The proposed Palo Alto wealth tax has many defects

Overview

In Palo Alto, a man named Kevin Creaven recently published a notice of intent to begin gathering signatures to qualify a local ballot measure titled “The Wealth Tax Initiative.” The proposed measure would “levy a 2% wealth tax on net worth above $50 million, and a 3% wealth tax on net worth above $1 billion dollars; the revenue will be used to provide every permanent resident of [Palo Alto] a one-time payment of $2,500.” This article details the legal issues a court would likely address when reviewing this ballot proposal. We conclude that the measure is vulnerable to multiple constitutional and statutory pre- and post-election challenges. There may be good ways to address wealth inequality with local tax measures, but this is not one of them.

Analysis

The wealth tax proposal may appear on either a special or a general election ballot. The local electorate’s “power to propose and adopt initiatives is at least as broad as the legislative power wielded by the Legislature and local governments.”[1] Until recently, the state constitution and statutory provisions that limit local government power to adopt and impose taxes were believed to also limit the local initiative. But a series of California Supreme Court decisions has clarified that procedural requirements imposed on the government do not necessarily constrain the electorate’s initiative power.[2] For example, Cal. Const., art. XIII A, section 3 requires the legislature to obtain a two-thirds electorate approval to raise taxes. But in *Kennedy Wholesale*, the court held that the two-thirds approval requirement does not apply to the state electorate when it uses its initiative power.[3] And in

California Cannabis, the court held that Article XIII C[4] (which restricts local governments to placing new tax proposals on general election ballots) does not constrain the local electorate, concluding that local initiative tax measures may appear on a special election ballot.[5]

That Creaven's ballot measure is a local initiative raises several issues about how state law affects the local electorate:

- Is this a special or general tax?
- Does the two-thirds vote rule for raising taxes apply?
- Can a local government tax income?
- Can a local government impose an ad valorem tax?

We consider those issues first, then move to larger state and federal constitutional issues.

The proposed measure is probably a special tax

Courts are likely to classify the proposed measure as a special tax, not a general tax. As the California Supreme Court explained over 100 years ago, "the compensating benefit to the property owner" on whom the government imposes a charge for an improvement "is the sole warrant" for finding that the charge is a valid assessment, not a tax.[6] If a court cannot conclude that the owner is compensated by the increased value of the property that is taxed, then "we have a special tax."[7] In other words, an assessment levied upon property owners "without regard to the benefit actually accruing to them by means of the improvement, is a tax."[8] The proposed measure, which distributes its proceeds to everyone except those taxed, does not benefit the property owners — so it is a special tax, not an assessment.

This proposed measure also meets the “special tax” definition in Proposition 13, which provides that a special tax is a tax that both has a specific purpose and has its revenue kept separate from the taxing authority’s general fund.[9] This measure has a specific purpose (taxing the wealthy), and its revenues are distributed directly to citizens, with any surplus given “to the State of California.” That is a special tax.

The major effect of a court classifying this proposed measure as a special tax is that Propositions 13 and 62 require special taxes to pass by a two-thirds supermajority.

A two-thirds supermajority is probably required

The state electorate adopted two measures that apply here: Propositions 13 and 62. Both impose a two-thirds supermajority vote requirement on special taxes like this proposed measure.

Proposition 13 (adopted in 1978) eliminated the power of state and local entities to impose ad valorem taxes (taxes based on the assessed value of real property). To prevent local taxing entities from circumventing these limitations, Proposition 13 required any new or increased special tax proposed by a local government be approved by a two-thirds vote of its local electorate.[10] Proposition 13 also prohibited local governments from imposing new special taxes without express authorization from the legislature. That permission is currently codified in Government Code section 50075 et seq.,[11] and section 50077(a) requires that special-tax propositions be submitted to the voters subject to “the approval of two-thirds of the [electorate] voting upon the proposition.”

