



Taxpayers Will Challenge California Wealth Tax Proposal If It Passes

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OCTOBER 13, 2026

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Key Takeaways

- Proposition 40 would create an unprecedented state wealth tax of 5% on roughly 200 individuals and trusts with more than \$1 billion in assets.
- While supporters project the tax will produce a \$100 billion windfall, a Hoover Institution analysis estimates roughly \$40 billion in collections before economic effects and a net revenue loss of about \$25 billion after accounting for losses from other taxes.
- Proposition 40 contains unusual rules for residency, assets, and valuation. It would tax 100% of worldwide wealth based on California residency on January 1, 2026, and treat otherwise similar assets differently depending on how they are owned.
- Taxpayers would have numerous grounds for constitutional challenges. Potential claims include violations of the Due Process, Commerce, Equal Protection, Excessive Fines, Bill of Attainder, Takings, and Right to Travel protections, as well as separation-of-powers concerns and conflicts with federal law and Proposition 13.
- Valuation and enforcement would create major administrative problems. Privately held businesses, intellectual property, collectibles, and other illiquid assets can be extremely difficult to value, yet Proposition 40 would impose substantial penalties when taxpayers' valuations differ significantly from those accepted by the Franchise Tax Board.
- Passage on November 3 would mark the beginning, rather than the end, of the fight over the tax. Proposition 40 provides an expedited process for facial constitutional challenges, while taxpayer-specific disputes over residency, valuation, apportionment, and other issues could continue through the courts for years.

Executive Summary

California voters this November will vote on Proposition 40, which would impose a 5% wealth tax for 2026 on approximately 200 individuals and trusts with assets over \$1 billion. If this expanded and unusual tax on property passes, it would be the first such levy of its kind in the United States, with the proposal's authors hoping it will then spread to other states and be adopted federally.

However, the fate of Proposition 40 would likely be decided by the courts. Proposition 40's design flaws also mean it will cause negative economic and administrative effects, and will face serious legal challenges. NTUF's Taxpayer Defense Center has identified at least eight different grounds for taxpayers to challenge Proposition 40 if it passes on November 3:¹

- Retroactive tax increase in violation of the Due Process Clause, because the tax applies to those who were California residents on January 1, 2026 (before the election), and imposes new liability on past accumulations of assets.
- Excessive apportionment in violation of the Commerce Clause, because the tax applies to 100% of worldwide net worth, including assets held entirely out-of-state.
- Irrational rules in violation of the Equal Protection Clause, such as the one-day residency snapshot and differential treatment of individual-held real estate versus LLC-held real estate.
- Punitive taxation and penalties so significant as to violate the Excessive Fines Clause.
- A burden on a small identifiable group motivated by punishment that violates the Bill of Attainder Clause.
- A direction to the judiciary to rewrite the law if necessary that violates separation of powers.
- A direction to the legislature to amend the law, exceeding its own limits and likely conflicting with Proposition 13.
- For specific taxpayers, an as-applied challenge on valuation disputes, residency disputes, if the tax results in confiscation of value and forced sales in violation of the Takings Clause and Due Process Clause, or excessive apportionment in violation of the Commerce Clause.

¹ The authors drew upon and are grateful for the issues identified in the following: Baker Botts LLP, California 2026 Billionaire Tax Act, Dec. 2025, <https://www.bakerbotts.com/thought-leadership/publications/2025/december/california-2026-billionaire-tax-act>; Marty Dakessian, Dakessian Law, "What is the California Billionaire Tax?," Jun. 2026, <https://www.dakessianlaw.com/news/what-is-the-california-billionaire-tax-act/>; Marty Dakessian, Dakessian Law, "The 'One-Time' Wealth Tax Is Not Intended to Be 'One-Time,'" Jun. 2026, <https://www.dakessianlaw.com/news/the-one-time-wealth-tax-is-not-intended-to-be-one-time/>; Marty Dakessian, Dakessian Law, "The 'Billionaire Wealth Tax' Is Really an Aggressive Expansion of California's Property Tax," Jul. 2026, <https://www.dakessianlaw.com/news/the-billionaire-wealth-tax-is-really-an-aggressive-expansion-of-californias-property-tax/>; Marty Dakessian, Dakessian Law, "Wealth Tax: The 5% Rate and the Phase-In," Jul. 2026, <https://www.dakessianlaw.com/news/wealth-tax-the-5-rate-and-the-phase-in/>; Marty Dakessian, Dakessian Law, "Installment Payments: Help or Illusion?," Jul. 2026, <https://www.dakessianlaw.com/news/installment-payments-help-or-illusion/>; Marty Dakessian, Dakessian Law, "The Wealth Tax: Taxation of Trusts," Jul. 2026, <https://www.dakessianlaw.com/news/the-wealth-tax-taxation-of-trusts/>; Marty Dakessian, Dakessian Law, "The Three Asset Tracks of the Wealth Tax," Jul. 2026, <https://www.dakessianlaw.com/news/the-three-asset-tracks-of-the-wealth-tax/>; Marty Dakessian, Dakessian Law, "Wealth Tax: Why Special Control Shares Don't Qualify as 'Publicly Traded,'" Jul. 2026, <https://www.dakessianlaw.com/news/wealth-tax-why-special-control-shares-dont-qualify-as-publicly-traded/>; Marty Dakessian, Dakessian Law, "Rebutting the Wealth Tax's Valuation Formula is a Heavy Lift," Sep. 2026, <https://www.dakessianlaw.com/news/rebutting-the-wealth-taxes-valuation-formula-is-a-heavy-lift/>; Saba Shatara, Reed Smith LLP; Logan Gans, Holland & Knight LLP; Jared Walczak, "Proposition 40's Greatest Challenges Would Begin After Election Day," California Tax Foundation, Aug. 2026, <https://www.caltax.org/foundation/reports/prop40wp.pdf>; Jared Walczak, "Constitutional Flaws of California's Proposed Wealth Tax," Tax Foundation, Aug. 2026, <https://taxfoundation.org/research/all/state/california-proposition-40-wealth-tax-constitutional-legal-issues>; Letter from Alex Spiro to Gavin Newsom, Dec. 11, 2025, in Jack Newsham & Madeline Berg, "Read the letter celebrity lawyer Alex Spiro wrote to Gavin Newsom, warning that his clients will 'permanently relocate' if California wealth tax passes," Dec. 2025, <https://www.businessinsider.com/alex-spiro-letter-gavin-newsom-stop-california-wealth-tax-billionaires-2025-12>.

