TAX LIMITS AND THE FUTURE OF LOCAL DEMOCRACY

Ariel Jurow Kleiman

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Ariel Jurow Kleiman[*]

Property tax limits are state-level laws that place caps on local governments' tax rates and revenue. These statutory limits, which put pressure on already strapped cities and counties in forty-six states, present an inexorable dilemma for local policymakers. On the one hand, they may cause cuts to vital services, bankruptcy, and reliance on regressive revenue sources. At the same time, however, tax limits may reflect genuine concerns about government profligacy and nonresponsiveness. While much research has focused on the first side of the dilemma — examining the laws' fiscal consequences — this Article explores the second, probing how tax limits affect the distribution of political power between local voters and policymakers.

The Article makes three contributions. First, it argues that property tax limits have focused too strongly on a tax reduction goal to the exclusion of other potential objectives. It takes tax limits as a political reality and argues that existing limits should be shaped to improve local public control and oversight of government fiscal decisions. Prioritizing public control would increase voter satisfaction and expand opportunities for taxpayer voices to be heard. Second, having identified this additional tax limit objective, the Article evaluates the laws' potential efficacy in achieving it. To do so, the Article identifies a list of statutory features that enhance or undermine local public control. The Article then surveys property tax limits in all fifty states and is the first to code each statute for features affecting the power of local voters. The survey results demonstrate that tax limits in most states undermine public control by reducing voter power, instead shifting power to governors and state legislatures and prioritizing a pure tax reduction goal. Additionally, although most tax limits can be exceeded with voter approval, there is reason to believe that voter approval may result in policies that do not accurately reflect voters' true preferences. The Article surveys literature on direct democracy to conclude that softer forms of public engagement such as disclosure requirements or petition referenda may result in more democratically responsive laws.

The Article's third and final contribution is a menu of policy reforms for state and local actors. Distinct from other commentators who tend to advocate the wholesale embrace or repeal of tax limits, the author suggests reforms that respect the laws' public appeal while seeking to soften their harsher consequences. Assuming that the state-set limits will persist, mayors, city councils, and state legislatures can use the suggested reform principles to reinvigorate local democracy and, perhaps, address some of the concerns that led to the limits being adopted in the first place.

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INTRODUCTION

Local government finances have lately commanded significant public attention.[1] In the shadow of the Great Recession, fiscal crises and their consequences have intensified such scrutiny. Four of the five largest local government bankruptcies in U.S. history occurred after 2010: in Detroit, Jefferson County, Stockton, and San Bernardino County.[2] Aggressive revenue-collection tactics in places like Ferguson, Missouri, have spurred federal inquiry and spotlighted the pernicious downstream effects of city government insolvency.[3]

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[1] Municipal bankruptcies offer one example of high-profile fiscal events that have captured recent media attention. *See, e.g.*, Monica Davey & Mary Williams Walsh, *Billions in Debt, Detroit Tumbles into Insolvency*, N.Y. TIMES (July 18, 2013), https://nyti.ms/1bM3VGF [https://perma.cc/FJU8-73H3]; Ian Lovett, *Third City in California Votes to Seek Bankruptcy*, N.Y. TIMES (July 11, 2012), https://nyti.ms/PMWTYL [https://perma.cc/8R8Y-5CNA]; *The 5 Biggest Municipal Bankruptcies in U.S. History*, FORBES, https://www.forbes.com/pictures/ejii45efkm/the-5-biggest-municipal-bankruptcies-in-u-s-history [https://perma.cc/G7TC-7XGK] (listing the five largest municipal bankruptcies in U.S. history, four of which have occurred since 2011 and include, by size of bankruptcy, Detroit, Michigan (2013), Jefferson County, Alabama (2011), Stockton, California (2012), and San Bernardino County, California (2012)); Malia Wollan, *Years of Unraveling, Then Bankruptcy for a City*, N.Y. TIMES (July 18, 2012), https://nyti.ms/NAu2Cs [https://perma.cc/2AN4-YQY5]. More recently, unfunded pensions in Illinois have grabbed headlines. *E.g.*, Editorial, *Goodbye to Illinois' $130 Billion Pension Hole. Now It's $133 Billion. And Getting Deeper.*, CHI. TRIB. (Dec. 10, 2018, 5:15 PM), https://www.chicagotribune.com/opinion/editorials/ct-edit-pension-illinois-pritzker-budget-20181210-story.html [https://perma.cc/9LQ8-R6EJ].

Cuts to vital public services such as fire departments have also drawn attention, often with direct reference to state tax limitations. *E.g.*, Shaun Boyd, *Fire Districts Fall Short for Funding Despite Increase in Emergency Calls*, CBS DENVER (Dec. 12, 2018, 7:56 PM), https://denver.cbslocal.com/2018/12/12/fire-districts-emergency-calls-tabor-gallagher [https://perma.cc/SJP6-KZD7]; *Colorado Fire Chiefs Mount Push to Fix Funding Shortfall*, CPR NEWS (Apr. 20, 2018), https://www.cpr.org/2018/04/20/colorado-fire-chiefs-mount-push-to-fix-funding-shortfall [https://perma.cc/5FPR-M3G7].

Perhaps more sensationally, increased local government reliance on fine and fee revenue has led to accusations against police departments of operating as aggressive collection agencies. *E.g.*, Matt Ford, *The Problem with Funding Government Through Fines*, THE ATLANTIC (Apr. 2, 2015), https://www.theatlantic.com/politics/archive/2015/04/the-problem-with-funding-government-through-fines/389387 [https://perma.cc/7ZQV-YSTG]; Terrence McCoy, *Ferguson Shows How a Police Force Can Turn into a Plundering "Collection Agency,"* WASH. POST (Mar. 5, 2015, 4:45 AM), https://www.washingtonpost.com/news/morning-mix/wp/2015/03/05/ferguson-shows-how-a-police-force-can-turn-into-a-plundering-collection-agency [https://perma.cc/U8PH-GD37].

[2] *E.g.*, Davey & Walsh, *supra* note 1; Lovett, *supra* note 1; *The 5 Biggest Municipal Bankruptcies in U.S. History*, *supra* note 1; Mary Williams Walsh, *In Alabama, a County That Fell Off the Financial Cliff*, N.Y. TIMES (Feb. 18, 2012), https://www.nytimes.com/2012/02/19/business/jefferson-county-ala-falls-off-the-bankruptcy-cliff.html [https://perma.cc/M7TP-3VWU].

[3] The U.S. Department of Justice investigated the revenue-collection tactics of the Ferguson, Missouri, police department after the shooting death of Michael Brown by a police officer in August 2014. *See* CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 9–15 (2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [https://perma.cc/G4VT-WUWD]. Notably, evidence from the investigation suggested that a sales tax shortfall triggered more aggressive enforcement of the Ferguson municipal code in order to increase revenue from fines and fees. *See id.* at 10. The investigation concluded that the police department focused too

In forty-six states,[4] tax limits operate in the background of these local fiscal decisions by increasing pressure on already strapped cities and counties. These revenue-limiting statutes imperil the functioning of local government — or so the story goes.

Although tax limits can take diverse forms,[5] the most common restrict local governments' abilities to increase property tax rates or revenue beyond certain prescribed ceilings. A brief, representative description and tally of dominant tax limit types in all fifty states is provided in the Appendix.[6] Regardless of their form, the laws present an inexorable dilemma for local officials. On the one hand, tax limits may contribute to public service cuts,[7] reliance on more regressive revenue

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strongly on maximizing revenue to the detriment of community trust. *See id.* at 9–15 ("Ferguson's strategy of revenue generation through policing has fostered practices . . . [that] erode police legitimacy and community trust, making policing in Ferguson less fair, less effective at promoting public safety, and less safe." *Id.* at 15.); *see also* Fred O. Smith, Jr., *Abstention in the Time of Ferguson*, 131 HARV. L. REV. 2283, 2313–17 (2018) (detailing how local government parties involved in the justice system may have a direct economic interest in defendants' convictions and guilty pleas, especially of indigent defendants); *Developments in the Law — Policing*, 128 HARV. L. REV. 1706, 1727–33 (2015); Note, *State Bans on Debtors' Prisons and Criminal Justice Debt*, 129 HARV. L. REV. 1024, 1029–30 (2016); *Criminalization of Poverty as a Driver of Poverty in the United States*, HUM. RTS. WATCH (Oct. 4, 2017, 12:00 AM), https://www.hrw.org/news/2017/10/04/criminalization-poverty-driver-poverty-united-states [https://perma.cc/ADW6-8E5R]; Chuck DeVore, *Police-Collected Fines, Fees and Forfeitures: How Does Your City Rank?*, FORBES (Oct. 26, 2016, 4:28 PM), https://www.forbes.com/sites/chuckdevore/2016/10/26/police-collected-fines-fees-and-forfeitures-how-does-your-city-rank [https://perma.cc/YP2Z-UTEJ]; Brentin Mock, *Municipal Courts' War on Poor People, Explained*, CITYLAB (Sept. 29, 2017), https://www.citylab.com/equity/2017/09/municipal-courts-war-on-poor-people-explained/541395 [https://perma.cc/DS5G-96HL].

[4] *See infra* Appendix, Part B, pp. 1959–62.

[5] This Article focuses specifically on tax limits imposed by states on localities. Some states limit taxes directly — for example, by imposing caps on tax rates or tax revenue collected by local governments. *See, e.g.*, IND. CODE ANN. § 6-1.1-18-3 (West 2020) (imposing a maximum property tax rate on political subdivisions); *id.* § 6-1.1-18.5-2 (limiting annual property tax revenue growth to 6% or the average annual growth rate over the prior six years). For example, California's Proposition 13, which initiated the national Tax Revolt, *see* Clyde Haberman, *The California Ballot Measure that Inspired a Tax Revolt*, N.Y. TIMES (Oct. 16, 2016), https://nyti.ms/2eamX0J [https://perma.cc/2CHS-7WFN], restricts increases in the assessed value of real property and limits local property tax rates to 1%. CAL. CONST. art. XIII A. Some states also restrict the tax legislative process — for example, by requiring supermajority approval or direct voter approval for tax increases. *E.g.*, *id.* art. XIII A, § 3 (requiring two-thirds legislative approval for state tax increases); *id.* art. XIII C, § 2 (requiring direct voter approval for all local tax increases).

[6] *See infra* Appendix, Part B, pp. 1959–62.

[7] *See, e.g.*, IRIS J. LAV & MICHAEL LEACHMAN, CTR. ON BUDGET & POLICY PRIORITIES, STATE LIMITS ON PROPERTY TAXES HAMSTRING LOCAL SERVICES AND SHOULD BE RELAXED OR REPEALED 10–12 (2018), https://www.cbpp.org/research/state-budget-and-tax/state-limits-on-property-taxes-hamstring-local-services-and-should-be [https://perma.cc/P6HS-ZURR] (finding that property tax limits enacted during and after the 1970s Tax Revolt have led to public service cuts, including to police, schools, fire, and parks); IRIS J. LAV & ERICA WILLIAMS, CTR. ON BUDGET & POLICY PRIORITIES, A FORMULA FOR DECLINE: LESSONS FROM COLORADO FOR STATES CONSIDERING TABOR 5, 13 (2010), https://www.cbpp.org/sites/default/files/atoms/files/10-19-05sfp.pdf [https://perma.cc/T3F7-BZ9G] (finding evidence that Colorado's state tax limits led to cuts in state spending in most major categories, including education and healthcare);

sources,[8] fiscal crises,[9] and a shift in power from the local level to the state level.[10] On these measures, it would be reasonable to conclude that tax limits have harmed localities. However, at the same time, the laws may reflect genuine concerns about local government profligacy and nonresponsiveness[11] and, more generally, concerns about principal-agent slack between voters and policymakers.[12] Thus, although this Article does not advocate adopting limits where none exist, it acknowledges that eliminating them entirely may be inadvisable or politically infeasible, despite potential positive outcomes.[13]

Katharine L. Bradbury, Christopher J. Mayer & Karl E. Case, *Property Tax Limits, Local Fiscal Behavior, and Property Values: Evidence from Massachusetts Under Proposition 2 1/2*, 80 J. PUB. ECON. 287, 288 (2001) (finding evidence that tax limitations led to local spending cuts, with significant impact on school spending).

[8] *See, e.g.*, LAV & LEACHMAN, *supra* note 7, at 12 (finding that tax limits in certain states have led to reliance on alternative revenue sources that tend to more heavily burden low-income taxpayers). In particular, research tends to suggest that property tax limitations have led to greater reliance on nonproperty tax revenue, especially sales taxes, fees, and assessments. *See* RICHARD BRIFFAULT & LAURIE REYNOLDS, CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW 740–41 (8th ed. 2016) (summarizing research consensus regarding property tax limits). Sales taxes, in particular, are typically more regressive than income or property taxes. *See* INST. ON TAXATION & ECON. POLICY, HOW SALES AND EXCISE TAXES WORK 2 (2011), https://itep.org/wp-content/uploads/pb49salesex.pdf [https://perma.cc/M8DQ-MUBH] (explaining that low-income families spend approximately three-quarters of their income on items subject to sales tax, middle-income families spend approximately half of their income, and wealthy families approximately a sixth of their income).

[9] *See* Charles K. Coe, *Preventing Local Government Fiscal Crises: Emerging Best Practices*, 68 PUB. ADMIN. REV. 759, 759 (2008) (listing tax levy limits as a leading cause of local government fiscal distress).

[10] *See* BRIFFAULT & REYNOLDS, *supra* note 8, at 740–41 (explaining that one primary outcome of tax limits is increased local reliance on state support); Mark Skidmore, *Tax and Expenditure Limitations and the Fiscal Relationships Between State and Local Governments*, 99 PUB. CHOICE 77, 94–96 (1999) (finding that strict local tax limits are associated with increased reliance on state aid).

[11] See *infra* section II.C.2, pp. 1913–18 for evidence that voters may have supported tax limits in part to better control local government. Professors Geoffrey Brennan and James Buchanan offer a political-economy model to explain the need for tax limits despite existing electoral constraints. *See* Geoffrey Brennan & James Buchanan, *The Logic of Tax Limits: Alternative Constitutional Constraints on the Power to Tax*, 32 NAT'L TAX J. 11, 11–12 (1979). The model assumes that government seeks to maximize revenue like a private monopolist seeks to maximize profits, resulting in higher-than-optimal taxation. *Id.* at 13–14. For a summary of this and other governance models, see David Brunori, Michael Bell, Joseph Cordes & Bing Yuan, *Tax and Expenditure Limitations and Their Effects on Local Finances and Urban Areas*, *in* URBAN AND REGIONAL POLICY AND ITS EFFECTS 109, 118–23 (Margery Austin Turner, Howard Wial & Harold Wolman eds., 2008).

[12] Put simply, principal-agent slack means that government is not listening to voters' expressed preferences. The fact that many prominent tax limits were adopted via initiative supports this interpretation. *See* JOHN G. MATSUSAKA, FOR THE MANY OR THE FEW: THE INITIATIVE, PUBLIC POLICY, AND AMERICAN DEMOCRACY 130–33 (2004) (arguing that laws passed via initiative may better align with median voter preferences, particularly where principal-agent slack characterizes the political environment).

[13] Moreover, tax limits enjoy some degree of political popularity. *See, e.g.*, MARK BALDASSARE, DEAN BONNER, ALYSSA DYKMAN & LUNNA LOPES, PUB. POLICY INST. OF CAL., PROPOSITION 13: 40 YEARS LATER (2018), https://www.ppic.org/wp-content/uploads/jtf-

This Article respects and engages both sides of this dilemma. While tax scholarship has overwhelmingly focused on the first side — assessing the laws' fiscal consequences[14] — this Article explores the second, probing how tax limits affect the distribution of political power between voters and local policymakers. Accepting tax limits as a political reality, this inquiry is undertaken in pursuit of reforms that may correct some of the laws' worst effects, while remaining responsive to democratic preferences. Although the analysis herein is applicable to tax limits generally, the Article focuses on property tax rate and levy limits due to their nearly nationwide adoption[15] as well as their budget-defining effects on local government.[16]

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proposition-13-40-years-later-1.pdf [https://perma.cc/X45D-ZFDN] (finding that 57% of surveyed California residents and 65% of likely voters believe Proposition 13 to be "mostly a good thing" for the state); Tim Eyman, Opinion, *Voters Want the Property Tax Limit*, THE SPOKESMAN-REV. (Mar. 25, 2017), http://www.spokesman.com/stories/2017/mar/25/tim-eyman-voters-want-the-property-tax-limit [https://perma.cc/66AT-ENAD] (providing evidence for the popularity of Washington's property tax limits).

[14] For a summary of the literature on outcomes of tax limits as well as expenditure limitations, see BRIFFAULT & REYNOLDS, *supra* note 8, at 740–41. Professors Richard Briffault and Laurie Reynolds summarize four main outcomes of the limits, all primarily fiscal. According to the authors, research tends to find that tax and spending limits: (1) decrease reliance on property taxes in funding local government; (2) increase local government reliance on sales taxes, assessments, fees, and charges; (3) increase local government reliance on state support; and (4) have little or no long-term effect on state and local taxes and spending. *Id.*

As one example, a common strain of analysis explores the effect of tax and expenditure limitations on the size of government budgets. *E.g.*, MICHAEL J. NEW, CATO INSTITUTE POLICY ANALYSIS NO. 420: LIMITING GOVERNMENT THROUGH DIRECT DEMOCRACY: THE CASE OF STATE TAX AND EXPENDITURE LIMITATIONS 1, 8 (2001) (finding that tax and expenditure limits passed by initiative are effective at limiting government spending); Dale Bails & Margie A. Tieslau, *The Impact of Fiscal Constitutions on State and Local Expenditures*, 20 CATO J. 255, 261–64, 270 (2000) (reporting estimate that per-capita spending is about forty-one dollars lower in states with a tax and expenditure limit compared to those without a limit); Leah Brooks, Yosh Halberstam & Justin Phillips, *Spending Within Limits: Evidence from Municipal Fiscal Restraints*, 69 NAT'L TAX J. 315, 316 (2016) (exploring effect of municipal fiscal restraints on local spending). For further discussion of this focus in the scholarship, see *infra* notes 62–67 and accompanying text.

[15] Forty-three states have a property tax rate limit, levy limit, or both. *See infra* Appendix, Part B, pp. 1959–62.

[16] Property tax limits have a significant impact in part due to the centrality of property taxes in local government budgets. According to 2015 U.S. Census data, property taxes made up approximately 47% of local government own-source revenue, larger than any other component of own-source revenue. *2015 State & Local Government Finance Historical Datasets and Tables*, U.S. CENSUS BUREAU (2015), https://www.census.gov/data/datasets/2015/econ/local/public-use-datasets.html [https://perma.cc/ZNG2-52B3] (download "US Summary & Alabama-Mississippi" spreadsheet, Table 1. State and Local Government Finances by Level of Government and by State: 2015, and compare local government revenue from own sources (column 4, line 7) to property taxes (column 4, line 9)); *see also* BENJAMIN H. HARRIS & BRIAN DAVID MOORE, URBAN-BROOKINGS TAX POLICY CTR., RESIDENTIAL PROPERTY TAXES IN THE UNITED STATES 2 (2013), https://www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/412959-Residential-Property-Taxes-in-the-United-States.PDF [https://perma.cc/FS6D-VFNL] (describing the importance of the property tax to U.S. localities).

The Article makes three contributions to the tax literature. First, it argues that tax limits have been defined too strongly by a tax reduction goal, to the exclusion of other normatively desirable objectives. Instead, taking the laws as a given, the piece provides a pragmatic account of how tax limits can be drafted to increase (rather than decrease) local public control. Public control is defined here as local residents' power to ensure that local policies adequately reflect public preferences.[17] Tax limits may decrease public control, on the one hand, by preventing cities and counties from funding projects that local voters would like. They can improve public control, on the other hand, by requiring local policymakers to disclose important tax information or hold public hearings, thereby aiding community oversight.[18] Effective public engagement along these lines is normatively desirable because it increases voter satisfaction and expands opportunities for taxpayer voice.[19] Thus, on the assumption that tax limits will remain popular, the Article interrogates how they can be used to advance local democracy, rather than diminish it.

Despite these potential positive outcomes, governance goals have largely been ignored by those crafting tax limits[20] as well as scholars evaluating the successes and failures of the limits.[21] Instead, a tax reduction goal has dominated. This focus on tax reduction can be traced to the Tax Revolt movement of the 1970s, which is the source of modern property tax limits.[22] Because the Tax Revolt is typically understood as an antitax movement, the same motivating aim has come to define tax

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[17] Further, this Article assumes that a democratic government should seek to reflect the will of the majority, while protecting the rights of minority groups. *See* ROBERT A. DAHL & CHARLES E. LINDBLOM, POLITICS, ECONOMICS, AND WELFARE 43–45 (Transaction Publishers 1992) (1953) (defining and defending majority rule as the correct path to political equality in a democracy); *see also* Jonathan Riley, *American Democracy and Majority Rule*, *in* NOMOS XXXII: MAJORITIES AND MINORITIES 267, 270 (John W. Chapman & Alan Wertheimer eds., 1990) (arguing that the U.S. Constitution seeks a "logically coherent form of just majority rule"). For further explanation and discussion of the public control goal, see *infra* section II.A, pp. 1900–04 and section II.B, pp. 1905–11.

[18] See *infra* section II.A, pp. 1900–04, for further explanation of how tax limits can improve public control and oversight.

[19] *See infra* section II.B, pp. 1905–11.

[20] *See infra* section III.B, pp. 1922–29 (describing how tax limits often prioritize tax reduction over improving public control). As used here, *governance* is a broad term that encompasses the full process of governing. It might include consideration of voting processes, political power, administration, accountability, and so forth. As defined, governance outcomes are distinct from *fiscal* outcomes, which narrowly address government budgets, revenue, spending, and other money-related matters.

[21] *See infra* notes 62–67 and accompanying text.

[22] These include California's Proposition 13 and Massachusetts's Proposition 2 1/2, among others. *See* Daniel R. Mullins & Bruce A. Wallin, *Tax and Expenditure Limitations: Introduction and Overview*, PUB. BUDGETING & FIN., Winter 2004, at 2, 4–5 tbl.1 (listing tax and expenditure limits across states, including many limits enacted in the 1970s and 1980s); *see also infra* Part I, pp. 1893–1900.

limits. This antitax interpretation has taken hold, however, despite evidence suggesting that improving public control motivated tax limit enthusiasts in at least some instances. To support this point, the Article reviews public rhetoric of the Tax Revolt movement in key states as well as voter surveys from the height of the Tax Revolt, finding that many tax limit supporters sought to shift power away from elected officials and toward the public.[23] Thus, designing tax limits to improve public control may effectuate governance-related objectives that have heretofore been overlooked.

The Article's second contribution is to assess tax limits' potential efficacy in improving public control and oversight of local fiscal decisionmaking. To do so, the Article identifies key statutory features that enhance or undermine local public control. As one example of a feature that may theoretically enhance public control, most tax limits require local government to obtain majority voter approval via referendum in order to increase property tax rates or revenue above the statutory limit.[24] In theory, a voter-approval requirement shifts final decisionmaking power to local voters, increasing their power vis-à-vis local policymakers. However, other statutory features may work to undermine this public control improvement. For example, supermajority-approval requirements, hard rate caps that cannot be exceeded, and sunset clauses on tax increases all reduce the power of local voters.[25] After describing these features, the Article next surveys property tax limits in all fifty states, and is the first to code each statute for features affecting the power of local voters. The survey reveals significant variation across states. However, most statutes undermine public control by reducing local voter power, instead shifting power to governors and state legislatures and prioritizing a pure tax reduction goal.[26]

Of course, in reality, improving public control is far more difficult than merely asking voters what they want. Low voter capacity, voter

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[23] As one example, a Southern California taxpayers association issued the following public statement in 1967, about ten years before the passage of Proposition 13, a landmark tax limit in California: "If you are unhappy about the constant increase in your property taxes and the fact that your inherent right to vote on school taxes has been stolen from you, then you have the privilege of letting your opinions and wants known." CLARENCE Y.H. LO, SMALL PROPERTY VERSUS BIG GOVERNMENT: SOCIAL ORIGINS OF THE PROPERTY TAX REVOLT 74 (1995); *see also infra* section II.C.2, pp. 1913–18.