Proposition 62 (adopted in 1986) added provisions to the Government Code imposing a two-thirds voter approval requirement for all local special taxes. It defines “special taxes” consistent with the general definition described above: taxes

"imposed for a specific purpose."[12] And it requires such local special taxes to be "approved by a two-thirds vote of the voters voting in an election on the issue."[13]

Accordingly, under Propositions 13 and 62 local special taxes like this proposed measure require a two-thirds vote. There is an argument that the textual similarity between Article XIII C, section 2(b) and section 2(d) suggests that local voters can increase special taxes by a simple majority vote, because the supermajority limitation does not apply to local initiatives any more than the general election requirement does.[14] A recent Court of Appeal decision adopted that reasoning. But the California Supreme Court has not yet considered whether procedural limits on local governments also apply to the voting rule for local initiative measures. The present state of the law is that a two-thirds majority is required to enact local special taxes by initiative, and barring some change in the law that rule should apply to this proposed measure.

State law bars local income taxes

This measure would tax "the free market value of all assets held domestically and foreign." That includes existing cash assets and incoming new revenue — otherwise known as "income." State law expressly bars charter cities like Palo Alto from taxing income:

> *Notwithstanding any statute, ordinance, regulation, rule or decision to the contrary, no city, county, city and county, governmental subdivision, district, public and quasi-public corporation, municipal corporation, whether incorporated or not or whether chartered or not, shall levy or collect or cause to be levied or collected any tax upon the income, or any part thereof, of any person, resident or nonresident.[15]*

Palo Alto cannot tax income.

Local ad valorem taxes are unconstitutional

State law contains exclusive provisions concerning ad valorem taxes. Ad valorem taxes are "revenue derived from applying a property tax rate to the assessed value of property."[16] The key is that an appraisal of value is made.[17] The state constitution caps the amount of any ad valorem tax on real property at 1% and gives counties exclusive collection power.[18] Cities (like Palo Alto) are prohibited from imposing any ad valorem or sales taxes on real property.[19]

This proposed measure requires residents to "assess all assets and liabilities at their free market value" and imposes a tax rate of "2% on net worth above $50 million and 3% on net worth above $1 billion." That requires an assessment, and taxes that assessed value. Cities cannot collect such an ad valorem tax.

State law occupies the income tax field and preempts this measure

This proposed measure conflicts with an area that the legislature has expressly stated its intent to fully occupy: income taxes. The state constitution allows cities to enact and enforce local ordinances only if they do not conflict with the state's general laws; if an otherwise valid ordinance does so, it is preempted.[20] Local legislation enters an area that is fully occupied by general law when the legislature has expressly or impliedly manifested its intent to fully occupy the area.[21] A local law may conflict with state law either directly or by implication.[22] A conflict exists if the local ordinance duplicates or contradicts the statute.[23] Local legislation may be preempted when the two are coextensive,[24] or when the ordinance is inimical to state law.[25]

The legislature has shown its intent to occupy the income tax field in California by enacting a comprehensive state income tax scheme, creating a state agency to administer that scheme, and banning local income taxes in Rev. & Tax. Code section 17041.5. That makes this proposed measure conflict with state tax law, which is the only circumstance where the California Supreme Court has invalidated a city's assertion of the power to tax state-regulated parties.[26]

Additionally, this proposed measure's tax rates (2% on fortunes over $50 million, and 3% on fortunes over $1 billion) conflict with the exclusive income tax rates imposed by the legislature. The result is the same regardless whether this proposed measure taxes income or total assets: a local *income* tax duplicates the state income tax, and a local *asset* tax would levy assets remaining after state taxes are imposed. That distinguishes this tax from the ordinance upheld in *City and County of San Francisco v. Regents of University of California*, where an ordinance imposing a local tax on a state parking lot survived because "the Legislature has enacted no overriding statutory regime designed to displace municipal [] taxes" on the subject.[27] Here, by contrast, the legislature has enacted a comprehensive statutory income tax regime to displace local income taxes like this proposed measure.

