

3-20-2018

Strict Property Tax Caps: A Case Study of Massachusetts's Proposition 2 1/2, its Shortcomings, and the Path Forward

Trevor J. Brown

Follow this and additional works at: https://scholars.unh.edu/unh_lr

Repository Citation

Trevor J. Brown, Strict Property Tax Caps: A Case Study of Massachusetts's Proposition 2 1/2, its Shortcomings, and the Path Forward, 16 U.N.H. L. Rev. 359 (2018)

This Notes is brought to you for free and open access by the University of New Hampshire – School of Law at University of New Hampshire Scholars' Repository. It has been accepted for inclusion in The University of New Hampshire Law Review by an authorized editor of University of New Hampshire Scholars' Repository. For more information, please contact ellen.phillips@law.unh.edu.

Strict Property Tax Caps: A Case Study of Massachusetts's Proposition 2 ½, its Shortcomings, and the Path Forward

TREVOR J. BROWN*

ABSTRACT

Strict property tax caps are statutory measures that limit municipalities from raising property taxes by more than a certain percentage each fiscal year. In addition, they place a ceiling on the total amount of real and personal property tax revenue a municipality can raise annually. Often spearheaded by voter initiative, strict property tax caps are championed by proponents as a way to limit taxes and increase civic participation. Conversely, detractors frame caps as artificial barriers that improperly constrain local governments in their taxing powers.

Massachusetts voters approved a strict property tax cap, Proposition 2 ½, in 1980. Proposition 2 ½ provides that communities may increase taxes on real and personal property annually by no more than 2.5% of the total fair cash value of such property. Further, it states that the total annual property tax revenue raised by municipalities cannot surpass 2.5% of the assessed value of all taxable property in each community.

In the three-and-a-half decades since Proposition 2 ½ was adopted, many cities and towns have found that they cannot raise sufficient revenue to meet their communities' needs because of the restrictions imposed by the cap. However, the statute does contain a side-step maneuver: a community can override its levy limit with a majority vote.

This Note examines the total number of override votes—attempted and successful—from 1980 through 2010. In doing so, it assesses the impact Proposition 2 ½ has had and is continuing to have on municipalities, namely the services local governments provide to their residents. The data indicates that the number of proposed override votes has increased over time, as communities have found that they are unable to meet their needs under the 2.5% increase limit. Further, the vote totals make clear that successful override votes happen more frequently in wealthier communities versus poorer communities.

Based on this data, this Note argues that Proposition 2 ½'s 2.5% levy cap is an unrealistic and artificial barrier. Strict property tax caps place arbitrary limits on the amounts municipalities can raise taxes, without regard to changes in inflation, the cost of providing services, or community needs. The Note concludes by suggesting potential alternatives moving forward.

* University of New Hampshire School of Law, J.D. Candidate 2018; Saint Michael's College, B.A. 2015.

CONTENTS

I.	INTRODUCTION	360
II.	OVERVIEW	363
III.	HISTORY OF STRICT PROPERTY TAX CAPS	365
	A. <i>The Beginnings: California's Proposition 13</i>	365
	B. <i>Massachusetts</i>	366
	C. <i>Impetus</i>	368
	1. Legal Challenges in the Commonwealth	369
	2. Immediate & Short-Term Impact	370
	3. Long-Term Impact	372
	4. Override Votes	373
	5. Arguments for Retaining Proposition 2 ½	374
	6. Arguments Against Retaining Proposition 2 ½	375
	D. <i>The Unintended Consequences of a Strict Property Tax Cap in Massachusetts</i>	377
IV.	PROPOSITION 2 ½: THE DATA	380
	A. <i>Override Votes Since 1983: A Growing Wave</i>	380
	1. 351 Cities & Towns: 351 Different Experiences	381
	B. <i>Community Wealth Determining Impact</i>	382
	C. <i>Trends Based on Community Wealth</i>	383
	D. <i>Data Overview</i>	386
	E. <i>Can a "One Size Fits All" Framework Work?</i>	387
V.	RECOMMENDATIONS	387
	A. <i>Indexing the Cap to the Rate of Inflation</i>	388
	B. <i>Capping the Budget</i>	389
	C. <i>Why Reform? Why Now?</i>	389
VI.	CONCLUSION	391

I. INTRODUCTION

A distaste for taxes has marked the American spirit from the time of the country's founding.¹ From rallying cries of "no taxation without representation," to "read my lips: no new taxes," a revulsion to state-imposed levies—even those used to provide heavily utilized social services—permeates American history.² Beginning in the early 1980s, the conservative resurgence,

¹ See JUSTIN DU RIVAGE, *REVOLUTION AGAINST EMPIRE: TAXES, POLITICS, AND THE ORIGINS OF AMERICAN INDEPENDENCE* (2017) (discussing factors fueling the American Revolution).

² George H.W. Bush, *Address Accepting the Presidential Nomination at the Republican National Convention in New Orleans - August 18, 1988*, THE AMERICAN PRESIDENCY PROJECT (Jan. 24, 2017, 3:17 PM),

emboldened by the rise of Ronald Reagan, pushed to cut taxes at all levels of government.³ Against this backdrop, a number of states instituted strict property tax caps, often by ballot initiative.⁴ One such state was Massachusetts, which adopted Proposition 2 ½ in 1980.⁵

A brief overview of the framework of strict property tax caps is covered in Part I. In short, strict property tax caps limit the percentage communities can increase property taxes in any one year.⁶ Proposition 2 ½, for example, places a ceiling on the total annual property tax revenue that a municipality can raise: 2.5% of the total assessed value of the taxable property in the community.⁷ It also prohibits communities from levying an increase in taxes of more than 2.5% per year of the total full and fair cash value of all taxable real and personal property.⁸

Part II details the history of strict property tax caps.⁹ In Massachusetts, the strict property tax cap scheme saw defeat on Beacon Hill before being overwhelmingly approved by voters in November of 1980.¹⁰ This Note not only considers the history of Massachusetts's Proposition 2 ½, but also discusses how the vast majority of states that have strict property tax caps have had them implemented through plebiscite rather than by legislatures.¹¹

Part III examines Proposition 2 ½ override voting data from each of Massachusetts's 351 cities and towns, from 1983 (when the first override vote took place) through 2010.¹² The data shows a dramatic increase in the number of proposed override votes over time, as municipalities have become

<http://www.presidency.ucsb.edu/ws/?pid=25955> [<https://perma.cc/3YL2-RY4F>]; *see generally* HENRY M. GLADNEY, NO TAXATION WITHOUT REPRESENTATION: 1768 PETITION, MEMORIAL, AND REMONSTRANCE (2014).

³ John Samples, *Limiting Government, 1980 – 2010*, CATO INSTITUTE, Mar./Apr. 2010, <https://www.cato.org/policy-report/marchapril-2010/limiting-government-1980-2010> [<https://perma.cc/VZD6-HUWC>].

⁴ Hector Chang & Christine Wen, *Tax Caps in Other States: Lessons for New York*, CORNELL U. DEP'T OF CITY & REGIONAL PLAN. CREATIVE RESPONSES TO FISCAL STRESS PROJECT (Dec. 2014).

⁵ Barbara Anderson, *From Barbara Anderson, A Little History*, BOS. GLOBE (May 5, 2008), http://archive.boston.com/bostonglobe/regional_editions/overridecentral/2008/05/barbara_anderso.html [<https://perma.cc/HG7P-5P2X>].

⁶ MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., LEVY LIMITS: A PRIMER ON PROPOSITION 2 ½ (June 2007).

⁷ MASS. GEN. LAWS ch. 59, § 21C (2016).

⁸ *Id.*

⁹ *See generally* Citizens for Limited Taxation & Citizens Economic Research Foundation, *Celebrating Proposition 2 ½ after 30 Years*, CITIZENS FOR LIMITED TAXATION (Nov. 4, 2010), http://cltg.org/cltg/Prop_2/index.htm.

¹⁰ *Id.*

¹¹ *See generally* Chang & Wen, *supra*, note 4.

¹² MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

increasingly unable to meet their obligations under the 2.5% cap.¹³ From Fiscal Year 1983 through 1989, the average number of override votes in the entire Commonwealth was 69 votes per year.¹⁴ Between Fiscal Year 2000 through 2009, however, that number had risen to 118 votes per year.¹⁵ Additionally, the data indicates that wealthier communities are far more likely to approve override votes versus poorer communities.¹⁶ In communities where the median household income is less than \$49,999, the success rate of an override vote is 27.125%.¹⁷ At the opposite end of the spectrum, in communities where the median household income exceeds \$125,000, an override vote has a 69.435% chance of passing.¹⁸ Through examining the voting data of municipalities in Massachusetts, it becomes clear that the current system leads to dramatic discrepancies in municipal services between communities based on wealth.

Consequently, this Note argues that although these measures have proven popular with voters, they present obstacles to efficient municipal governing and impose arbitrary limits on municipal taxing abilities.¹⁹ Proposition 2 ½'s formula is in need of reform, as municipalities cannot operate under current constraints, and the framework of the law favors wealthy communities over poorer communities, leading to a bifurcation of services between towns. Moreover, while the intent of Proposition 2 ½ was to afford communities greater local control and to curb rising property taxes, the measure has created a more muddled situation.²⁰ Even with an override measure in place, many communities have been unable to meet their obligations.²¹ This issue has been exacerbated given that the needs of many communities have significantly changed since 1980—the rate of inflation has consistently outpaced levy limits, and local aid has failed to materialize, all while Proposition 2 ½ has not changed.²²

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ BOSTON REGIONAL METROPOLITAN PLANNING ORG., MASS. MEDIAN HOUSEHOLD INCOME BY TOWN, 1979-2010 (2011); MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Charles Kenney, *Massachusetts Makes a Comeback*, BOSTON GLOBE MAG., May 18, 1986, at 1–7.