[24] *See infra* Table 1, pp. 1920–21.

[25] See *infra* section III.B, pp. 1922–29, for a detailed description of these features and how they affect public control.

[26] As an example, the Supreme Court of California described a provision of California's Proposition 13 that requires a two-thirds vote for the adoption of local taxes as "inherently undemocratic" because "the requirement was imposed by a simple majority of the voters throughout the state upon a local entity to prohibit a majority (but less than two-thirds) of the voters of that entity from taxing themselves for programs or services which would benefit largely local residents." City & County of San Francisco v. Farrell, 648 P.2d 935, 938 (Cal. 1982).

bias, special interest influence, and the high cost of public engagement all weaken the integrity of electoral processes. These problems may lead to lower-than-optimal taxes that fail to accurately reflect voters' true preferences. In Part III, the Article describes these issues and surveys literature on direct democracy[27] to conclude that voter approval may not be the optimal form of public engagement to improve public control. Instead, tax limits might better improve public control via weaker forms of public engagement such as mandated public disclosure, public hearings, and petition referenda.[28] Combined with the survey results, this analysis leads the Article to conclude that most tax limits undermine effective public control and oversight, instead focusing too strongly on a tax reduction objective.

The Article shapes these findings into its third and final contribution: a menu of policy reforms for state and local actors. The Article's central recommendation is that state legislatures should restructure tax limits with greater mindfulness of their effect on public control and oversight. To that end, it offers four principles for reform. Most importantly, (1) local governments should be allowed to exceed tax limits to better serve public preferences. In doing so, however, they must seek public engagement in a way that (2) fosters expression of voters' true preferences, (3) enhances taxpayer voice, and (4) ensures equal access for wealthy and nonwealthy taxpayers. Again, the Article is not advocating that states adopt tax limits. Rather, in states that already have tax limits, and where such limits cannot be repealed, state legislatures should reform the laws to prioritize improved public control and oversight.

Through this exploration, the Article suggests a way forward for empirical tax research, one that is more mindful of noneconomic motivations underlying tax laws. In particular, empirical tax research should be aware of potential governance goals that may underlie tax limits. Such research can then better inform policy design as well as the public's understanding of tax limits' effects. For example, evidence that tax limits undermine public control may reduce support for such limits among voters who prioritize responsive government.

The Article proceeds in four parts. Part I presents the traditional understanding of tax limits' motivating objectives, which can be traced to the 1970s Tax Revolt. Part II argues that tax limits ought to be structured to improve public control. Part III evaluates existing tax limits' effects on public control, in part by presenting the results of a fifty-state survey that

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[27] "Direct democracy is an umbrella term that covers a variety of political processes, all of which allow ordinary citizens to vote directly on laws rather than candidates for office." John G. Matsusaka, *Direct Democracy Works*, 19 J. ECON. PERSP. 185, 187 (2005). Such structures include town meetings, initiatives proposed by citizens, referenda on laws already approved by the government, and legislative measures or legislative referenda that are placed on the ballot by government bodies. *Id.*

[28] A petition referendum allows voters to petition for a tax increase referendum, but does not necessarily require voter approval for all tax increases. *See infra* notes 80–81 and accompanying text.

codes the laws for features affecting local voter power. It also surveys literature on direct democracy, concluding that voter approval may not result in democratically responsive laws. Finally, Part IV offers a policy-reform playbook for state and local actors, including key principles for tax limit design as well as a broader fiscal governance agenda.

I. UNDERSTANDING THE TAX REDUCTION GOAL

Although some states enacted property tax limits in the early twentieth century, many states with such limits today adopted or strengthened these laws during or shortly after the 1970s, in a period known as the Tax Revolt.[29] Because of this common origin, analysis of the Tax Revolt movement has informed scholars' current understanding of property tax limits.[30] Most importantly, because the Tax Revolt is typically interpreted as an antitax movement, the same motivating goal — that is, tax reduction — has come to define tax limits as well. This Part explains how this understanding of the Tax Revolt formed, and explores how it has shaped subsequent understanding and analysis of tax limits.

After four decades of research and reflection, the story of the Tax Revolt has calcified into a familiar sequence of retold events. It starts in California on June 6, 1978, when voters passed Proposition 13 by a nearly two-to-one majority.[31] Other states quickly followed. In 1978 and 1979, thirty-seven states limited or reduced property taxes, and another twenty-eight reduced income taxes.[32] Thus began one of the nation's most successful taxpayer revolutions, shortly followed on the national stage by the election of President Ronald Reagan and a newly dominant conservative antitax agenda.[33] This is a narrative in which

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[29] *See* Mullins & Wallin, *supra* note 22, at 2, 4–5 tbl.1; *see also* Harold W. Elder, *Exploring the Tax Revolt*, 20 PUB. FIN. Q. 47, 48, 53 tbl.1 (1992).

[30] *See, e.g.*, Mullins & Wallin, *supra* note 22, at 2–3 (linking tax limitations with Proposition 13 and the national movement that followed).

[31] CAL. CONST. art. XIII A; LO, *supra* note 23, at 1, 16; Mullins & Wallin, *supra* note 22, at 2 (positing that "1978's Proposition 13 in California reignited the flames of taxpayer revolt in America"). There is substantial literature on Proposition 13 and its effects in California and beyond. For recent analysis, see BALDASSARE, BONNER, DYKMAN & LOPES, *supra* note 13; MAC TAYLOR, CALIFORNIA LEGISLATIVE ANALYST'S OFFICE, COMMON CLAIMS ABOUT PROPOSITION 13 (2016), https://lao.ca.gov/reports/2016/3497/common-claims-prop13-091916.pdf [https://perma.cc/4GWU-3MVQ].

[32] SIMON HALL, AMERICAN PATRIOTISM, AMERICAN PROTEST: SOCIAL MOVEMENTS SINCE THE SIXTIES 96 (2011).

[33] *E.g.*, *id.* at 110 ("Many commentators . . . view[] the tax protests of the 1970s as a critical component of the New Right's rise to power and a contributor to the conservative political realignment that swept away the old New Deal Order."); ISAAC WILLIAM MARTIN, THE PERMANENT TAX REVOLT: HOW THE PROPERTY TAX TRANSFORMED AMERICAN POLITICS 126–42 (2008) (arguing that the Tax Revolt brought taxes to the forefront of political dialogue as "an issue of partisan competition," *id.* at 127, and describing their embrace by Republican politicians in particular); Mullins & Wallin, *supra* note 22, at 2; Kirk J. Stark, *The Right to Vote on Taxes*, 96 NW. U. L. REV. 191, 192 (2001).

antitax ire provides both the inciting incident and the driving momentum for its aftermath.

Although thorough analyses unearth additional potential motivations,[34] voters' desire to cut personal tax burdens and reduce government spending has become a dominant explanatory device.[35] And with good reason, as there is ample evidence to support this interpretation of events. For one, the structure of the limits themselves evinces a clear tax and spending reduction goal. Many of the restraints passed in the wake of Proposition 13 place caps on property tax rates and revenue or restrict the growth of the assessed value of taxable real estate.[36] Voter and legislator support for such limits suggests a shared desire to reduce tax burdens and restrain government growth.

Voter surveys provide further support for the antitax story. One survey in the late 1970s found that 70% of Americans believed that the tax system was "unreasonable."[37] About the same proportion of surveyed Americans believed that they did not receive "good value" for their tax dollars.[38] A telling 66% believed they had reached "the breaking point" with regard to taxes paid — an increase of twelve percentage points over the preceding decade.[39] The property tax was consistently chosen

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[34] As an early example of such analysis, Professors David Lowery and Lee Sigelman assess the explanatory power of eight different justifications for the post–Proposition 13 Tax Revolt. *See* David Lowery & Lee Sigelman, *Understanding the Tax Revolt: Eight Explanations*, 75 AM. POL. SCI. REV. 963, 964–66 (1981). Aside from reducing tax burdens, these justifications include perceived government waste, inequitable distribution of taxes, distrust of government, and lack of information on the part of voters. *Id.* The authors find insufficient empirical support for all justifications and suggest the Tax Revolt may instead constitute an "expressive or symbolic social movement." *Id.* at 971; *see also id.* at 969–72.

[35] *See, e.g.*, Mullins & Wallin, *supra* note 22, at 2 ("Voters found that they could go into a voting booth and grant themselves a $7 billion property tax break."); Lindsay Amiel, Steven Deller & Judith Stallmann, *The Construction of a Tax and Expenditure Limitation Index for the U.S.* 2 (Univ. of Wis.-Madison, Dep't. of Agric. and Applied Econ., Staff Paper No. 536, 2009) (describing two categories of justification for tax and expenditures limits, both related to reducing taxing and spending); *see also* Bails & Tieslau, *supra* note 14, at 255 ("Proponents of these fiscal discipline mechanisms argue that these tools have been or will be effective at slowing the rate of spending at all levels of government."); Michael R. Johnson, Scott H. Beck & H. Lawrence Hoyt, *State Constitutional Tax Limitations: The Colorado and California Experiences*, 35 URB. LAW. 817, 817 (2003) (explaining that tax limits arose at least in part due to citizens' and legislators' concerns over tax burdens); Colin H. McCubbins & Mathew D. McCubbins, *Cheating on Their Taxes: When Are Tax Limitations Effective at Limiting State Taxes, Expenditures, and Budgets?*, 67 TAX L. REV. 507, 508 (2014) (describing tax limits as a reflection of citizens' longstanding desire to "limit the fiscal inputs of their governments, trying to tie their hands by limiting levels of taxation, expenditure, and debt").

[36] DANIEL R. MULLINS & KIMBERLEY A. COX, ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, M-194, TAX AND EXPENDITURE LIMITS ON LOCAL GOVERNMENTS iii, 5–10 tbl. 1 (1995).

[37] Jack Citrin, *Do People Want Something for Nothing: Public Opinion on Taxes and Government Spending*, 32 NAT'L TAX J. 113, 114–15 (1979).

[38] *Id.* at 115.

[39] *Id.* at 114.

by surveyed Americans as among the "least fair" taxes.[40] Perhaps most telling, surveys of Massachusetts and Michigan voters found strong support for tax-cutting initiatives among those who believed that the laws would reduce their personal taxes.[41]

Restraining property taxes offered a solution to diverse policy concerns that resonated strongly with both liberals and conservatives. Many voters sought to curb government waste, separate from an ideological commitment to small government.[42] Anxiety over personal economic stability and concerns about equitable distribution of tax burdens[43] animated some tax limit supporters, especially on the political left.[44] The disconnect between property tax burdens and income levels made the tax particularly aggrieving to those concerned about the well-being of low-income or elderly taxpayers.[45] Of course, capping tax rates or revenues, as most states did, does not necessarily protect low-income property owners from onerous tax burdens. "Circuit-breaker" programs offer a more targeted response to such concerns by preventing property

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[40] *Id.* at 115.

[41] Paul N. Courant, Edward M. Gramlich & Daniel L. Rubinfeld, *Why Voters Support Tax Limitation Amendments: The Michigan Case*, 33 NAT'L TAX J. 1, 14, 19 (1980) (finding strong support for the Headlee Amendment, a tax and revenue limitation passed in Michigan in 1978, among those who believed tax reduction would be the amendment's most important impact); Helen F. Ladd & Julie Boatright Wilson, *Why Voters Support Tax Limitations: Evidence from Massachusetts' Proposition 2-1/2*, 35 NAT'L TAX J. 121, 131–32 (1982) (finding that voters were more likely to support Massachusetts's Proposition 2 1/2 if they believed that the initiative would reduce their household taxes by "a lot" as opposed to "a little").

[42] *E.g.*, Dennis Hale, *Proposition 2 1/2 a Decade Later: The Ambiguous Legacy of Tax Reform in Massachusetts*, 25 ST. & LOC. GOV'T REV. 117, 119 (1993) (stating that Massachusetts voters were "apparently" compelled most by concerns about government waste, rather than interests or expectations of reducing government services, when considering Proposition 2 1/2); Ladd & Wilson, *supra* note 41, at 128–31; Mullins & Wallin, *supra* note 22, at 14 (stating that voter support for tax and expenditure limitations is "focused on a desire for lower taxes and more efficiency in government, rather than reduced public services" and providing a list of supporting citations).

[43] *See, e.g.*, MARK HAVEMAN & TERRI A. SEXTON, LINCOLN INST. OF LAND POLICY, PROPERTY TAX ASSESSMENT LIMITS: LESSONS FROM THIRTY YEARS OF EXPERIENCE 3–8 (2008) (exploring the role of the rising assessed values of property and shifts in relative values of property in seeding taxpayer discontent); Perry Shapiro, David Puryear & John Ross, *Tax and Expenditure Limitation in Retrospect and in Prospect*, 32 NAT'L TAX J. 1, 4 (1979) (speculating that "Proposition 13 was an expression, by the property owner-voter, of dissatisfaction with bearing a growing share of the public financial responsibility"); Robert M. Stein, Keith E. Hamm & Patricia K. Freeman, *An Analysis of Support for Tax Limitation Referenda*, 40 PUB. CHOICE 187, 193 (1983) (analyzing data on Wisconsin tax-petition signers and finding that a two-variable model based on change in property tax assessment and property assessment values could accurately predict the voting behavior of two-thirds of surveyed individuals considering the tax limitation).

[44] HALL, *supra* note 32, at 105–06 (describing antiproperty tax efforts on the political left and the Tax Revolt's "important and productive links with the civil rights and New Left movements," *id.* at 106).

[45] *See* LO, *supra* note 23, at 17–20.

tax liabilities from rising above a certain percentage of income.[46] But the Tax Revolt foregrounded tax caps, not circuit breakers.

Commercial property interests, especially landlords and real estate businesses, also played a key role in supporting tax limits both during and after the Tax Revolt.[47] Although not united in support of the laws,[48] many businesses stood to gain handsomely from tax caps, as opposed to circuit breakers, which targeted individual taxpayers. Even in California, where homeowners opposed commercial and residential property tax inequities, business interests captured the majority of tax savings from Proposition 13.[49] In lending their weight to the already-popular antitax movement, commercial interests thus further tilted the scales in favor of the tax-cutting laws.

While the presence of one goal need not preclude others, reducing taxing and spending was the objective that came to dominate the public narrative. Howard Jarvis may be partly responsible for this. California's Proposition 13 is colloquially referred to as the Jarvis-Gann amendment in recognition of Jarvis's leading role, alongside that of Sacramento antitax activist Paul Gann, in promoting the measure.[50] Jarvis was the public leader of the Tax Revolt in California and a high-profile face of the movement nationally.[51] His activism earned him the June 1978 cover of *Time* magazine, and a near miss at the magazine's

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[46] Many tax equity protesters did advocate for such circuit-breaker programs, although their efforts were unsuccessful in California. *Id.* at 18–20 (describing circuit-breaker programs throughout the United States and the failure of a more robust circuit-breaker measure to take hold in California); MARTIN, *supra* note 33, at 88–90 (describing circuit breakers as a progressive policy response to the Tax Revolt and stating that a majority of states enacted them by the end of 1976).

[47] *See* Daniel A. Smith, *Howard Jarvis, Populist Entrepreneur: Reevaluating the Causes of Proposition 13*, 23 SOC. SCI. HIST. 173, 195–201 (1999) [hereinafter Smith, *Populist Entrepreneur*] (documenting the involvement of organized commercial interest groups, including the Los Angeles Apartment Owners Association, in Proposition 13); Daniel A. Smith, Howard Jarvis' Legacy? Assessing Anti-Tax Initiatives in the American States 10 (Mar. 21, 2014) (unpublished manuscript), https://www.researchgate.net/profile/Daniel_Smith37/publication/253453294_Howard_Jarvis'_Legacy_Assessing_Anti-Tax_Initiatives_in_the_American_States/links/0c960532c685724765000000.pdf [https://perma.cc/G7XV-YQKW] (documenting business contributions to tax limit campaigns by six antitax groups and noting that Oregon Taxpayers United "raked in tens-of-thousands of dollars in contributions from small businesses, especially from building and real estate interests and apartment owners," *id.* at 11).

[48] *See, e.g.*, LO, *supra* note 23, at 24–26 (explaining that large business interests in California opposed Proposition 13 in part because they feared it would trigger increased business taxes to fill revenue shortfalls).

[49] *Id.* at 20–23 (explaining that residential homeowners received 36% of tax savings from Proposition 13, while commercial and industrial property owners, landlords, and farmers received the other 64%, leading to homeowners bearing a larger share of the property tax burden four years after the passage of Proposition 13).

[50] HALL, *supra* note 32, at 100.

[51] *See id.* at 98.

Man of the Year title.[52] Even if voters accommodated multifaceted motivations for supporting tax limits, Jarvis was clearheaded in his dislike of government taxing and spending.[53] Due to his leadership role and the media attention he commanded, his vocal opinions drove national understanding of the movement.[54]

Jarvis's advocacy on the subject was tireless and colorful. By his account, tax limitations like Proposition 13 sought to "forge a chain around the necks of all elected officials . . . so that they could be dragged away from the feedbag."[55] Favoring livestock-feeding analogies, he also likened tax limits to a "fence between the hogs and the swill bucket."[56] In his book, *I'm Mad as Hell*, written as an epilogue to Proposition 13 and a prologue to the broader national movement, he called for an end to all property taxation.[57] This agenda both defined and aligned Jarvis with the emergent antitax shift in national conservative rhetoric.[58] Seizing on the momentum of state and local tax revolts, this movement would lead to Reagan's election and passage of the tax-cutting Economic Recovery Tax Act[59] in the coming years.[60]

While certainly other motivations were present,[61] the antitax, small-government narrative has won the day. Over the past four decades it has been distilled into a simplified sequence of events that is rehashed throughout the tax limit literature. In part because of this, tax limits have come to be viewed as having one central goal: reducing taxes. This interpretation is evident in the evaluative literature, which overwhelmingly spotlights taxing and spending outcomes. A common line of analysis investigates whether such limits reduce government size,[62] while

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[52] *Id.* at 98–99.

[53] *See id.* at 99–100.

[54] *Id.* at 98 (arguing Jarvis was "widely viewed as the driving force behind Proposition 13" and "certainly the tax revolt's most high-profile leader").

[55] HOWARD JARVIS, I'M MAD AS HELL: THE EXCLUSIVE STORY OF THE TAX REVOLT AND ITS LEADER 118 (1979).

[56] *Id.*

[57] *Id.* at 283. Jarvis felt that property taxes were inherently unfair because they were divorced from ability to pay. *Id.* In contrast, he argued, the sales tax was the fairest. As he explained, "When I'm paying the sales tax, I have to pay only as much as I decide I can afford; otherwise, I don't buy the item." *Id.*

[58] HALL, *supra* note 32, at 111, 114 (describing intersections between the state and local tax revolts and the national shift in conservative rhetoric toward tax cuts and small government).

[59] Pub. L. No. 97-34, 95 Stat. 172 (1981) (codified as amended in scattered sections of 26 U.S.C.).

[60] HALL, *supra* note 32, at 111.

[61] *See infra* section II.C.2, pp. 1913–18. In addition to the argument made herein, sociologist Isaac Martin argues that some tax protesters originally sought to protect homeowners' tax breaks, which were threatened as states aimed to modernize and equalize property tax collections. MARTIN, *supra* note 33, at 51, 57–60. In an argument echoed by historian Simon Hall, Martin provides evidence that the Tax Revolt originally found purchase in a progressive movement to protect welfare rights. *Id.* at 99; *see* HALL, *supra* note 32, at 104–06.

[62] *E.g.*, NEW, *supra* note 14, at 1, 8 (finding that tax and expenditure limits passed by initiative are effective at restraining government spending); Bails & Tieslau, *supra* note 14, at 270 (reporting

other research explores how restrictions affect tax burdens in general[63] and property tax burdens in particular.[64] Related research explores how the limits affect the distribution of tax burdens[65] as well as budget composition.[66] Even within the political economy literature, empirical

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estimate that per-capita spending is about forty-one dollars lower in states with a tax and expenditure limit, compared to those without such a limit); Brooks, Halberstam & Phillips, *supra* note 14, at 316 (exploring effect of municipal fiscal restraint on local revenue); Thad Kousser, Mathew D. McCubbins & Kaj Rozga, *When Does the Ballot Box Limit the Budget? Politics and Spending Limits in California, Colorado, Utah, and Washington*, *in* FISCAL CHALLENGES: AN INTERDISCIPLINARY APPROACH TO BUDGET POLICY 290, 318 (Elizabeth Garrett, Elizabeth A. Graddy & Howell E. Jackson eds., 2008) (finding that tax and expenditure limits did not constrain government size in three out of four states examined, with anecdotal evidence in the final state that politicians circumvented limits); McCubbins & McCubbins, *supra* note 35, at 542 (finding that voter-approval requirements for tax impositions do not decrease government spending or debt); Ronald J. Shadbegian, *Do Tax and Expenditure Limitations Affect the Size and Growth of State Government?*, 14 CONTEMP. ECON. POL'Y 22, 34 (1996) (finding that tax and expenditure limits have, on average, no significant effect on the size or growth of government).

The overall result of such research is inconclusive, with some studies finding that fiscal restraints reduce spending, and others finding otherwise. *E.g.*, Bails & Tieslau, *supra* note 14, at 270 (finding tax and expenditure limits correlated with reduced spending); Shadbegian, *supra* (finding that, on average, tax and expenditure limits do not reduce government size). Professors Colin H. McCubbins and Mathew D. McCubbins explain that such a divide in the literature is due to methodological differences, with pooled regressions often finding "moderate to strong directional effects on state finances" after the passage of tax and expenditure limits and state-by-state analysis tending to find otherwise. McCubbins & McCubbins, *supra* note 35, at 512–13.

[63] *E.g.*, Elder, *supra* note 29, at 58 ("[T]here is strong evidence of a reduction of tax growth in states with expenditure limitations."); Brian G. Knight, *Supermajority Voting Requirements for Tax Increases: Evidence from the States*, 76 J. PUB. ECON. 41, 58–61 (2000) (controlling for unobserved tax attitudes finding that supermajority voting requirements reduce state taxes); Soomi Lee, *The Effect of Supermajority Vote Requirements for Tax Increase in California: A Synthetic Control Method Approach*, 14 ST. POL. & POL'Y Q. 414, 430 (2014) (finding that California's supermajority vote requirement suppressed state nonproperty tax burdens, but that the effect has abated over time).

[64] *See, e.g.*, BRIFFAULT & REYNOLDS, *supra* note 8, at 740; Terri A. Sexton, Steven M. Sheffrin & Arthur O'Sullivan, *Proposition 13: Unintended Effects and Feasible Reforms*, 52 NAT'L TAX J. 99, 107 (1999) (finding that Proposition 13 decreased the relative importance of the property tax in California).

[65] *E.g.*, Dennis De Tray & Judith Fernandez, *Distributional Impacts of the Property Tax Revolt*, 39 NAT'L TAX J. 435, 449 (1986) (finding increased progressivity); Thomas A. Downes & David N. Figlio, *Do Tax and Expenditure Limits Provide a Free Lunch? Evidence on the Link Between Limits and Public Sector Service Quality*, 52 NAT'L TAX J. 113, 124 (1999) (surveying tax and expenditure limits and concluding that lower-income communities suffer greater tax and expenditure limit–induced harm to public school student performance).

[66] For example, many studies find that tax limits increase reliance on user fees. *See, e.g.*, Gary M. Galles & Robert L. Sexton, *A Tale of Two Tax Jurisdictions*, 57 AM. J. ECON. & SOC. 123, 126, 131 (1998) (finding that local governments responded to tax limits by increasing nontax fees); Colin H. McCubbins & Mathew D. McCubbins, *Proposition 13 and the California Fiscal Shell Game*, 2 CAL. J. POL. & POL'Y 1, 20 (2010) (finding that Proposition 13 led to increased fee-based revenue in California); Gabriel R. Serna, *Do Tax Revolt Provisions Influence Tuition and Fee Levels? Evidence from the States Using Recent Panel Data*, 41 J. EDUC. FIN. 48, 72 (2015) (finding that supermajority voting requirements have a statistically significant, positive relationship with increased fees and tuition at public colleges and universities); Ronald J. Shadbegian, *The Effect of Tax and Expenditure Limitations on the Revenue Structure of Local Government, 1962–87*, 52 NAT'L

analysis largely remains focused on tax and spending outcomes, rather than, for example, the effect of such limits on public oversight.[67]

Research on economic outcomes is vital to understanding tax limits and their consequences. This Article does not mean to suggest otherwise. However, this important focus has operated to the near exclusion of other potential concerns, such as the laws' effects on political power or fiscal accountability. Further, the emphasis on tax reduction alone has led to inflexible laws that fail to adequately address salient social and political problems. This Article problematizes this unitary focus by recognizing an alternative tax limit function, beyond simply restraining tax liability. Expanding the understanding of tax limits' goals may lead to legal reforms that improve public accountability and enable local governments to better satisfy voter wishes. The next Part explores this possibility in greater detail.