Instead, this proposed tax resembles the ordinance the California Supreme Court invalidated in *California Fed. S&L Association v. Los Angeles*.[28] There, the court held that a state statute imposing a tax on banks and financial corporations in lieu of all other taxes and licenses preempted a municipal business tax that Los Angeles sought to collect from a bank. The core of the ruling concerned the conflict between the municipal tax and state tax law — which was designed to displace all other taxation laws. The court explained that although taxation is a "necessary and appropriate power of municipal government, aspects of local taxation may under some circumstances acquire a 'supramunicipal' dimension, transforming an otherwise intramural affair into a matter of statewide concern warranting legislative attention."[29] The court held that when a state statute that is reasonably tailored to a matter of statewide concern conflicts with a charter city tax measure, "the latter

ceases to be a 'municipal affair' to the extent of the conflict and must yield."[30]

Cases that have upheld a charter city's general fund taxing authority do not apply because this measure does not raise revenue for general government purposes. Instead, this measure distributes proceeds to residents as a "one-time stimulus check for $2,500." A charter city's taxing power can only overlap with a field the legislature has occupied for general revenue purposes. For example, the ordinances in *The Pines v. City of Santa Monica*[31] and *Centex Real Estate Corp. v. City of Vallejo*[32] imposed general taxes to fund general governmental purposes. A charter city's power to tax for general revenue was central to both decisions.

But a charter city's ability to impose revenue taxes ends where its exercise is in "direct and immediate conflict with a state statute or statutory scheme."[33] And this tax is not imposed for general fund revenue, but to finance a bounty for residents. The charter city power to generate income for municipal services is not implicated, so the city cannot rely on its home-rule taxing powers.

The power to raise revenue for local purposes is a longstanding principle viewed as "absolutely vital for a municipality."[34] But this special tax conflicts with a comprehensive state statutory scheme and does not raise city general fund revenue. Indeed, sending the excess tax revenue to the state betrays the measure's otherwise local appearance. That exceeds the local taxing power.

The criminal enforcement provisions in this tax are similarly preempted by existing state statutes. A city legislative body may impose fines, penalties, and forfeitures for violations of ordinances, and may fix the penalty by a fine not to exceed $1,000, or imprisonment not to exceed 6 months, or both fine and imprisonment.[35] But the legislature has already occupied the field of enforcing income tax laws. California's tax code defines various tax crimes.[36] For example, Rev. & Tax. Code section 19706 makes it a crime to willfully fail to timely file a state tax return with the intent

to evade paying owed taxes.[37] This proposed measure would make it a crime to deliberately undervalue or overvalue, hide, or fail to disclose assets or liabilities. The state tax code already criminalizes these acts.[38] Consequently, this proposed measure is invalid because it covers the same ground the legislature has already ploughed.[39] Worse, it contradicts the statute because it specifies different punishment for the proscribed criminal conduct.[40] The enforcement provision is probably preempted.

A local ordinance cannot direct the state to create a new tax collecting agency

The proposed measure seems to demand that the state of California "create a Tax Authority to enact this Initiative." (We assume that means to *collect* the measure's proceeds.) As we have explained, the California Supreme Court decision in *UC Regents* expanded the permissible subjects of local taxation to include taxes that pass through the state. But that decision does not allow a charter city to compel the state to build a new agency solely for collecting a local tax. It is elementary that a local government entity cannot, by voter initiative, compel the sovereign state to create a new agency to manage a local tax. California's sovereignty defines its relationship with its political subordinates: the state is supreme.[41] "[T]he states are sovereign but cities and counties are not; in California as elsewhere they are mere creatures of the state and exist only at the state's sufferance."[42] The state of California "has plenary power to set the conditions under which its political subdivisions are created."[43] Cities are the lowest-status governments because a city is merely "an incorporation of the inhabitants of a specified region for purposes of local government."[44] Local initiative ordinances cannot bind the state.[45] The proposed measure's apparent requirement that the state create a new agency is ineffective.