²⁰ Allan R. Gold, *In Massachusetts, Budgets That Hurt*, N.Y. TIMES (Aug. 15, 1988), <http://www.nytimes.com/1988/08/15/us/in-massachusetts-budgets-that-hurt.html> [https://perma.cc/WQU7-AGPF].

²¹ MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

²² *Historical Inflation Rates: 1914-2017*, U.S. INFLATION CALCULATOR, Jan. 24, 2017, <http://www.usinflationcalculator.com/inflation/historical-inflation-rates/>

To remedy these difficulties, Part IV suggests several policy recommendations which could serve as alternatives to strict property tax caps. Potential reforms could include indexing the cap to the rate of inflation rather than holding it to a strict figure; or replacing the system with a cap on the total amount municipal budgets can increase each year, rather than a cap on the amount taxes can be increased.²³ This Note concludes by arguing that Massachusetts, and other states that employ strict property tax caps, should consider alternatives that embrace the rationale behind strict property tax caps—stronger local control and a desire for greater government efficiency—while allowing local governments the flexibility necessary to react to changing needs.

II. OVERVIEW

Strict property tax caps are statutory measures aimed at controlling the future growth of property taxes by limiting the ability of local governments to increase taxes above a certain percentage.²⁴ While different states have implemented various formulas and percentages for calculating tax caps, the central purpose is the same: to limit local property taxes.²⁵

Under Massachusetts's Proposition 2 ½, a ceiling is placed on municipalities' ability to raise taxes.²⁶ The increase limit, or levy limit, is the maximum amount a municipality can increase taxes on a yearly basis.²⁷ Proposition 2 ½ mandates that municipalities cannot increase property taxes by more than 2.5% annually.²⁸ Further, communities cannot impose a property tax rate greater than 2.5% of the assessed "full and fair cash value" of all taxable real and personal property in the community.²⁹

The limitations imposed on tax increases have exceptions, however. For example, if new property is added to the tax roles, it is not included in calculating the ceiling.³⁰ This exception for "new growth" allows for the tax

[<https://perma.cc/2Q2M-8EDN>]; Luc Schuster, *The Rise and Fall of Local Aid in Massachusetts*, MASSACHUSETTS BUDGET AND POLICY CENTER (Dec. 20, 2012), http://www.massbudget.org/report_window.php?loc=local_aid_long_term.html [<https://perma.cc/G244-27EM>].

²³ C. CHRISTINE FILMORE, N.H. TOWN & CITY, WHAT IS NEW IN MUNICIPAL BUDGETING? (Sept./Oct. 2013).

²⁴ Hector Chang & Christine Wen, *Tax Caps in Other States: Lessons for New York*, CORNELL U. DEP'T OF CITY & REGIONAL PLAN. CREATIVE RESPONSES TO FISCAL STRESS PROJECT (Dec. 2014).

²⁵ MASS. GEN. LAWS ch. 59, § 21C (2016); Chang & Wen, *supra* note 4.

²⁶ MASS. GEN. LAWS ch. 59, § 21C (2016).

²⁷ *Id.*

²⁸ *Id.* The level limit will at most be equal to the levy ceiling (2.5% maximum increase year to year); the levy limit cannot exceed the levy ceiling.

²⁹ *Id.*

³⁰ *Id.*

levy to be increased by the amount of taxes collected from the new property, without affecting the ceiling.³¹ Additionally, the 2.5% cap and increase limits can be exempted for specific purposes. “Capital exclusions,” if approved by a majority of voters, allow for the omission of capital expenditures from Proposition 2 ½’s limitations.³² Similarly, “debt exclusions,” with majority approval, are excluded if the new debt is being incurred for a specific purpose.³³ Finally, tax increases for water/sewer system construction are excluded from Proposition 2 ½’s limitations.³⁴

Proposition 2 ½ also allows for override votes. By majority vote, a community can permanently increase its levy limit.³⁵ A specific dollar amount must be put to ballot, together with a stated purpose for what the funds generated from the tax increase will go towards.³⁶ Proposition 2 ½ overrides must be used to fund municipal operating budgets, not to fund capital projects.³⁷ Some communities that have attempted override votes have chosen to request large sums for “general operating expenses,” while others have multiple votes in a single year, each corresponding to a specific line item in the budget.³⁸ When Proposition 2 ½ was passed in 1980, a two-thirds majority vote was required in order to approve an override; this requirement was amended by the General Court in 1981 so that only a majority vote is needed to successfully increase a community’s levy limit above the cap.³⁹

Similarly, Proposition 2 ½ also allows for underride votes. A community can reduce its levy limit by a majority vote, or by petitioning the state

³¹ *Id.*

³² *Id.*

³³ *Id.* (such as municipal bonds issued for capital expenditures that extend beyond the current year. Note that both capital and debt exclusions originally required a two-thirds vote by voters in order to be exempt from the limitation on tax levy increases, but the requirement was reduced to a majority vote by a 1981 amendment passed by the Massachusetts General Court).

³⁴ *Id.* (provision must be accepted by the “local appropriating authority,” and approved by a majority vote of the community).

³⁵ *Id.*

³⁶ MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., PROPOSITION 2 1/2 BALLOT QUESTIONS (Oct. 19, 2013).

³⁷ Robert David Sullivan, *Two and a Half Decades of Prop. 2 ½*, COMMONWEALTH MAG., Winter 2005, at 26; capital projects are excluded from Proposition 2 ½’s limits, as discussed above.

³⁸ MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011) (some communities have had dozens of votes in a single year for smaller amounts of money, for everything from town Christmas lights, to replacing dasher boards on the town skating rink; the norm, however, is to request funds for the general operating budget).

³⁹ MASS. GEN. LAWS ch. 59, § 21C (2016); JOSEPH F. ZIMMERMAN, STATE-LOCAL RELATIONS: A PARTNERSHIP APPROACH 64 (1995).

legislature for a reduction.⁴⁰ Even if an override vote is successful, only the ceiling is reduced; the increase limit, which prevents municipalities from increasing property taxes annually beyond 2.5%, is still in place.⁴¹ If an override vote is successful, the levy limit can later be increased by a successful override vote.

In Massachusetts, taxes levied on real and personal property constitute “the main tax imposed by cities and towns, and is usually their largest source of revenue.”⁴² The amount of money a community raises in property taxes must be sufficient to fund: all town “appropriations, [services,] a reserve for abatements and exemptions, and other amounts required by law to be raised” minus “estimated receipts from state and local sources and appropriations from available funds and reserves.”⁴³ The majority of municipal operating budgets are funded through property taxes.⁴⁴ Consequently, a cap on municipalities’ ability to raise property taxes above a certain level can have a dramatic impact on a community’s ability to provide services, as well as its overall fiscal well-being.

III. HISTORY OF STRICT PROPERTY TAX CAPS

A. *The Beginnings: California’s Proposition 13*

California introduced the first state-wide limitation on local governments’ abilities to levy property taxes with the passage of Proposition 13 in 1978.⁴⁵ Passed by voter initiative, Proposition 13 amended the California Constitution to fix property taxes at no more than 1% of real value, in addition to restricting annual increases to the rate of inflation, not to exceed 2%.⁴⁶ Override votes are allowed if the revenue from the proposed tax increases are approved by two-thirds of voters.⁴⁷

In *Nordlinger v. Hahn*, the U.S. Supreme Court upheld the legality of California’s strict property tax cap regime.⁴⁸ The Court specifically looked at Proposition 13’s framework for reassessment of taxes upon the sale of property, which can result in one landowner paying higher taxes than his neighbors.⁴⁹ The Court found that California’s exemption scheme was

⁴⁰ MASS. GEN. LAWS ch. 59, § 21C (2016).

⁴¹ *Id.*

⁴² KATHLEEN COLLEARY, MASSACHUSETTS MUNICIPAL LAW § 6.2.1 (2015).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Chang & Wen, *supra* note 4.

⁴⁶ CAL. CONST. art. XIII, A, § 1; Chang & Wen, *supra* note 4.

⁴⁷ CAL. CONST. art. XIII, A, § 1 (with the reassessed value becoming the new basis).

⁴⁸ *Nordlinger v. Hahn*, 505 U.S. 1, 17–18 (1992).

⁴⁹ *Id.*

Constitutional, as it furthered a legitimate purpose, and did not discriminate with respect to the tax rate, nor with respect to the annual rate of assessment adjustments.⁵⁰

The impact of Proposition 13 on California is unclear, as multiple exceptions have been added to the policy over the subsequent four decades.⁵¹ For example, whenever property is sold in California, it is reassessed, thereby changing the taxes (although not the tax rate) on the property.⁵² Cities and towns are also permitted to create “local improvement districts.”⁵³ Once such districts are approved by voters, the property within the district is exempt from the Proposition 13 tax cap.⁵⁴ In exchange for this exemption, property owners within the “improvement districts” must then directly pay for infrastructure improvements, such as sidewalk construction and storm-water systems.⁵⁵

Although Proposition 13 provided a framework for other states looking to adopt strict property tax caps, it can hardly be said that California currently has any sort of strict property tax-cap scheme. Rather, it has a system so riddled with exceptions that there is no coherent structure left, resulting in a number of undesirable consequences. Land-use decisions have been made based on the ability of land to generate revenue, rather than on need.⁵⁶ Complex methods to circumvent the system, whether through the creation of local improvement districts or otherwise, have multiplied.⁵⁷ Significantly, the cap led to a dramatic decrease in local revenue.⁵⁸ In Fiscal Year 1980, the first year after the cap went into effect, county property tax revenue dropped from \$10.3 billion to \$5.04 billion.⁵⁹ The ensuing crisis led to a one-time \$4.85 billion bailout by the state for municipalities, together with an increase of state control over local finances.⁶⁰

B. Massachusetts

Following California’s adoption, the strict property tax cap movement quickly spread east, with Massachusetts approving Proposition 2 ½ in 1980.⁶¹ Unlike California’s Proposition 13 which amended the state constitution,

⁵⁰ *Id.*

⁵¹ Chang & Wen, *supra* note 4.