II. IMPROVING PUBLIC CONTROL

Rather than only reducing taxes, tax limits can also improve local public control and oversight of government fiscal activity. This Article defines public control as local residents' power to ensure that local policies adequately reflect public preferences.[68] The term encompasses

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TAX J. 221, 222 (1999) (finding that tax and expenditure limits drive governments to shift to nonproperty tax revenue, such as user fees and charges).

Studies also find that limits increase reliance on state and federal aid. *See, e.g.*, John J. Kirlin, *The Impacts of Proposition 13 upon the California Political System: Re-Regulating the Intergovernmental System*, 39 PUB. CHOICE 147, 160, 163 (1982) (describing the political process that led to increased state aid in California, and arguing that as a result local governments are more intertwined with state government); Skidmore, *supra* note 10, at 95 (finding that local fiscal constraints are associated with increased state aid); Alvin D. Sokolow, *The Changing Property Tax in the West: State Centralization of Local Finances*, 20 PUB. BUDGETING & FIN. 85, 98, 99 tbl.5 (2000) (finding that state tax shares of total state-local taxes rose from 59.6% to 63.3% from 1970 to 1994, attributing the increase in part to property tax restrictions).

[67] *E.g.*, Michael J. New, *U.S. State Tax and Expenditure Limitations: A Comparative Political Analysis*, 10 ST. POL. & POL'Y Q. 25, 45 (2010) (finding that tax limits passed via voter initiative are more effective at constraining government spending than tax limits passed by state legislatures); Ellen C. Seljan, *The Limits of Tax and Expenditure Limits: TEL Implementation as a Principal-Agent Problem*, 159 PUB. CHOICE 485, 494 (2014) (reviewing predictive strength of principal-agent problem in explaining efficacy of tax and expenditure limits and finding that such limits restrain government spending only where government is under control of agents who prefer limited government). *But see* Mathew D. McCubbins, *Putting the State Back into State Government: The Constitution and the Budget*, *in* CONSTITUTIONAL REFORM IN CALIFORNIA: MAKING STATE GOVERNMENT MORE EFFECTIVE AND RESPONSIVE 353, 365–66 (Bruce E. Cain & Roger G. Noll eds., 1995) (exploring possible mechanisms by which voter-imposed governmental constraints, including the legislative supermajority requirement to increase taxes, have reduced rather than improved government accountability).

[68] *Supra* note 17 and accompanying text. For further discussion of electoral accountability, see generally Sean Gailmard, *Accountability and Principal-Agent Theory*, *in* THE OXFORD HANDBOOK OF POLITICAL ACCOUNTABILITY 90, 93–95 (Mark Bovens, Robert E. Goodin & Thomas Schillemans eds., 2014).

various objectives that are necessary to a successful democracy, including government responsiveness, public participation, and fiscal accountability and oversight.[69] Pursuing local public control should increase voter satisfaction and expand opportunities for taxpayer voice, which are normatively desirable goals.

After providing a normative justification for a public control objective, this Part addresses countervailing interests. For one, some may invoke the interests of extralocal taxpayers such as commercial and rental property owners. Yet their interests ought not to undermine support for local public control. Among other reasons, extralocal taxpayers' interests are already protected via closely aligned local-voter interests, as well as extralocal taxpayers' credible threat of exit. Second, some may counter that reframing tax limits to improve public control would pervert their enactors' original intentions. On the contrary, however, there is evidence that Tax Revolt participants and supporters were motivated partly by a desire to improve public control.[70] Thus, designing tax limits to prioritize public control may address an important concern of the laws' originating populace.

Importantly, the Article is not arguing that all states should impose tax limits. Rather, it argues that those states that have chosen to limit tax capacity of local governments should design the limits in order to improve public control and oversight. The laws should pursue such a goal instead of or alongside a goal of restraining tax and spending growth.

Lastly, this Article focuses specifically on property tax *rate* limits, which place a ceiling on property tax rates, and property tax *levy* limits, which restrict the growth of property tax revenue from year to year. The Appendix provides further description and a fifty-state tally of tax limits.[71]

A. How Tax Limits Can Improve Public Control

Tax limits can enhance local residents' power to ensure democratic responsiveness in a variety of ways. For example, a tax limit might improve oversight by mandating detailed public notice of tax increases

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[69] *See, e.g.*, John Ferejohn, *Accountability and Authority: Toward a Theory of Political Accountability*, *in* DEMOCRACY, ACCOUNTABILITY, AND REPRESENTATION 131, 131 (Adam Przeworski, Susan C. Stokes & Bernard Manin eds., 1999) (explaining that government responsiveness depends on "how much accountability an institutional structure permits"); Jeremy Waldron, *Accountability: Fundamental to Democracy* 3–4 (N.Y. Univ. Sch. of Law Pub. Law & Legal Theory Research Paper Series, Working Paper No. 14-13, 2014) (explaining, in describing agent accountability as fundamental to democracy, that the "agent is required to give the principal an account of what he has done or what he is doing and the principal is empowered to modify or terminate the agency relation in the light of this account," *id.* at 3).

[70] LO, *supra* note 23, at 81 ("To take back political power and to win back tax money — these were the twin objectives of the tax revolt.").

[71] See *infra* Appendix, Part B, pp. 1959–62 for a description and tally of such rate and levy limits, as well as other common tax limit structures.

before they occur, requiring that government hold public hearings for tax increases, allowing residents to petition for voter approval of certain tax increases, or requiring voter approval of all tax increases. Property tax limits are uniquely well-suited to improving local fiscal oversight because the property tax is the largest revenue source that local governments directly control.[72] Thus, overseeing the property tax typically means overseeing the most important component of local budgets.

Although requiring voter approval may be problematic for various reasons,[73] a tax limit that requires voter approval for tax increases offers the clearest example of how such laws can improve public control. Consider the following statute:

Limit 1: Property tax rates cannot exceed 2% of assessed value, except with majority approval of all qualified electors.[74]

Limit 1 theoretically increases public control by shifting final decisionmaking power over certain fiscal actions to local voters, rather than policymakers. Local voters can exert oversight of local government fiscal decisionmaking by refusing to approve tax increases where local government is being nonresponsive to voter desires.

A hypothetical city government can further illustrate how such a statutory structure may affect local public control. Imagine *Industria*, a midsize city subject to Limit 1. *Industria* policymakers seek to increase tax rates above the statutory cap, but they cannot do so without voter approval. Assume, further, that a majority of *Industria* voters desire improved roads, but strongly dislike public art. These voters can approve a tax-increase proposal when policymakers promise to improve roads. Conversely, where policymakers are silent on road improvement, or instead promise to build a new civic center, voters can reject requested tax increases. In this way, tax limits can enhance local public control, adding a check on local government power alongside standard electoral controls.

However, various factors might reduce voter approval's efficacy in improving public oversight. For example, voters may have insufficient understanding of tax laws to vote according to their true preferences, or they may be easily swayed by the influence of special interests. Further, ascertaining true preferences would be difficult where a plan proposed to build both roads *and* a new civic center. These issues, which are addressed in greater detail below,[75] may lead to tax revenue that is too

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[72] *See supra* note 16.

[73] *See infra* section III.C, pp. 1929–39.

[74] *See, e.g.*, COLO. CONST. art. X, § 20(4) (allowing property tax rate increases only after voter approval unless annual payments on general obligation bonds, pensions, and final court judgments exceed annual district revenue or in case of emergency); N.M. CONST. art. VIII, § 2 (imposing property tax rate caps that can be exceeded with approval of the majority of the electorate).

[75] *See infra* section III.C, pp. 1929–39.

low or otherwise fails to adequately reflect voters' wishes. Importantly, however, tax limits can improve public control without requiring full voter approval of all tax increases. For example, tax laws could improve public oversight by providing voters with additional information about the use of tax revenue, or by requiring that policymakers meaningfully engage with voters in various ways prior to a tax increase.

Consider the following statute, which is a modified example of a "full-disclosure" or "truth-in-taxation" law[76]:

Limit 2: All local governments must provide public notice of proposed tax rate increases as well as hold a public hearing at which members of the public may voice their opinions on the local tax rate and budget.[77]

Limit 2, distinct from Limit 1, does not directly restrict tax rates or revenue. Rather, it requires that local government provide public notice and hearing for all proposed tax increases. Thus informed, the public can exert control via voicing its opinion at public hearings, lobbying local representatives, or mounting campaigns to oppose the tax increase. In *Industria*, for instance, voters would express their desire that policymakers use the increased revenue to improve roads. If officials ignore their expressed preferences, voters can oust incumbent representatives, get involved in challenger political campaigns, or themselves run for public office.[78] In this way, such disclosure improves public control and oversight.

Thus, a tax limit can theoretically improve public control and oversight by requiring some level of public engagement, ranging from disclosure to public hearing to full voter approval. These options represent a spectrum of public engagement from soft to hard public power. Voter-approval requirements are the strongest form of public control, providing voters plenary veto power for all tax increases.[79] Moving

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[76] *See infra* pp. 1959 for the definition of "full-disclosure" or "truth-in-taxation" laws. *See also* LINCOLN INST. OF LAND POLICY, TAX DIGEST GLOSSARY 4, 11 (2018), https://www.lincolninst.edu/sites/default/files/gwipp/upload/files/tax_digest/tax-digest-glossary.pdf [https://perma.cc/3T5Z-JN9P] [hereinafter TAX GLOSSARY].

[77] *See, e.g.*, NEV. REV. STAT. ANN. § 361.4545 (LexisNexis 2019) (imposing a full-disclosure requirement on Nevada local government).

[78] In theory, a taxpayer could respond similarly to any increase in her property tax bill without the need to notify taxpayers of public hearing. However, full-disclosure laws enhance oversight and control beyond standard democratic mechanisms by allowing taxpayers to oppose a tax increase before it goes into effect. Under the standard system, voters can only take defensive political action once their tax bill has already increased. Adding preemptive oversight on top of existing electoral controls enhances voter power over unresponsive government officials.

[79] Some states, like California and Colorado, require voter approval for all new taxes at the local government level. *See* CAL. CONST. art. XIII C, § 2 (requiring local government to obtain majority electoral approval to increase or impose a general tax and two-thirds electoral approval for any tax imposed for specific purposes); COLO. CONST. art. X, § 20(4) (requiring advance voter approval

along the spectrum, some states do not require voter approval in all instances but may do so in some cases where a specified percentage of qualified voters petition to require electorate approval.[80] This structure is known as a petition referendum.[81] Full-disclosure laws, which mandate public notice and hearing for proposed tax increases, occupy the weakest end of the public control spectrum. All of these structures, whether hard or soft, have the potential to improve public control and oversight relative to a strict tax limit that lacks a public engagement requirement, as in Limit 3 below.

In contrast to Limits 1 and 2, Limit 3 provides an example of a tax limit structure that fails to improve public control:

Limit 3: Property tax rates cannot exceed 2% of assessed value.[82]

Limit 3 cannot be exceeded regardless of local residents' preferences. Under this kind of limit, local legislators seeking increased revenue will either be thwarted or seek revenue outside the limit's restrictions. This revenue might include sales taxes, fees, or less visible sources such as revenue bonds.[83] Efforts to raise revenue from such sources are unlikely to improve local public control or oversight of fiscal decisions. Where revenue sources are less visible, these actions may even harm public oversight.[84] Further, for *Industria* voters who want

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for any new tax or tax rate increase unless annual payments on general obligation bonds, pensions, and final court judgments exceed annual district revenue or in case of emergency). Others require local governments to seek voter approval for specific tax increases only. For example, some require voter approval for property tax increases. *E.g.*, ARIZ. CONST. art. IX, § 19 (providing for voter override of property tax levy limits); N.M. CONST. art. VIII, § 2 (allowing voters to approve property taxes outside of the property tax rate cap); *see infra* Table 1, pp. 1920–21. Some require approval for sales tax increases or renewals. *E.g.*, ALASKA STAT. § 29.45.670 (2019); LA. STAT. ANN. § 47:337.3 (2019).

[80] *See, e.g.*, NEB. REV. STAT. ANN. § 77-3402 (LexisNexis 2020) (providing procedure for vote to limit the portion of the budget funded by property taxes, including petitions); S.D. CODIFIED LAWS § 10-13-36 (2019) (providing procedure for vote to exceed property tax limits, including petitions).

[81] John G. Matsusaka, *Public Policy and the Initiative and Referendum: A Survey with Some New Evidence*, 174 PUB. CHOICE 107, 110 & n.5 (2018) (defining "petition referendum," *id.* at 110, and noting that such a legal structure can also be called an optional, popular, or veto referendum).

[82] *See, e.g.*, CAL. CONST. art. XIII A, § 1(a) (providing for a strict property tax rate cap of 1%, with no voter-override mechanism).

[83] *E.g.*, James T. Bennett & Thomas J. DiLorenzo, *Off-Budget Activities of Local Government: The Bane of the Tax Revolt*, 39 PUB. CHOICE 333, 334 (1982) (finding that tax limits led to increased use of "off-budget enterprises" financed by revenue bonds and "largely beyond the control and scrutiny of citizen-taxpayers"); McCubbins & McCubbins, *supra* note 66, at 20–21 (finding that Proposition 13 caused an increased reliance on user fees and special assessments).

[84] For example, Professors James Bennett and Thomas DiLorenzo describe the link between tax limits and "off-budget enterprises," which are corporations formed by political localities and typically described as authorities, boards, commissions, agencies, or districts. Bennett & DiLorenzo, *supra* note 83, at 334. These districts are financed via nonguaranteed revenue bonds that are not subject to voter approval. *Id.* The authors attribute the proliferation of off-budget enterprises to

improved roads, the rate cap may prevent the expenditure entirely.[85] Such an outcome frustrates voter wishes and reduces public control, resulting in policies that fail to reflect residents' preferences.

Because these tax limits are imposed at the state level, strict limits shift power from local governments and voters to state legislatures or state voters.[86] This is because localities would need to change state law in order to increase property taxes above the limit. Changing state law requires the approval of either state legislators if the limit is statutory, or, in nearly all states, at least a majority of state voters if the limit is constitutional.[87] This means that voters can prevent tax rate increases in cities and counties where they do not reside. This feature of tax limits caused the California Supreme Court to call such state voter-imposed limits on local taxes "inherently undemocratic."[88]

Limit 3 shows how the dual goals of reducing taxes and improving public control can directly conflict, resulting in a legal structure that reduces taxes, potentially at the expense of local public control. Unlike Limits 1 and 2, local voters who wish to oversee local decisionmaking have no increased power to do so under Limit 3, as it provides no additional mechanism for monitoring or approving local government actions. By focusing on pure tax reduction, this limit structure may undermine the objective of improving public control. The next section explains why this outcome is undesirable.

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policymakers' efforts to circumvent tax and spending limitations. *Id.* at 335; *see also* McCubbins & McCubbins, *supra* note 66, at 20–22 (arguing that tax limits have caused governments to rely on less visible revenue sources, reducing government accountability).

[85] *See* LAV & LEACHMAN, *supra* note 7, at 3, 10–12 (finding that tax limits cause cuts to desired public services); Bradbury, Mayer & Case, *supra* note 7, at 288 (noting that the spending reduction in the wake of Massachusetts's Proposition 2 1/2, which had an especially "profound impact on local school spending," may "represent undesirable service cuts forced by the constraint or exactly the kind of change that backers of Proposition 2 1/2 wanted").

[86] There is evidence that Massachusetts voters supported tax limits in order to reduce property taxes in jurisdictions outside of their own, supporting the argument that tax limits strip power from local voters and empower same-state voters in other localities. *See* Jacob L. Vigdor, *Other People's Taxes: Nonresident Voters and Statewide Limitation of Local Government*, 47 J. L. & ECON. 453, 454–55 (2004).

[87] All states except for Delaware require voter approval of constitutional amendments. Jennie Drage Bowser, *Constitutions: Amend with Care*, ST. LEGISLATURES MAG. (Sept. 1, 2015), http://www.ncsl.org/research/elections-and-campaigns/constitution-amend-with-care.aspx [https://perma.cc/VC87-E925] (noting that state constitutions may also be amended through constitutional conventions, which in most states may be called by the state's legislature, sometimes with voter approval).

[88] *See* City & County of San Francisco v. Farrell, 648 P.2d 935, 938 (1982) (calling a provision of California's Proposition 13 that requires a two-thirds vote for the adoption of local taxes "inherently undemocratic" because "the requirement was imposed by a simple majority of the voters throughout the state upon a local entity to prohibit a majority (but less than two-thirds) of the voters of that entity from taxing themselves for programs or services which would benefit largely local residents").

B. *Normative Support for Local Public Control*

1. Improved Policies. — Public control can act as a local release valve to strict limits set at the state level by allowing the local government to exceed a tax limit after some form of heightened public engagement. Such a release would better and continuously align the limits' outcomes with local voters' wishes, which is a desirable outcome in a democracy.[89]

A simple thought experiment demonstrates how allowing local public overrides of state-set tax limits would improve voter satisfaction and democratic outcomes. Let us return to *Industria*, which is located in a state where a majority of *state* voters have approved a property tax limit. Members of this state majority may comprise a majority voting bloc in certain localities and a minority in others. Imagine that these tax limit supporters will reject a tax increase for any reason because they believe that taxes should never rise above the level set by their state's limit. Therefore, where they comprise a local majority, any tax limit override will fail. Assume, also, that other voters would like improved roads and would be willing to pay increased taxes in order to fund them.

Allowing localities to override the tax limit where the majority of voters are willing to pay increased taxes for better roads would improve general voter satisfaction. To see why, imagine that the state comprises two cities of 100 citizens each, and localities can override the tax limit based on voter desires. Voter wishes in each city are the following:

	Want Low Taxes Always (# of voters)	Want Improved Roads (# of voters)	Voter Override of Limit?	Satisfied After Voter Override (# of voters)
Industria	35	65	Yes	65
Notaxia	85	15	No	85
Total	**120**	**80**		**150**

The tax limit passed at the state level because 120 of 200 citizens desire low taxes in all cases. These voters have higher satisfaction when the tax limit succeeds in keeping taxes low, and hence they would support a law that provides no option to override the limit. Under a strict limit with no public override option, a majority of the state voters would be satisfied. However, 80 voters want improved roads, and are willing

[89] At a basic level, a government that is responsive to the desires of the electorate is more likely to promote and maximize its citizens' well-being. *See* JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 57–59 (Henry Regnery Co. 1962) (1861); Tom Christiano, *Democracy*, *in* STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., Fall 2018 ed.), https://plato.stanford.edu/entries/democracy [https://perma.cc/2BPH-VW92].

to pay higher taxes to fund them. If the tax limit has no public override option to allow for improved roads, these 80 voters will be unsatisfied.

Allowing for local override should increase satisfaction in the state overall. If *Industria* and *Notaxia* were to place a tax increase on their respective ballots, the increase would pass in *Industria* and fail in *Notaxia*. In such a case, 65 voters in *Industria* would be satisfied and 85 voters in *Notaxia* would remain satisfied with their tax burdens. With a voter override, 150 voters are satisfied, compared to 120 under the strict limit. Although this is an oversimplified example, allowing for local override should generally allow for greater total voter satisfaction.[90] Those who support tax limits and comprise a majority of a locality will vote to keep taxes low. This outcome will only be reversed where a majority feels otherwise — that is to say, *more* people will be satisfied by the proposed tax increase.

Moreover, allowing localities to exceed state-set limits would enable greater diversity of taxing and spending levels among localities. This localized diversity should theoretically enable more efficient sorting of local residents based on tax and spending preferences. The positive pressure exerted on local governments by such interlocal competition forms the basis of Professor Charles Tiebout's theory of local government efficiency.[91] Tiebout hypothesized that, in a world with perfect mobility, local governments compete for residents by offering varying bundles of public services, with tax levels serving as the pricing mechanism.[92] Residents and firms sort themselves by locality according to their preferences for public services and tax levels.[93] In an idealized world, such sorting leads to something akin to market efficiency, with governments operating to minimize costs, and public goods and services flowing to those who value them the most.[94]

Two forces operate to produce such a result, both of which are disrupted by property tax limits. In the first, competition from other localities exerts pressure on local governments, which seek to retain and

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[90] There is some empirical evidence supporting this intuition. For example, survey evidence from Swiss residents finds higher levels of happiness in places with heightened local autonomy and better developed institutions of direct democracy such as initiatives and referenda. Bruno S. Frey & Alois Stutzer, *Happiness, Economy and Institutions*, 110 ECON. J. 918, 918 (2000). The survey's authors attribute such a result, in part, to the fact that political outcomes better align with voter desires. *Id.* at 921.

[91] Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 420, 424 (1956) (arguing that local governments will reach equilibrium of local taxes and services, similar to private-market equilibrium, provided that "consumer-voters" are fully mobile). Thanks to Professor Theodore Seto for highlighting this point.

[92] *Id.* at 422.

[93] *Id.*

[94] *Id.* at 424 ("The solution, like a general equilibrium solution for a private spatial economy, is the best that can be obtained given preferences and resource endowments.").

attract residents.[95] In the second, residents maximize their own personal well-being by choosing the ideal bundle of taxing and spending.[96] Because property taxes tend to make up the primary local government tax source,[97] rigid property tax limits may disrupt this process by severely limiting the diversity of both bundles and prices. Thus, property tax limits may render impossible such an efficiency-maximizing equilibrium.

It is important to note that Tieboutian sorting assumes an idealized world of perfect mobility,[98] which is untrue for all residents.[99] Low-income residents face significant financial barriers to relocating, and households of all income levels are limited to places where they can find work.[100] Further, some populations may face external barriers to relocating due to implicit racial discrimination or policies that seek to exclude individuals whose public service consumption exceeds their tax payments.[101] Imperfect mobility limits potential efficiency gains from interlocal competition and fiscal diversity.

It is also important to acknowledge that fiscal localism can have adverse consequences. For example, divergent public service spending may contribute to inequality because wealthier localities can provide higher quality public services such as schooling.[102] Indeed, such concerns in the 1960s and 1970s incited opposition to property tax funding of local schools.[103] Some also believe that localized tax policy can lead to "races

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[95] *Id.* at 422.

[96] *Id.*

[97] *See supra* note 16.

[98] Tiebout is transparent about the model's assumptions. Tiebout, *supra* note 91, at 419. In recognition of real-world constraints, he concludes that reducing barriers to mobility and increasing knowledge of local government fiscal policies would improve efficiency. *Id.* at 423.

[99] Wallace E. Oates, *On Local Finance and the Tiebout Model*, 71 AM. ECON. REV. 93, 93 (1981) ("The pure [Tiebout] model, however, involves a set of assumptions so patently unrealistic as to verge on the outrageous.").

[100] Richard Briffault, *Our Localism: Part II — Localism and Legal Theory*, 90 COLUM. L. REV. 346, 420 (1990) (describing financial barriers to moving).

[101] *See* Vicki Been, *Comment on Professor Jerry Frug's* The Geography of Community, 48 STAN. L. REV. 1109, 1110–11 (1996) (describing fiscal zoning practices, which often result in individuals sorting into "income-homogenous" communities, *id.* at 1111).

[102] *See, e.g.*, Gladriel Shobe, *Subsidizing Economic Segregation*, U.C. IRVINE L. REV. (forthcoming) (manuscript at 16–18), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3548290 [https://perma.cc/KJE6-BZRF].