Some legal challenges may proceed quickly. Under its own terms, the initiative requires post-election challenges to overall constitutionality (facial challenges), to be filed in a Sacramento court within 60 days with any appeal directly proceeding to the Supreme Court of California. These restrictions do not apply to pre-election challenges or post-election taxpayer-specific disputes of liability (as-applied challenges), so, if Proposition 40 passes, legal challenges may persist for years.

Proposition 40's Wealth Tax Would Be Extreme and Unprecedented in the U.S.

Wealth tax rates often appear misleadingly modest when compared to income or sales tax rates. However, because they target the entirety of an individual's net worth instead of just a subset, they are far more burdensome than other types of taxes. Proposition 40, for example, would impose a 5% wealth tax on the net assets of billionaires. For a stock portfolio that appreciates by 4% over the course of the year, a 5% wealth tax is equivalent to a 125% capital gains tax.

Moreover, most assets are not as easy to value as publicly-traded stock shares. Billionaire net worth often consists of assets such as ownership stakes in privately-held companies, collectible artwork and jewelry, intangible assets such as trademarks and patents, and other assets that are difficult to value accurately. The Franchise Tax Board currently has no infrastructure for valuing these types of assets. Valuing these kinds of assets will entail years of costly litigation on both ends and establishment of an extensive and costly administrative apparatus for an ostensibly "one-time" tax.

Wealth Taxes Being Abandoned Worldwide as California Considers Adopting One

California's wealth tax proposal comes as other nations with developed economies are abandoning them. While 12 OECD countries levied a wealth tax comparable to what is being proposed under Proposition 40 in the 1990s, today just 4 do: Colombia, Norway, Spain, and Switzerland.² A few other European countries tax subsets of net worth; for instance, France taxes net real estate wealth, Belgium taxes the value of securities accounts, and Italy taxes the net value of foreign real estate and financial assets held by Italian residents.

European countries that have repealed broad wealth taxes levied against individuals include Austria (repealed 1994), Denmark (repealed 1997), Finland (repealed 2006), France (repealed 2018), Germany (repealed 1997), Iceland (repealed 2015), Ireland (repealed 1978), Luxembourg (repealed 2006), the Netherlands (repealed 2001), and Sweden (repealed 2007).³ Recurring themes motivating these retrenchments have been persistent outmigration, high administrative costs, difficulty in preventing evasion, and underwhelming revenues.

The most recent country to learn this lesson was the Netherlands. The Netherlands operated a "deemed-return" ("Box 3") scheme that taxed financial assets at an assumed rate of return before its high court struck it down. The country's government briefly considered adopting a new tax on unrealized gains, but has announced that it will instead move towards a traditional capital gains tax formula after significant investor backlash.⁴

² See Adam Michel & Chris Edwards, "Failures of Wealth Taxation, Cato Institute Policy Analysis No. 1021, Jul. 2026, <https://www.cato.org/policy-analysis/failures-wealth-taxation>.

³ See *id.*

⁴ Patrick Van Oosterom, "Dutch to Propose Capital Gains Tax to Break Reform Deadlock," Bloomberg, Sep. 2026, <https://www.bloomberg.com/news/articles/2026-09-15/dutch-to-propose-capital-gains-tax-in-reform-of-levies-on-wealth>.