Taxing global assets exceeds the local taxing power

Taxes must have some nexus to the local government entity imposing them. The federal and state constitutions require that local taxes be apportioned to activity within the jurisdiction.[46] Under the federal constitution's Commerce Clause and analogous state commerce protections, to avoid the possibility of double taxation each jurisdiction can only impose taxes based on the nexus between the jurisdiction and economic activity.[47] In *City of Los Angeles v. Shell Oil Co.*, the California Supreme Court explained:

> *The basic policy underlying the commerce clause of the Federal Constitution — to preserve the free flow of commerce among the states to optimize economic benefits — is equally applicable to intercity commerce within the state. If fifty independent economic units within the United States are undesirable, economic enclaves within California would be intolerable. A tax burden which places intercity commerce at a disadvantage in comparison to a wholly intracity business may have such an effect.[48]*

The court explained that the state constitution's "provisions forbidding extraterritorial application of laws and guaranteeing equal protection of the laws" and the federal Equal Protection guarantee "proscribe local taxes which operate to unfairly discriminate against intercity businesses by subjecting such businesses to a measure of taxation which is not fairly apportioned to the quantum of business actually done in the taxing jurisdiction."[49]

That is what this proposed measure would do: tax activity that has no connection to Palo Alto aside from a person's residence in the city. That violates both the state constitution (by taxing economic activity outside of the city)[50] and the dormant Commerce Clause by discriminating against interstate commerce (by taxing income attributable to activity in other states).[51] An as-applied challenge or a carve-out might address this problem, but given that this proposed measure's targets are the ultra-wealthy, it is likely that the bulk of their assets are situated outside Palo Alto

(for example, Mark Zuckerberg owns substantial land in Hawaii). The proposed measure's intent is to leverage the fact of residence in Palo Alto to attach a wealthy resident's global portfolio — which a local tax cannot do.

The 40% exit tax probably violates the right to interstate travel

By imposing the usurious 40% rate to penalize taxpayers who change domiciles, the wealth tax probably invokes strict scrutiny because it significantly affects interstate travel. The U.S. Supreme Court has long held that the privileges and immunities clause in the U.S. Constitution protects a right to interstate travel.[52] That provision bars discriminating legislation against citizens of other states, gives citizens of each state "the right of free ingress into other States, and egress from them," and "secures to them in other States the equal protection of their laws."[53] Because interstate travel is a fundamental right, state laws that that significantly affect travel across state borders must pass strict scrutiny. When a state burdens this right the challenged law must be both "necessary to further a compelling state interest"[54] and be narrowly tailored to serve that interest.[55]

This proposed measure probably implicates the first of three elements in the right to interstate travel: "the right of a citizen of one State to enter and to leave another State."[56] Penalizing those who depart Palo Alto with a 40% tax impairs the right to enter and leave California.[57] This directly impairs "the right to move between the states, that is, the right to go from one place to another, including the right to cross state borders while en route."[58] The wealth tax "erect[s an] actual barrier[] to interstate movement" that the federal constitution bans, so it must pass strict scrutiny.[59]

Palo Alto will struggle to identify a compelling interest here. We recently argued that states likely can show that protecting their citizens against the spread of a global pandemic such as COVID-19 is a compelling government interest.[60] This

proposed measure is a far cry from the overriding governmental responsibility to guard the people against a plague. Rather than articulating some interest that could be called compelling, the measure's statement of reasons shows an intent to punish one tranche of citizens: "Is it fair that a billionaire in Palo Alto has to pay a wealth tax while one in Menlo Park or New York City doesn't have to? No, of course not . . . ." An admittedly unfair policy cannot be a compelling governmental interest.

Even if Palo Alto could show a compelling interest, the measure must be "the least restrictive means" to accomplish the government's goal.[61] If "any other methods exist to achieve the desired results," then "a State may not choose the way of greater interference."[62] Palo Alto would need to show that it considered less restrictive measures than reaping the bounty of nearly half a person's assets, and then show that those solutions were inferior. The ballot proposition contains no evidence that less restrictive means were considered. Instead, this proposed measure makes plain an intent to target and punish the wealthy: "If this Initiative passes, our billionaires will understand the frustration that their neighbors don't pay their fair share of the tax burden." Nothing in the ballot proposition suggests an intent other than to arbitrarily select an exit tax rate high enough to be punitive. That lack of tailoring means this measure should fail strict scrutiny.

A $1M bounty for snitching? That has to be wrong. (It's not.)