[103] MARTIN, *supra* note 33, at 79–83 (describing civil rights challenges to local school funding in various states, as well as a 1972 proposal by President Richard Nixon's commission on school finance to shift school funding from local property taxes to federal or state aid raised via a value-added tax). Proposition 13's impact on California school funding reflects this dynamic, theoretically improving educational equality by "limiting the ability of high wealth districts to outspend their neighbors." Richard Briffault, *Our Localism: Part I — The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 62 n.265 (1990) (citing Joseph T. Henke, *Financing Public Schools in California: The Aftermath of* Serrano v. Priest *and Proposition 13*, 21 U.S.F. L. REV. 1, 23 (1986)).

to the bottom," imposing negative externalities on neighboring communities.[104] These problems counsel toward some limited fiscal centralization,[105] despite the welfare gains that localism might otherwise generate. As such, this Article does not advocate fiscal localism writ large[106] — indeed, it even suggests state intervention to improve fiscal governance.[107] The aim here is rather more circumscribed, offering a targeted critique of tax limits as they currently operate. To the extent that the laws prevent localities from providing desired public services, they reduce public well-being and the potential welfare-enhancing effects of interlocal competition.[108] Other modes of fiscal centralization, such as laws seeking equal public service provision, could be justified in certain circumstances.[109] Tax limits, however, do not achieve such goals.[110]

2. Improved Process. — Aside from improving policy responsiveness and voter satisfaction, allowing for greater public engagement with fiscal policies would improve the political process by enhancing taxpayer

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[104] *See, e.g.*, Editorial, *Race to the Bottom*, N.Y. TIMES (Dec. 5, 2012), https://nyti.ms/YCnoFL [https://perma.cc/YW2H-Y5BF] (discussing an investigation finding that state and local governments gave out $80 billion a year in tax reductions and subsidies and describing the effort as a "foolhardy, shortsighted race to attract companies" to their jurisdictions); *see generally* John Douglas Wilson, *Theories of Tax Competition*, 52 NAT'L TAX J. 269 (1999) (describing literature on tax competition, including later research finding efficiency-enhancing consequences of interlocal competition, as well as circumstances leading to inefficiently high taxes).

[105] MARTIN, *supra* note 33, at 79–83 (describing efforts during and before the Tax Revolt to improve educational equality via federal or state control of school spending).

[106] For a broader discussion of localism, see Briffault, *supra* note 103. Briffault describes historically problematic uses of localism to support discriminatory housing and education policies. *Id.* at 19–58.

[107] *See infra* section IV.A, pp. 1939–42.

[108] *See* Tiebout, *supra* note 91, at 420 (discussing how consumer-voters choose their locality in part based on the public services provided in that locality); *see also* Frey & Stutzer, *supra* note 90, at 933–34 (finding that presence of political institutions of direct democracy, hypothesized to enable closer alignment of policies with voter preferences, are correlated with increased well-being among citizens).

[109] Laws requiring equal school spending are one example where such state preemption may be justified. *See, e.g.*, Serrano v. Priest, 487 P.2d 1241, 1252–55 (Cal. 1971) (holding that a public school funding system that relies largely on local property taxes and results in differences among districts in spending per pupil unconstitutionally discriminates against the poor); Alana Semuels, *Good School, Rich School; Bad School, Poor School*, THE ATLANTIC (Aug. 25, 2016), https://www.theatlantic.com/business/archive/2016/08/property-taxes-and-unequal-schools/497333 [https://perma.cc/HY9L-T77T] (describing how property tax revenue disparity leads to unequal school spending).

[110] For instance, tax limits are associated with more regressive taxing and spending policies. *See* LAV & LEACHMAN, *supra* note 7, at 12. Relatedly, there is also evidence that certain property tax limit structures may cause disparate fiscal burdens by race. *E.g.*, Shayak Sarkar & Josh Rosenthal, *Exclusionary Taxation*, 53 HARV. C.R.-C.L. L. REV. 619, 663–64 (2018). For instance, in Nassau County, New York, limitations on assessment provided greater benefit to white homeowners because property in nonminority neighborhoods had increased more in value than property in minority neighborhoods. *Id.* at 663. The result was that homeowners in largely minority neighborhoods paid higher property taxes as a percentage of their homes' current market values. *Id.* at 663–64.

voice.[111] It is best to state up front an assumption that underlies such an argument: Citizens' normative beliefs have merit. As such, these beliefs should be respected and translated into policy — even fiscal policy — via accountable institutions. Although fiscal policy design may be beyond the ken of many citizens, the scope and contours of such policy can still be defined by citizens' broad normative goals, which should be openly debated in public institutions. Moreover, creating space for the airing of those beliefs may have value in itself.

Improving taxpayer voice could have several positive consequences. For one, there is evidence that direct democracy efforts improve democratic engagement, both by educating voters about political issues and by leading to higher voter turnout.[112] In turn, encouraging greater public engagement may lead to more positive opinions about government responsiveness and policies. Research on initiatives and referenda often finds that allowing citizens to vote on laws increases perceived government responsiveness.[113] Further, in the context of tax increases specifically, there is some evidence that active citizen involvement and

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[111] I thank Professor Katie Pratt for suggesting the enhancement of "taxpayer voice" as a way to frame the procedural improvements caused by tax limits.

[112] *See, e.g.*, Robert J. Lacey, *The Electoral Allure of Direct Democracy: The Effect of Initiative Salience on Voting, 1990–96*, 5 ST. POL. & POL'Y Q. 168, 176 (2005) (finding evidence that "salient" ballot measures increase voter turnout during midterm elections and speculating that a "robust initiative process creates better-informed citizens"); Mark A. Smith, *The Contingent Effects of Ballot Initiatives and Candidate Races on Turnout*, 45 AM. J. POL. SCI. 700, 705 (2001) (finding that highly salient initiatives and popular referenda increase voter turnout in midterm elections); Caroline J. Tolbert, John A. Grummel & Daniel A. Smith, *The Effects of Ballot Initiatives on Voter Turnout in the American States*, 29 AM. POL. RES. 625, 639–44 (2001) (finding that voter turnout in states with significant use of citizen initiatives is higher than turnout in states without such processes across both presidential and midterm elections and suggesting "ballot propositions may increase voter turnout by transforming low information midterm elections into high information elections, and adding additional information to already high information presidential elections," *id.* at 644). *But see* Matthew Childers & Mike Binder, *Engaged by the Initiative? How the Use of Citizen Initiatives Increases Voter Turnout*, 65 POL. RES. Q. 93, 100–01 (2012) (finding that voter mobilization in competitive initiative elections, not the presence of initiatives alone, explains higher voter turnout in initiative states).

[113] *See, e.g.*, Shaun Bowler & Todd Donovan, *Democracy, Institutions and Attitudes About Citizen Influence on Government*, 32 BRIT. J. POL. SCI. 371, 385, 388, 389 (2002) (finding evidence that, for some populations, the use of initiatives correlates positively with perceived government responsiveness); Rodney E. Hero & Caroline J. Tolbert, *Minority Voices and Citizen Attitudes About Government Responsiveness in the American States: Do Social and Institutional Context Matter?*, 34 BRIT. J. POL. SCI. 109, 118–20 (2004) (finding that increased exposure to direct democracy is correlated with higher levels of perceived responsiveness, and finding no evidence that it reduces perceived responsiveness among minority groups); Daniel A. Smith, Caroline J. Tolbert & Daniel C. Bowen, *The Educative Effects of Direct Democracy: A Research Primer for Legal Scholars*, 78 U. COLO. L. REV. 1371, 1390–92 (2007) (finding that citizens who are given greater opportunity to engage with government via the initiative process are more likely to hold favorable opinions of state government, though "extensive use" of the process may reduce confidence in the government, *id.* at 1390).

monitoring of funds increase voter support for such policies.[114] All of these outcomes are normatively desirable in and of themselves. Applying the conclusions of such evidence to tax limits suggests that allowing for greater public engagement may increase public approval of tax laws and perhaps improve tax morale.

Further, improving public perceptions of tax policies may reduce the public's desire for more stringent tax limits. As the next section will detail, there is evidence that voters have supported tax limits partly due to a perceived lack of public control over government fiscal decisions.[115] Professor Steven Sheffrin, in his book *Tax Fairness and Folk Justice*, highlights this connection between taxpayer engagement, perceptions of tax fairness, and public support for tax policies.[116] As Sheffrin explains, public satisfaction with tax policies is based in part on whether individuals have a "voice" in the process.[117] He further explains that local governments administering property taxes are often plagued by a lack of transparency and accountability, which minimizes taxpayer voice.[118] The failure of local government to effectively engage with the public in advance of tax changes can cause "a deep sense of violation of procedural justice" among taxpayers.[119]

According to Sheffrin, in the lead-up to Proposition 13, this lack of government transparency and accountability exacerbated taxpayers' frustration over rising home assessments, causing taxpayers to feel that tax increases were "totally arbitrary and outside their control."[120] The public responded by passing Proposition 13.[121] He notes similar dissatisfaction in Ontario in the wake of property tax reforms.[122] Sheffrin contrasts these reform efforts to property tax reform efforts in Wales, in which the government effectively engaged taxpayers by actively seeking residents' feedback and mounting a publicity and education campaign a few years in advance of the reform.[123] While individual tax increases remained unpopular, the reform was overall politically successful, with

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[114] *See, e.g.*, Ashad Hamideh, Jung Eun Oh, Samuel Labi & Fred Mannering, *Public Acceptance of Local Government Transportation Sales Taxes: A Statistical Assessment*, 40 ST. & LOC. GOV'T REV. 150, 150, 156–58 (2008) (finding greater support for sales tax increase where it was accompanied by "an independent citizen oversight committee . . . designated to track expenditures of tax revenues," *id.* at 150).

[115] *See infra* section II.C.2, pp. 1913–18.

[116] STEVEN M. SHEFFRIN, TAX FAIRNESS AND FOLK JUSTICE 69–117 (2013).

[117] *See id.* at 85.

[118] *Id.* at 86.

[119] *Id.*

[120] *Id.* at 94.

[121] *Id.* at 94–95 (acknowledging "other accounts . . . regarding the origins of Proposition 13," *id.* at 94, but arguing "a lack of accountability and perceived political injustice brought forth the tax revolt that gave birth to Proposition 13," *id.* at 95).

[122] *Id.* at 98–99.

[123] *Id.* at 100–09.

less than 2% of households appealing their revised valuation.[124] Although certainly Wales is not wholly reflective of U.S. localities, the account suggests that providing taxpayers greater voice in the fiscal process could improve general satisfaction with taxation policies, perhaps preventing the development or further entrenchment of rigid tax limits designed, at least in part, in reaction to a perceived lack of public control over fiscal policymaking.

These arguments are all consequentialist — that is, based on the likelihood of positive outcomes. Putting aside potential welfare improvements, providing taxpayers greater voice in the political process may be desirable per se. For example, there may be important dignitary value to allowing taxpayers to voice their concerns in a public forum.[125] Such political participation may be viewed as part of a package of political rights that includes voting as its most sacred right. Indeed, these political rights are the very source of governmental legitimacy.[126] Such reasoning suggests that there is value to providing taxpayers meaningful opportunities to engage with the fiscal process, beyond the policy consequences of such efforts.

It is important to strike an optimal balance when designing political institutions to enhance public voice. Too much voice without restriction can be noisy, even incomprehensible. Further, without restriction the voices of the powerful will drown out those of the disenfranchised. Commercial interests, for example, may exert disproportionate pressure.[127] Such concerns suggest that an ideal tax limit would enable the proper level of public engagement that enhances taxpayer voice, while imposing sufficient restriction to ensure equity in the process.[128] These considerations are discussed further below.[129]

C. Countervailing Interests

1. Extralocal Residents. — Some may argue that extralocal residents — individuals who own business or rental property in one jurisdiction, but live and vote in another — have salient concerns about

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[124] *Id.* at 108.

[125] Other political rights, such as voting or serving on a jury, are often described as having dignitary value. *See, e.g.*, Vikram David Amar & Alan Brownstein, *The Hybrid Nature of Political Rights*, 50 STAN. L. REV. 915, 918 (1998).

[126] *See id.* at 924 (arguing that "government derived its just powers from the consent of the governed" and "voting was the means by which that consent could be expressed or withheld").

[127] *See supra* p. 1896.

[128] *See* William H. Baker, H. Lon Addams & Brian Davis, *Critical Factors for Enhancing Municipal Public Hearings*, 65 PUB. ADMIN. REV. 490, 493–98 (2005) (describing best practices to optimize engagement at public hearings).

[129] *See infra* section III.C.2, pp. 1934–37.

local public control over tax policies despite the positive outcomes described in the preceding section.[130] Businesses spanning multiple regions, for example, may be unable to express policy preferences across different jurisdictions. Transient residents, such as renters who move frequently[131] or those who spend only a portion of the year in a given jurisdiction, may face similar challenges. Upon initial consideration, such concerns may undermine support for local control. However, although policymakers should take extralocal concerns seriously, this section explains why they ought not to dominate over the normative goals described above.

As an initial matter, there is no reason to believe that a great chasm exists between the tax and spending interests of local and extralocal residents. Both groups of taxpayers will bear the burden of increased taxes and both will benefit from improved services, albeit to different extents. On the tax side, extralocal property owners are taxed the same as local owners.[132] Although attenuated, even renters may bear some portion of a property tax increase through raised rents[133] or higher cost of commercial goods, which may give them pause before demanding property tax increases.[134] Local residents may also fear higher future taxes if rising property taxes cause businesses to flee the area.[135] Thus, local residents may vote and behave in ways that reflect and protect extralocal interests.

On the spending side, extralocal residents will likely benefit from the public services funded by increased tax revenue. For instance, transient

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[130] *See* Vigdor, *supra* note 86, at 454–56 (explaining nonresidents' interest in controlling local property taxes).

[131] *See* Derick Moore, *Overall Mover Rate Remains at an All-time Low*, U.S. CENSUS BUREAU (Dec. 21, 2017), https://www.census.gov/library/stories/2017/12/lower-moving-rate.html [https://perma.cc/DXZ6-6DY2] (describing 2017 survey data finding that 21.7% of renters moved in 2017, compared to 5.5% of property owners nationwide).

[132] This discussion ignores the possibility of a targeted foreign-buyer tax, which is outside the scope of the traditional property tax. Several Canadian provinces, including Ontario and British Columbia, have imposed surtaxes on property purchases by foreign nationals. *See* Ashifa Kassam, *Toronto to Impose 15% Tax on Foreign Home Buyers to Regulate Housing Costs*, THE GUARDIAN (Apr. 20, 2017, 3:17 PM), https://www.theguardian.com/world/2017/apr/20/toronto-foreign-tax-homes-housing-market-canada [https://perma.cc/NF6B-4NAN]; Douglas Todd, Opinion, *Once Abhorred, Foreign-Buyers Tax Now Mainstream in Canada*, VANCOUVER SUN (Oct. 5, 2019), https://vancouversun.com/opinion/columnists/douglas-todd-once-abhorred-foreign-buyers-tax-now-mainstream-in-canada [https://perma.cc/P78E-S23N].

[133] The incidence of the property tax on renters is still an open question. *See generally* Richard W. England, *Tax Incidence and Rental Housing: A Survey and Critique of Research*, 69 NAT'L TAX J. 435 (2016).

[134] *E.g.*, Helen F. Ladd, *Local Education Expenditures, Fiscal Capacity, and the Composition of the Property Tax Base*, 28 NAT'L TAX J. 145, 147 (1975) (explaining that voters may believe firms will raise prices in response to higher taxes, resulting in higher costs of local goods and services).

[135] *Id.* (explaining that "resident voters may perceive that they bear part of the property tax levied on local firms" in part because they believe that firms may relocate in response to higher taxes, resulting in a smaller overall tax base).

residents may prefer to live near well-maintained parks and robust public transportation networks. Extralocal landlords may charge higher rent for proximity to such amenities. Businesses may also benefit from functional public transportation, clean streets and sidewalks, and responsive local government agencies. To the extent that extralocal residents desire such improved public services, tax limits may frustrate their wishes just as they may frustrate the wishes of local residents.

Of course, disjuncture between local and extralocal interests may exist. Where it does, extralocal residents have a powerful mechanism to sway local government that is less available to long-term residents: the ever-present threat of exit.[136] Although these extralocal residents may not vote in a jurisdiction in the traditional sense, they can vote with their feet far better than can long-term residents. Indeed, extralocal business and rental property owners approach the ideal Tiebout consumer, able to choose their jurisdiction based on its tax price and bundle of services, with fewer mobility restrictions than long-term residents have.[137] Policymakers, conscious of the need to spur economic growth, will likely avoid deterring such inbound investment via exorbitant taxes.[138] This dynamic may actually provide extralocal residents with *greater* political power compared to local voters.

Finally, and importantly, this Article does not seek to ignore extralocal interests, but neither does it seek to elevate them above the needs of local residents. Long-term residents will likely be more invested in the strength of their local economy, infrastructure, and schools as well as in the well-being of their community generally. For these reasons, they ought to have greater power to decide their locality's mix of taxing and spending, distilled and focused through the operation of representative government. The solutions proposed below describe such a middle-ground approach,[139] allowing local governments to exceed tax limits on the condition that they engage stakeholder groups, which should include extralocal voices where possible.

2. Tax Limit Enactors. — Some may argue that reframing tax limits to focus on public control would pervert the intention of the voters who enacted the laws originally. However, there is evidence that voters and supporters of tax limits were motivated in part by a desire to improve

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[136] *See* Tiebout, *supra* note 91, at 418–20 (explaining that perfectly mobile consumer voters will move to communities with their ideal mix of taxes and services, and that communities that are below optimal size will seek to attract such mobile residents).

[137] *Id.* at 419 (describing "fully mobile" consumer voters who choose their jurisdiction based on their ideal mix of public services); *see supra* pp. 1906–07.

[138] Such pressure may lead to lower-than-optimal taxes even without tax limits. *See generally* Wilson, *supra* note 104, at 269–71, 273–77 (describing models of tax competition that find the government's interest in attracting mobile resources and business investment to be welfare reducing).

[139] *See infra* section IV.A, pp. 1939–42 and section IV.B, pp. 1942–44.

public control of local government fiscal decisions.[140] Therefore, designing tax limits to improve public control may remain true to their originating intentions. This section offers evidence in support of this position, reviewing public rhetoric used by Tax Revolt leaders and activists in key states as well as voter surveys conducted during the height of the Tax Revolt.

Tax Revolt activist groups' rhetoric as well as personal accounts of their members and leaders reflected a desire to shift fiscal power away from elected officials and toward the public.[141] When interviewed about personal motivations for joining the Tax Revolt movement, activists shared accounts of meetings with aloof government officials who, in their view, were willfully unconcerned about rising property tax burdens. For example, Richard Carman, who led protesters before the Los Angeles County Board of Supervisors, felt that the county supervisors actively obstructed his ability to publicly voice his concerns. He explained:

> Local government did everything in the world to discourage us. We'd be on the agenda to speak, and I'd be the last one to be heard because they figured the press had plenty of stories and they'd have to get out and file their stories . . . . Then they'd do everything possible to belittle you or even entrap you.[142]

Others describe county assessors adopting condescending tones, using books and graphs to convey information, and offering basic civics lessons[143] in a manner "almost calculated to induce feelings of inferiority."[144] Such accounts evince a simmering conflict between citizens and their government, with ordinary citizens powerless to effect policy change via standard electoral channels. These stories foreshadow future efforts to wrest power from government via tax limits.[145]

Increasing control and oversight of government fiscal decisionmaking was central to certain Tax Revolt groups' public messaging. As one example, after California passed legislation allowing school boards to increase local taxes without voter approval, the San Gabriel Taxpayers Association issued the following statement: "If you are unhappy about

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[140] LO, *supra* note 23, at 81 ("To take back political power and to win back tax money — these were the twin objectives of the tax revolt.").

[141] Professor Clarence Lo provides a stunningly detailed description of the various impulses and interests that coalesced to form the Tax Revolt. *Id.* at 23–26. The quotes from this section are largely drawn from his interviews with leaders of the Tax Revolt movement.

[142] *Id.* at 73.

[143] *Id.* at 73–74.

[144] *Id.* at 74.

[145] According to Barbara Anderson, secretary for Massachusetts's Citizens for Limited Taxation and later the executive director of a group that advocated for Proposition 2 1/2, the Tax Revolt movement comprised "people who just were tired of being pushed around . . . [and] tired of not having their voices heard at high levels." *Id.* at 3.

the constant increase in your property taxes and the fact that your inherent right to vote on school taxes has been stolen from you, then you have the privilege of letting your opinions and wants [be] known."[146] Such a statement suggests an assumed right of public control over local government decisions. Indeed, among one group's primary demands was the following: "We the people insist on remaining informed so that we may retain control over the instruments that we have created."[147] The protesters' eventual support for Proposition 13 reflected the same presumption of and desire for public control of government fiscal decisionmaking. As the Better Government Association of California entreated: "Let's not forget that it is a privilege . . . that the voters give [to] their elected officials to set property tax rates. . . . 'Abuse a privilege — lose a privilege.' . . . That is what the Jarvis-Gann amendment is saying."[148]

The media picked up on this public control objective as well. When a California school board overrode public protest of a decision to extend a contract with a district superintendent, a local paper editorialized: "[I]s it any wonder that the voters are looking at the Jarvis-Gann initiative as a way of getting control of a system that now appears to be totally out of their control?"[149] Thus, both private accounts and public rhetoric reflected the movement's objective of improving public oversight of government.

It is possible that such rhetoric reflected a calculated effort by movement leaders to downplay antitax motivations, which might have alienated moderate voters. However, voter surveys in key states provide additional evidence that voters supported tax limits because they believed the laws would improve public control of government actions. For example, a 1978 Michigan survey found the strongest support for tax limits among voters who believed that the restrictions would improve voter control of government or government efficiency.[150] The authors had not anticipated such a finding, presuming instead that fiscal goals would drive results.[151] Professors Helen F. Ladd and Julie Boatright Wilson report similar findings in a survey of Massachusetts

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[146] *Id.* at 74.

[147] *Id.* at 79.

[148] *Id.* at 101–02 (origin of internal quotation not provided in source material).

[149] JARVIS, *supra* note 55, at 84 (quoting the *Thousand Oaks Chronicle*).

[150] Courant, Gramlich & Rubinfeld, *supra* note 41, at 14, 18 (finding that of the 120 voters who believed limits would increase voter control or government efficiency, more than 80% voted for the tax limitations). In 1978, Michigan voters passed the Headlee Amendment, which, among other things, limited local property tax revenue and required voter approval for any local tax additions or increases. MICH. CONST. art. IX, § 31. The Tisch Amendment, which would have reduced the assessed value of property, did not pass. Courant, Gramlich & Rubinfeld, *supra* note 41, at 2.

[151] Courant, Gramlich & Rubinfeld, *supra* note 41, at 19 ("Had we anticipated such a finding, we would have added questions to probe why and how voters felt this would happen . . . ."). Asking open-ended questions allowed the authors to find unanticipated answers. *See id.* at 11.

voters.[152] The authors found strong support for the state's tax limit among voters who believed that it would improve local voter control over school spending, with such a belief increasing the probability of a "yes" vote by 12.9 percentage points.[153] These surveys provide direct evidence that public control was a strong motivating factor among voters who supported local government tax limits.

The fact that other surveys fail to report such findings is far from dispositive, as many scholars who conducted surveys simply failed to investigate whether governance concerns motivated support for tax limits.[154] However, some surveys offer circumstantial evidence for a public control motivation. For example, Ladd and Wilson also found strong support for Massachusetts's Proposition 2 1/2 among voters who believed that the tax limit would improve governmental responsibility and reduce corruption.[155] Although a tax limit may improve responsibility and reduce corruption through diverse mechanisms, improved public oversight of fiscal decisionmaking is one obvious way that it might do so. Similarly, several surveys find strong support for tax limits among voters concerned about government efficiency.[156] Again, improved public oversight is one mechanism by which tax limits might increase governmental efficiency, offering indirect support for a public control motivation.[157]

It is important to note that racial and class prejudices may have partly undergirded tax limit enactors' desire for public control of local action. Although demographics cannot robustly determine tax limit support,[158] there was significant cultural overlap between the Tax Revolt

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[152] Ladd & Wilson, *supra* note 41, at 124–37 (describing factors that motivated Massachusetts voters to support Proposition 2 1/2). Proposition 2 1/2, enacted in 1980, limits municipalities' total property tax revenue to 2.5% of total assessed value in the municipality. MASS. GEN. LAWS ch. 59, § 21C (2020).