Proposition 40 Would Impose a “One-Time” 5% Wealth Tax, But Allows the Legislature and the Judiciary to Modify It

Proposition 40 as written imposes a 5% tax on certain property⁵ of individuals and trusts worth over \$1 billion, with valuation as of December 31, 2026, and residency based on a snapshot date of January 1, 2026.⁶ Between \$1 billion and \$1.1 billion of assets, the rate for individuals scales at 0.1 percentage point per \$2 million to minimize a cliff effect, or excessive marginal tax rates caused by rate differentials.⁷ Filing, valuation, and payment are due with the filing of 2026 income taxes (April 2027, or later with extensions), and there is an option to pay the wealth tax all at once or in five equal annual installments.⁸ The expected revenue from this one-time tax would shore up recurring state spending on health care, education, and food assistance.

Taxable wealth includes publicly tradable assets like stocks, sole proprietorships, and privately held assets like the value of personal property and shares of businesses. Each category has different valuation rules. For shares of businesses, Proposition 40 sets a presumption that ownership percentage is no less than voting percentage. Real estate held by individuals is exempt from Proposition 40, but real estate held by corporations, trusts, LLCs, and partnerships is taxed at a formula of value plus 7.5 times profits. Trusts funded in 2025 and 2026 are taxed, with 2025 trusts taxed at 75% of transferred value and 2026 trusts taxed at 100% of *all* value (likely a drafting error, with transferred value intended). Tangible personal property held outside the state is excluded only if it was outside California for at least 270 days in 2026.

Penalties established by Proposition 40 will be severe. Substantial understatement of tax, defined as the greater of \$1 million or 20% of the total, faces a penalty of 20% of the understatement.⁹ Gross understatement of tax, defined as the greater of \$10 million or 40% of the total, faces a penalty of 40% of the understatement.¹⁰ Appraisals would be due relatively quickly: in April 2027 with the filing and payment. Appraisers must provide copies of their reports directly to the Franchise Tax Board, and also face penalties for substantial understatement (2% of amount) or gross understatement (4% of amount).¹¹ The state Franchise Tax Board is directed to disregard transactions they believe lack economic substance, apply step-transaction and substance-over-form doctrines, reallocate assets and liabilities among commonly controlled entities, and challenge conversion of assets between public and non-public status that they may contend were to manipulate valuation. Consequently, there is great risk these penalties would apply even in good-faith valuation disagreements, and the appraisal penalties in particular may make it difficult to find appraisers willing to do the work without indemnification guarantees. These ruinous penalties may themselves raise constitutional issues under the Excessive Fines Clause and the Due Process Clause separate from the tax itself.

Legislation often contains a severability clause directing a court to continue applying the rest of a law if part of it is held to be unconstitutional, but Proposition 40 goes further. The initiative adds a new law directing courts to “preserve the imposition of the tax authorized, including by reforming dates or periods specified, using the most limited adjustment possible to cure any constitutional or other legal defect, while allowing the remaining provisions to operate.”¹²

⁵ Proposition 40 terms the tax “an excise tax on the activity of sustaining excessive accumulations of wealth” to avoid restrictions on property taxation, but that would suggest that it would only apply to “accumulations of wealth” sustained after January 1, 2026. Concluding otherwise would require acknowledging that the “the activity of” phrase is meaningless and the tax is just a property tax on wealth. Cf. *Moore v. United States*, 600 U.S. 572 (2024) (discussing distinctions between excise taxes vs. income taxes vs. property taxes in the context of federal constitutionality).

⁶ See Cal. Proposition 40, Proposed Cal. Rev. & Fin. §§ 50308(a) (defining individuals and applicable trusts); 50308(n) (“Tax obligation date” means January 1, 2026.”); 50308(o) (“Valuation date” means December 31, 2026.”).

⁷ See Cal. Proposition 40, Proposed Cal. Rev. & Fin. § 50301(b). Absent this adjustment, the marginal tax rate on taxable value of \$1,000,000,001 would be near infinite.

⁸ See Cal. Proposition 40, Proposed Cal. Rev. & Fin. § 50301(c).

⁹ See Cal. Proposition 40, Proposed Cal. Rev. & Fin. § 50312(a).

¹⁰ See Cal. Proposition 40, Proposed Cal. Rev. & Fin. § 50312(b).

¹¹ See Cal. Proposition 40, Proposed Cal. Rev. & Fin. § 50305 (a), (c).

¹² Cal. Proposition 40, Proposed Cal. Rev. & Fin. § 50311(b).

Perhaps in recognition of the constitutional dubiousness of the retroactive residency snapshot date, the provision specifically directs courts to change it if invalidated.¹³ This raises a question of whether such judicially-amended language is what voters actually approved, should they vote yes on Proposition 40.

Two other ballot measures, if they pass, would affect Proposition 40. Proposition 41 would ban new taxes that are excluded from the statewide spending limit and would add a requirement for pre-election audits of tax proposals put on the ballot with 25% of the required signatures. Proposition 42 would ban new taxes on personal property (retirement holdings, personal assets, and savings) and explicitly bans retroactive taxes. If either Proposition 41 or 42 passes with more votes than Proposition 40, it would supersede Proposition 40, although this may also be subject to legal interpretation or challenge.