⁵² CAL. CONST. art. XIII, A, § 1.

⁵³ San Francisco Office of Economic and Workforce Development, *Community Benefit Districts*, CITY AND COUNTY OF SAN FRANCISCO (2017), <http://oewd.org/community-benefit-districts> [<https://perma.cc/Q4JE-8E3T>].

⁵⁴ CAL. CONST. art. XIII, A, § 1.

⁵⁵ San Francisco Office of Economic and Workforce Development, *supra* note 53.

⁵⁶ Chang & Wen, *supra* note 4.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ MASS. GEN. LAWS ch. 59, § 21C (2016).

Proposition 2 ½ is a law, subject to legislative repeal or amendment.⁶² Proposition 2 ½ was first presented as legislation in the Massachusetts House of Representatives in 1980; it failed, 155 to 5 votes.⁶³ At the time, the overwhelming majority of state legislators saw it as a “destructive, small-minded, reactionary assault on public services,” with both Governor Edward King and former Governor Michael Dukakis opposing it, too.⁶⁴

Subsequently, Proposition 2 ½ was passed by ballot initiative.⁶⁵ In Massachusetts, the ballot initiative process was made a part of the Massachusetts Constitution in 1918.⁶⁶ Ballot initiatives allow individuals and interest groups to advance their policy objectives; accordingly, almost all states that have strict property tax caps have had them implemented through citizen initiative.⁶⁷ Using this tool, the advocacy group Citizens for Limited Taxation spearheaded a state-wide signature collection drive for Proposition 2 ½ following its defeat in the Statehouse.⁶⁸ The group secured enough support to place the petition on the November 1980 ballot.⁶⁹

The measure passed overwhelmingly, with 59% of Massachusetts voters supporting it.⁷⁰ Consequently, Proposition 2 ½ became law, limiting communities to imposing property taxes no greater than 2.5% of the “full and fair cash value of real property,” and capping the annual increase in the tax levy to 2.5%.⁷¹

⁶² *Id.*

⁶³ See Citizens for Limited Taxation & Citizens Economic Research Foundation, *supra* note 9.

⁶⁴ Kenney, *supra* note 19.

⁶⁵ Citizens for Limited Taxation & Citizens Economic Research Foundation, *supra* note 9.

⁶⁶ Dina E. Conlin, *The Ballot Initiative in Massachusetts: The Fallacy of Direct Democracy*, 37 SUFFOLK U. L. REV. 1087, 1087 (2004).

⁶⁷ *Id.* at 1087–88; see generally Chang & Wen, *supra* note 4 (five out of the seven states which have strict property tax caps have had them implemented through ballot initiative: California (1978), Massachusetts (1980), Oregon (1990), Illinois (1991), and Colorado (1992). Unsurprisingly, strict property tax caps have been far more successful and expansive in states which allow voters to propose ballot questions as opposed to those which only allow the state legislature to propose ballot questions. Only New Jersey (2007) and New York (2012) have implemented strict property tax caps through their state legislatures).

⁶⁸ Citizens for Limited Taxation & Citizens Economic Research Foundation, *supra* note 9.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ MASS. GEN. LAWS ch. 59, § 21C (2016) (in addition to the strict property tax cap, Proposition 2 ½ implemented other reforms, including limiting the automobile excise tax and eliminating school committee autonomy; these aspects of the statute are outside the scope of this Note).

In addition to introducing a strict property tax cap, the Proposition 2 ½ ballot measure included a number of other reforms.⁷² The law also reduced the excise tax on personal property such as automobiles, boats, farm animals, and machinery to 2.5%,⁷³ down from 6.6%.⁷⁴ Aside from the impact Proposition 2 ½ had on municipal budgets because of reduced property tax revenue, the reduction in revenue due to the reduced excise tax dramatically affected municipalities in their own right.⁷⁵ While the mechanics and impact of these provisions of Proposition 2 ½ are outside of the scope of this Note, it is important to note that if a community approves a general override vote, then the local government can automatically increase the excise tax to 6.6% without any authorization from the voters.⁷⁶

C. *Impetus*

In addition to California and Massachusetts, five other states have some form of strict property cap systems.⁷⁷ The popularization of such caps can be attributed to several factors. Anti-property tax sentiments developed across the country in the late 1970s and 1980s through the growth of interest groups promoting “taxpayer revolution[s]”, inspired by the “Reagan Revolution.”⁷⁸ The so-called “Taxpayer Bill of Rights” was proposed and debated in statehouses across the country, with several enacted.⁷⁹ Strict property tax caps fit into the broader societal push of the time, with proponents advocating these measures not only as a way to limit the growth of taxes, but also to shrink the size of state and local governments.⁸⁰

⁷² *Id.*; Citizens for Limited Taxation & Citizens Economic Research Foundation, *supra* note 9. Significantly, the statute: forbid the Commonwealth from passing unfunded mandates on cities and towns; repealed school board fiscal autonomy; repealed compulsory binding arbitration for police and fire unions; and reconfigured the Department of Revenue to include the Division on Local Services.

⁷³ COLLEARY, *supra* note 42.

⁷⁴ MASS. GEN. LAWS ch. 59, § 21C (2016).

⁷⁵ ZIMMERMAN, *supra* note 39.

⁷⁶ MASS. GEN. LAWS ch. 59, § 21C (2016).

⁷⁷ See Chang & Wen, *supra* note 4 (New York implemented a strict property tax cap most recently, in 2012).

⁷⁸ Steven V. Melnik & David S. Cenedella, *Tax Assessment in New York State*, 4 ALB. GOV'T L. REV. 427 (2011); Ronald W. Reagan, Transcript of Reagan's Farewell Address to the American People, N.Y. TIMES (Jan. 12, 1989), <http://www.nytimes.com/1989/01/12/news/transcript-of-reagan-s-farewell-address-to-american-people.html?pagewanted=all> [<https://perma.cc/B86C-9HU4>].

⁷⁹ See generally Andrew Reschovsky, *Taxpayer Bill of Rights: A Solution to Wisconsin's Fiscal Problems or a Prescription for Future Fiscal Crises?*, 88 MARQ. L. REV. 135 (2004).

⁸⁰ See generally *id.*

Barbara Anderson, who later became the executive director of Citizens for Limited Taxation, spearheaded the passage of Proposition 2 ½.⁸¹ She attributed the success of Proposition 2 ½ as the culmination of a number of factors: the combination of the conservative trends propelling Reagan to office, and the desire by many voters for greater local control, helped to drive the passage of Proposition 2 ½.⁸² Anderson also pointed to voter anger as a driving factor behind the ballot question's success.⁸³ Voters were frustrated with a legislature that was perceived as unresponsive to their needs and that continued to tax heavily through economically depressed years.⁸⁴ The popular "override" of the legislature's initial rejection of Proposition 2 ½ was a natural outgrowth of this frustration. With no limit imposed on how high property taxes could rise, Massachusetts had the highest property taxes in the country in the years leading up to 1980.⁸⁵ Consequently, the combination of voter frustration, voter empowerment, and a desire for lower taxes led to overwhelming support for the measure.

1. Legal Challenges in the Commonwealth

Despite the strong support Proposition 2 ½ saw at the ballot box, a little over a week after it was approved by voters, three legal challenges were filed – one by an individual taxpayer, another by a collation of objectors, and the third by the Massachusetts Teachers Association, a politically-influential union.⁸⁶ The cases were consolidated and heard by the Supreme Judicial Court of Massachusetts in early 1981.⁸⁷ The plaintiffs advanced two arguments. First, they argued that Proposition 2 ½ "was not a proper subject of an initiative petition" and that the procedural requirements of the Massachusetts Constitution were not adequately followed.⁸⁸ Second, the plaintiffs challenged whether a provision of the law relating to a deduction from taxable income on rent paid violated equal protection under the state Constitution.⁸⁹

The Massachusetts Supreme Judicial Court concluded that in both substance and form, the petition was appropriate.⁹⁰ The Court found that the initiative petition was properly originated by ten qualified voters, and then sent to the Attorney General.⁹¹ Further, the Court concluded that the Attorney

⁸¹ Anderson, *supra* note 5.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Kenney, *supra* note 19.

⁸⁵ Anderson, *supra* note 5.

⁸⁶ *Mass. Tchrs. Ass'n v. Sec'y of Commonwealth*, 384 Mass. 209, 213–14 (1981).

⁸⁷ *Id.* at 212.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 236–38.

⁹¹ *Id.* at 217.

General's summary of the law for the ballot was a fair summation of the act, and that an amendment to the measure was procedurally sound.⁹² With regards to the question over the renter's deduction provision, the Court held that it did not violate Constitutional requirements of equal protection.⁹³ In concluding that Proposition 2 ½ was lawfully adopted, and that it did not violate either the Massachusetts Constitution or the United States' Constitution, the Court gave a major victory to the anti-tax proponents of the measure.⁹⁴

Similarly, the Supreme Judicial Court of Massachusetts upheld, in a related action, the authority of the Commissioner of the Department of Revenue to issue guidelines to cities and towns for determining the "full and fair cash value" of property when calculating levy limits.⁹⁵ Even where such guidelines did not give individualized considerations for variations between communities, the Court stated that the Commissioner had the power to promulgate such regulations.⁹⁶ The success of Proposition 2 ½ in the face of legal challenges inspired advocates of strict property tax caps in other jurisdictions, with a number of other states implementing similar measures in subsequent years.⁹⁷

2. Immediate & Short-Term Impact

At the time Proposition 2 ½ was passed, local governments that imposed property taxes exceeding the 2.5% limit were required to reduce their tax levies by 15% annually until the cap was reached.⁹⁸ Boston, for example, had a tax rate in 1980 equal to 10% of the full and fair cash value of all the real property within the city limits.⁹⁹ Across the Commonwealth, "[b]y the autumn of 1981, approximately 15,000 city, town, and county employees had been laid off."¹⁰⁰ In 1982, local revenue dropped by approximately \$500 million; the impact of reduced revenue was mitigated only by an increase of \$265 million in local aid.¹⁰¹ Proposition 2 ½ ultimately resulted in the proportion of local revenue raised by property taxes decreasing from nearly two-third prior to 1980, to approximately one-half of municipal budgets today.¹⁰²

⁹² *Id.* at 236–38.