[153] Ladd & Wilson, *supra* note 41, at 130, 130 tbl.V.

[154] *E.g.*, Lowery & Sigelman, *supra* note 34, at 964–66 (exploring eight explanations for the Tax Revolt, none of which directly involves increasing voter control); Stein, Hamm & Freeman, *supra* note 43 (investigating support for tax limits based only on economic considerations and failing to consider governance motivations).

[155] Ladd & Wilson, *supra* note 41, at 129–31, 130 tbl.V.

[156] Citrin, *supra* note 37, at 120 (finding a strong correlation between negative views of governmental efficiency and support for Proposition 13 among California voters); Ladd & Wilson, *supra* note 41, at 128, 130 tbl.V (reporting that a belief that Proposition 2 1/2 would improve government efficiency increased the likelihood of a "yes" vote); Lowery & Sigelman, *supra* note 34, at 965 (describing and briefly surveying the literature supporting a "tax efficiency explanation" for the Tax Revolt).

[157] Of course, reducing tax revenue by itself could improve efficiency, by forcing government officials to operate on tighter budgets, providing them less slack.

[158] *See, e.g.*, Lowery & Sigelman, *supra* note 34, at 970 (finding at best a weak relationship between tax limit support and various demographic characteristics such as race, gender, age, and class).

and the antibusing movement, which sought to prevent school integration.[159] In addition to sharing ideological DNA — that is, a reticence to share resources via taxing and spending[160] — these two movements often drew from the same group of protesters.[161] Further, those who supported one effort tended to support the other.[162] Proposition 13's electoral outcome reflected these race-related affinities, with white voters more than three times more likely than black voters to support the tax limit.[163]

The existence of race-related motivations complicates support for greater public control of government policies, which might lead to unequal outcomes or give space to radical local proclivities.[164] This is an unavoidable consequence of decentralized politics and increased local public control. However, in the context of tax limits, reforming the laws as proposed by this Article should move tax policies in only one direction — that is, to allow localities to raise taxes above current levels to satisfy public desires. While wealthy communities could use this freedom to their solitary advantage, so too could economically and racially diverse cities and counties use it to improve integration and redistribution. The net result will depend on the distribution of taxing and spending preferences. Moreover, focusing on local public control elevates the tax limit debate beyond standard partisan bromides. Just as tax limits originally drew support from both sides of the ideological spectrum[165] — in part because of the public control motivation — relaxing strict limits to improve local power could command similar bipartisan popularity.

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[159] LO, *supra* note 23, at 57–60. The antibusing movement opposed efforts to integrate otherwise racially segregated schools by busing white suburban students closer to largely black and Latinx communities in more central areas, or vice versa. *See, e.g.*, Howard Blume, *School Busing and Race Tore L.A. Apart in the 1970s. Now, Kamala Harris Is Reviving Debate*, L.A. TIMES (June 28, 2019, 1:09 PM), https://www.latimes.com/local/lanow/la-me-busing-schools-los-angeles-harris-biden-20190628-story.html [https://perma.cc/9HX7-U2NQ]; Patt Morrison, *Bitter Memories of the Busing Years*, L.A. TIMES (Sept. 28, 1997, 12:00 AM), https://www.latimes.com/archives/la-xpm-1997-sep-28-tm-37601-story.html [https://perma.cc/TUD4-D9GN] (profiling Los Angeles Superior Court Judge Paul Egly, who oversaw busing litigation in Los Angeles starting in 1977).

[160] *See* Robert O. Self, *Prelude to the Tax Revolt: The Politics of the "Tax Dollar" in Postwar California*, *in* THE NEW SUBURBAN HISTORY 144, 146–48, 151–53, 157–60 (Kevin M. Kruse & Thomas J. Sugrue eds., 2006) (situating the East Bay Proposition 13 campaign in postwar growth liberalism, white racial backlash, and the rise of the new right).

[161] LO, *supra* note 23, at 58.

[162] *Id.* (citing research finding that those who supported an antibusing proposition were "particularly likely" to support tax reduction efforts).

[163] Smith, *Populist Entrepreneur*, *supra* note 47, at 174.

[164] *See generally* Briffault, *supra* note 103, at 1 (interrogating how localism "reflects territorial economic and social inequalities and reinforces them with political power," often benefiting affluent communities "to the detriment of other communities and to the system of local government as a whole").

[165] *See supra* pp. 1895–96.

It is important not to overstate the strength of the evidence in favor of an originating public control motivation. Improving public control is certainly not tax limits' only goal, nor their primary goal.[166] Complicating this analysis yet further, assessing how much public control mattered to enacting voters is difficult because such governance goals are largely absent from the relevant literature.[167] However, despite limited evidence, there is reason to believe that improving public control motivated tax limit supporters in at least some instances. Because of this, reframing tax limits to improve public control may not pervert intentions underlying the laws. Indeed, doing so may actually address governance-related motivations that have heretofore been overlooked.

III. Assessing Public Control Effects

The preceding discussion argued that tax limits should seek to improve public control, expanding on the typical understanding of tax limits as tools of tax restraint alone. Properly identifying this objective is necessary to evaluate whether the limits can successfully achieve it. To that end, this Part assesses the potential efficacy of tax rate and levy limits in improving public control and oversight. To do so, it identifies a list of tax limit features that affect voter power, and then codes property tax limits in all states according to such features. Finding that most states' tax limits allow for voter-approval override, it also considers factors, such as lack of voter capacity or special-interest influence, that may undermine the positive public control effect of voter-approval requirements.

A. Public Engagement Overrides

As explained above, to improve public control a tax limit must allow local government to exceed the prescribed ceiling, but it must require some form of heightened public engagement in order to do so. Table 1 lists the states that allow for such public override of property tax rate and levy limits.[168] Most states that allow for public override require approval by at least a majority of the electorate, the efficacy of which is explored further below.[169] However, a few allow the local governing body to override the limit after holding a public hearing only. As explained in section II.A, where a tax limit allows for public engagement

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[166] See *supra* Part I, pp. 1893–99, for discussion of the tax reduction goal of such limits.

[167] Considering such governance goals in research on tax limits is one of the recommendations of this project. *See infra* section IV.C, pp. 1944–45.

[168] Property tax assessment limits are absent from Table 1 because no state that imposes a mandatory assessment limit on local governments allows local voters to choose to exceed the limit. However, Georgia and Illinois allow localities to choose whether to impose assessment limits, thus effectively offering a public override option. *See* GA. CONST. art. VII, § II; 35 ILL. COMP. STAT. ANN. 200/15–176(a) (West 2018).

[169] *See infra* section III.C, pp. 1929–39.

override, the law theoretically shifts power from local government bodies to local voters. In contrast, where a tax limit prevents local override, the law shifts power from the locality to state voters or legislatures.

Table 1: Public Engagement Overrides Across States[170]

State	Tax Levy Limit Override	Tax Rate Limit Override
AL	Yes	Yes
AK	No	No
AZ	Yes	Yes
AR	No	No
CA	—	No
CO	Yes	Yes
CT	—	—
DE	No	No
FL	—	Yes
GA	—	Yes
HI	—	—
ID	Yes	Yes
IL	Yes	Yes
IN	Yes	No
IA	Yes	Yes
KS	Yes	—
KY	Yes	Yes
LA	Yes	Yes
ME	Yes	—
MD	—	—
MA	Yes	Yes
MI	Yes	Yes
MN	—	—
MS	Yes	—

[170] Legal authority and a description for each tax limit override are provided in the Appendix, Part A, pp. 1947–58. In this table, "Yes" indicates that a state has a public override option for the limit in question, "No" indicates that a state does not have a public override option for the limit in question, and a dash indicates that the state does not have the limit in question.

State	Tax Levy Limit Override	Tax Rate Limit Override
MO	Yes	Yes
MT	Yes	Yes
NE	—	Yes
NV	Yes	No
NH	—	—
NJ	Yes	—
NM	No	Yes
NY	Yes	—
NC	—	Yes
ND	Yes	Yes
OH	No	Yes
OK	—	Yes
OR	—	Yes
PA	Yes	Yes
RI	Yes	—
SC	—	Yes
SD	Yes	Yes
TN	—	—
TX	Yes	Yes
UT	Yes	Yes
VT	—	—
VA	Yes	—
WA	Yes	Yes
WV	Yes	Yes
WI	Yes	—
WY	—	No
Total with override	**29**	**28**

Notice, first, that the majority of states that impose tax limits provide for some type of public override mechanism. Of all forty-three states that impose a rate or levy limit, only five have no override provision whatsoever. This observation lends support to the presence of a public control motivation underlying tax limitations: if the goal was merely to reduce taxes, strict caps would be the more common legal structure.

Where tax limits lack a public override mechanism, the laws work to restrict local voters' control over the taxing and spending decisions of their local governments.

B. Statutory Features that Undermine Public Control

The presence of a public engagement override is necessary but not sufficient to improve public control. The tax limit may still contain features that undermine public oversight or reduce government responsiveness, and instead shift power away from local voters. This section presents a list of such features and codes states' tax limits according to their presence. These features include:

Hard Ceilings. Some states allow for a limited override within a prescribed limit. That is, voters may approve a tax levy or rate increase, but only up to a certain amount. Limits with such a structure shift partial power to local voters and government, but reserve significant control to the state.

Supermajority Electorate Approval. Some states require supermajority electorate approval to increase taxes above the limit amount. Depending on the approval threshold, a supermajority vote requirement creates a minority veto that can thwart effective public control.[171]

Supermajority Government Approval. Some tax limits require supermajority approval of the local governing body before presenting the issue to voters, raising similar concerns.

Sunset Clauses. Some tax limits require continual voter approval of tax increases, with initial voter approval sunsetting after a certain

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[171] *See, e.g.*, THE FEDERALIST No. 58, at 359 (James Madison) (Clinton Rossiter ed., 2003) (arguing against supermajority vote requirements in Congress because "an interested minority might take advantage of it to screen themselves from equitable sacrifices to the general weal"); Comment, *An Open Letter to Congressman Gingrich*, 104 YALE L.J. 1539, 1539 (1995) (arguing against a proposed House of Representatives rule to impose a three-fifths supermajority requirement to increase federal income taxes). *But see* John O. McGinnis & Michael B. Rappaport, *The Constitutionality of Legislative Supermajority Requirements: A Defense*, 105 YALE L.J. 483, 484 (1995) (responding to the open letter that argued against the proposed supermajority rule for tax increases and suggesting the proposed rule constituted "good policy"); Wolfgang Schön, *Taxation and Democracy*, 72 TAX L. REV. (forthcoming) (manuscript at 17–18, 62–63), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3267279 [https://perma.cc/MKB2-UCW9] (discussing how supermajority requirements may promote a higher level of consent and may prevent exploitation of a wealthy minority by the majority). For a defense of majority rule, see generally DAHL & LINDBLOM, *supra* note 17, at 43–45.

amount of time.[172] At first glance, it may seem that sunsetting provisions shift power away from current voters in favor of future voters. Remember, however, that local tax limits first shifted power by imposing limits set by past *state* voters onto future (or present) *local* voters. Voter override provisions revert some power to local voters by allowing them to supersede the limits. Sunsetting clauses limit how much power is reverted to local voters, because eventually the clauses reimpose the limits set by past state voters. Thus, rather than strengthening the power of future voters, sunsetting provisions limit local public control by reverting to state voters' preferences.

Table 2 codes tax limits in each state for these various features. A description of each override provision, along with legal authority, is provided in the Appendix.

[172] *See generally* Manoj Viswanathan, Note, *Sunset Provisions in the Tax Code: A Critical Evaluation and Prescriptions for the Future*, 82 N.Y.U. L. REV. 656, 668–78 (2007) (evaluating efficiency, complexity, and other concerns associated with sunset clauses).

Table 2: Tax Limit Features that Erode Public Control Across States[173]

State	No Public Override	Hard Ceiling	Electorate Super-majority	Gov't Super-majority	Sunset Clause
AL		X			
AK	X				
AZ				X	X
AR	X				
CA	X				
CO					
CT	*No property tax levy or rate limits.*				
DE	X				
FL		X		X	X
GA					
HI	*No property tax levy or rate limits.*				
ID			X		X
IL		X			X
IN					
IA		X		X	X
KS					
KY					
LA				X	
ME					
MD	*No property tax levy or rate limits.*				
MA		X	X	X	
MI		X			X

[173] Legal authority and further information on these features are provided in the Appendix, Part A, pp. 1947–58. Please note that the presence of an eroding feature in any state means that it exists in at least one instance for the levy limit or the rate limit in that state. Thus, the eroding features may not apply to all tax limits in a given state.

State	No Public Override	Hard Ceiling	Electorate Super-majority	Gov't Super-majority	Sunset Clause
MN	*No property tax levy or rate limits.*				
MS			X		X
MO		X	X		X
MT					
NE				X	X
NV					X
NH	*No property tax levy or rate limits.*				
NJ					
NM					
NY			X	X	
NC					
ND		X	X		X
OH				X	X
OK		X			X
OR					X
PA		X			
RI				X	
SC		X		X	
SD		X	X	X	
TN	*No property tax levy or rate limits.*				
TX		X		X	
UT					
VT	*No property tax levy or rate limits.*				
VA					
WA			X		X
WV		X	X		X

State	No Public Override	Hard Ceiling	Electorate Super-majority	Gov't Super-majority	Sunset Clause
WI					
WY	X				
Total	**5**	**14**	**9**	**12**	**16**
Total states with tax limits that either have no public override or have a public override with features that erode public control					**30**
Total states with tax limits that have no features that erode public control					**13**

While Table 2 provides a useful overview, focusing on specific legal structures offers analytical focal points. Consider, for example, the property tax rate limit in New Mexico. The New Mexico Constitution provides that the total property tax rate for all purposes shall not exceed 2% of net taxable value of property.[174] However, a simple majority approval of the electorate allows New Mexico localities to override the tax limit set by their state laws.[175] Such a limit provides local voters with the ability to oversee local government fiscal activity, requiring the government to put before the voters any desired revenue increase that might raise property taxes above the mandated cap. Thus, although the state imposed the cap, by doing so it shifted power from local government to local voters.

In contrast, Oklahoma allows only local school districts to exceed tax levy limits up to a further cap, retaining significant power at the state level. School districts in Oklahoma can exceed the property tax rate cap

[174] N.M. CONST. art. VIII, § 2. New Mexico statutes further divide this total 2% tax rate as 1.185% to county government, 0.05% to school districts, and 0.765% to other "general purposes." N.M. STAT. ANN. § 7-37-7 (West 2019).

It is interesting to note that New Mexico's property tax rate limit and override provision were enacted prior to the Tax Revolt of the late twentieth century. The rate limit was originally imposed in 1911, when the New Mexico Constitution was ratified, and was subsequently amended in 1914, 1933, and 1967. *See* H.J. Res. 23, 28th Leg., Reg. Sess. (N.M. 1967); S.J. Res. 21, 11th Leg., Reg. Sess. (N.M. 1933); J. Res. 10, 1st Leg. (N.M. 1913).

[175] N.M. CONST. art. VIII, § 2 (authorizing taxes that exceed limits "when approved by at least a majority of the qualified electors of the taxing district who paid a property tax therein during the preceding year voting on such proposition").

with majority electorate approval for emergency measures up to a maximum of 0.5%, and for a "local support levy" up to a maximum of 1%.[176] Localities cannot raise property tax rates above these additional amounts even with voter approval.[177] Such a restriction provides partial voter control over local government, but leaves significant power at the state level, where the limits are set.

Admittedly, the Oklahoma structure should improve voter oversight compared to a tax limit that lacks any override provision. That is because it requires the school district to check in with voters and receive approval in order to levy the additional taxes between the general cap and the excess levy caps. Such activity will provide voters with information about school district fiscal activity and ensure that they approve of such incremental spending increases. However, should voters desire that school districts increase spending above that allowed by these constitutional limits, their only recourse would be to seek a constitutional amendment to lift the limit, which would require majority support of both houses of the state legislature as well as approval by a majority of state voters.[178] Thus, significant control remains at the state level.

Other states require a supermajority vote of the local government body or the electorate in order to exceed tax limits. In Massachusetts, for example, the local governing body must achieve at least two-thirds support in order to place a tax increase on the ballot.[179] If the requested amount of tax revenue exceeds a certain limit, the referendum must receive approval from two-thirds of the electorate.[180] Requiring such supermajority approval may give inordinate power to minority political groups, thus shifting power not to the public at large, but rather to organized minorities capable of exerting veto power.[181] Such political groups could operate via the electorate or the governing body, preventing tax increases at either veto point. In such a case, even if a majority of the public desired increased taxes and spending, their desires would be thwarted.

Lastly, some states allow localities to exceed tax limits temporarily, with tax rates or revenue eventually reverting below ceilings set by the

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[176] OKLA. CONST. art. X, § 9(d), (d-1). In general, these property tax rate increases must be brought before the voters annually. *Id.* However, a school district can request a permanent increase, up to the cap, with majority electorate approval. *Id.* § 9(d-2). In such a case, voters can demand that levies revert to annual approval by calling for an election on the matter. *Id.* Such an election is called after voters secure a petition signed by 10% of voters, or after recommendation of the school district's board of education. *Id.*

[177] *Id.* § 9(d), (d-1) (setting limits for additional taxes without exceptions).

[178] *Id.* art. XXIV, § 1. Alternatively, the legislature may propose amendments through a constitutional convention approved by a public referendum vote or state voters may submit an amendment by an initiative petition. *Id.* §§ 2–3.

[179] MASS. GEN. LAWS ch. 59, § 21C(e) (2020).

[180] *Id.* The amount still cannot exceed an absolute ceiling set by the statute. *Id.* § 21C(d)–(e).

[181] *See supra* note 171 and accompanying text.

state. For example, Florida localities can exceed tax limits for up to two years when authorized by vote of the impacted property owners.[182] Such a structure, referred to here as a sunset clause, may seem appealing because it requires government to continually reengage the public. However, sunset clauses are problematic from a local-control perspective for several reasons. First, tax limit ceilings are set at the state level. Thus, when tax rates and revenue revert to statutory limits, the reversion reflects the wishes of state voters, not local voters. Second, requiring government to constantly seek reapproval is costly. Local government may be unwilling or unable to spend funds to repeatedly obtain approval. This could cause service cuts in contravention of residents' wishes, among other ill effects. Implications of the high cost of public engagement are considered further below.[183]

This analysis of tax limit override features enables classification of states according to how well their tax limits augment public control over local government. Those states that fare the worst under such an assessment prescribe a strict rate or levy cap without any override mechanism. States in this category include Alaska, Arkansas, California, Delaware, and Wyoming.[184] Those that fare best require engagement with the public to override tax limits without shifting power to the state level through sunset clauses or hard caps or to minority political factions through electorate or governing body supermajority requirements. This group includes Georgia, Indiana, Maine, and New Mexico, to name just a few. Most states fall somewhere in the middle, enhancing public oversight by requiring some form of public engagement to override tax limits, but shifting power to some degree away from the local public. Table 3 provides a schematic representation of this classification, dividing states into four quadrants based on public engagement requirements and the locus of political power.

This section has focused on the thirty states in Quadrants 3 and 4 — states where tax limits exist but local control is either limited or nonexistent. However, as the next section further explains, the thirteen states in Quadrant 1 would likely also benefit from improved local control, notwithstanding the fact that their tax limits already require public engagement. Notably, nearly all of the Quadrant 1 states, as well as those in Quadrant 3, require public engagement via voter approval of tax increases. The next section directly addresses why such mandatory voter approval may not result in laws that accurately reflect public desires.

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[182] FLA. CONST. art. VII, § 9.
[183] *See infra* section III.C.3, pp. 1937–39.
[184] *See infra* Table 3, pp. 1929.

Table 3: Classification of States by Tax Limit Structure[185]

	Public Engagement Required	No Public Engagement Required
Shifts Power to Local Voters	1. Tax limit with public override and no features that erode public control States: CO, GA, IN, KS, KY, ME, MT, NJ, NM, NC, UT, VA, WI	2. No tax limit States: CT, HI, MD, MN, NH, TN, VT
Shifts Power Away from Local Voters	3. Tax limit with public override and one or more features that erode public control States: AL, AZ, FL, ID, IL, IA, LA, MA, MI, MS, MO, NE, NV, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, WA, WV	4. Tax limit with no public override States: AK, AR, CA, DE, WY

C. *Forces that Undermine the Representative Power of Voter Approval*

Improving democratic responsiveness requires a method of public engagement that enables expression of voters' true preferences. Although most states have chosen to engage the public in the tax limit override process via voter approval,[186] ensuring democratically responsive laws is more difficult than merely asking voters what they want. Problems such as low voter capacity, special interest influence, and the high cost of seeking electoral approval undermine the representative

[185] Table 3 summarizes the information in Tables 1 and 2, as well as the Appendix, which showcase the diversity of tax limits and public override options across states. See *infra* Appendix, Part A, pp. 1947–58 for a survey of public override features of each state's levy and rate limits and Appendix, Part B, pp. 1959–62 for a catalog of tax assessment limits, levy limits, rate limits, and full-disclosure/truth-in-taxation requirements across states.

[186] Utah, Virginia, and West Virginia are among the few states with limits that allow override without full voter approval, requiring only a public hearing at least in certain cases. *See infra* Appendix, Part A, pp. 1947–58; *see also* UTAH CODE ANN. §§ 59-2-909, 59-2-919, 59-2-924 (LexisNexis 2020); VA. CODE ANN. § 58.1–3321(b) (2019); W. VA. CODE ANN. § 11-8-6e (LexisNexis 2019).

power of direct democracy.[187] This section briefly explores these issues in the context of voter approval of tax increases. The analysis herein suggests that governments might better improve public control via engagement methods other than voter approval.

To some degree, this discussion reflects the eternal debate over the merits of direct versus representative democracy. This Article does not attempt to resolve that debate. Rather, it provides a brief description of factors undermining the representative power of direct democracy, and considers how those factors might apply to tax limits.

1. Voter Capacity. — A plebiscite may misrepresent the majority's will due to low voter turnout, poor understanding or lack of information about the policies being decided, and cognitive biases.[188] Where less than half of eligible residents cast a vote, electoral outcomes may not represent the will of the majority.[189] Perhaps more concerning, voters'

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[187] *See* Matsusaka, *supra* note 27, at 197–201, 203–04. The term "direct democracy" describes political processes that allow citizens to vote directly on laws, rather than voting for representatives who pass laws on their constituents' behalf. *Id.* at 187.

[188] *See, e.g.*, Erwin Chemerinsky, *Challenging Direct Democracy*, 2007 MICH. ST. L. REV. 293, 299–301 (arguing that direct democracy does not necessarily reflect the policy preferences of the majority of voters in part due to the inability to compromise); Julian N. Eule, *Judicial Review of Direct Democracy*, 99 YALE L.J. 1503, 1513–22 (1990) (arguing that direct democracy may distort majority will due to low voter turnout and voters' lack of information); Maxwell L. Stearns, *Direct (Anti-)Democracy*, 80 GEO. WASH. L. REV. 311, 322–26 (2012) (surveying arguments against direct democracy, including low and selective turnout, failure to protect interests of demographic minorities, voter ignorance, and mistimed spending and revenue provisions).

In the context of tax-approval provisions specifically, scholars have noted voters' proclivity to support tax cuts alongside spending increases, leading to policy mismatches. Such an outcome is attributed to internally inconsistent preferences, misunderstanding, and cognitive bias. *See, e.g.*, Citrin, *supra* note 37, at 114–18 (finding public support for tax cuts as well as spending increases in particular arenas); Kirk J. Stark, Commentary, *The Operation of Tax Limitation Initiatives in the Face of Conflicting Voter Preferences for Tax and Spending Levels*, 67 TAX L. REV. 543, 553–54 (2014) (noting that "in some cases individual voters may favor both lower taxes and higher spending," *id.* at 553).