One unusual feature of the initiative is its provision for the tax authority to "provide financial awards in excess of $1 million to anyone that discloses and provides evidence of tax fraud . . . or other tax evasion practices." While this may seem odd, bounty schemes have long been employed by the government to enlist public assistance in enforcement efforts. For example, qui tam suits have permitted bounty payments for centuries, and current federal whistleblower statutes permit awards to informants who provide information in significant enforcement actions.[63] Federal law offers awards to informers who help uncover customs fraud or assist with drug enforcement.[64] Most similarly, the IRS authorizes awards up to $10 million for

"information that leads to the detection and punishment of anyone violating the internal revenue laws."[65] At least this provision is likely to pass muster.

The exit penalty is suspect because the wealthy can change domiciles

Finally, we note that this measure's penalty for moving is probably unenforceable because its targets can avoid it by declaring a new domicile. (Nevermind that it seeks to tax all residents of Palo Alto, whether or not they are domiciled in the city.) A person can have many residences but only one domicile for tax purposes.[66] The wealthy persons who own property in Palo Alto may indeed reside there at times — but they doubtless have property elsewhere. A person has a fundamental liberty interest in deciding where they call home,[67] and a local ordinance cannot require anyone to make their domicile in Palo Alto or anywhere else.

Conclusion

We have proved that the current doctrinal approach California courts use to resolve state–city disputes over local taxes heavily favors charter cities, and that cases where the city loses are outliers. This proposed measure may well be the rare instance when a charter city exceeds the local taxing power. And because the state budget and tax law are so complex, with multiple interlocking constitutional and statutory requirements, crafting new tax measures by initiative has great destructive potential.

Although the California Supreme Court has held that it is usually more appropriate to review challenges to ballot propositions or initiative measures after an election,[68] the court has also made clear that when a substantial question has been raised about the proposition's validity and the "hardships from permitting an invalid measure to remain on the ballot" outweigh the harm potentially posed by

"delaying a proposition to a future election," it may be appropriate to review a proposed measure before it is placed on the ballot.[69] Because significant questions exist about this proposed measure's validity, and because the potential harm in permitting the measure to go on the ballot outweighs the potential harm in delaying the proposition to a future election, a court could well conclude that pre-election review is necessary here.

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Senior research fellow Stephen M. Duvernay assisted on this article.

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[1] *California Cannabis Coalition v. City of Upland* (2017) at 935.

[2] See, e.g., *DeVita v. County of Napa* (1995) at 785 ("existence of procedural requirements for the adoptions of local ordinances generally does not imply a restriction of the power of initiative"); *Associated Home Builders etc., Inc. v. City of Livermore* (1976) at 588, 593–96.

[3] *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) at 248–53.

[4] Cal. Const., art. XIII C limits the ability of "local governments . . . to impose, extend, or increase any general tax." Added by Proposition 218, adopted November 5, 1996.

[5] *Upland* at 930–31.

[6] *Spring Street Co. v. City of Los Angeles* (1915) 170 Cal. 24, 30.

[7] *Ibid.*

[8] *Creighton v. Manson* (1865) 27 Cal. 613, 627.

[9] "Special taxes" means "taxes levied for a specific purpose rather than a levy placed in the general fund to be utilized for general governmental purposes." *Heckendorn v. City of San Marino* (1986) at 489; *City and County of San Francisco v. Farrell* (1982) at 56–57.

[10] Cal. Const., art. XIII A, § 4; *Rider v. County of San Diego* (1991) at 7.

[11] "It is the intent of the Legislature to provide all cities, counties, and districts with the authority to impose special taxes, pursuant to the provisions of Article XIII A of the California Constitution."

[12] Gov. Code §§ 53721, 53722; see *Santa Clara County Local Trans. Authority v. Guardino* (1995) at 231–32. A special tax may be authorized by a majority vote of the legislative body of the local taxing entity, but it still must be approved by a two-thirds majority of local voters. Gov. Code § 53722. A general tax must be authorized by a two-thirds vote of the legislative body of the taxing entity, but can be approved by only a majority of local voters. Gov. Code §§ 53723, 53724(b).

[13] Gov. Code § 53722.

[14] Article XIII C, section 2(d) provides: “No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.” One Court of Appeal panel recently adopted this position. Slip op., City And County of San Francisco v. All Persons Interested in the Matter of Proposition C (A158645).

[15] Rev. & Tax. Code § 17041.5.

[16] *Heckendorn* at 487.