Revenue Will Likely Fall Short from Negative Economic and Administrative Effects

Proponents anticipate a \$100 billion windfall from the passage of Proposition 40, calculated from the paper wealth of billionaires listed as residing in California on the Forbes list. Actual collections will likely be significantly less, given the realities of administration and the actual sale value of paper wealth. A study by Stanford's Hoover Institution estimated the actual collection at approximately \$40 billion over five years, before accounting for economic effects.¹⁴

Even should Proposition 40 pass, it will have significantly eroded California's tax base in exchange for "one-time" revenue. Confirmed departures from California already by billionaires add up to hundreds of billions of dollars in net worth that will no longer be subject to California income or sales tax. Factoring in quieter departures, the total amount of wealth that has fled California due to Proposition 40 likely exceeds \$1 trillion.¹⁵

The Hoover study found that, after factoring in lost revenue from other taxes, Proposition 40 will likely end up losing the state around \$25 billion even if the new billionaire tax goes into effect.¹⁶ Further, that does not account for the strong possibility that a legal challenge to the tax would force the state to refund whatever revenue it collects somewhere down the line. Maryland, for example, faces refunding hundreds of millions of dollars (plus interest) collected by its digital advertising tax after a court recently invalidated it.¹⁷

¹³ See *id.* ("If a court determines that imposing liability under this act by reference to the tax obligation date specified in subdivision (n) of Section 50308 or the valuation date specified in subdivision (o) of Section 50308, in whole or in part, is contrary to the United States Constitution, the California Constitution, or other governing federal law, then, to the extent of that determination, all references in the act and in Section 37 of Article XIII of the California Constitution to the "tax obligation date" and "valuation date" shall instead be construed to refer to the earliest date or dates subsequent to the tax obligation date or valuation date, as applicable, on which liability may be imposed consistently with that law. In reforming any dates or periods specified in the act, a court shall, to the maximum extent permitted by law, preserve the imposition of the tax for the 2026 tax year, or if that is not permissible then for 2027 or the earliest permissible subsequent year, while otherwise preserving the overall structure and purposes of this act.").

¹⁴ See Joshua Rauh & Ben Jaros, "The Net Present Value of the Billionaire Tax Act: An Assessment of the Fiscal Effects of California's Proposed Wealth Tax," Hoover Institution, Mar. 2026, <https://www.hoover.org/press/californias-proposed-billionaire-tax-will-cost-state-estimated-25-billion-hoover-study-finds>

¹⁵ See Andrew Wilford, "California Wealth Tax Proposal Achieves a New Feat in Tax Policy: Losing the State Money Before It Even Becomes Law," NTUE, Feb. 2026, <https://www.ntu.org/foundation/detail/california-wealth-tax-proposal-achieves-a-new-feat-in-tax-policy-losing-the-state-money-before-it-even-becomes-law>

¹⁶ See Rauh & Jaros, <https://www.hoover.org/press/californias-proposed-billionaire-tax-will-cost-state-estimated-25-billion-hoover-study-finds>

¹⁷ See Andrew Wilford, "Maryland's Digital Ad Tax Struck Down in Court," NTUE, Aug. 2026, <https://www.ntu.org/foundation/detail/marylands-digital-ad-tax-struck-down-in-court>.

Design Flaws Leave the Proposal Vulnerable to Legal Challenges

Proposition 40 was designed in part by a group of legal academics who hoped to insulate it from legal challenge.¹⁸ A federal wealth tax would face a serious challenge under the U.S. Constitution, but NTUF's Taxpayer Defense Center has identified numerous legal issues with California's wealth tax proposal.¹⁹

Retroactivity and Due Process

If the tax passes on November 3, it will apply to those who were California residents on January 1, 2026, eleven months earlier. Retroactive taxes violate the fundamental principles of transparency and stability. Retroactive tax increases undermine certainty in the law and the ability of taxpayers to plan their affairs by relying on the law today, not based on what legislators in the future decide the law was. Contrary to popular belief, the U.S. Supreme Court has not yet categorically held retroactive tax increases to be unconstitutional, but Proposition 40 would go beyond what it has previously upheld.

In *U.S. v. Carlton* (1994), the U.S. Supreme Court both set limits on and upheld a retroactive tax change relating to a minor provision of the tax reform law passed in 1986.²⁰ The law created an estate tax deduction for half the proceeds of the sale of employer securities by an estate executor to an employee stock ownership plan, intending to incentivize estate transfers of stock from owners to employees rather than to outside investors. But, because the deduction was not limited to transfers by decedent owners, nor restricted to pre-death transfers, executors such as Carlton exploited the new loophole. On January 5, 1987—about two and a half months after the law's effective date of October 22, 1986—the IRS announced it would seek a legislative fix and warned against deductions being taken except by decedents who owned the shares and who transferred them before death. Congress ultimately enacted the legislative fix on December 22, 1987, with an effective date of October 22, 1986, some sixteen months of retroactivity. Under these circumstances of curing a recent change and immediate public notice, the Supreme Court upheld the retroactive application: “The amendment at issue here certainly is not properly characterized as a “wholly new tax,” and its period of retroactive effect is limited.”²¹ Justice Sandra Day O'Connor wrote separately, agreeing with the result but urging a more definitive result: “A period of retroactivity longer than the year preceding the legislative session in which the law was enacted would raise, in my view, serious constitutional questions.”²²