⁹³ *Id.* at 245.

⁹⁴ *Id.* at 245–46.

⁹⁵ *Newton v. Comm'r of Revenue*, 384 Mass. 115, 120 (1981).

⁹⁶ *Id.* at 121–22.

⁹⁷ *Chang & Wen*, *supra* note 4.

⁹⁸ ZIMMERMAN, *supra* note 39. At the time Proposition 2 ½ was passed in 1980, 52 municipalities with a population over 27,000 exceeded the capped rate imposed by the law, and subsequently had to reduce their tax rates gradually until they came in line with the levy limits.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *See generally* *Chang & Wen*, *supra* note 4; ZIMMERMAN, *supra* note 39.

¹⁰² ZIMMERMAN, *supra* note 39.

Despite the fears of many politicians and citizens, Proposition 2 ½ did not initially have a devastating impact on cities and towns. Rather, the statute took effect at the same time as the “Massachusetts Miracle,” a period of rapid economic growth in the Commonwealth after a decade of decline.¹⁰³ Coupled with falling primary and secondary school enrollment, municipalities and school districts were able to reduce their budgets without drastically cutting services.¹⁰⁴ Along with lower-than-forecasted energy costs and decisions to defer spending on maintenance, communities avoided the worst predictions about Proposition 2 ½.¹⁰⁵ As previously noted, the strengthening economy allowed the General Court to provide a substantial increase in local aid in Fiscal Year 1983.¹⁰⁶ Thus, timing was key in blunting the impact of Proposition 2 ½ at the time of its implementation.¹⁰⁷

From 1980 to 1985, property taxes in Massachusetts fell from 76% above the national average to 13% above the national average.¹⁰⁸ As of 2017, the Commonwealth has the eighth highest property taxes in the country, significantly lower than the number one slot Massachusetts occupied during the years leading up to Proposition 2 ½’s passage.¹⁰⁹

Beyond the initial reduction in local property taxes seen because of the measure, there were non-economic outcomes that grew from the passage of Proposition 2 ½. Many commentators at the time noted that Proposition 2 ½ was less about lowering taxes and more about voter empowerment in the face of an unresponsive Beacon Hill.¹¹⁰ Following the passage of Proposition 2 ½, *The Boston Globe Magazine* noted that the exercise of voters’ will through plebiscite revived a sense of accountability in elected officials on both the local and state levels.¹¹¹ The subsequent trimming of municipal positions, required because of reduced budgets, led to a reduction in cronyism, and higher quality individuals being retained.¹¹² In the short-term, several favorable outcomes occurred as a result of Proposition 2 ½’s passage.

¹⁰³ Kenney, *supra* note 7; Chang & Wen, *supra* note 4.

¹⁰⁴ Chang & Wen, *supra* note 4.

¹⁰⁵ Gold, *supra* note 10.

¹⁰⁶ Chang & Wen, *supra* note 4.

¹⁰⁷ Kenney, *supra* note 19, at 3.

¹⁰⁸ Phil Oliff & Iris J. Lav, Center on Budget and Policy Priorities, *Hidden Consequences: Lessons from Massachusetts for States Considering a Property Tax Cap* (2010) (as a percentage of income).

¹⁰⁹ *Id.*

¹¹⁰ Kenney, *supra* note 19, at 3; *see generally* Anderson, *supra* note 5.

¹¹¹ Kenney, *supra* note 19, at 1–2.

¹¹² *Id.* at 6.

3. Long-Term Impact

While the initial impact of Proposition 2 ½ was not the widespread devastation that many had feared, the long-term effects of the law cannot be understated. Though the reduction in property taxes was welcomed by voters, in the long term, the cap imposed by Proposition 2 ½ has significantly impacted municipalities' abilities to provide services. Due to Proposition 2 ½'s cap, "many Massachusetts localities are experiencing cost increases [for providing services] beyond their control that far exceed their annual property tax growth threshold."¹¹³ For example, health care costs dramatically impact municipal budgets.¹¹⁴ From 2001 to 2006, municipal health care costs grew by 13%, increasing from 7.4% to 10.6%, on average, of municipal budgets in Massachusetts.¹¹⁵ Despite this increase in costs, cities and towns are unable to increase property taxes, the main source of municipal revenue, beyond the 2.5% cap.¹¹⁶ Consequently, in order to address fixed costs, other areas of municipal budgets have been cut. Examining the hundreds of override votes proposed over the past few years, overrides are routinely floated by communities in order to support everything from high school sports and extracurriculars, to keeping operating budgets "level."¹¹⁷

Despite an initial increase in local aid from Fiscal Year 1982 to 1983, the bump was short-lived: today, local aid is approximately one-half of what it was three decades ago.¹¹⁸ This cut in state aid, combined with the restrictions Proposition 2 ½ places on communities' abilities to raise funds for services, has led to a number of unintended consequences. As early as 1988, *The New York Times* reported a "snowball[] effect", as more and more towns were attempting override votes, because the amount of revenue growth under the cap was "not sufficient to keep up with inflation."¹¹⁹

Aside from the financial burden that Proposition 2 ½ has imposed, the measure has also significantly strained relations between municipal governments and the Commonwealth. With their ability to raise revenue constrained, cities and towns now routinely petition the latter for funds.¹²⁰ Taken together, both the financial and non-financial impacts of Proposition 2 ½ have been much deeper than any of the proponents could have initially forecast.

¹¹³ Oliff & Lav, *supra* note 108.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹¹⁸ Schuster, *supra* note 22 (when adjusted for inflation).

¹¹⁹ Gold, *supra* note 20.

¹²⁰ Kenney, *supra* note 19, at 3.

4. Override Votes

The impact Proposition 2 ½ has had on municipalities has been amplified by the law’s override measure. The framework of Proposition 2 ½ is such that each community has a levy limit: the amount real and personal property taxes can be increased each year, which is 2.5%.¹²¹ The levy limit can be increased up to the levy ceiling, which is equal to 2.5% of the full and fair cash value of the property in a community.¹²² Generally, the levy ceiling changes every year, as “properties are added or removed from the tax roll and market values increase or decrease,” thus causing the value of taxable property in a community to change.¹²³

Each year, a community’s levy limit automatically increases 2.5% over the previous year’s levy limit.¹²⁴ Beyond that, communities are able to increase their levy limits if there is new growth in the tax base (such as the development of a new subdivision).¹²⁵ Finally, and most significantly, a community can override its levy limit through a majority vote for a specific dollar amount; if successful, the levy limit base is permanently increased by the amount of the override.¹²⁶ While the original law only allowed municipalities to hold override votes if approved by the General Court, and required approval by two-thirds of voters in the municipality, a 1981 amendment by the legislature removed the first requirement.¹²⁷ City councils, mayors, or selectmen are allowed to place override questions on the local ballot.¹²⁸ Additionally, the two-thirds requirement was reduced to a simple majority vote.¹²⁹

The override measure allows communities to override the 2.5% limit, and increase their property taxes beyond this threshold.¹³⁰ As discussed below, the data makes clear that this model significantly favors wealthier communities

¹²¹ MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., *supra* note 6.

¹²² *Id.*

¹²³ *Id.* The Department of Revenue calculates each community’s levy ceiling annually.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* See MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., PROPOSITION 2 1/2 BALLOT QUESTIONS (Oct. 19, 2013) and MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., PROPOSITION 2 1/2 BALLOT QUESTIONS: REQUIREMENTS & PROCEDURES (Feb. 2002) for an overview of various ballot question forms and levy limit override approaches that have been approved by the state government for local governments looking to hold an override vote.

¹²⁷ MASS. GEN. LAWS ch. 59, § 21C (2016).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

over poorer communities, resulting in widespread discrepancies across the Commonwealth in the level and in extent of municipal services provided.¹³¹

5. Arguments for Retaining Proposition 2 ½

The arguments for retaining (or in the case of other states, implementing) strict property tax caps largely mirror the arguments which propelled the initial passage of such measures: greater local control, smaller government, and lower taxes.¹³² Perhaps the strongest argument for retaining a strict property tax cap in Massachusetts can be found in the Commonwealth's tax rate itself. Massachusetts, though it has the eighth highest property taxes per capita (38.4% higher than the national average), has fallen sharply from the number one slot it occupied prior to the implementation of the cap.¹³³ Although the number eight slot is still high, it is critical to note that Massachusetts localities are forced to rely more heavily on property tax revenues to fund local expenditures as compared to municipalities in other states.¹³⁴ Unlike in other states, Massachusetts cities and towns are not permitted to levy other forms of taxes (such as sales or income taxes).¹³⁵

In 2000, the polling firm Lane & Company conducted a study extrapolating the difference between what taxpayers in certain communities would be paying if Proposition 2 ½ had never passed, versus what they paid under the current system.¹³⁶ The study found that from 1983 to 2000, the per capita residential property tax levy dropped 1.6%, after adjusting for inflation.¹³⁷ Despite the "savings" in property taxes this study found, it did not take into account other ramifications of the cap, such as increased fees or cuts in municipal services.