[189] Eule, *supra* note 188, at 1514–15 ("We legitimately may question whether the full citizenry share the preferences of the subgroup who actually vote on the ballot proposition.").

Less than half of the voting-eligible population has turned out for midterm national elections for the past century, with the exception of the 2018 midterm. *See* U.S. ELECTIONS PROJECT, *National General Election VEP Turnout Rates, 1789–Present*, http://www.electproject.org/national-1789-present [https://perma.cc/QY82-3X9K]. Voter turnout for local elections varies greatly, but is often lower than that of national elections. *See* ZOLTAN L. HAJNAL, PAUL G. LEWIS & HUGH LOUCH, PUB. POLICY INST. OF CAL., MUNICIPAL ELECTIONS IN CALIFORNIA: TURNOUT, TIMING, AND COMPETITION 34 (2002), https://www.ppic.org/content/pubs/report/R_302ZHR.pdf [https://perma.cc/3T6G-YKBH] (providing data that voter turnout in local elections ranged from 10% to 89% of registered voters across California cities in the late 1990s and early 2000s); Kriston Capps, *In the U.S., Almost No One Votes in Local Elections*, CITYLAB (Nov. 1, 2016), https://www.citylab.com/equity/2016/11/in-the-us-almost-no-one-votes-in-local-elections/505766 [https://perma.cc/7PD3-QQNK] ("[I]n 15 of the 30 most populous cities in the U.S., voter turnout in mayoral elections is less than 20 percent.").

decisions may not reflect their true preferences due to ignorance, confusion,[190] or lack of information or education.[191] These problems may have outsized effects on fiscal matters in particular, because they tend to be complicated.

It is important to note that some of the critiques of direct democracy based on voter shortcomings apply to representative democracy as well.[192] That is, low voter turnout and voter ignorance will lead to a nonrepresentative governing body just as they might lead to nonrepresentative laws.[193] Thus, in order for such critiques against direct democracy to stick, there must be evidence that direct processes result in *worsened* democratic outcomes (that is, less reflective policies) compared to those under a representative legislature.[194]

Despite the predominance of such fears, the empirical evidence gives some reason to be optimistic about voter oversight.[195] A body of research finds that voters are often able to vote in alignment with their political preferences, even if they lack sufficient information about a specific ballot measure.[196] They often do so by looking to informational

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[190] Concern about voter confusion often centers on the poor drafting of initiative ballot measures, which are proposed by citizens. *See* Chemerinsky, *supra* note 188, at 297–99 (arguing that initiatives are poorly drafted and confusing, leading voters to approve laws they do not fully understand). However, tax limit overrides are often drafted by a government body seeking to increase taxes. Poor drafting by citizens may be less of a concern in this context. *See also infra* Appendix, Part A, pp. 1947–58 (describing processes for tax limit override referenda, most of which are initiated by governing bodies seeking tax increases).

[191] Craig M. Burnett & Mathew D. McCubbins, *When Common Wisdom Is Neither Common nor Wisdom: Exploring Voters' Limited Use of Endorsements on Three Ballot Measures*, 97 MINN. L. REV. 1557, 1559 (2013) ("Overall, the empirical evidence suggests that the prospects for voters casting competent votes on initiatives and referendums are quite poor."); Eule, *supra* note 188, at 1516–17 (arguing that ballot measures are confusing, acknowledging that the measures are probably readable only for those with post-secondary education, and suggesting that the number of provisions leads to "overloads" that "so strain the voters' capacity for education as virtually to ensure decisions inconsistent with their own desires," *id.* at 1517); Michael S. Kang, *Democratizing Direct Democracy: Restoring Voter Competence Through Heuristic Cues and "Disclosure Plus,"* 50 UCLA L. REV. 1141, 1145–46, 1149 (2003) (citing survey evidence that voters find ballot measures to be confusing and that such measures often address complex issues and concluding that a lack of heuristic clues, not voter inability, creates such voter confusion); David B. Magleby, *Let the Voters Decide? An Assessment of the Initiative and Referendum Process*, 66 U. COLO. L. REV. 13, 40 (1995) (finding that voter information pamphlets in four states require a fifteenth- to eighteenth-grade reading level).

[192] MATSUSAKA, *supra* note 12, at 54.

[193] *See id.* ("But the issue of voter competence has more to do with the advisability of democracy in general than with the relative merits of the initiative and legislative processes.").

[194] *See id.*

[195] Shaun Bowler, *When Is It OK to Limit Direct Democracy?*, 97 MINN. L. REV. 1780, 1784 (2013) ("The problem for [critiques based on voter shortcomings] is that a sizeable body of empirical work shows that the critique is, at best, overstated and, at worst, wrong — especially when it comes to the issue of voter competence."); Matsusaka, *supra* note 27, at 186 ("[T]he emerging view is that direct democracy works — allowing the general public to participate in lawmaking often seems to improve the performance of government.").

[196] *See, e.g.*, MATSUSAKA, *supra* note 12, at 54–62.

cues and shortcuts, such as endorsements by trusted public figures, newspapers, or civil society groups.[197] An oft-cited study of election results for five complex insurance-reform ballot initiatives in California reveals such shortcut practices.[198] In that study, uninformed voters were able to mimic the behavior of informed voters by looking to the positions taken by various interest groups.[199] Other studies have similarly found that voters are capable of voting in their political or economic interests based on various cues or basic understanding of a measure's implications for their self-interest.[200] This evidence suggests that, while ballot measures may face some barriers to reflecting true voter preferences, these barriers are likely not as significant as some fear.

Concerns about voter capacity are more salient where voters lack sufficient political cues to make ideologically reflective decisions. For example, many ballot measures are not affiliated with a political party, and they often do not easily track standard ideological divides.[201] Without party affiliation, voters lack their primary source of voting information.[202] Making matters worse, politicians are often reluctant to weigh in on ballot measures aside from the most accessible ones, which also tend to be those for which ideological underpinnings are most obvious.[203] This suggests

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[197] *See, e.g.*, *id.* at 62 (comparing public survey responses with initiative outcomes and concluding that "the initiative nudged state spending in the direction preferred by a majority of citizens"); Bowler, *supra* note 195, at 1783–84 (summarizing critiques of direct democracy based on voter capacity, as well as surveying literature rebutting such critiques); Kang, *supra* note 191, at 1149–60 (arguing that voters are capable of informed voting in direct democracy with the aid of heuristic cues); Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88 AM. POL. SCI. REV. 63, 63–64 (1994).

[198] Lupia, *supra* note 197, at 63–64.

[199] *Id.* at 71–72. *But see* Burnett & McCubbins, *supra* note 191, at 1561 (challenging, based on voter data, the conclusion that voters routinely use endorsements to make decisions on ballot measures).

[200] *See, e.g.*, ARTHUR LUPIA & MATHEW D. MCCUBBINS, THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW? 2, 7–8 (1998) (explaining how citizens use heuristic cues to make political decisions); *id.* at 39–67 (outlining the conditions under which citizens can make reasoned choices based on the speech and actions of others); *id.* at 101–48 (describing lab experiments in which subjects were able to make reasoned choices based on cues from others); John E. Filer & Lawrence W. Kenny, *Voter Reaction to City-County Consolidation Referenda*, 23 J.L. & ECON. 179, 189–90 (1980) (finding that residents voted in their economic best interest in city/county merger elections); Matthew E. Kahn & John G. Matsusaka, *Demand for Environmental Goods: Evidence from Voting Patterns on California Initiatives*, 40 J.L. & ECON. 137, 166–67 (1997) (finding that residents voted predictably based on income and pricing in various California environmental initiatives).

[201] *See, e.g.*, Kang, *supra* note 191, at 1151–52 ("Ballot measures do not come to the voter affixed with a partisan label." *Id.* at 1151.).

[202] *Id.* at 1150 ("Political scientists have shown that when deciding for whom to vote in candidate elections, the typical voter refers to the heuristic cue of party identification to figure out which candidate is most likely to match her values and share her interests.").

[203] *Id.* at 1152–53.

that providing increased information about tax measures' supporters and opponents could potentially improve voter competence.[204]

Perhaps more worrisome, cognitive biases may cause voters to reject property tax increases despite a genuine preference for additional public services. Loss aversion is one example of such a bias. Loss aversion means that people care more about losing something they already have than about gaining something they do not yet have.[205] In practice, this tendency may cause voters to reject a tax increase even where it funds a service they want. The effects of loss aversion may be heightened for property taxes because the tax is highly salient and strongly disliked.[206] Because taxpayers typically remit property taxes directly to government, without the pacifying buffer of third-party withholding, they may feel the sting of tax payment more deeply than with other kinds of taxes.[207] Additionally, some voters manifest tax-label aversion, which may cause them to reject any policy labeled a "tax" even if they would support the same policy under a different name, such as "fee," "penalty," or "offset."[208] Where taxpayers are asked to approve all significant property tax increases, these cognitive biases may cause lower-than-optimal tax and spending levels that may not reflect voters' true policy preferences.

Finally, the very structure of plebiscites may lead to distorted voter preference expression and manipulation by policymakers. For one, the binary yes/no and single-issue nature of ballot measures precludes voters

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[204] *See, e.g.*, *id.* at 1179–82 (advocating disclosure of ballot-measure supporters, among other direct democracy reforms to improve voter competence).

[205] *E.g.*, Daniel Kahneman, Jack L. Knetsch & Richard H. Thaler, *Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias*, 5 J. ECON. PERSP. 193, 199–203 (1991).

[206] *See, e.g.*, DAVID O. SEARS & JACK CITRIN, TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA 5, 115–20 (1982) (explaining the theory that resistance to property taxes is particularly intense because a property tax is "notoriously visible," *id.* at 5, and "was experienced as extremely onerous" in California in the years leading up to Proposition 13, *id.* at 117); *Taxes*, GALLUP, https://news.gallup.com/poll/1714/taxes.aspx [https://perma.cc/XSQ8-LK48] (providing survey evidence showing that a plurality of respondents described the property tax as the "least fair" tax relative to other major taxes in five out of seven survey years from the 1980s to the 2000s).

[207] *See* Marika Cabral & Caroline Hoxby, *The Hated Property Tax: Salience, Tax Rates, and Tax Revolts* 1 (Nat'l Bureau of Econ. Research, Working Paper No. 18514, 2012), https://www.nber.org/papers/w18514.pdf [https://perma.cc/AJY5-D5B7] ("Because people typically pay property taxes in the U.S. by writing one or two very large checks each year, the property tax is . . . more likely to be salient than taxes that are indirect, rolled into gross-of-tax prices, collected through withholding, fragmented, or otherwise difficult to compute or notice.").

[208] *See* David Gamage & Darien Shanske, *Three Essays on Tax Salience: Market Salience and Political Salience*, 65 TAX L. REV. 19, 50–54 (2011) (describing tax-label aversion); David J. Hardisty, Eric J. Johnson & Elke U. Weber, *A Dirty Word or a Dirty World?: Attribute Framing, Political Affiliation, and Query Theory*, 21 PSYCHOL. SCI. 86, 88 (2010) (finding that experiment participants self-identifying as "Republican" were more likely to oppose policies labeled as "taxes," versus identical policies labeled as "offsets").

from ranking their preferences.[209] This is in contrast to representative democracy, which allows preference ranking through legislative logrolling.[210] In addition to obscuring policy preferences, this binary structure allows policymakers to manipulate budgets to increase the likelihood of voter approval. For example, during lean times policymakers may maintain administrative functions while cutting necessary services, like police or teachers, on the expectation that voters will approve tax increases for such services.[211] Where outcomes are based on manipulated choices, and preference ranking is not possible, voters cannot effectively communicate their genuine preferences.

Thus, although some research suggests that lack of capacity need not undermine the representative power of voter approval, sufficient concerns remain. Specifically, cognitive biases, insufficient heuristic clues, and inability to rank policy choices may undermine citizens' ability to vote their true preferences for tax increases. These concerns counsel toward a public engagement method that provides the public with soft power — for instance, the ability to voice opinions through public hearings — rather than hard power in the form of mandatory voter approval.[212] Where the default rule allows a tax increase to remain — yet still engages the public either through the use of a petition referendum or full-disclosure provision[213] — voter shortcomings are less problematic.

2. Special Interest Influence. — In addition to influencing tax limits' enactment,[214] wealthy commercial entities — such as corporations or trade groups — can distort the referendum process to ensure that political outcomes serve their economic interests.[215] Concerns about such

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[209] *See* Sherman J. Clark, Commentary, *A Populist Critique of Direct Democracy*, 112 HARV. L. REV. 434, 449–50 (1998) (arguing that direct democracy misrepresents voter preferences by presenting voters with one issue at a time, precluding ranking of preferences); *see also* Chemerinsky, *supra* note 188, at 299–300 (arguing that the initiative process does not reflect the will of the electorate due to the binary nature of initiative processes and inability to reach compromises).

[210] Clark, *supra* note 209, at 456–63 (explaining how legislative logrolling allows for weighing of voters' preferences as well as protection of minority interests).

[211] *See* David N. Figlio & Arthur O'Sullivan, *The Local Response to Tax Limitation Measures: Do Local Governments Manipulate Voters to Increase Revenues?*, 44 J.L. & ECON. 233, 233 (2001) (finding that "some cities subject to a statewide tax limit manipulate their mix of productive and administrative services in an attempt to get voters to override the statewide limit").

[212] *See supra* notes 79–81 and accompanying text.

[213] For further discussion of the use of these structures, see *infra* section IV.A, pp. 1939–42.

[214] *See supra* p. 1896.

[215] *See, e.g.*, Nicole Bremner Cásarez, *Corruption, Corrosion, and Corporate Political Speech*, 70 NEB. L. REV. 689, 727 (1991) (citing evidence of a positive correlation between corporate spending and voter opposition to ballot measures); Clark, *supra* note 209, at 439 (citing "the influence of money[] and special-interest capture" among a list of factors that "undermine the responsiveness of direct democracy" (footnote omitted)); Elizabeth Garrett, *Who Directs Direct Democracy?*, 4 U. CHI. L. SCH. ROUNDTABLE 17, 18 (1997) (arguing that special interests have inordinate power in selecting and drafting ballot measures); Kang, *supra* note 191, at 1146–48 (describing concerns over campaign spending in direct democracy); J. Skelly Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?*, 82 COLUM. L. REV. 609, 622–25 (1982)

special interest influence are often based on the prominence of private money in direct democracy campaigns.[216] For example, wealthy special interests use paid signature gatherers to obtain the necessary signatures to qualify an initiative for the ballot.[217] They may also spend inordinate sums on public messaging and advertising, which can sway election results in their favor.[218] The nature and scope of such efforts — on the order of hundreds of millions of dollars[219] — have cast serious doubt on ballot measures' integrity.[220]

Importantly, such concerns must be calibrated to the narrow case of voter approval of tax *increases*. In this context, special interest involvement is less threatening. To see why, imagine that policymakers seek to raise property taxes on business property owners, but must secure electorate approval in order to do so. Businesses will no doubt mount an advertising campaign to oppose the tax increase.[221] Even if they succeed in defeating the tax increase, however, the outcome is no worse than if legislators were subject to a strict limit with no override option. In both cases, taxes cannot be increased. Further, research suggests that special interests will be less successful in supporting *approval*

(citing research finding a direct correlation between campaign spending and success in ballot measures); Robert Reinhold, *California Has 29 on the Ballot: With Proliferation of Ballot Initiatives, Suddenly Everyone's Interest Is Special*, N.Y. TIMES (Nov. 6, 1988), https://nyti.ms/29zpFOd [https://perma.cc/436J-226T] (quoting two political scientists who commented that "[s]etting the state's political agenda through initiatives has now become the proprietorship of the wealthy").

[216] ELISABETH R. GERBER, THE POPULIST PARADOX: INTEREST GROUP INFLUENCE AND THE PROMISE OF DIRECT LEGISLATION 4–5 (1999) (citing instances of excessive private investment in ballot measure campaigns, which "have led some critics to suspect that wealthy interests are using direct legislation to buy favorable policy at the ballot box," *id.* at 5); Kang, *supra* note 191, at 1146–47.

[217] Elizabeth Garrett, *Money, Agenda Setting, and Direct Democracy*, 77 TEX. L. REV. 1845, 1849–54 (1999) (arguing that wealth is crucial to qualifying a provision for the ballot, particularly due to the use of paid consultants and professional signature gatherers).

[218] *See, e.g.*, Cásarez, *supra* note 215, at 726–31 (concluding, after a survey of relevant studies, that corporate and other wealthy spenders exert a strong influence on ballot issue campaigns).

[219] *See* GERBER, *supra* note 216, at 5; Kang, *supra* note 191, at 1148 n.26.

[220] *See, e.g.*, Clark, *supra* note 209, at 439 (noting that "special-interest capture" has undermined faith in direct democracy). It is interesting to note that advocates of direct democracy originally promoted plebiscites as a way to bypass special interest capture of legislatures. GERBER, *supra* note 216, at 4 (describing how late nineteenth-century Populists and early twentieth-century Progressives advocated direct democracy as a means of bypassing established political parties, which were beholden to corporate interests). Even now, despite the large sums spent by wealthy interests in direct democracy campaigns, it would be difficult to prove that capture is *worse* in direct democracy than in representative democracy. *See* Garrett, *supra* note 215, at 18 (suggesting that legislators and plebiscites are both subject to interest group pressure); Clayton P. Gillette, *Is Direct Democracy Anti-Democratic?*, 34 WILLAMETTE L. REV. 609, 624 (1998) ("My claim . . . is not that interest groups will avoid initiatives. . . . Rather, my more modest claim is that there is little reason to believe that the initiative is *more* susceptible to interest groups than is the legislature.").

[221] *See* GERBER, *supra* note 216, at 93–97 (finding that business groups concentrate spending on "defeat[ing] changes to the status quo," *id.* at 95).

of new taxes. Data on special interest influence tend to reveal that monied interests are particularly effective at defeating ballot measures, but less so at supporting their passage.[222] Thus, special interest influence is generally less concerning in the context of tax limit overrides, because corporate campaigns are unlikely to distort outcomes away from those that would prevail under strict tax limits. As a result, fear of special interest interference should not counsel against voter overrides. Moreover, given the fiscal challenges facing many local governments,[223] if special interests distorted outcomes in favor of tax increases, this could be viewed as a positive outcome.

Special interest influence may raise distinct concerns for other forms of public engagement aside from direct voter approval. For example, if local government bodies are required to hold a public hearing prior to increasing taxes, wealthy interest groups are probably better able to attend such hearings and voice their concerns compared to ordinary citizens. This could allow them to sway the political process at relatively low cost — although presumably policymakers could decide whether to heed such private interests when making a final policy decision.

The influence of wealthy special interests is particularly concerning in the context of petition referenda. A petition referendum structure requires that tax increases be put to a vote only where a certain percentage of qualified voters petitions to require electorate approval.[224] Although evidence of special interests' power to sway electoral outcomes is mixed, wealth provides a clear advantage in placing a provision on the ballot.[225] In order for a measure to be placed on the ballot — whether

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[222] For instance, Professor David Magleby finds evidence of this imbalance in outcomes in his research on special interest spending on ballot measures in California. DAVID B. MAGLEBY, DIRECT LEGISLATION: VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES 147–48, 148 tbl.1 (1984). His data show that, where *opponents* of a measure outspent proponents by more than two-thirds, the measure was defeated 87% of the time. *Id.* at 148 tbl.1. However, where the spending imbalance was reversed, and *proponents* outspent opponents by more than two-thirds, the measure still failed 52% of the time. *Id.* Magleby concludes that "proponents cannot spend an initiative into law." *Id.* at 147; *see also* GERBER, *supra* note 216, at 118–19 (finding that economic and business special interests are less effective than citizen interest groups at achieving measures' passage, but more effective at blocking measures' passage). Paid political consultants are aware of this trend, preferring to work on opposition campaigns because, according to one political consultant, "it is easier to present a negative message than to present a concept." DENNIS W. JOHNSON, NO PLACE FOR AMATEURS: HOW POLITICAL CONSULTANTS ARE RESHAPING AMERICAN DEMOCRACY 209 (2001) (quoting David B. Magleby & Kelly D. Patterson, *Consultants and Direct Democracy*, 31 PS 160, 166 (1998)).

[223] *See supra* notes 1–3 and accompanying text.

[224] Matsusaka, *supra* note 81, at 110 & n.5 (defining petition referendum and noting that such a legal structure can also be called an optional, popular, or veto referendum). Various states employ such a structure in their tax limits. *See, e.g.*, S.D. CODIFIED LAWS § 10-13-36 (2019) (providing procedure for vote to exceed property tax limits, including petition referenda).

[225] *See* Garrett, *supra* note 217, at 1849–54 (arguing that wealthy interests have a disproportionate advantage in qualifying initiatives for the ballot via the petition process); *see also* JOHNSON, *supra* note 222, at 201 ("If you have $1 million, you can get anything on the

to oppose a tax increase or otherwise — supporters must obtain a large number of signatures within a limited period of time.[226] This task requires resources and manpower, and thus is difficult for an individual or nonprofit organization, aside from the few well-heeled exceptions.[227] Commercial interests, on the other hand, can simply hire paid petition circulators to secure the required signatures.[228] Indeed, some observe that qualifying a petition for the ballot is impossible without the use of paid signature gatherers, and, further, that using them "virtually guarantees" access.[229]

Under a petition referendum structure, the effect of lopsided petition access dominated by the wealthy is that only taxes on wealthy taxpayers would face potential voter rejection. Meanwhile, taxes that burden poor or middle-income individuals would be unlikely to face effective opposition. The possible long-run consequence of such a structure is a more regressive tax system. However, structural reforms, such as allowing expanded time for citizen groups to gather signatures or increasing requirements imposed on paid signature gatherers in tax limit referenda, could ameliorate these concerns.[230] Several such reforms are described in greater detail in Part IV.

The upshot of this discussion is that special interest influence should be considered in the design of tax limit overrides. Generally speaking, although special interest capture may undermine the integrity of direct democracy broadly, such concerns are less problematic in the context of voter approval of tax increases.[231] This is because such capture tends to be more effective at preserving the status quo, which is what strict tax limits already do. Nonetheless, policymakers should seek to restrain the power of wealthy interests when designing tax limit overrides, paying special attention to petition referenda.

3. Costs of Electoral Approval. — Public engagement requirements impose costs on government that may drive a wedge between preferences and outcomes. Such costs might include, for example, outlays associated with holding referenda or hearings (for example, personnel time or other administrative costs) or distributing information to voters

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ballot." (quoting Dan Morain, *Making of a Ballot Initiative*, L.A. TIMES (Apr. 16, 1998, 12:00 AM), https://www.latimes.com/archives/la-xpm-1998-apr-16-mn-39886-story.html [https://perma.cc/UKH7-SMAQ])).

[226] Garrett, *supra* note 217, at 1849–50.

[227] *See id.* at 1851, 1853.

[228] *See id.* at 1851; *see also* JOHNSON, *supra* note 222, at 205 (describing the increased use of paid political consultants and petition circulators for local initiative campaigns).

[229] Garrett, *supra* note 217, at 1852–53.

[230] *See id.* at 1874.

[231] *See supra* pp. 1936–37.

(including research, printing costs, postage, and so forth).[232] To avoid these costs, some governing bodies may pursue revenue that does not require such public engagement.[233] Others may forgo revenue increases altogether. For example, a study of Missouri cities subject to strict voter-approval requirements for all tax and fee increases found that some localities failed to increase fees at all in response to the requirement.[234] As one St. Elmo city official put it: "We're not going to spend, say $15,000 to put something on the ballot that's only going to increase revenue $300."[235] Where such increases would have funded desired public services, democratic outcomes are harmed.