Here, Proposition 40 is indisputably “the creation of a wholly new tax” that would violate the majority holding in *Carlton*.²³ The retroactivity is also not related to a legitimate government purpose, but rather to deprive taxpayers of any ability to end residency before the effective date. California courts have struck down retroactive tax increases that violate the *Carlton* standard.²⁴ Ominously for Proposition 40, one California appellate decision invalidated a tax that “imposes new, additional or different liabilities based on past conduct.”²⁵

¹⁸ See, e.g., David Gamage & Darien Shanske, “Proposition 40: A One-Time Tax on Billionaire Wealth,” Tax Notes, Oct. 2026, <https://www.taxnotes.com/tax-notes-state/legislation-and-lawmaking/proposition-40-one-time-tax-billionaire-wealth/2026/10/05/7wq68>; Brian Galle, David Gamage, Emmanuel Saez, & Darien Shanske, “Some Actual Facts About California's Billionaire Tax,” Tax Notes, May 2026, <https://www.taxnotes.com/tax-notes-state/tax-reform/some-actual-facts-californias-billionaire-tax/2026/05/04/7vrg7>; Brian Galle, David Gamage, & Darien Shanske, “Correcting the Record: Responding to Some Legal Arguments About the 2026 Billionaire Tax Act,” University of Missouri School of Law Legal Studies Research Paper No. 2026-02 (Dec. 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5996574.

¹⁹ For legal issues with a federal wealth tax, see Joe Bishop-Henchman, “Is A Federal Wealth Tax Constitutional?,” NTUF, Oct. 25, 2021, <https://www.ntu.org/foundation/detail/is-a-wealth-tax-constitutional>.

²⁰ See *U.S. v. Carlton*, 512 U.S. 26 (1994).

²¹ *Id.* at 34.

²² *Id.* at 38 (O'Connor, J., concurring in the judgment).

²³ See *id.* at 34 (citing *Blodgett v. Holden*, 275 U.S. 142 (1927) and *Untermeyer v. Anderson*, 276 U.S. 440 (1928)); see also *United States v. Hemme*, 476 U.S. 558, 568 (1986).

²⁴ See, e.g., *NetJets Aviation, Inc. v. Guillory*, (2012) 207 Cal.App.4th 26; *City of Modesto v. National Med., Inc.*, (2005) 128 Cal. App.4th 518. See also *Quarty v. U.S.*, 170 F.3d 961, 967 (9th Cir. 1999).

²⁵ See *Brenton v. Metabolife International, Inc.*, (2004) 116 Cal.App.4th 679, 688.

Commerce Clause

State taxes on out-of-state activity must comply with the four-part test from *Complete Auto Transit v. Brady*, which requires such a tax (1) be applied to an activity with a substantial nexus to the taxing state, (2) be fairly apportioned, (3) not discriminate against interstate commerce, and (4) be fairly related to services provided by the state.²⁶ Proposition 40 arguably violates all four prongs, but especially prongs 2 and 4.

Nexus. Many of these assets may have no current connection with California other than the in-state presence of the taxpayer (or their spouse) on the snapshot date of January 1, 2026.

Fairly Apportioned. Proposition 40, despite being a state-level enactment, defines its taxable base as global: “the total value of all assets and property interests taken into account for the taxpayer and their spouse *worldwide* . . .”²⁷ To meet the constitutional requirement that California not tax more than its fair share of the tax base, such a tax must use an allocation or apportionment formula, or provide a credit. Proposition 40 does none of those things, instead superseding California’s existing rules to instead direct 100% of the defined global tax base to California.²⁸ Someone resident on January 1 must allocate 100% of their global assets to California, while someone who moved out the day or in the day after allocates zero. The initiative provides for “alternative apportionment” as opposed to the default, but because it puts the burden of proof on the taxpayer and still retains a 25% minimum apportionment to California even if the facts do not support it, the fair apportionment violation remains. Similarly, the initiative provides for judicial reformation of any portion of the law held invalid, but this does not save the underlying default formula from its constitutional infirmity.