"When local officials want more money than the levy limit allows, they must ask for it, instead of just taking it as they did before 1980," noted Barbara Anderson, of Citizens for Limited Taxation; "[c]itizen empowerment is one of the best things about our property tax limit."¹³⁸ As Ms. Anderson noted, a renewed sense of civic engagement and a sense of accountability in elected officials is another significant byproduct of the cap.

¹³¹ MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹³² Anderson, *supra* note 5.

¹³³ Robert J. Dolan & Barbara Anderson, *The Argument: Is it time to update Proposition 2 ½*, BOSTON GLOBE, Dec. 7, 2014, <http://www.cltg.org/cltg/clt2014/14-12-09.htm> [<https://perma.cc/RP6J-ZBWF>].

¹³⁴ Oliff & Lav, *supra* note 108.

¹³⁵ *Id.*

¹³⁶ CITIZENS FOR LIMITED TAXATION, PROPOSITION 2 ½ AND YOU: A STUDY OF THE IMPACT OF PROPOSITION 2 ½ ON MASSACHUSETTS TAXPAYERS (Oct. 31, 2005) (citing data from Lane & Company, 2000).

¹³⁷ *Id.*

¹³⁸ Dolan & Anderson, *supra* note 133.

6. Arguments Against Retaining Proposition 2 ½

In 1980, the majority of residents in 67 of Massachusetts's 351 cities and towns voted against Proposition 2 ½.¹³⁹ The central argument against Proposition 2 ½, both when it was first enacted and today, is that the 2.5% tax cap and the 2.5% levy ceiling are arbitrary limits.¹⁴⁰ Municipal officials have aptly noted in recent years that the law has not been significantly updated in thirty years. Rather than staying responsive to modern needs, the law has remained static, even though “[t]he local government of 1982 is unrecognizable compared to today in terms of technology, health care, mandates, and particularly public education.”¹⁴¹ Along this same vein, the number of state and federal mandates have exploded since the 1980s. Proposition 2 ½ bans unfunded state mandates, but has no impact on federal mandates, nor does it take into the account the cost of implementing mandates which may not require funding in and of themselves.¹⁴²

Significantly, Proposition 2 ½ does not take into consideration the actual cost of providing services, inflation, or other extraneous factors.¹⁴³ Arguments for reform or repeal of Proposition 2 ½ tend to focus on the capricious barrier the law imposes on local governments' ability to raise revenues.¹⁴⁴ Thus, “[w]hen some budget items increase faster than the cap,” which occurs nearly every year, “other items must be cut to fit total expenditures under the cap. As a result, town and school services actually lose ground most years because of Prop[osition] 2 ½.”¹⁴⁵ Strict property tax caps do not make services cost less; this results in cuts to services.¹⁴⁶

Opponents to Proposition 2 ½ point to two specific areas that have led to ongoing financial issues for many cities and towns. Public employee benefits (significantly, healthcare costs), and education costs continue to rise.¹⁴⁷ While proponents of Proposition 2 ½ argue that these costs need to be independently

¹³⁹ Karen Kraut, *Opinion: Prop 2 ½ a lousy law we should be glad to override*, WICKED LOCAL BROOKLINE (Mar. 30, 2015), <http://brookline.wickedlocal.com/article/20150325/OPINION/150327381> [<https://perma.cc/KV47-VMEZ>] (the majority of residents in 284 towns voted for Proposition 2 ½; across the Commonwealth, 59% of voters supported the measure, while 41% opposed it).

¹⁴⁰ Oliff & Lav, *supra* note 108.

¹⁴¹ Dolan & Anderson, *supra* note 133.

¹⁴² *Id.*

¹⁴³ Oliff & Lav, *supra* note 108.

¹⁴⁴ *Id.*

¹⁴⁵ Kraut, *supra* note 139.

¹⁴⁶ Oliff & Lav, *supra* note 108.

¹⁴⁷ Anderson, *supra* note 5.

addressed, this argument ignores the fact that while strict property tax caps can limit the size of government, they cannot affect the cost of the services themselves.¹⁴⁸ With mandated costs, communities are finding that they cannot afford sharp increases, despite their obligations to pay.¹⁴⁹

One of the strongest arguments against Proposition 2 ½ focuses on inflation. Proposition 2 ½, unlike some strict property tax cap schemes, makes no allocation for inflation.¹⁵⁰ Average yearly inflation has exceeded the 2.5% cap for twenty-four out of the past thirty-seven years, even reaching double-digit inflation in a single year.¹⁵¹ Inflation has been below 2.5% for only thirteen years out of the past thirty-seven years.¹⁵² Consequently, municipalities' buying power has eroded. As inflation has risen, communities' abilities to levy taxes in line with inflation has been handicapped.

A 1996 article in *CommonWealth Magazine* noted that Proposition 2 ½ had "created a new culture for local governments," forcing local officials to "look carefully at every spending item," and having to become "leaner and more efficient."¹⁵³ While this may be true to some extent, efficiency can only go so far: having one less man on the highway department or reducing the hours of the town's library may have a seemingly minimal short-term effect, but can have a much deeper long-term effect. Similarly, the argument that caps would produce large savings through "efficiencies" was flawed; "efficiencies" to one person, such as the closure of a fire station or a library branch, "may represent the loss of a critical service for another person."¹⁵⁴

The law also makes local governments heavily dependent on state aid, which tends to fluctuate with economic cycles and state politics.¹⁵⁵ While some proponents of Proposition 2 ½ see this as a positive feature, it is more properly viewed as a major issue: in times of economic downturn, the need for municipal services stays the same or increases (i.e. the utilization of public libraries), while local aid shrinks. Thus, "[t]he success of Proposition 2 ½ was based on revenue sharing between the state and federal government and cities and towns. That partnership is shrinking, or ending, and the model no longer works."¹⁵⁶

¹⁴⁸ *Id.*; Dolan & Anderson, *supra* note 133.

¹⁴⁹ Anderson, *supra* note 5.

¹⁵⁰ See CAL. CONST. art. XIII, A, § 1. California's Proposition 13, limits municipalities to increasing taxes by no more than 1% of the assessed value of real property or the rate of inflation, not to exceed 2% of the full cash value of the property. A similar provision for inflation is not seen in Massachusetts's Proposition 2 ½.

¹⁵¹ *Historical Inflation Rates: 1914-2017*, *supra* note 22.

¹⁵² *Id.*

¹⁵³ Dave Tyler, *A Tale of Eight Cities and Towns: Prop 2 ½ Yields Different Results in Different Places*, COMMONWEALTH MAG., Summer 1996, at 43.

¹⁵⁴ Oliff & Lav, *supra* note 108.

¹⁵⁵ *Id.*

¹⁵⁶ Dolan & Anderson, *supra* note 133.

D. The Unintended Consequences of a Strict Property Tax Cap in Massachusetts

The promise of lower taxes and greater control proved alluring to voters across the country when faced with the opportunity to implement strict property tax caps. While different regimes have varying frameworks, all have been driven by similar desires for greater local control and for lower taxes.¹⁵⁷ Despite initial excitement propelling the passage of these laws, outcomes have been more varied.

Of the seven states that have some form of strict property tax caps, all have some of the highest property taxes per capita in the United States.¹⁵⁸ New Jersey, which has a strict property tax cap, has the highest property taxes per capita in the country, at \$2,819.¹⁵⁹ Within the cohort of states with strict property tax caps, the lowest per capita property tax rate is seen in Oregon, at \$1,292, which is still the twenty-sixth highest rate in the country.¹⁶⁰ Thus, even in states that have implemented caps, almost all are in the top half of states in terms of per capita tax rates.¹⁶¹ While it is unclear whether or not strict property tax caps were implemented to address this issue (and failed to accomplish what they purported to do), or caused this issue, the fact of the matter remains that states with strict property tax caps, on average, have far higher per capita property taxes than states that do not have caps.¹⁶²

While some commentators point to Massachusetts as a success story in this regard, success depends on one's interpretation. Prior to the implementation of Proposition 2 ½, Massachusetts had the highest property taxes per capita in the country.¹⁶³ Currently, Massachusetts has the eighth highest property taxes per capita nationwide.¹⁶⁴ If municipalities had not chosen to approve override votes over the years, property taxes in the Bay State could be lower; however, many municipalities have felt forced to put forward overrides because necessary revenue cannot be raised under the cap's rigid formula.

A number of unexpected consequences have also arisen as a result of the implementation of strict property tax caps. New York, for example, only implemented a strict property tax cap in 2012.¹⁶⁵ A Cornell University survey published a year later found that “over 60% of villages and towns and over

¹⁵⁷ Chang & Wen, *supra* note 4 (for example, Illinois' tax cap is optional, with only 33 of the state's 102 counties opting in).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* (New Jersey's property tax per capita is based off of 2013 data).

¹⁶⁰ Chang & Wen, *supra* note 4.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Oliff & Lav, *supra* note 108.

¹⁶⁴ Chang & Wen, *supra* note 4.

¹⁶⁵ N.Y. GEN. MUN. § 3-c (LexisNexis 2016).