The cost of public engagement is therefore a key consideration when designing a tax limit override provision.[236] Requiring full voter approval means that government must provide a voter referendum for all affected taxes, at significant expense. Sunset clauses increase outlays further by requiring constant reapproval. In contrast, under a full-disclosure law, the government bears some costs in notifying taxpayers and holding a public hearing, but voters also bear some costs should they wish to oppose a tax increase. Such voter costs might include lobbying policymakers, organizing grassroots protest, mounting opposition at public hearings, and so forth. Similar to disclosure laws, the petition referendum imposes some costs on both government and voters. However, unlike governments that need voter approval or must provide full disclosure, a government with a petition referendum requirement bears a cost only if the public wishes to overturn the law. In those

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[232] *See* David R. Elkins & Elaine B. Sharp, *Living with the Tax Revolt: Adaptations to Fiscal Limitation*, 15 PUB. ADMIN. Q. 272, 275–76 (1991) (discussing costs to Missouri municipalities of conducting tax-increase referenda and obtaining voter approval); Katy Owens Hubler & Wendy Underhill, *Election Costs: Who Pays and with Which Funds?*, NAT'L CONF. ST. LEGISLATURES (Mar. 2018), http://www.ncsl.org/LinkClick.aspx?fileticket=y7G5AApYoKI%3d&tabid=32195&portalid=1 [https://perma.cc/2JBD-JS2U].

[233] Indeed, commentators often list this as one of the primary outcomes of tax limits. *See, e.g.*, BRIFFAULT & REYNOLDS, *supra* note 8, at 740 (describing research on outcomes of tax and spending limits, including local governments' increased reliance on sales taxes, special assessments, fees, and service charges); Mullins & Wallin, *supra* note 22, at 15 (describing the "overall effects of these limitations" as including "decreased use of local broad-based taxes (specifically property taxes), and shifts to state aid[], user charges, and miscellaneous revenues"); *see also* Bennett & DiLorenzo, *supra* note 83, at 334, 340–41 (finding that localities have responded to tax limits by issuing nonguaranteed debt through municipal corporations that often are not subject to voter scrutiny); Galles & Sexton, *supra* note 66, at 124–25 (describing use of nontax charges and fees to raise revenue following implementation of tax limits); McCubbins & McCubbins, *supra* note 66, at 20–22 (describing nontax revenue-raising methods used in California).

[234] *See* Elkins & Sharp, *supra* note 232, at 276, 278.

[235] *Id.* at 276.

[236] For a general discussion of how costs of direct democracy institutions affect policy outcomes and public responsiveness, see Matsusaka, *supra* note 81, at 115–18 (modeling policy outcomes relative to government's and voters' ideal points for mandatory referenda, petition referenda, and initiatives).

limited cases, voters bear the cost of collecting signatures and government bears the cost of administering the referendum.[237] Importantly, however, government need not hold a referendum for all tax increases, reducing overall costliness of the mechanism.

Concerns about the distorting effect of such costs counsel toward the use of public engagement requirements that impose lower costs on government, such as full disclosure and petition referenda. The next Part draws on such considerations to inform policy recommendations.

IV. Pursuing a Public Control Agenda

This Part identifies several key implications of an expanded public control goal. The first section offers reform principles to guide state legislators concerned about tax limits' effect on local democracy. The second section considers the broader implications of the normative arguments made in Part II, offering reforms to local governments concerned about public engagement. Most importantly, that section suggests that city and county officials should improve fiscal governance and seek more meaningful engagement with residents on local fiscal decisions. This fiscal governance agenda is relevant to all states and localities, including those without tax limits. The final section explores implications for future research.

A. State-Level Reforms

The central recommendation of this analysis is that state legislators should design tax limits with greater mindfulness of the laws' effects on public control and oversight. This section explores how that can be done, offering several key principles for tax limit reform and design. Importantly, this Article is not advocating that states *adopt* tax limits. Rather, it advocates that state legislators reframe and restructure existing laws to prioritize improved public control and oversight.

This Article's first and most important key principle is that tax limits should feature some form of public engagement override that is not eroded by hard ceilings, supermajority voting requirements, or sunset provisions.[238] Local government should be allowed to exceed tax limits where doing so would better serve public preferences, provided that policymakers seek public engagement as part of that effort.

The second key principle is that tax limits should require public engagement in a way that fosters representation of voters' true preferences. As explained above, voter approval may not result in democratically responsive laws due to problems of voter capacity and the high cost of

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[237] As explained above, the cost of collecting petition signatures can be significant. *See supra* pp. 1936–37.

[238] *See supra* section III.B, pp. 1922–29.

seeking voter approval.[239] An effective tax limit structure must account for these problems. Ideally, state policymakers should be guided by empirical research on the governance consequences of tax limits. Expanding this research is an important recommendation of this analysis.[240]

Based on this second key principle, an effective tax limit might require detailed notice and public hearing in advance of a tax increase and perhaps provide a petition referendum option rather than require full voter approval.[241] Unsatisfied voters, armed with this tax information, can respond by campaigning against the increase, lobbying elected officials, or voting against policymakers that support the increase. Where policymakers remain unresponsive to public opposition, a petition referendum would enable voters to trigger voter approval.[242] Such a structure shifts significant public control to local voters, while allowing tax increases to remain by default. Importantly, by pursuing

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[239] *See supra* section III.C, pp. 1929–39. While this Article seeks to balance the various normative objectives described above, prioritizing one normative goal above others might counsel toward different optimal methods of engagement. For example, if the primary goal is to improve government accountability and transparency, increased disclosure of tax and spending information might work best. However, if the primary goal is to enhance taxpayer voice, a public hearing may be the optimal public engagement policy.

[240] *See infra* section IV.C, pp. 1944–45.

[241] Full-disclosure laws offer an example of tax limits that improve public oversight without imposing rigid tax or revenue caps. Seventeen states impose such laws. *See infra* Appendix, Part B, pp. 1959–62. The laws require local government to publicly disclose tax increases and to conduct public hearings on such actions, including an alert before an increase in property tax revenue due to property value appreciation in the district. Gary C. Cornia & Lawrence C. Walters, *Full Disclosure: Controlling Property Tax Increases During Periods of Increasing Housing Values*, 59 NAT'L TAX J. 735, 736 (2006). They do so by requiring localities to calculate a figure often known as the "rollback rate" or "certified rate." *Id.* at 741; *see also, e.g.*, GA. CODE ANN. § 48-5-32 (2019); TENN. CODE ANN. § 67-5-1701 (2019); TEX. TAX CODE ANN. § 26.041(a) (West 2019). This rate produces the same amount of revenue as the prior year when applied to the new appreciated property base, typically excluding new property and improvements. Cornia & Walters, *supra*, at 741; *see, e.g.*, TENN. CODE ANN. § 67-5-1701 (2019) (detailing the process for calculating the "certified rate"). Thus, any rate in excess of this rollback rate will collect increased revenue over the prior year (for the property tax base as it existed in the prior year).

If policymakers wish to impose a tax rate that will produce increased revenue, full-disclosure laws mandate various notice and public hearing requirements. In many states, the governing body must publish the notice of tax increase in a newspaper of general circulation, often using language specified in the statute. *E.g.*, ARIZ. REV. STAT. ANN. § 42-17107 (2020); GA. CODE ANN. § 48-5-32 (2019); *see* Cornia & Walters, *supra*, at 741. In others, the governing body is required to mail a notice of the tax increase and public hearing to all affected taxpayers. *E.g.*, FLA. STAT. §§ 200.065, 200.069 (West 2019); MINN. STAT. ANN. § 275.065 (West 2020).

[242] For instance, residents of Maine localities may trigger voter approval of tax increases by submitting a petition signed by 10% of qualified voters. ME. REV. STAT. ANN. tit. 30A, § 5721-A(7)(B) (2019). Nebraska, South Dakota, and Texas also allow for petition referenda of tax increases or changes. NEB. REV. STAT. ANN. § 77-3402 (LexisNexis 2020) (providing petition requirements for election to limit portion of budget funded by property taxes); S.D. CODIFIED LAWS § 10-13-36 (2019) (providing procedures for vote to exceed tax limits, including petitions); TEX. TAX CODE ANN. § 26.075 (West 2019) (providing petition requirements for election to reduce tax rate).

effective public control alongside tax restraint, such reforms might prevent the damaging service cuts that have occurred in recent years.[243] Relatedly, ensuring adequately reflective policies may require expanding public control not only to keep taxes low, but also to *increase* taxes. That is, states should consider allowing voters to petition for tax increases as well as decreases.[244]

The third key principle is that tax limits should mandate a form of public engagement that enhances taxpayer voice. This could occur via public hearings, surveys, citizen committees, social media campaigns, and other methods that engage taxpayers and key stakeholders from diverse demographic groups. Importantly, such engagement with taxpayers must occur well before any tax increase is adopted, allowing taxpayers preemptive engagement with the policy.[245] Where necessary, it should make space for extralocal interests as well.[246] Local governments can then revise tax policies to account for taxpayers' concerns. Doing so should ensure that taxpayers and others feel heard by their representatives, thereby heightening public support for tax policies.[247]

The fourth and final key principle is that, regardless of the form of mandated public engagement, the law should seek to ensure equal access between wealthy and nonwealthy taxpayers, to avoid the distorting influence of well-heeled commercial interests. For example, public hearings should be held at times when working individuals are able to attend, such as early evenings on weekdays or on weekends. As another example of an access-promoting feature, Professors Daniel Lowenstein and Robert Stern have proposed requiring a higher signature threshold for groups using paid petition circulators.[248] A tax limit that utilizes a

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[243] *See* LAV & LEACHMAN, *supra* note 7, at 10–12 (finding that tax limits cause cuts to public services such as police, schools, fire, parks, and so forth); LAV & WILLIAMS, *supra* note 7, at 1–2 (linking Colorado's tax limits with cuts to state spending on education and healthcare); Bradbury, Mayer & Case, *supra* note 7, at 288 (linking tax limits to cuts to school spending); ISAAC WILLIAM MARTIN, UCLA INST. FOR RESEARCH ON LABOR & EMP'T, WHAT PROPERTY TAX LIMITATION DOES TO LOCAL PUBLIC SERVICES 2–3 (Apr. 2015), https://irle.ucla.edu/wp-content/uploads/2016/03/ResearchBrief22.pdf [https://perma.cc/3S9D-3U5U] (summarizing research finding that property tax limits lead to reduced wages for public sector employees as well as worsened quality of public services, particularly education).

[244] Florida allows such a petition structure. FLA. STAT. ANN. § 200.091 (West 2019) (providing for a petition referendum to increase taxes above the statutory limit).

[245] *See* Baker, Addams & Davis, *supra* note 128, at 495–96 (finding that adequate preparation and notice in advance of a public hearing is key to its success).

[246] *See supra* section II.C.1, pp. 1911–13.

[247] *See supra* section II.B.2, pp. 1908–11.

[248] For a description of this and other reforms to the petition process, see Garrett, *supra* note 217, at 1873–75 (citing Daniel Hays Lowenstein & Robert M. Stern, *The First Amendment and Paid Initiative Petition Circulators: A Dissenting View and a Proposal*, 17 HASTINGS CONST. L.Q. 175, 220–21 (1989)). Although banning the use of paid signature gatherers altogether may seem like a simpler alternative, the Supreme Court has declared such a ban unconstitutional. Meyer v. Grant, 486 U.S. 414, 416 (1988) (holding that a Colorado law prohibiting paid petition circulators violated

petition referendum could also impose shorter signature timelines for paid gatherers and allow longer timelines for volunteers.[249] Additionally, allowing electronic signature gathering could reduce the burden and cost of signature gathering, enabling greater participation by a broader base of voters.[250] An ideal law would likely combine several methods to equalize influence between wealthy and nonwealthy groups.

Reforming tax limits based on these key principles would improve public engagement while enabling local government to pursue policies that better reflect public preferences.[251] If effective, such an outcome would enhance voter satisfaction and increase public support for fiscal policies.

B. Local-Level Reforms

Although this Article's primary goal is to improve tax limits, the normative goals identified herein hold true for fiscal governance across cities and counties, even those without tax limits. In particular, local governments should consider adopting policies that improve public understanding of and engagement with fiscal policies. Doing so may improve public support for tax policies, perhaps even eliminating or reducing the desire for tax limits.

An exploration of how to improve fiscal governance could fill volumes. This section distills and briefly lists several policy improvements recommended elsewhere that could enhance taxpayer voice and input while making greater effort to communicate government activity to stakeholders. Importantly, these efforts should seek to engage nonresident stakeholders to a limited degree as well, as explained above.[252]

Taxpayer Surveys. In addition to holding public hearings regarding tax increases, local government should provide multiple opportunities for res-

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the First Amendment); *see also* Lowenstein & Stern, *supra*, at 209–19 (arguing that the *Meyer* decision is based on flawed First Amendment analysis).

As explained above, petitions are especially vulnerable to special interest capture because wealthy groups and commercial interests can hire paid signature gatherers to ensure that their issue is placed on the ballot. *See supra* notes 225–229 and accompanying text. Without safeguards to ensure equal access, a petition structure may result in only taxes on the wealthy being subject to voter approval, while taxes on middle- or lower-income taxpayers may go unchallenged. The proposed structure reduces the advantage that petition referenda provide to wealthy special interests by requiring them to collect more signatures. Garrett, *supra* note 217, at 1874–75; Lowenstein & Stern, *supra*, at 221–22. However, Professor Elizabeth Garrett notes that courts may view such a structure as burdening political speech. Garrett, *supra* note 217, at 1875.

[249] Garrett, *supra* note 217, at 1874.

[250] *See id.* at 1877–78.

[251] Note that the necessary mechanism of reform depends on the legal authority of the tax limit. Where the tax limit is provided by state statute, the state legislature may enact such reforms. Where it is enshrined in the state constitution, such reform will typically require approval of the state legislature as well as state voters.

[252] *See supra* section II.C.1, pp. 1911–13.

idents, taxpayers, and other key stakeholders to express opinions about fiscal activities. For example, at early stages of the lawmaking process, government should conduct surveys or other opinion research with local residents and property owners to learn about public budgetary preferences.[253]

Neighborhood Advisory Committees. Committees offer structured opportunities for residents to advise government about their preferences as well as for local officials to educate communities about government activities.[254] Though such committees frequently occupy more of an advisory role,[255] local governments could organize committees that have veto power and can intervene throughout the policymaking and implementation process. There is some evidence that public support for tax measures has increased where the program provides for an independent citizen oversight committee to monitor the use of tax revenue.[256]

Enhanced Taxpayer Education. Public education regarding changes to local tax laws should occur far in advance of any reform, to reduce transition friction.[257] Such education can occur after a tax increase as well, to inform citizens about the use of tax revenue. For example, the California Department of Transportation utilizes project funding identification signs to inform residents about project funding sources.[258] These signs are posted near road construction projects and include information about the ballot measure or government agency responsible for the funding, as well as the estimated year of completion.[259] Such campaigns offer a relatively low-cost way to inform voters about the use of tax revenue and may build support for future tax increases by assuaging possible doubts about the transparent use of funds.

Participatory Budgeting.[260] Participatory budgeting is a process by which residents meet publicly to discuss a local budget and to decide

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[253] *See* GOV'T FIN. OFFICERS ASS'N, PUBLIC ENGAGEMENT IN THE BUDGET PROCESS (2018), https://gfoa.org/public-engagement-budget-process [https://perma.cc/R9DL-9ZST] [hereinafter GFOA] (recommending best practices for public engagement in the budget process); Tanya Heikkila & Kimberley Roussin Isett, *Citizen Involvement and Performance Management in Special-Purpose Governments*, 67 PUB. ADMIN. REV. 238, 245 (2007) (studying special-purpose districts in Texas and recommending citizen surveys as a method of gathering information about public preferences); *see also* SHEFFRIN, *supra* note 116, at 100–09 (describing the Welsh government's efforts to gather citizen input during a property tax reform campaign, which involved mailing informational pamphlets to residents, seeking input, and incorporating feedback into policy design, and resulted in a "very successful revaluation," *id.* at 100).

[254] *See* GFOA, *supra* note 253; Heikkila & Isett, *supra* note 253, at 239, 243.

[255] *See* Heikkila & Isett, *supra* note 253, at 243.

[256] *See* Hamideh, Oh, Labi & Mannering, *supra* note 114, at 156–57.

[257] *See, e.g.*, SHEFFRIN, *supra* note 116, at 105 (describing the Welsh government's efforts to educate citizens about the effects of property tax reform several years before the changes took effect).

[258] *See* STATE OF CAL., DEP'T OF TRANSP. (CALTRANS), *Construction Project Funding Identification Signs*, https://dot.ca.gov/programs/traffic-operations/pfi [https://perma.cc/44KZ-DRCS].

[259] *Id.*

[260] First made famous by its success in Porto Alegre, Brazil, beginning in the 1990s, *see* Gianpaolo Baiocchi & Josh Lerner, *Could Participatory Budgeting Work in the United States?*, 16 GOOD

how to spend a portion of it.[261] Although generally confined to spending decisions, such public discussion could extend in a limited way to taxes as well, encouraging improved public debate regarding how local governments fund necessary public services. Even without direct discussion of tax policies, participatory budgeting could improve trust in government by encouraging more meaningful interaction between government and the public.[262]

Regardless of the method chosen, local government should endeavor to obtain public input and enact policies that are responsive to public desires. By improving public trust, such efforts may prevent the enactment of tax limits in places that lack them and perhaps even allow for the weakening or removal of existing limits.

C. A Way Forward for Research

Finally, this discussion highlights important interactions between fiscal policies and governance, which the empirical research on tax limits should reflect. Most importantly, more research is needed on how tax limits affect government responsiveness and accountability. Notably, some studies find that tax limits drive local governments to seek alternative sources of revenue, suggesting that accountability and transparency are harmed as a result.[263] However, even this scholarship typ-

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SOC'Y 8, 9 (2007), participatory budgeting has gained support throughout Canada and in the United States in recent years, *see* PUB. AGENDA, PUBLIC SPENDING, BY THE PEOPLE: PARTICIPATORY BUDGETING IN THE UNITED STATES AND CANADA IN 2014–15, at 10–12 (2016), https://www.publicagenda.org/wp-content/uploads/2019/11/PublicSpendingByThePeople_PublicAgenda_2016.pdf [https://perma.cc/FJ3P-PL7Q]; *see also* Amber Gonzalez, *Council Member Stephen Levin: Bringing the City Council to the People*, 10 CITYLAND 32, 32 (2013) (detailing a participatory budgeting project in Brooklyn, New York).

[261] *See generally* Hollie Russon Gilman, *Engaging Citizens: Participatory Budgeting and the Inclusive Governance Movement Within the United States*, *in* ASH CTR. OCCASIONAL PAPERS (Tony Saich & Jessica Engleman eds., 2016) (describing participatory budgeting and its use in the United States); Victor Lledo, Aaron Schneider & Mick Moore, *Governance, Taxes, and Tax Reform in Latin America* 34–35 (Inst. of Dev. Studies, Working Paper No. 221, 2004).

[262] *See, e.g.*, Yves Cabannes, *Participatory Budgeting: A Significant Contribution to Participatory Democracy*, 16 ENV'T & URBANIZATION 27, 36 (2004) (reporting that cities that adopted participatory budgeting found that the process led to increased tax revenues and decreased tax delinquency); Aaron Schneider & Marcelo Baquero, *Get What You Want, Give What You Can: Embedded Public Finance in Porto Alegre* 24 (Inst. of Dev. Studies, Working Paper No. 266, 2006), https://opendocs.ids.ac.uk/opendocs/ds2/stream/?#/documents/13501/page/1 [https://perma.cc/2HBH-5TDU] (finding that participatory budgeting was associated with increases in tax morale in Brazilian communities); Yves Zamboni, Participatory Budgeting and Local Governance: An Evidence-Based Evaluation of Participatory Budgeting Experiences in Brazil 32–33 (May 28, 2007) (unpublished manuscript), https://pria-academy.org/pdf/3-Zamboni.pdf [https://perma.cc/ZEG7-ZWKA] (finding evidence of a positive relationship between participatory budgeting and good governance indicators in several Brazilian counties).

[263] *E.g.*, Bennett & DiLorenzo, *supra* note 83, at 334 (explaining that tax limits drive government to rely on off-budget activities that are "largely beyond the control and scrutiny of citizen-

ically remains focused on fiscal consequences rather than probing governance outcomes.[264] As a result, the relevant literature does not provide adequate information to determine whether the laws are successful in achieving potential noneconomic goals.

A more nuanced understanding of fiscal legislation will inform research conclusions as well as future policy improvements. For example, research on the efficacy of tax and spending limits tends to find that they fail to reduce taxing and spending over time, which is often taken as evidence of failure overall.[265] However, whether such an outcome indicates failure depends entirely on its cause. If tax limits fail to reduce tax burdens because the public regularly desires tax and spending increases, then the laws have succeeded in improving public oversight and government responsiveness. If, however, such limits fail to reduce spending because policymakers circumvent limits by pursuing unaccountable revenue sources, then the limits fail on both counts. Determining which mechanism dominates is paramount to understanding how tax limits affect our governmental processes.

CONCLUSION

This Article has sought to do three things. First, it has argued that tax limits can improve public control and oversight of government fiscal decisions. This is an important goal that has been overlooked by policymakers and scholars. Pursuing such a goal would lead to laws that better reflect public preferences, resulting in greater voter satisfaction. Focusing on public control will also allow greater opportunity for taxpayers to express their concerns to government. Research suggests that enhancing taxpayer voice may increase public support for government fiscal policies. Further, providing taxpayers such an opportunity to engage with fiscal policies may be viewed as an inherent political right.

Second, this Article has shown that tax limits in most states undermine these public control goals by focusing too narrowly on tax reduction objectives. Rather than designing tax limits to improve public control, most states' laws contain features that erode public control by shifting power away from local voters. Additionally, although the majority of limits allow voter-approval override, there is reason to believe that voter approval may not result in policies that accurately reflect voters' true preferences. If the ultimate goal is to ensure democratically responsive laws, softer forms of public engagement such as petition referenda may be more effective.

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taxpayers"); McCubbins & McCubbins, *supra* note 66, at 20–22 (arguing that tax limits have caused governments to rely on less visible revenue sources, reducing government accountability).

[264] Bennett & DiLorenzo, *supra* note 83, at 334 (focusing on off-budget enterprises); McCubbins & McCubbins, *supra* note 66, at 20–22 (focusing on revenue sources).

[265] *See* BRIFFAULT & REYNOLDS, *supra* note 8, at 741; McCubbins & McCubbins, *supra* note 35, at 542.

These conclusions should be concerning for state and local government officials who want to respond to constituents' concerns, as well as for scholars seeking to understand tax limits' consequences. By undermining public control, tax limits damage public trust in government and ultimately weaken our fiscal institutions. Policymakers ignore these effects at their peril. Indeed, the future of local democracy is at stake.

Finally, to reverse this trend, this Article has offered a policy reform playbook for state and local actors. The policies suggested herein aim to improve communication between government and citizen-taxpayers, and to instigate fiscal policies that better reflect public wishes. The hope is that these reforms can repair the relationship between local governments and residents, and, in so doing, restore the promise of local democracy.

APPENDIX

States have taken diverse approaches to limiting property taxes, with legal structures varying significantly both among and within states. Tables 4 and 5 offer a representative, rather than comprehensive, survey of tax-limiting laws in all fifty states. As such, the supporting sources do not include every property tax limit–related provision within the states' laws. In particular, the tables omit certain exceptions to state tax limits, such as common provisions that allow governments to exceed tax limits to address bond or debt issues.[266] Moreover, the laws cited here may lend themselves to different interpretations, for example, in differentiating tax rate limits and tax levy limits.

A. Tax Limit Overrides

The following table contains a brief description of tax rate and levy limit override rules in all fifty states, with supporting citations.

[266] *See, e.g.*, COLO. CONST. art. X, § 20(4) (allowing local government to increase taxes without voter approval where annual payments on general obligation bonds, pensions, and final court judgments exceed annual district revenue or in cases of emergency).

Table 4: Rate and Levy Limit Overrides

State	Type of Limit	Override Process
AL	Levy Limit[267]	Majority vote of the qualified electorate residing in the taxing authority after public hearing and approval by an act of the legislature. Applies to counties and municipalities, but not the state.
	Rate Limit[268]	Majority vote of the qualified electorate residing in the taxing authority, in a special election, after public notice and hearing. Can increase only up to an additional hard cap.
AK	Levy Limit[269]	No override process.
	Rate Limit[270]	No override process.
AZ	Levy Limit[271]	Approval of the qualified electorate of a proposal passed by two-thirds of the governing body. Proposal must request an increase for a minimum of two and a maximum of seven years, state the intended use of the funds, and state the maximum dollar amount and rate of the secondary property tax levied in each year.
	Rate Limit[272]	Override by voters in an election to exceed a tax limitation.
AR	Levy Limit[273]	No override process.
	Rate Limit[274]	No override process.
CA	Rate Limit[275]	No override process.