Non-Discrimination

To protect a national market from states erecting trade barriers against each other, courts invalidate state tax and regulatory enactments that have a discriminatory purpose of harming out-of-state actors to benefit in-state actors.²⁹ Discriminatory purpose can be evidenced by statements evidencing such an intent, or, more commonly, analysis of how the actual burdens shake out through application of the “internal consistency test.” “This test . . . looks to the structure of the tax at issue to see whether its identical application by every State in the Union would place interstate commerce at a disadvantage as compared with commerce intrastate.”³⁰ After applying this analysis, “[a]ny cross-border tax disadvantage that remains after application of the test cannot be due to tax disparities, but is instead attributable to the taxing State’s discriminatory policies alone.”³¹

Applying the internal consistency test to Proposition 40, every state adopting a similar tax with a 100% global tax base would result in crushing burdens on out-of-state assets. Meanwhile, the vast majority of in-state property (real estate held by individuals and all property held by non-billionaires) would be exempt. Proposition 40’s broad taxation of out-of-state assets, while exempting in-state assets like residential property, evidences a decision to discriminate against interstate (and international) commerce. A billionaire would pay no tax on their in-state estate while an out-of-state LLC (via an in-state shareholder) would pay tax on equivalently owned property. In this way, Proposition 40 acts as an impermissible state tariff on those who entered California on or before the snapshot date.

²⁶ See *Complete Auto Transit Co. v. Brady*, 430 U.S. 274, 279 (1977).

²⁷ Proposition 40, Proposed Cal. Rev. & Fin. § 50308(f) (emphasis added).

²⁸ Proposition 40, Proposed Cal. Rev. & Fin. § 50306(a) (“The rules in this chapter supersede other rules, including the rules concerning the division of income for purposes of part-year residence. One hundred percent of any tax imposed under Sections 50301 and 50304 is apportioned to California for all applicable individuals and applicable trusts, without reduction or multiplier based on residency history, including whether an individual was a California resident before the tax obligation date described in subdivision (n) of Section 50308.”).

²⁹ See, e.g., *National Pork Producers, Inc. v. Ross*, 598 U.S. 356, 369-371 (2023) (reciting cases).

³⁰ *Comptroller of the Treasury v. Wynne*, 575 U.S. 542, 562 (2015) (internal quotations omitted).

³¹ *Id.* at 563.

Fairly Related to Services

Generally taxes need not satisfy a dollar-for-dollar cost-benefit test to be upheld as being fairly related to services provided by the state.³² But the enormous sums of tax envisioned to be collected by this proposal—according to the proponents, an average of \$500 million each from 200 people—are far and beyond any conceivable estimate of services provided by the state to those individuals and any just share of the tax burden.

Equal Protection Clause

Courts apply the Fourteenth Amendment’s Equal Protection Clause to invalidate state laws that deprive citizens of fundamental rights where the law is not narrowly tailored for a compelling government interest, or for other restrictions on liberty where the law is not rationally related to a legitimate government interest. In other words, where a law treats categories of individuals differently, there are minimum standards of rationality that need to be attained. This rational basis test, as it is called, is inherently deferential to legislatures making choices that result in benefits for some and harm to others.³³ But several features of Proposition 40 are sufficiently unusual that they violate equal protection guarantees.

For example, the residency snapshot date of January 1, 2026, differs from most residency standards for taxation that rely on presence over an extended time period such as a year, allocation of income, or apportionment of presence or activity. Put simply, a billionaire who moved into California on January 2, 2026, will pay nothing under the tax while a billionaire who exited the state completely after January 1 (nearly a year before passage) will pay the full amount. The arbitrariness of the unusual January 1 snapshot defies rationality.

Similarly, real estate held by an individual is exempt under Proposition 40, but otherwise identical real estate held by a trust or an LLC is taxed fully. This differential treatment was likely intended to avoid the talking point that this tax will gut the protections of Proposition 13. But the result is arbitrarily unequal treatment that does not further any legitimate governmental, as opposed to political, interest.

A key Supreme Court case on application of the Equal Protection Clause to tax laws coincidentally involves California’s Proposition 13.³⁴ Challengers pointed to the likely disparate treatment between long-term homeowners (who benefit from accumulated limits on annual assessment increases) and new homeowners (who do not and pay taxes on more recent market value). The Court concluded that California could rationally choose to orient the tax system to benefit long-term homeowners at the expense of new homeowners, for the interests of not forcing older persons to move out of residences when tax burdens became too great and of neighborhood continuity and stability.³⁵ Such explanations are not applicable to Proposition 40’s unusual snapshot date or arbitrary real estate treatment.

³² See, e.g., *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 625-28 (1981).

³³ See, e.g., *Nordlinger v. Hahn*, 505 U.S. 1, 11-12 (1992) (“In general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational. This standard is especially deferential in the context of classifications made by complex tax laws.”) (internal citations omitted).

³⁴ See *id.*

³⁵ See *id.* at 17.

Bill of Attainder

The Constitution prohibits legislative acts that single out individuals for punishment without judicial trial.³⁶ A bill of attainder may “apply either to named individuals or to easily ascertainable members of a group . . .”³⁷ A forbidden legislative bill of attainder may affect the life of an individual, or may confiscate his property, or may do both.³⁸

Proposition 40 targets 200 ascertainable members of a group and does not provide for judicial trial. The key question will be whether Proposition 40’s levy constitutes punishment. Because Proposition 40 speaks critically of that group’s privileges and the importance of collectively depriving them of some of their property for a greater good, this is evidence of an intent to punish.³⁹ Just as a bill of attainder punishes for past conduct, Proposition 40 taxes past accumulations rather than future activity.