80% of cities and counties across New York faced increased fiscal stress due to the tax cap.”¹⁶⁶ Similarly, a story from *The Boston Globe*, titled “In Massachusetts, Budgets that Hurt” reflected on slashed municipal services in the wake of Proposition 2 ½, only eight years after the measure had been passed into law.¹⁶⁷ Ultimately, “[i]n the absence of additional state aid,” local governments in states which have strict property tax caps “make more drastic service cuts and increase revenues through overrides and user fees [as compared to municipalities in states without caps].”¹⁶⁸

The other significant goal behind implementing strict property tax caps was a desire by voters for greater local control. To some degree, strict property tax caps have accomplished this: in Massachusetts, the increasing number of proposed override votes illustrates the power voters have in making meaningful decisions over the future of their communities.¹⁶⁹ Proposition 2 ½ has brought many financial issues to the forefront of local elections and town meetings.¹⁷⁰ Yet, despite this increased civic engagement, strict property tax caps generally do not reduce the size of government.¹⁷¹ While the “fringes” may be cut in order to save money, it is far more common for local governments to rely more heavily on other sources of funding, whether that be petitioning Beacon Hill, or increasing local fees, rather than substantially shrinking the size and cost of government.¹⁷² Many areas of local government have funding mandates, so the size of government cannot be substantially reduced, even with strict property tax caps in place.¹⁷³ Similarly, many costs that fall on municipalities, such as employee healthcare costs and education expenses, continue to rise; although local governments have no ability to curb these costs, they still have to pay for it within this framework.¹⁷⁴

The impact of strict property tax caps on municipal finances has been exacerbated by a reduction in local aid. Municipalities in the Commonwealth derived (both in 1980 and today) the vast majority of their revenue through local property taxes.¹⁷⁵ In the aftermath of Proposition 2 ½’s passage, cities and towns, worried about the impact of the cap, successfully achieved an

¹⁶⁶ Chang & Wen, *supra* note 4.

¹⁶⁷ Gold, *supra* note 20.

¹⁶⁸ Chang & Wen, *supra* note 4.

¹⁶⁹ MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹⁷⁰ See generally MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011) (for an overview of the increasing number of override votes in Massachusetts over the decades).

¹⁷¹ Chang & Wen, *supra* note 4.

¹⁷² *Id.*

¹⁷³ *Id.* (such as public school funding).

¹⁷⁴ *Id.*

¹⁷⁵ COLLEARY, *supra* note 42.

agreement with Beacon Hill to increase local aid.¹⁷⁶ In the early- to mid-1980s, Beacon Hill kept this promise: local aid (including general local aid, Chapter 70 (education aid), and school building assistance) continued to rise, reaching a peak in 1986.¹⁷⁷ Over the past three decades, however, local aid levels have drastically declined.¹⁷⁸ In 1986, total local aid, as a percentage of personal income, was approximately 2.4%.¹⁷⁹ That figure fell to 1.7% by 2013.¹⁸⁰ If the Commonwealth was dedicating “the same share of resources to local aid today” as it did thirty-five years ago, even when adjusting for inflation, cities and towns would be receiving approximately \$1.7 billion more each year.¹⁸¹ While the reduction of local aid was not a consequence of Proposition 2 ½, the increased reliance of municipalities on local aid is a direct result of the strict property tax cap.¹⁸²

Strict property tax caps can have varying impacts based on the makeup of a community. This Note uses Massachusetts as a case study by examining the total number of Proposition 2 ½ override votes, both proposed and successful, that have been taken over three decades. This data paints a picture of the impact strict property tax caps have had on communities. Significantly, the relative wealth of a community is indicative of whether or not an override vote will pass; a community’s decision whether to approve or reject an override vote impacts what services a municipality can provide.¹⁸³ This, in turn, creates greater disparities over time, as wealthy communities continue to provide services—thereby attracting other well-to-do families—and poorer communities continue to cut services. While this cycle is fully discussed below, this fact illustrates the fundamental shortcoming of strict property tax caps: different communities have vastly different needs. It makes little sense to impose a uniform constraining measure across an entire state, when each community has its own challenges to address. Instead, strict property tax caps, with their “static and insensitive” nature, have “produced greater regional fiscal disparity” where they have been imposed than might otherwise be seen.¹⁸⁴

¹⁷⁶ Gold, *supra* note 20.

¹⁷⁷ As adjusted for inflation, see Schuster, *supra* note 22.

¹⁷⁸ COLLEARY, *supra* note 42; Schuster, *supra* note 22.

¹⁷⁹ As adjusted for inflation, see Schuster, *supra* note 22.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Reduction in local aid reflects a series of choices by the General Court, as well as the broader economy.

¹⁸³ MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹⁸⁴ Chang & Wen, *supra* note 4.

IV. PROPOSITION 2 ½: THE DATA

The data from Massachusetts's three-and-a-half decade-long experience with a strict property tax cap illustrates the effectiveness of the law. The rationale of the strict property tax cap model is that municipalities will be restrained in spending because they will be restrained in taxing.¹⁸⁵ Presumably, if the law functioned the way it was intended to, governments would "live within their means" under the cap, and thus the need for override votes would be few. For those override votes that did occur, the success rate would be low, as voters presumably would not vote against their interests to increase their own taxes.¹⁸⁶ However, by examining over three decades of data, it becomes clear that Proposition 2 ½ is not working as intended. Since 1983, there have been over 4,000 override votes, resulting in a disproportionately negative impact on communities with certain economic makeups.

A. *Override Votes Since 1983: A Growing Wave*

In 1983, the first communities in the Commonwealth were asked whether or not they wanted to raise their own property taxes by a percentage greater than the 2.5% cap.¹⁸⁷ That year, 38 override votes were proposed across the Commonwealth in 28 different communities, ranging from \$4,465 to \$10,195,082.¹⁸⁸ Of those 38 votes, 11 failed.¹⁸⁹ The other 27 votes passed, thereby raising taxes on voters in those communities by the percentage necessary to match the amount of money approved.¹⁹⁰

From Fiscal Year 1983 through Fiscal Year 1989, 486 override votes were taken across the Commonwealth.¹⁹¹ More recently, from Fiscal Year 2000 through Fiscal Year 2009, there were 1,182 override votes taken.¹⁹² Over the course of two decades, this represents an increase in the average number of votes taken from 69 votes per year, to 118 votes per year. This dramatic increase in the number of proposed override votes—regardless of whether or not voters ultimately approved or rejected increasing their taxes—indicates a deeper problem. As time has gone on, communities have found that they are

¹⁸⁵ See generally CAL. CONST. art. XIII, A, § 1; MASS. GEN. LAWS ch. 59, §21 C (2016).

¹⁸⁶ Anderson, *supra* note 5.

¹⁸⁷ MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

unable to support municipal services under the 2.5% cap imposed by Proposition 2 ½. Consequently, selectmen, mayors, and town councils across the Commonwealth have been forced to ask voters to override the levy limit and increase their own property taxes. As inflation has eroded the buying power of each dollar, and as services have become costlier to provide, the strain imposed by the 2.5% cap has caused increased pressure and has led to a greater number of override propositions being presented to voters in more recent years.

1. 351 Cities & Towns: 351 Different Experiences

In order to truly assess the effectiveness of the law, it is necessary to look at the impact Proposition 2 ½ has had on both the Commonwealth as a whole *and* on individual communities with different demographics and makeups. The Commonwealth of Massachusetts has 351 cities and towns from the affluent suburbs of Boston to the small villages of the Berkshires.¹⁹³ Prosperous communities outside of Boston have approved overrides for over \$10 million in a single year, while more rural communities in the central and western parts of the state have rejected proposed overrides for little more than \$10,000.¹⁹⁴ While most communities request larger figures for “general operating expenses,” other communities ask voters to approve narrowly defined spending requests—several communities have had over 100 override votes since 1983.¹⁹⁵

From 1983 through 2010, of Massachusetts’s 351 cities and towns, 304 have taken at least one Proposition 2 ½ override vote; 47 have never taken an override vote.¹⁹⁶ Of the 304 communities that have held at least one override vote, a total of 4,499 votes have been taken.¹⁹⁷ Voters have approved overriding the 2.5% cap 1,826 times out of 4,499 votes taken.¹⁹⁸ Thus, for all cities and towns that have taken a Proposition 2 ½ override vote, the average success rate of a proposed override vote passing is 40.58%. This figure

¹⁹³ MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹⁹⁴ Sullivan, *supra* note 37 (discussing Newton’s approval of a \$11.5 million override in 2002, and Cambridge’s \$10.2 million approval in 1983; Cambridge approved an addition \$5 million in a separate vote in 1983, whereas Princeton, a rural community in the central part of the state, rejected a \$10,000 override that same year); *see also* MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹⁹⁵ Sullivan, *supra* note 37; MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹⁹⁶ MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

¹⁹⁷ Votes taken from the beginning of FY1983 through the end of FY2010. *See id.*

¹⁹⁸ *Id.*

indicates that communities are willing—or were willing at some point over the past thirty years—to approve overriding Proposition 2 ½’s limits and increase their own property taxes.

Distilling this data down further, a greater understanding of the law’s impact can be gained by looking at the economic profiles of the communities that have either approved or rejected override votes. Using median household income data for each municipality in Massachusetts, and overlaying it with the success rates of Proposition 2 ½ override votes, allows a more complete picture of the impact the law has had on different communities.

B. Community Wealth Determining Impact

For the purposes of determining whether or not Proposition 2 ½ override votes are more successful in wealthy or poorer communities, the following designations were applied to Massachusetts communities. Communities with median household incomes below \$49,999 were designated as the “low” category; 32 cities and towns meet this definition. “Low average” communities have a median household income between \$50,000 and \$74,999. This is the largest category, with 164 cities and towns meeting the criteria. Communities with median household incomes between \$75,000 and \$99,999 were designated as the “average” category; 105 cities and towns meet this definition. “High average” communities, totaling 35 cities and towns, have a median household income between \$100,000 and \$124,999. Finally, the 15 communities with a median household income exceeding \$125,000 were designated as the “high” category.

Addressing the first category, communities with a “low” median household income, 25 of the 32 cities and towns have had a Proposition 2 ½ override vote, 7 have not.¹⁹⁹ Of the 25 communities that have had an override vote since 1983, voters approved override measures 27.125% of the time.