[267] ALA. CONST. art. XI, § 217(e)–(f).
[268] *Id.* art. XI, §§ 214, 215.01, 216.01, 216.02, 216.04, 217.
[269] ALASKA STAT. §§ 29.45.090, 29.45.100 (2019).
[270] *Id.*
[271] ARIZ. CONST. art. IX, § 19(5); ARIZ. REV. STAT. ANN. §§ 42-17201, 42-17202 (2020).
[272] ARIZ. CONST. art. IX, § 18(1)–(2).
[273] ARK. CONST. art. 16, § 14.
[274] *Id.* art. 16, §§ 8–9.
[275] CAL. CONST. art. XIII A, § 1.

State	Type of Limit	Override Process
CO	Levy Limit[276]	Majority vote of the electorate, after notice. For special districts only, the board may decide to increase the limit for a specified number of years without a majority vote of the electorate after considering the "public awareness" of, "public support" for, and "public objection" to the increase.
	Rate Limit[277]	Majority vote of the electorate, after notice.
CT	*No property tax levy or rate limits.*	
DE	Levy Limit[278]	No override process.
	Rate Limit[279]	No override process.
FL	Rate Limit 1[280]	Majority vote of the electorate, in a special election, for increase up to two years.
	Rate Limit 2[281]	Two-thirds approval of the governing body of a rate up to 110% of rolled-back rate. A higher rate, up to the constitutional limit, requires unanimous approval of the governing body, or three-fourths approval if the governing body has nine or more members, or a majority vote of the electorate in a referendum.
GA	Rate Limit (school districts)[282]	Majority vote of the voters affected by an action of the board of education to increase taxes.
HI	*No property tax levy or rate limits.*	

[276] COLO. CONST. art. X, § 20(3)–(4); COLO. REV. STAT. §§ 29-1-301 to -302 (2019).
[277] COLO. CONST. art. X, § 20(3)–(4).
[278] DEL. CODE ANN. tit. 9, § 8002(c) (2020).
[279] *Id.* § 8002(b); DEL. CODE ANN. tit. 14, § 2601.
[280] FLA. CONST. art. VII, § 9; FLA. STAT. ANN. §§ 200.091, 200.101, 200.181 (West 2019).
[281] FLA. CONST. art. VII, § 9; FLA. STAT. ANN. § 200.065(5).
[282] GA. CONST. art. VIII, § VI.

State	Type of Limit	Override Process
ID	Levy Limit[283]	Permanent override with two-thirds vote of the electorate, or a maximum two-year override with a majority vote of the electorate.
	Rate Limit[284]	Majority vote of the electorate for changes to rate of taxation for real and personal property. Majority vote of the electorate for noncharter school district maintenance and operation, limited to two years.
IL	Levy Limit[285]	Majority vote of the electorate by referendum in a regularly scheduled election to increase an extension limitation for a specified number of years.
	Rate Limit[286]	Majority vote of the electorate for increase up to a further cap, after notice. Requirements depend on size and type of the locality.
IN	Levy Limit (aggregate)[287]	Local government can appeal to state department of local government finance.
	Levy Limit (individual)[288]	Majority vote of the electorate to approve taxes that fall outside the cap.
	Rate Limit[289]	No override process.
IA	Levy Limit 1[290]	Majority vote of the electorate in special levy election.
	Levy Limit 2[291]	Two-thirds approval of the governing board to exceed the levy growth limit.

[283] IDAHO CODE § 63-802 (2019).
[284] IDAHO CONST. art. VII, § 9; IDAHO CODE § 33-802.
[285] 35 ILL. COMP. STAT. ANN. 200/18-205 (West 2018).
[286] 35 ILL. COMP. STAT. ANN. 200/18-120, 200/18-190; 55 ILL. COMP. STAT. ANN. 5/5-1024; 65 ILL. COMP. STAT. ANN. 5/8-3-1.
[287] IND. CODE ANN. §§ 6-1.1-18.5-3, 6-1.1-18.5-12 (West 2020).
[288] IND. CONST. art. 10, § 1(g); IND. CODE ANN. §§ 6-1.1-20-3.6(m), 6-1.1-20.6-7.5(b), 20-46-1-19(a).
[289] IND. CODE ANN. § 6-1.1-18-3.
[290] IOWA CODE ANN. §§ 331.423, 331.425, 331.426 (West 2019).
[291] *Id.* § 331.433A(b).

State	Type of Limit	Override Process
IA	Rate Limit[292]	Majority vote of the electorate in special levy election, for up to one year. Can increase permanently after petition and majority vote of the electorate for specific, enumerated purposes, in many cases up to a hard cap.
KS	Levy Limit[293]	Adoption of resolution by governing body and majority vote of the electorate.
KY	Levy Limit[294]	Public hearing required before approval of tax rate that will raise revenue above the compensation rate. Electorate may recall an increase greater than 4% of the compensation rate through referendum that requires a majority vote.
	Rate Limit[295]	Majority vote of the electorate for special taxes in addition to the current property tax levy rate.
LA	Levy Limit[296]	Two-thirds approval of the taxing authority, after public hearing, for localities to increase tax revenue up to the prior year's maximum. Localities can exceed the maximum by increasing the millage rate, subject to voter approval.
	Rate Limit[297]	Majority vote of the electorate in special vote.
ME	Levy Limit[298]	Majority vote of the local government, or by referendum if requested by petition signed by 10% of qualified voters.
MD	*No property tax levy or rate limits.*	

[292] *Id.* §§ 384.1, 384.12(1)–(19).
[293] KAN. STAT. ANN. §§ 79-2925b to -2925c (West 2019).
[294] KY. REV. STAT. ANN. §§ 132.017, 132.023, 132.027, 160.470 (West 2020).
[295] *Id.* §§ 65.125, 68.090, 160.475.
[296] LA. CONST. art. VI, §§ 26(A), 27(A); *id.* art. VII, § 23; LA. STAT. ANN. § 47:1705 (2019).
[297] LA. CONST. art. VI, §§ 26–27; *id.* art. VIII, § 13.
[298] ME. REV. STAT. ANN. tit. 30A, § 5721-A(7) (2019).

State	Type of Limit	Override Process
MA	Levy Limit[299]	Majority vote of the governing body and majority vote of the electorate.
	Rate Limit[300]	Two-thirds approval of the governing body to seek voter approval to exceed cap. If excess is greater than half of reduction required to compensate in subsequent years, requires the approval of two-thirds of voters, otherwise just majority approval. In no case can the government increase more than the required reduction amount.
MI	Levy Limit[301]	Majority vote of the electorate.
	Rate Limit[302]	Majority vote of the electorate to increase rate itself up to eighteen mills.[303] Majority vote of the electorate to increase rate itself up to fifty mills, but limited to a period of twenty years.
MN	*No property tax levy or rate limits.*	
MS	Levy Limit[304]	Majority vote of the electorate for an increase exceeding 110% of the aggregate levy receipts during one of the past three years, with duration of increase limited to only five years. If the increase is less than 110%, it may be approved by the board of supervisors. For school districts, approval of 60% of the electorate is required for an increase exceeding 107% of the aggregate levy receipts during one of the past three years.
MO	Levy Limit[305]	Majority vote of the electorate.

[299] MASS. GEN. LAWS ch. 59, § 21C (2020).
[300] *Id.*
[301] MICH. CONST. art. IX, § 31; MICH. COMP. LAWS ANN. § 211.34d(11) (West 2020).
[302] MICH. CONST. art. IX, § 6; MICH. COMP. LAWS ANN. § 211.203.
[303] A "mill" is equivalent to $1 in property tax per $1000 of the assessed value of a property.
[304] MISS. CODE ANN. §§ 27-39-320, 27-39-321(2), 37-57-107 (2019).
[305] MO. CONST. art. X, § 22; MO. ANN. STAT. § 137.073(5) (West 2019).

State	Type of Limit	Override Process
MO	Rate Limit[306]	For municipalities, counties, and school districts when the money is used for nonschool purposes, two-thirds vote of the electorate, with duration limited to four years. For cities, the increase is not to exceed thirty cents on one hundred dollars assessed. For school districts, when the increase is used for school purposes, a majority vote of the electorate. Voters may petition for the board of aldermen, city council, or county commission to request voter approval of a rate increase.
MT	Levy Limit[307]	Majority vote of the electorate.
	Rate Limit (education districts only)[308]	Majority vote of the electorate to increase funding for educational districts.
NE	Rate Limit[309]	Majority vote of the electorate, limited to a period of five years, after referendum approved by two-thirds of the governing body of the political subdivision or petition signed by at least 5% of voters residing in that political subdivision.
NV	Levy Limit (aggregate)[310]	Majority vote of the electorate for a period of up to thirty years.
	Levy Limit (individual)[311]	Majority vote of the electorate.
	Rate Limit[312]	No override process.
NH	*No property tax levy or rate limits.*	

[306] MO. CONST. art. X, §§ 8, 11(c); MO. ANN. STAT. §§ 94.060, 94.250, 137.065.
[307] MONT. CODE ANN. §§ 15-10-420, 15-10-425 (West 2019).
[308] *Id.* §§ 15-10-425, 20-9-353.
[309] NEB. REV. STAT. ANN. §§ 19-1309, 77-3442, 77-3444 (LexisNexis 2020).
[310] NEV. REV. STAT. ANN. §§ 354.59811, 354.5982 (LexisNexis 2019).
[311] *Id.* §§ 361.4727, 361.4728.
[312] NEV. CONST. art. X, § 2.

State	Type of Limit	Override Process
NJ	Levy Limit[313]	Majority vote of the electorate.
NM	Levy Limit[314]	No override process.
	Rate Limit[315]	Majority vote of the qualified electors of a district who paid a property tax therein during the preceding year.
NY	Levy Limit[316]	For locality, approval of 60% of the governing body. For school district, approval of 60% of the electorate.
NC	Rate Limit[317]	Majority vote of the electorate.
ND	Levy Limit[318]	Majority vote of the electorate for large districts. Approval of 55% of the electorate in small districts.
	Rate Limit[319]	Majority vote of the electorate to increase rate up to a hard cap, depending on locality type and size. For townships, increases can last for a period of no longer than five years and must be accompanied by notice.
OH	Levy Limit[320]	No override process.
	Rate Limit[321]	Majority vote of the electorate; increases for specific, enumerated purposes must first be approved by two-thirds of the taxing body, and some are subject to time period limits of, for example, five or ten years.

[313] N.J. STAT. ANN. §§ 18A:7F-39, 40A:4-45.46 (West 2019).
[314] N.M. STAT. ANN. § 7-37-7.1 (West 2019).
[315] N.M. CONST. art. VIII, § 2.
[316] N.Y. GEN. MUN. LAW § 3-c(5) (McKinney 2019); N.Y. EDUC. LAW § 2023-a (McKinney 2019).
[317] N.C. GEN. STAT. § 153A-149(e) (2019).
[318] N.D. CENT. CODE § 57-15-14 (2019).
[319] *Id.* §§ 57-15-06, 57-15-08, 57-15-20.
[320] OHIO REV. CODE ANN. §§ 319.301, 5705.211 (LexisNexis 2019).
[321] OHIO CONST. art. XII, § 2; OHIO REV. CODE ANN. §§ 5705.07, 5705.191.

State	Type of Limit	Override Process
OK	Rate Limit[322]	Majority vote of the electorate for specific, enumerated purposes. The amount of increase is limited depending on the purpose, and annual votes may be required.
OR	Rate Limit 1[323]	No override process.
	Rate Limit 2[324]	Majority vote of a majority of eligible voters in a given election (double majority) to approve local-option taxes for a period of up to five years (ten years for capital projects).
PA	Levy Limit[325]	Majority vote of the electorate or by approval of the court of common pleas. For school districts, majority vote in referendum, or in specific, enumerated cases, can ask permission from department of education.
	Rate Limit[326]	No rate limit on home-rule municipalities. A majority of county commissioners can, with due cause, petition the court of common pleas for an increase of no more than five additional mills.
RI	Levy Limit[327]	Approval of 80% of the governing body or a majority of electors at a financial town meeting, only if qualifying provisions are met.
SC	Rate Limit[328]	Approval of two-thirds of the local governing body, only if qualifying provisions are met. For fire district or mental health expenditure, approval by ordinance by a majority of the electorate. For mental health expenditure, millage rate may be increased by up to six-tenths of a mill.

[322] OKLA. CONST. art. X, §§ 9, 9A, 10, 10B.
[323] OR. CONST. art. XI, § 11b; OR. REV. STAT. ANN. § 310.150(3) (West 2019).
[324] OR. CONST. art. XI, § 11(4)(b); OR. REV. STAT. ANN. §§ 280.060, 310.200, 310.242.
[325] 53 PA. STAT. AND CONS. STAT. ANN. §§ 6926.327, 6926.333 (West 2019); 72 PA. STAT. AND CONS. STAT. ANN. § 5020-402(b).
[326] PA. CONST. art. IX, § 2; 16 PA. STAT. AND CONS. STAT. ANN. § 1770; 53 PA. STAT. AND CONS. STAT. ANN. § 6924.307.
[327] 44 R.I. GEN. LAWS § 5-2(d) to -(e) (2019).
[328] S.C. CODE ANN. § 6-1-320 (2019).

State	Type of Limit	Override Process
SD	Levy Limit[329]	Approval of two-thirds of the governing body. Either by resolution of the governing body or by petition signed by 5% of voters, the decision may be referred to a majority vote of the electorate.
	Rate Limit[330]	For nonschool districts, approval of 75% of the electorate at special election up to an additional limit. For school districts, the governing body can increase after approval of two-thirds of the body. Either by resolution of the governing body or by petition signed by at least 5% of voters, the decision may be referred to a majority vote of the electorate in the district.
TN	*No property tax levy or rate limits.*	
TX	Levy Limit[331]	Majority vote of the electorate required for tax rates that would raise revenue above specified amounts. Prior to election, public notice and hearing, as well as approval of 60% of the governing body, are also required.
	Rate Limit[332]	Majority vote of the electorate for additional levies outside the rate limit (for specified purposes only), subject to additional hard cap above the statutory cap.
UT	Levy Limit[333]	A taxing entity may increase rate after providing public notice and public hearing.
	Rate Limit[334]	Localities can exceed the rate limit without voter approval, but not above the rate set by the levy limit.
VT	*No property tax levy or rate limits.*	

[329] S.D. CODIFIED LAWS § 10-13-36 (2019).
[330] S.D. CONST. art. XI, § 1; S.D. CODIFIED LAWS §§ 10-12-36, 10-12-43.
[331] TEX. CONST. art. VIII, § 21; TEX. TAX CODE ANN. §§ 26.05 to -.08 (West 2019).
[332] TEX. CONST. art. VIII, § 9; TEX. EDUC. CODE ANN. § 45.003 (West 2019).
[333] UTAH CODE ANN. §§ 59-2-909, 59-2-919, 59-2-924 (LexisNexis 2020).
[334] *Id.* §§ 10-5-112, 10-6-133, 59-2-908, 59-2-914.

State	Type of Limit	Override Process
VA	Levy Limit[335]	Governing body may increase rates after public notice and hearing.
WA	Levy Limit[336]	Majority vote of the electorate to exceed limitation for up to six years.
	Rate Limit[337]	For political subdivisions, approval of 60% of the electorate, provided that 40% of the voting body votes on the referendum. For school districts, majority vote of the electorate, without regard to the size of the voting body. In most cases, excess levies are limited in duration to as short as one year or up to six years.
WV	Levy Limit[338]	After public notice and hearing, a governing body can increase rates up to an amount that does not allow property tax revenues to exceed revenues for the preceding year by more than 10%.
	Rate Limit[339]	For nonschool districts, approval of 60% of the electorate. For school districts, when the taxes go to the support of public schools, majority vote of the electorate. Increases cannot last for longer than five years without resubmission to the voters, and various caps apply; the levying body must also publish notice of the referendum.

[335] VA. CONST. art. X, § 1; VA. CODE ANN. § 58.1-3321(b) (2019).
[336] WASH. REV. CODE ANN. §§ 84.55.010, 84.55.050 (West 2020).
[337] WASH. CONST. art. VII, § 2(a); WASH. REV. CODE ANN. §§ 84.52.052 to -.053.
[338] W. VA. CODE ANN. § 11-8-6e (LexisNexis 2019).
[339] W. VA. CONST. art. X, §§ 1, 10, 11; W. VA. CODE ANN. §§ 11-8-16 to -17.

State	Type of Limit	Override Process
WI	Levy Limit[340]	Majority vote of the electorate by referendum following governing body resolution. Small-town governments can increase above the limit for a period of one year without referendum, upon a resolution by the town board and adoption of the resolution by a majority of attendees at an annual or special town meeting.
WY	Rate Limit[341]	No override process.

[340] WIS. STAT. ANN. §§ 66.0602(4)–(5), 121.91 (West 2019).
[341] WYO. CONST. art. XV, §§ 5, 6, 15, 17; WYO. STAT. ANN. §§ 21-13-303, 39-13-104 (2019).

B. Tax Limit Types

The following list describes common property tax limit structures. Table 5 lists which tax limits exist in each state.

Property Tax Assessment Limit. This restriction places a limit on the amount by which property's assessed value can increase above the prior year's value.[342]

Property Tax Levy Limit. These restrictions impose a limit on the total revenue, or the rate of growth of the total revenue, raised by the property tax.[343] Some states impose a specific percentage limit,[344] while others apply a formula, for example, based on the rate of inflation.[345]

Property Tax Rate Limit. Rate limits prevent local governments from increasing property tax rates above a certain percentage.[346] Some states prevent any increases,[347] some set a strict maximum percentage cap (for example, 1%),[348] and some base the increase limit on an external figure, for example, the annual increase in personal income.[349]

Full-Disclosure/Truth-in-Taxation Requirement. These laws require local government to publicly disclose certain tax increases and to hold public hearings on such actions.[350]

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[342] TAX GLOSSARY, *supra* note 76, at 1; *see also* HAVEMAN & SEXTON, *supra* note 43, at 10.

[343] TAX GLOSSARY, *supra* note 76, at 6.

[344] *E.g.*, DEL. CODE ANN. tit. 9, § 8002(c) (2020) (limiting county property tax revenue to 115% of property tax revenue from the prior fiscal year).

[345] *E.g.*, COLO. CONST. art. X, § 20(7)(c) (limiting property tax revenue increases to local growth plus inflation, adjusted for any voter-approved property tax revenue changes).

[346] TAX GLOSSARY, *supra* note 76, at 8.

[347] *See, e.g.*, COLO. CONST. art. X, § 20(4) (allowing property tax rate increases only after voter approval, except in cases where annual payments on general obligation bonds, pensions, and final court judgments exceed annual district revenue or in case of emergency).

[348] *E.g.*, CAL. CONST. art. XIII A, § 1(a).

[349] *E.g.*, FLA. STAT. § 200.065(5) (2018).

[350] TAX GLOSSARY, *supra* note 76, at 4.

Table 5: Property Tax Limits in All States[351]

State	Assessment Limit	Levy Limit	Rate Limit	Full-Disclosure Requirement
AL		X	X	
AK		X	X	
AZ[352]	X	X	X	X
AR[353]	X	X	X	
CA[354]	X		X	
CO[355]	X	X	X	
CT				
DE[356]		X	X[357]	X
FL[358]	X		X	X
GA[359]			X[360]	X
HI				
ID		X	X	
IL[361]		X	X	X
IN		X	X	

[351] Table 5 excludes limits that are enacted at the option of the locality. Please refer to the footnotes associated with Table 4 for sourcing on the tax levy and rate limits.

[352] ARIZ. REV. STAT. ANN. § 42-13301 (2020) (assessment limit); *id.* § 42-17107 (full-disclosure requirement).

[353] ARK. CONST. amend. 79, § 1 (assessment limit).

[354] CAL. CONST. art. XIII A, § 2(b) (assessment limit).

[355] COLO. CONST. art. X, § 3(b) (assessment limit).

[356] DEL. CODE ANN. tit. 9, § 8002(d)–(e) (2020) (full-disclosure requirement).

[357] Delaware's rate limits apply only to Kent County and to county vocational-technical high school districts or county vocational-technical center districts collecting taxes. *See id.* § 8002(b); DEL. CODE ANN. tit. 14, § 2601(a).

[358] FLA. CONST. art. VII, § 4(d), (h) (assessment limit); FLA. STAT. ANN. § 200.065 (West 2019) (full-disclosure requirement).

[359] GA. CODE ANN. § 48-5-32 (2019) (full-disclosure requirement).

[360] Georgia's rate limit applies only to school districts for taxes to fund education support and maintenance. GA. CONST. art. VIII, § VI.

[361] 35 ILL. COMP. STAT. ANN. 200/18-70 (West 2018) (full-disclosure requirement). All Illinois limits apply only to non-home-rule municipalities. ILL. CONST. art. VII, § 6(l).

State	Assessment Limit	Levy Limit	Rate Limit	Full-Disclosure Requirement
IA[362]	X	X	X	X
KS		X		
KY[363]		X	X	X
LA		X	X	
ME		X		
MD[364]	X			X
MA		X	X	
MI[365]	X	X	X	
MN[366]				X
MS		X		
MO[367]		X	X	X
MT		X	X	
NE			X	
NV[368]		X	X	X
NH				
NJ		X		
NM[369]	X	X	X	
NY[370]	X[371]	X		

[362] IOWA CODE ANN. § 441.21(4) (West 2019) (assessment limit); *id.* § 331.434 (full-disclosure requirement).
[363] KY. REV. STAT. ANN. § 132.023 (West 2020) (full-disclosure requirement).
[364] MD. CODE ANN., TAX–PROP. §§ 8-103, 9-105(a)(9), 9-105(e) (LexisNexis 2020) (assessment limit); *id.* § 6-308 (full-disclosure requirement).
[365] MICH. CONST. art. IX, § 3 (assessment limit).
[366] MINN. STAT. ANN. § 275.065(c), (f) (West 2020) (full-disclosure requirement).
[367] MO. ANN. STAT. § 137.055(2) (West 2019) (full-disclosure requirement).
[368] NEV. REV. STAT. ANN. § 361.4545 (LexisNexis 2019) (full-disclosure requirement).
[369] N.M. STAT. ANN. § 7-36-21.2(A)–(B) (West 2019) (assessment limit).
[370] N.Y. REAL PROP. TAX LAW § 1805 (McKinney 2019) (assessment limit).
[371] New York state assessment limits apply only to assessing units with populations of one million or more people. *Id.* §§ 1801(a), 1805.

State	Assessment Limit	Levy Limit	Rate Limit	Full-Disclosure Requirement
NC			X	
ND[372]		X	X	X
OH		X	X	
OK[373]	X		X	
OR[374]	X		X	
PA		X	X	
RI		X		
SC[375]	X		X	
SD		X	X	
TN[376]				X
TX[377]	X	X	X	X
UT[378]		X	X	X
VT				
VA[379]		X		X
WA		X	X	
WV[380]		X	X	X
WI		X		
WY			X	
Total	**14**	**34**	**35**	**17**

[372] N.D. CENT. CODE § 57-15-02.2 (2019) (full-disclosure requirement).
[373] OKLA. CONST. art. X, §§ 8, 8B (assessment limit).
[374] OR. CONST. art. XI, § 11(1)(b) (assessment limit).
[375] S.C. CONST. art. X, § 6; S.C. CODE ANN. § 12-37-3140(B) (2019) (assessment limit).
[376] TENN. CODE ANN. § 67-5-1702 (2019) (full-disclosure requirement).
[377] TEX. CONST. art. VIII, § 21 (full-disclosure requirement); TEX. TAX CODE ANN. § 23.23(a) (West 2019) (assessment limit).
[378] UTAH CODE ANN. § 59-2-919(3)–(7) (LexisNexis 2020) (full-disclosure requirement).
[379] VA. CODE ANN. § 58.1-3321(B)–(C) (2019) (full-disclosure requirement).
[380] W. VA. CODE ANN. § 11-8-6e(c) (LexisNexis 2019) (full-disclosure requirement).