Excessive Fines

The Eighth Amendment bans punitive forfeitures that are “grossly disproportional to the gravity of a defendant’s offense.”⁴⁰ Non-criminal statutes, such as the punitive effect of a tax-related seizure of residential property, may implicate the Clause.⁴¹ If Proposition 40 is punitive in nature, the large amount of the levy would be excessive.

Right to Travel

The Constitution protects the right to travel freely between the states. With its retroactive residency snapshot date, Proposition 40 would impose a punishing tax on former residents after they have left the state (and indeed on new residents who move into the state on or before that date). “But, in moving . . . , appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.”⁴² To the extent California attempts to apply the tax to those who have exited the state, it would be a forbidden tax on leaving.⁴³

Separation of Powers

As aforementioned, Proposition 40 goes beyond typical severability clauses by adding a new law directing courts to “preserve the imposition of the tax authorized, including by reforming dates or periods specified, using the most limited adjustment possible to cure any constitutional or other legal defect, while allowing the remaining provisions to operate.”⁴⁴ The provision also specifically directs courts to change the residency date and the valuation date if the dates in the

³⁶ See, e.g., *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), citing U.S. Const., art. I, § 9, cl. 3.

³⁷ *U.S. v. Lovett*, 323 U.S. 303, 315-16 (1946).

³⁸ *Fletcher v. Peck*, 10 U.S. 87, 138 (1810).

³⁹ See, e.g., Proposition 40, Proposed Law § 2(r) (“California has around 200 billionaires who collectively possess an astonishing \$2 trillion in wealth.”); § 2(u) (“The immense and growing fortunes of billionaires bring privileges inaccessible to most.”); § 2(y) (“Billionaires have built their extraordinary fortunes with the help of California resources and were the largest beneficiaries of the federal legislation that contributed to the current state budget crisis. It therefore is both necessary and equitable to ask those who have benefitted most from California’s resources to contribute proportionately to support health care, education, and nutrition in California through a onetime 5% tax on billionaire wealth.”).

⁴⁰ *United States v. Bajakajian*, 524 U.S. 321, 334 (1998); see also *Timbs v. Indiana*, 586 U.S. 146 (2019) (applying the Excessive Fines Clause to state enactments).

⁴¹ See *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 648 (2023) (Gorsuch and Jackson, JJ., concurring).

⁴² *Shapiro v. Thompson*, 394 U.S. 618, 659 (1969).

⁴³ See, e.g., *Crandall v. State of Nevada*, 73 U.S. 35 (1867).

⁴⁴ Cal. Proposition 40, Proposed Cal. Rev. & Fin. § 50311(b).

initiative are invalidated.⁴⁵ These amount to delegations of legislative power to the judiciary, a violation of separation of powers.⁴⁶

Conflict with Proposition 13

Proposition 13, among other things, prohibits taxation of property at fair market value but requires instead taxation at assessed value. Because Proposition 40 taxes property at fair market value, it must override Proposition 13, which it does by amending the California Constitution to exempt itself from Proposition 13.⁴⁷ Proposition 40 also authorizes the Legislature to amend the law adopted by Proposition 40 as it sees fit.⁴⁸ Taken together, these changes open up a large potential loophole in Proposition 13 for future exploitation.

Conflict with Federal Law

Proposition 40 taxes all assets unless specifically exempted, and provides no exemption for federal bonds or other obligations. Federal law prohibits states from taxing these items.⁴⁹

As-Applied Challenges (Valuation Disputes, Commerce Clause, Confiscation, Takings Clause)

Individual taxpayers, citing their own circumstances, may be able to allege additional constitutional and legal challenges in their own disputes of liability.

Chief among these will be valuation disputes. While it will be easy to ascertain the value of some assets such as publicly-traded stocks, many of the assets subject to Proposition 40's tax will have more subjective value. Real estate valuation is tricky as anyone who has bought or sold a home or disputed a property tax assessment can attest. Privately-held companies are notoriously difficult to value. Personal property that has not been exchanged in some time or where there is no directly comparable market will be especially hard to value outside of general ranges.⁵⁰ Proposition 40 ignores these problems, essentially believing that there is a correct specific dollar amount and that enormous penalties are appropriate if the Franchise Tax Board disagrees with what the taxpayer contends.

⁴⁵ See *id.* (“If a court determines that imposing liability under this act by reference to the tax obligation date specified in subdivision (n) of Section 50308 or the valuation date specified in subdivision (o) of Section 50308, in whole or in part, is contrary to the United States Constitution, the California Constitution, or other governing federal law, then, to the extent of that determination, all references in the act and in Section 37 of Article XIII of the California Constitution to the “tax obligation date” and “valuation date” shall instead be construed to refer to the earliest date or dates subsequent to the tax obligation date or valuation date, as applicable, on which liability may be imposed consistently with that law. In reforming any dates or periods specified in the act, a court shall, to the maximum extent permitted by law, preserve the imposition of the tax for the 2026 tax year, or if that is not permissible then for 2027 or the earliest permissible subsequent year, while otherwise preserving the overall structure and purposes of this act.”).