The “low average” designation comprises the greatest number of communities of any of the categories: 164 cities and towns. A total of 132 communities where the median household income is between \$50,000 and \$74,999 have taken an override vote, 32 have not.²⁰⁰ In these 132 cities and towns, voters have approved proposed tax increases 41.612% of the time. This closely mirrors the overall success rate for the entire Commonwealth, of 40.58%.

With regards to communities with the “average” median household income designation, 98 communities have taken a Proposition 2 ½ vote, and 7 have not, out of the 105 communities in this category.²⁰¹ Of the 98 municipalities with a median household income between \$75,000 and \$99,999

¹⁹⁹ See *id.*; BOSTON REGIONAL METROPOLITAN PLANNING ORG., MASS. MEDIAN HOUSEHOLD INCOME BY TOWN, 1979-2010 (2011).

²⁰⁰ *Id.*

²⁰¹ *Id.*

that have had an override vote, voters approved the proposed overrides 31.083% of the time, significantly less frequently than communities in the “low average” bracket, the designation directly beneath this category.

For communities with the “high average” designation, 34 of the 35 towns have taken a Proposition 2 ½ override vote.²⁰² The data from municipal votes from 1983 through 2010 indicates that in towns where the median income is between \$100,000 and \$124,999, the success rate for an override vote is 49.325%. This figure jumps drastically for communities with the “high” median household income designation, where the median household income exceeds \$125,000.²⁰³ All 15 communities with this designation have had Proposition 2 ½ override votes.²⁰⁴ In this category, the success rate tops out at 69.435%.

C. Trends Based on Community Wealth

The overall trends indicated by three decades of voting data makes clear that voters in wealthier communities are more likely to approve Proposition 2 ½ override votes versus communities with lower median household incomes. To some degree that conclusion is intuitive: wealthier individuals can afford to increase their own property taxes to pay for municipal services whereas poorer individuals cannot.²⁰⁵ Within this framework, however, there is a notable point of pause. While overall the success rate for override votes increases as median household income increases, the success rate for “average” communities does not follow this trend.²⁰⁶ Where median household income was “average,” between \$75,000 and \$99,999, the likelihood of overrides decreased, to 31.083%, relative to the “low average” category. In communities with the “low average” designation, (where median household income is between \$50,000 and \$74,999), the success rate of override votes is much higher, at 41.612%.

This data point could be interpreted to indicate that “low average” communities are more likely to approve overrides versus their immediately wealthier counterparts.²⁰⁷ Within the framework that this Note has proposed,

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011); BOSTON REGIONAL METROPOLITAN PLANNING ORG., MASS. MEDIAN HOUSEHOLD INCOME BY TOWN, 1979-2010 (2011).

²⁰⁷ *Id.* Rather than seeing “average” communities as bucking the trend by being less-likely to approve overrides versus poorer communities, it could be interpreted that “low average” communities are more likely to approve overrides versus the immediately wealthier category.

the “average” and the “low average” median household income groups are fairly large categories compared to the other designations this Note has identified. The “average” category is comprised of 105 cities and towns, while the “low average” category is comprised of 164 cities and towns.²⁰⁸

Although a full analysis of this point is beyond the scope of this paper, it does present an interesting opportunity for reflection. Subdividing the “low average” category (where the median household income is \$50,000 to \$74,999) into two parts, a clearer picture forms. Among communities where the median household income is between \$50,000 and \$62,499, the likelihood of a Proposition 2 ½ override vote passing is 36.974%. Where the median household income level rises to between \$62,500 and \$74,999, the likelihood of voters approving a tax increase also rises, to 44.528%. This further division of the “low average” category reflects the broader data, which indicates that wealthier communities are more likely to approve override votes versus poorer communities.²⁰⁹

While it is unclear from the data why communities with the “low average” designation are more likely to approve override votes versus “average” median household income communities, the large sizes of both of these categories reflect greater diversity as compared to the categories at either the top or the bottom of the medium household income spectrum, with smaller sample sizes. Greater diversity in community composition, municipal needs, and geography necessitates different results.²¹⁰

Additionally, the uptick in approval seen in communities where the median household income is between \$50,000 and \$74,999 could reflect the support of young families for override votes. Young families, who generally make less money, may be more likely to approve override votes than older individuals who have greater incomes. This is because override votes are frequently for public school funding, which generally garners broader support from those who utilize the public school system compared to those who do not.²¹¹ The ultimate reason behind these disparities is not entirely clear from the data. The data does, however, clearly illustrate the great diversity of communities in the Commonwealth, and the difficulty of implementing a “one size fits all” taxation cap on every community.

What is truly striking from the data is the size of the disparity in supporting override votes between poorer and wealthy communities. In communities where the median household income is less than \$49,999, Proposition 2 ½

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ See generally Chang & Wen, *supra* note 4 (for a discussion on the difficulties of sweeping mandates in the face of unique, local needs).

²¹¹ See generally MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011) (noting that frequently, override votes are proposed to fund public schools and education services).

override votes only passed 27.125% of the time.²¹² In the wealthiest communities in the Commonwealth, however, where median household income exceeds \$125,000, the success rate of an override vote skyrockets to 69.435%.²¹³ This wide disparity illustrates one of the greatest shortcomings in the framework of Proposition 2 ½: while the statute itself does not take into account inflation or individual community needs, wealthy communities can get around these shortcomings by voting for an override. The model of Proposition 2 ½ favors wealthy communities whose residents can afford to absorb tax increases, leading to a bifurcation of services between towns.²¹⁴ Poorer communities, which cannot afford to approve tax increases, are more significantly harmed by this model. Residents of poorer communities are often more dependent on many municipal services than wealthier communities and yet are unable to achieve override votes to pay for these services.²¹⁵

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ See Nicholas Johnson, Phil Oliff & Erica Williams, Center on Budget and Policy Priorities, *An Update on State Budget Cuts: At Least 46 States Have Imposed Cuts That Hurt Vulnerable Residents and the Economy* (2011) for a discussion of the impact smaller budgets have on the poor.

D. Data Overview

Proposition 2 ½ Override Votes					
Category	Description	Number of Cities/Towns	Have Taken an Override Vote	Have Not Taken an Override Vote	Success Rate
1	“Low” Median Household Income: Less than \$49,999	32	25	7	27.125%
2	“Low Average” Median Household Income: \$50,000 - \$74,999	164	132	32	41.612%
3	“Average” Median Household Income: \$75,000 - \$99,999	105	98	7	31.083%
4	“High Average” Median Household Income: \$100,000 - \$124,999	35	34	1	49.325%
5	“High” Median Household Income: Greater than \$125,000	15	15	0	69.435%
OVERALL	-	351	304	47	40.58%

E. Can a “One Size Fits All” Framework Work?

Three decades of data from Massachusetts illustrates how the “one size fits all” model for strict property tax caps has had a disparate negative impact on poorer communities versus wealthier communities. Every one of Massachusetts’s 351 cities and towns have funding needs that must be met, but the ability of many communities to meet their obligations is severely constrained by a tax framework that can be sidestepped only by wealthier communities. Other studies of strict property tax caps have found that “[s]maller and less-densely populated communities tend to experience the greatest constraint from property tax limitations.”²¹⁶ A similar pattern is seen in Massachusetts: successful overrides to fund municipal operating budgets “have been prevalent in high-income suburbs to the west of Boston, along with parts of the north and south shores, Pioneer Valley, and the Cape and Islands. Outside of urban corridors,” in more rural and poorer areas, however, voters have taken a much harder line on override votes.²¹⁷ Consequently, “overrides have allowed wealthier communities to tax themselves more and maintain or improve services,” while poorer communities have fallen further and further behind.²¹⁸

V. RECOMMENDATIONS

Proposition 2 ½ was the outgrowth of noble intentions: a desire for smaller government, lower taxes, and greater civic involvement in local decision-making.²¹⁹ Despite these good intentions, three decades of data make clear that Proposition 2 ½ has had a disproportionately negative impact on poorer municipalities, communities that cannot successfully implement override votes in order to fund necessary municipal services.²²⁰

In contemplating alternatives to strict property tax caps, it is important to keep in mind the original impetus behind them, namely greater voter control over local spending, as well as limiting tax increases.²²¹ As discussed above, Proposition 2 ½ has promoted greater civic engagement and has helped to reduce Massachusetts’s property taxes from being the highest in the United

²¹⁶ Chang & Wen, *supra* note 4.

²¹⁷ Sullivan, *supra* note 37.

²¹⁸ Chang & Wen, *supra* note 4.

²¹⁹ Anderson, *supra* note 5.

²²⁰ See MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011); BOSTON REGIONAL METROPOLITAN PLANNING ORG., MASS. MEDIAN HOUSEHOLD INCOME BY TOWN, 1979-2010 (2011).

²²¹ Reschovsky, *supra* note 79.

States in 1980, to a slightly more respectable number eight slot today.²²² At the same time, it is necessary to recognize that the world that spawned strict property tax caps is not the reality we live with today.²²³ The outsized negative impact of Proposition 2 ½ on poorer communities begs the question: what can be done to allow communities to raise the funds they need, while also being cognizant of the financial realities many households face?

A. Indexing the Cap to the Rate of Inflation

Perhaps the most feasible and straight-forward reform to Proposition 2 ½ would be to retain the ceiling on the total annual property tax revenue that a municipality can raise (2.5% of the total assessed value of the community's taxable property), while altering the levy limit to either 2.5% per year (of the total full and fair cash value of all taxable real and personal property) *or* the rate of inflation.²²⁴ This is similar to the approach California took in its strict property tax cap, Proposition 13.²²⁵

From 1980 to 2010, inflation increased an average of 3.638% per year in the United States.²²⁶ During that time, the highest rate of inflation during one year was 13.5%, while the lowest annual change was -0.4%.²²⁷ Altering the yearly levy limit cap to either 2.5% *or* the rate of inflation, whichever is higher, would be a minor change, with potentially significant consequences. The first part of Proposition 2 ½ would remain unchanged: the total annual property tax revenue raised by municipalities could not surpass 2.5% of the assessed value of all taxable property in the community.²²⁸ However, the second part of Proposition 2 ½ would shift to allow communities to levy an increase in taxes by 2.5% per year of the total full and fair cash value of all taxable real and personal property, *or* the rate of inflation, whichever is higher.