[17] *Weisblat v. City of San Diego* (2009) at 1034 n.10 (the term “ad valorem tax” means any source of revenue derived from applying a property tax rate to the assessed value of property).

[18] Cal. Const., art. 13A, § 1(a) provides: “The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.”

[19] Gov. Code § 53725(a) provides: “Except as permitted in Section 1 of Article XIII A of the California Constitution, no local government . . . may impose any ad valorem taxes on real property. No local government . . . may impose any transaction tax or sales tax on the sale of real property within the city, county or district.”

[20] *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) at 743 (local legislation is “contradictory” to general law in preemption purposes when local legislation is inimical to state legislation).

[21] *Ibid.*

[22] *Foster v. Britton* (2015) at 929.

[23] *Kirby v. County of Fresno* (2015) at 954.

[24] *Inland Empire Patients Health and Wellness Center* at 743.

[25] *Sherwin-Williams Co. v. City of Los Angeles* (1993) at 898.

[26] *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991).

[27] *City and County of San Francisco v. Regents of University of California* (2019) at 530.

[28] *California Fed. Savings & Loan Assn.*.

[29] *Id.* at 7.

[30] *Ibid.*

[31] *The Pines v. City of Santa Monica* (1981).

[32] *Centex Real Estate Corp. v. City of Vallejo* (1993).

[33] *The Pines* at 660 n.3.

[34] *Weekes v. City of Oakland* (1978) at 392.

[35] Gov. Code § 36901.

[36] Rev. & Tax. Code §§ 19701 et seq.

[37] *Hudson v. Superior Court* (2017) at 1168.

[38] Rev. & Tax. Code § 19705(a).

[39] *In re Sic* (1887) 73 Cal. 142, 146 (invalidating local criminal ordinance because it denounced as criminal precisely the same acts that are proscribed by the Penal Code).

[40] See *Ex parte Daniels* (1920) 183 Cal. 636, 641–48 (finding "contradiction" where local legislation purported to fix a lower maximum speed limit for motor vehicles what general law prescribed).

[41] *Cal. Redevelopment Assn. v. Matosantos* (2011) at 255.

[42] *Bd. of Supervisors v. Local Agency Formation Com.* (1992) at 914.

[43] *Matosantos* at 255 (quotations and citation omitted).

[44] *Abbott v. City of Los Angeles* (1958) at 467 (quoting *Cty. of San Mateo v. Coburn* (1900) 130 Cal. 631, 636).

[45] *City of Malibu v. Cal. Coastal Com*. (2004) at 48 ("Good governance cannot permit local voters to override a state decision with a local referendum. . . . [W]hether legislative or administrative . . . to permit local voters to overturn state enactments would upend our governmental structure and invite chaos.").

[46] *City of Los Angeles v. Shell Oil Co.* (1971) at 119, 123–24; *Gen. Motors Corp. v. City of Los Angeles* (1971) at 238.

[47] *Id.*; see also *Oklahoma Tax Commission v. Jefferson Lines, Inc.* (1995) at 181–85; *Goldberg v. Sweet* (1989) at 260–62.

[48] *Shell Oil Co.* at 119.

[49] *Id.* at 124.

[50] *Volkswagen Pac., Inc. v. City of Los Angeles* (1972) at 58–59; *Gen. Motors Corp.* at 244; *Shell Oil Co.* at 124. Put another way, "a tax is invalid if it bears no relationship to the quantum of the taxable event actually transacted in the taxing city. The focus is upon the relationship between the taxable event or activity and the

tax imposed. The objective of the apportionment rule is to avoid multiple taxation of a single transaction, which imposes an unconstitutional burden upon those engaged in intercity business." *Park 'N Fly of San Francisco, Inc. v. City of S. San Francisco* (1987) at 1211 (citations omitted).

[51] See *Macy's Dep't Stores, Inc. v. City & Cty. of San Francisco* (2006) at 1449 (citing, inter alia, *Container Corp. v. Franchise Tax Bd.* (1983) at 169–70, and *Jefferson Lines* at 185).