⁴⁶ See, e.g., *Field v. Clark*, 143 U.S. 649, 697 (1898) (“That no part of this legislative power can be delegated by Congress to any other department of the government, executive or judicial, is an axiom in constitutional law, and is universally recognized as a principle essential to the integrity and maintenance of the system of government ordained by the Constitution.”); but see *Mistretta v. U.S.*, 488 U.S. 361, 412 (1989) (upholding the U.S. Sentencing Commission as “calling upon the accumulated wisdom and experience of the Judicial Branch in creating policy on a matter uniquely within the ken of judges.”).

⁴⁷ See Proposition 40, Proposed Calif. Const. art. XIII, § 37(e) (“To the extent any provision of Article XIII A [Proposition 13] would otherwise be construed to limit, restrict, or apply to the rate, base, valuation, or imposition of the tax authorized by this section, that provision shall not apply to, and is superseded by, this section.”).

⁴⁸ Proposition 40, Proposed Cal. Rev. & Fin. Code § 50310 (“The Legislature may amend the 2026 Billionaire Tax Act, by statute passed in each house of the Legislature by roll call vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with and furthers the purposes of the 2026 Billionaire Tax Act.”).

⁴⁹ See 31 U.S.C. § 3124(a).

⁵⁰ For example, when singer Michael Jackson died in 2009, the IRS and the estate disputed the estate's valuation and associated tax liability for 12 years. The estate calculated a value of \$5 million while the IRS asserted \$500 million. The chief dispute was over the value of the likeness and future endorsements by Jackson, with the estate estimating that to be worthless citing his scandals and death, and the IRS citing \$61 million as the value of comparable endorsement deals by living celebrities. Ultimately, the Tax Court split the difference at \$112 million (primarily the singer's share of the Beatles catalog), with likeness at \$4 million. See *Estate of Michael Jackson v. Commissioner*, T.C. Memo. 2021-48 (2021).

To the extent that a taxpayer's liability is unusually high in California compared to their global activities or overall assets, the taxpayer may have additional claims under the Commerce Clause, Due Process Clause, or Takings Clause. If a taxpayer is harmed because prices of certain assets are depressed with many assets being liquidated at the same time to meet tax obligations, or is compelled to sell at a level that constitutes confiscation, Proposition 40 would be "so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property."⁵¹

Taxes are generally not considered violations of the Takings Clause, but if the levy compels forced liquidations that could constitute a taking for which compensation is required.⁵² Additionally, forcing a small group of people "to bear public burdens which, in all fairness and justice, should be borne by the public as a whole" may also constitute a taking.⁵³ Proposition 40 is also a one-time levy on past accumulations, which is more like a taking than a tax.⁵⁴

Residency in California is also a somewhat ephemeral construct, using a closest connections test involving multiple factors (physical presence, property, family personal associations, children's school, business/employment, professional services, bank accounts, Secretary of State filings, DMV records, aircraft registration, voter registration, tax return filings, and filings for lawsuits).⁵⁵ Taxpayers who believe they ended their California residency before January 1, 2026, (or any other effective date that may be substituted) may be surprised to learn that California disagrees, based on one or more of the factors.

Conclusion

Proposition 40 is not simply an unusually aggressive tax proposal; it is a collection of novel and constitutionally dubious provisions that would invite litigation from the moment it takes effect. Its retroactive reach, taxation of worldwide assets, arbitrary residency and valuation rules, severe penalties, and attempts to empower courts and legislators to rewrite the measure all provide taxpayers with substantial grounds for challenge. Those disputes would come on top of the enormous practical difficulties of valuing privately held businesses and other illiquid assets, administering an unprecedented state wealth tax, and collecting revenue from taxpayers who may already be leaving California.

⁵¹ *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1, 24–25 (1916).

⁵² See, e.g., *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 615 (2013) (holding that Takings Clause "does not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners.").

⁵³ *Armstrong v. U.S.*, 364 U.S. 40, 49 (1960).

⁵⁴ Cf. *Eastern Enterprises v. Apfel*, 524 U.S. 498, 537 (1998) ("When, however, that solution singles out certain employers to bear a burden that is substantial in amount, based on the employers' conduct far in the past, and unrelated to any commitment that the employers made or to any injury they caused, the governmental action implicates fundamental principles of fairness underlying the Takings Clause.").

⁵⁵ See Cal. Franchise Tax Board, "Residency and Sourcing Technical Manual," Jan. 2026, 4630 Determining Residency at 114–15, <https://www.ftb.ca.gov/tax-pros/procedures/residency-and-sourcing-technical-manual-disclosure.pdf>.



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