²²² Anderson, *supra* note 5; see MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011) (illustrating the number of participating voters in Proposition 2 ½-related votes, indicating high civic engagement).

²²³ Samples, *supra* note 3.

²²⁴ MASS. GEN. LAWS ch. 59, § 21C (2016).

²²⁵ CAL. CONST. art. XIII, A, § 1 (limiting the tax on real property to 1% of the full cash value of the property, or an inflation factor, not to exceed 2% per value). Unfortunately, Proposition 13 does not provide fertile ground for examining the potential implications of indexing Massachusetts's strict property tax to inflation; California's approach not only put a cap on the full cash value of the property, but also capped the amount of the inflation factor to 2%. This, combined with the numerous exceptions and concessions that have been made to Proposition 13 over its nearly four-decades on the books makes it poor example to follow.

²²⁶ *Historical Inflation Rates: 1914-2017*, *supra* note 22.

²²⁷ *Id.* (inflation was only negative one year from 1980-2010).

²²⁸ MASS. GEN. LAWS ch. 59, § 21C (2016).

Such a shift would have two primary benefits. First, it would retain the civic engagement and voter control over local spending that were central goals behind the initial push for Proposition 2 ½.²²⁹ Municipalities would not be free to raise taxes as high as they would like: the total annual property tax revenue raised by a municipality would still be capped at 2.5%. However, this reform, by indexing levy limit to rate of inflation (or 2.5%, if inflation for a given year was below that), would allow communities to retain their buying power, power that is otherwise eroded when inflation increases but the cap does not.²³⁰ As costs increase because of inflation, communities would be able to keep up, and continue to provide services that might otherwise need to be cut.

B. Capping the Budget

Rather than imposing a cap on the total annual property taxes a municipality can impose, Massachusetts could look to impose a cap on the total amount each community's municipal budget could increase each year. The tax rate would correspond to whatever was needed to meet the community's budget. This method would be similar to New Hampshire's approach.²³¹ New Hampshire allows individual cities and towns to adopt their own limits on local spending and local tax increases.²³² This model affords individual cities and towns a significant amount of latitude: the Granite State allows voters to "adopt a limit on annual increases in the estimated amount of local taxes in the . . . proposed budget", the limit can either be a fixed dollar amount or a fixed percentage.²³³

If a cap was instituted on municipal budgets, however, many of the same issues seen with a cap on the amount taxes can increase would materialize. Without a provision to account for inflation, a cap—either in a dollar amount or a certain percentage—would steadily be eroded over time as the buying power of each dollar decreased. Consequently, a cap on the overall budget, without addressing the root issues inherent to any strict-cap system, would prove less than satisfactory.

C. Why Reform? Why Now?

Proposition 2 ½ has, at various times, been heralded as a saving grace for Massachusetts taxpayers. It has also been lamented as a monster set to destroy

²²⁹ Anderson, *supra* note 5.

²³⁰ See *Historical Inflation Rates: 1914-2017*, *supra* note 22 for inflation rates from 1980 through the present.

²³¹ See generally FILMORE, *supra* note 23.

²³² N.H. REV. STAT. ANN. § 49-C:33, I(d) (2017); *id.* § 49-D:3, I(e) (2017); *id.* § 49-D:12, III (2017).

²³³ N.H. Rev. Stat. Ann. § 32:5-b (2017); *id.* § 32:5-c (2017); FILMORE, *supra* note 23.

public schools and municipal services.²³⁴ As the fortieth anniversary of the law's passage approaches, the question remains: why reform Proposition 2 ½? Despite its flaws, it accomplished much of what it set out to achieve—lower taxes and greater civic control over municipal budgets.²³⁵ This notion, however, is limited. Although proponents of Massachusetts's strict property tax cap achieved their objectives in the short term, when examining the long-term impact of the law, the numerous downsides of Proposition 2 ½ come into greater focus.

Strict property tax caps present numerous challenges to municipalities, specifically to poorer communities. The restrictive cap and levy limits have kept taxes low, but also have constrained municipalities from raising taxes necessary to pay for heavily utilized municipal services.²³⁶ Communities are further handicapped in providing services because inflation—which has averaged 3.638% from 1980 through 2010—has constantly outpaced levy limits.²³⁷ Further, local aid, promised by Beacon Hill, has significantly declined since the mid-1980s.²³⁸ Consequently, communities have been facing increasing pressure due to Proposition 2 ½'s restrictions. Strict property tax caps have an inherently unsustainable nature as it relates to municipalities fulfilling their commitment to provide public services, especially, as the override voting data indicates, with regards to poorer communities.

Change is necessary. While increasing taxes is never a popular proposition, the reforms suggested here would keep a cap in place: taxes would not rise with abandon. Rather, the caps would take into account an outside factor, inflation, in order to allow communities the ability to retain purchasing power in the face of changing times. Timely reform should be a priority for Massachusetts legislators: more override votes are being proposed now than ever before.²³⁹ This indicates that local governments cannot operate under the cap, but instead are increasingly looking for voters to override the cap to fund the general budget. Wealthier communities are more likely to approve override votes compared to poorer communities; over time, this has exacerbated differences between municipalities, as wealthier communities

²³⁴ See generally Gold, *supra* note 20; Kenney, *supra* note 19; Mildred Wigfall Robinson, *Difficulties in Achieving Coherent State and Local Fiscal Policy at the Intersection of Direct Democracy and Republicanism: The Property Tax as a Case in Point*, 35 U. MICH. J.L. REFORM 511 (2002); Oliff & Lav, *supra* note 108.

²³⁵ Anderson, *supra* note 5.

²³⁶ MASS. GEN. LAWS ch. 59, § 21C (2016).

²³⁷ *Historical Inflation Rates: 1914-2017*, *supra* note 22.

²³⁸ Schuster, *supra* note 22; Chang & Wen, *supra* note 4.

²³⁹ See generally MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011).

have maintained or improved services, while poorer communities have had to continually cut services as voters refuse to approve overrides.²⁴⁰

Proposition 2 ½, unlike some strict property tax caps in other states, is not a constitutional amendment—it is a simple law that can be repealed or amended by the legislature at its will.²⁴¹ Since 1980, there have been attempts to repeal the law, though none of have succeeded.²⁴² There is no question that Massachusetts legislators can amend Proposition 2 ½; the true question is whether or not the political will exists to effectuate change.

VI. CONCLUSION

Strict property tax caps place arbitrary limits on municipal taxing abilities. In Massachusetts, as in other states, it makes little sense to impose a uniform “constraining instrument” as each community has vastly different needs.²⁴³ This issue has been heightened by the fact that the needs of many communities have changed dramatically since 1980; inflation rates have overwhelmingly outpaced levy limits; and promises of increased local aid by Beacon Hill have not materialized.²⁴⁴

Moving forward, there is no one, clear answer. No one wants to pay more taxes. Given the 40.58% success rate for override votes over the past three decades, however, it is clear that people will agree to increase their taxes when municipal services they rely on are in jeopardy.²⁴⁵ Despite this, override votes do not solve the root problem: if municipal leaders continually need to appeal to voters because they cannot raise enough money under the current system, then the system is in need of reform.

Laws are meant to be revisited and revised over time, in order to reflect the needs of the society that they have been crafted to serve. Proposition 2 ½ has been in place for over three decades without any major revisions.²⁴⁶ The model it sets forth does not work in today’s day and age. Proposition 2 ½ has

²⁴⁰ See generally *id.*; BOSTON REGIONAL METROPOLITAN PLANNING ORG., MASS. MEDIAN HOUSEHOLD INCOME BY TOWN, 1979-2010 (2011).

²⁴¹ MASS. GEN. LAWS ch. 59, § 21C (2016); see also CAL. CONST. art. XIII, A, § 1 (exemplifying a strict property tax cap enshrined in a state’s constitution).

²⁴² See Citizens for Limited Taxation & Citizens Economic Research Foundation, *supra* note 9. Though never repealed, several amendments in 1981 changed minor points of Proposition 2 ½; for example, the provision for voters to approve an override vote was reduced from a two-third threshold, to a simple majority.

²⁴³ Chang & Wen, *supra* note 4.

²⁴⁴ *Historical Inflation Rates: 1914-2017*, *supra* note 22; Schuster, *supra* note 22.

²⁴⁵ See MASS. DEP’T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011); BOSTON REGIONAL METROPOLITAN PLANNING ORG., MASS. MEDIAN HOUSEHOLD INCOME BY TOWN, 1979-2010 (2011).

²⁴⁶ MASS. GEN. LAWS ch. 59, § 21C (2016).

had an outsized disparate impact on poorer communities—those that cannot afford to increase their own taxes above the cap.²⁴⁷ In order to allow communities to raise the funds necessary to provide municipal services, Proposition 2 ½ has to be revisited. Addressing the future of strict property tax caps, in Massachusetts and elsewhere, is a pragmatic endeavor with real-life consequences for individuals living in affected communities.

²⁴⁷ See MASS. DEP'T OF REVENUE DIV. OF LOC. SERV., MUNICIPAL DATABANK/LOCAL AID SECTION, OVERRIDES SPREADSHEET FY1983-2010 (2011); BOSTON REGIONAL METROPOLITAN PLANNING ORG., MASS. MEDIAN HOUSEHOLD INCOME BY TOWN, 1979-2010 (2011).