[52] Article IV, section 2, clause 1; *Shapiro v. Thompson* (1969) at 630–31, *overruled in part on other grounds by Edelman v. Jordan* (1974) at 671; *Attorney General of New York v. Soto-Lopez* (1986)at 903 (Brennan, J., plurality opinion).

[53] *Paul v. Virginia* (1868) at 180, *overruled on other grounds by United States v. S.-E. Underwriters Ass'n* (1944). *See Toomer v. Witsell* (1948) at 395 (Article IV, section 2 "was designed to [e]nsure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy"). The right to travel interstate, independent of disparate treatment of citizens from other states, is "nowhere expressly mentioned in the Constitution" despite the Court's longstanding recognition of that right. *See San Antonio Indep. Sch. Dist.* at 99–100 (Marshall, J., dissenting); *Zobel v. Williams* (1982) at 67 (Brennan, J., concurring) (finding the right to interstate travel's "unmistakable essence in that document that transformed a loose confederation of States into one Nation"). In *Saenz v. Roe* (1999) at 500, 503, the Supreme Court noted that the "Privileges or Immunities Clause of the Fourteenth Amendment" protects one component of the right to travel: "the right to be treated like other citizens of that State."

[54] *See Miller v. Reed* (1999) at 1205 (noting "[t]he Supreme Court has recognized a fundamental right to interstate travel"); *Peruta v. Cty. of San Diego* (2010) at 1060 (citing *Soto-Lopez* at 904–05 n.4).

[55] *Reno v. Flores* (1993) at 301–02.

[56] *Saenz* at 500.

[57] It is unclear whether there is a right to intrastate travel. The Ninth Circuit has not recognized a right to intrastate travel. See *Lauran v. U.S. Forest Serv.* (9th Cir. 2005) 141 F.Appx. 515, 520 ("[N]either the Supreme Court nor the Ninth Circuit has recognized a protected right to intrastate travel.") (citing *Nunez ex rel. Nunez v. City of San Diego* (1997) at 944 n.7). But other circuits have reached different conclusions on the existence of a right to interstate travel. See *Fruitts v. Union Cty.* (D. Or. Aug. 17, 2015) No. 2:14-CV-00309-SU, 2015 WL 5232722 at *6 n.8, report and recommendation adopted (2015).

[58] *Chavez v. Illinois State Police* (2001) at 649.

[59] *Bray v. Alexandria Women's Health Clinic* (1993) at 277 (citing *Zobel* at 60 n.6) (internal quotes omitted).

[60] *See, e.g., Johnson v. City of Cincinnati* (2002) at 502 (holding interest in enacting ordinance "to enhance the quality of life in drug-plagued neighborhoods and to protect the health, safety, and welfare of citizens in those areas" was "a compelling government interest").

[61] *Id.* at 503.

[62] *Id.* (citing *Dunn v. Blumstein* (1972) at 343).

[63] *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens* (2000) at 775–78 (discussing historical development of qui tam statutes providing for bounties). See, e.g., 31 U.S.C. § 3730(d) (False Claims Act); 7 U.S.C. § 26(b) (Commodity Exchange Act); 15 U.S.C. § 78u-6(b) (Securities Exchange Act).

[64] 19 U.S.C. § 1619 (customs fraud); 21 U.S.C. 886(a) (drug enforcement).

[65] IRS, Pub. No. 733, Rewards for Information Provided by Individuals to the Internal Revenue Service (Rev. 10-2004); 26 U.S.C. § 7623(b); see also IRS, *Whistleblower – Informant Award*(last updated Feb. 6, 2020).

[66] See *Mississippi Band of Choctaw Indians v. Holyfield* (1989) at 48 ("'Domicile' is not necessarily synonymous with 'residence,' and one can reside in one place but be domiciled in another[.] For adults, domicile is established by physical presence in a place in connection with a certain state of mind concerning one's intent to remain there.") (citations omitted).

[67] "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home . . . and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Meyer v. Nebraska* (1923) at 399.

[68] *Costa v. Superior Court* (2006) at 1005.

[69] *Howard Jarvis Taxpayers Assn. v. Padilla* (2016) at 494; see also *id.* at 496–97; accord, *American Federation of Labor v. Eu* (1984) at 697.