

Correcting the Record: Addressing Some Legal Arguments About the 2026 Billionaire Tax Act

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If adopted by California voters in November of 2026, the 2026 California Billionaire Tax Act (CBTA or Act) would impose a one-time 5% tax on the net worth of California billionaires, payable in five annual installments of 1% over 5 years (plus a small deferral charge). This tax fits well within California’s power to tax, upon which federal law imposes few restrictions. As the Supreme Court [has said](#), “All subjects over which the sovereign power of a state extends are objects of taxation....the states have general dominion...over all persons, property, and business transactions within their borders.” Although the Supreme Court in 2024 [raised questions](#) about the possible legality of a federal tax on wealth, the limits the Court pointed to were based on a unique provision of the U.S. Constitution known as the “Direct Tax Clause” which does not apply to states. Indeed, Justices Thomas and Gorsuch wrote separately in that case to emphasize that the drafters of the Constitution intended to preserve state power to tax wealth.

Nonetheless, critics have raised several arguments suggesting that the Act would not bring in the expected \$100 billion in projected revenues because, the critics say, key parts of the Act are unconstitutional and would be subject to legal challenge. In fact, the supposed new legal challenges critics identify are mostly just very old arguments that courts have rejected over and over, and in some cases have been rejecting for more than one hundred years.

The Spiro Letter and Baker Botts Blog Post

A widely circulated [letter from attorney Alex Spiro](#) to Governor Newsom argues that the 2026 California Billionaire Tax Act is unconstitutional as a “taking,” that it is impermissibly retroactive, and that its “unprecedented novelty” makes it especially vulnerable to invalidation. The letter also predicts forced liquidations and an exodus of capital and innovation. The law firm Baker Botts makes some additional [arguments](#) grounded in other clauses of the U.S. Constitution, as well as the California Constitution.

1. Takings

Some critics, including Spiro, claim that the CBTA is not really a tax at all, but an uncompensated confiscation of property and therefore a taking without just compensation. However, that is simply not how constitutional law treats taxes. The Takings

Clause is about eminent domain and direct appropriations of identified property. It is not a general weapon for relabeling a progressive tax as a taking.

The Supreme Court recently stated the rule directly. In [Tyler v. Hennepin County](#) (2023), the Court explained that "States have long imposed taxes on property" and that "[s]uch taxes are not themselves a taking." And in [Koontz v. St. Johns River Water Mgmt. Dist.](#) (2013), the Court reiterated that "[t]axes and user fees . . . are not 'takings.'"

The letter's reliance on [Armstrong v. United States](#) is simply wrong. Armstrong involved the government's destruction of private lien rights. It did not announce a rule that a tax is unconstitutional whenever it falls on a small group or is large in dollar terms. If the Takings Clause applied whenever a tax imposed an "extraordinary burden" on a small number of taxpayers, then progressive income taxes, estate taxes, and other existing taxes would all be under threat. Again, this is not how constitutional law works.

Nor does a tax become unconstitutional simply because critics label it a "confiscation." In [City of Pittsburgh v. Alco Parking Corp.](#) (1974), the Supreme Court rejected the claim that a tax becomes unconstitutional because it is "discouraging" or even "destructive" to a business, explaining that there is "no constitutional objection" to a tax imposed at a "discouraging rate as the alternative to giving up a business." And it relied on earlier decisions recognizing that courts do not police the "reasonableness" of a tax under the Constitution. Those cases include [A. Magnano Co. v. Hamilton](#) (1934), which stated that, except in rare and special instances, due process is not a limitation on the taxing power.

2. Retroactivity

The CBTA, if adopted by voters in November of 2026, would impose tax on billionaires who resided in California as of January 1, 2026, which of course comes before November. Critics assert that this provision is an unconstitutional "retroactive" tax. Although they acknowledge that current law permits retroactive taxation, they say that this is not true of a "new tax" like the CBTA.

They are wrong. The most dramatic new tax in U.S. history was probably the introduction, in October of 1913, of the modern federal income tax. The income tax fundamentally transformed the federal budget from one that was mostly dependent on distortive and unreliable tariff revenue, enabling the growth of the modern economy and a robust national government capable of winning two world wars. It is hard to get more "new" than that. Yet the 1913 income tax—which, again, was adopted in October—imposed tax on all incomes "received after March 1, 1913." When challengers argued that this rule

unfairly imposed a retroactive new tax, the Supreme Court [brushed aside their claims](#) in a few brief sentences.

And indeed, for fifty years or more, when Congress enacted changes to the federal income tax during the year, it typically did so retroactive to January 1 of the year of enactment, much as the CBTA does. By as early as 1928, Justice Brandeis could write a long opinion pointing out that this practice was also common for tax provisions that predated the income tax. Indeed, in 2025, President Trump’s major tax legislation included a provision that was retroactive to a date earlier than when the bill passed.

There is thus no serious argument that legislation that reaches back to the beginning of the year, or a bit before, would face any meaningful legal challenge. In its most recent [major decision on this topic](#), the Supreme Court held that a legislature (or electorate) can adopt that approach for essentially any “rational basis,” meaning any conceivable valid government purpose. Notably, Justice Thomas, who is of course still on the Court today and usually rules in favor of wealthy taxpayers, agreed with that outcome, and would have gone even further in ruling that there is essentially no meaningful limit on retroactive taxes.

Instead of these modern cases, the critics instead appear to rely on a cryptic [case from 1928](#) in which the Court rejected retroactive application of the federal gift tax, saying it was “arbitrary.” But as the Court itself said in 1994, that simply is not the approach courts take today. The Supreme Court has not found any tax provision unconstitutionally retroactive since its 1928 decision.

Our take is not novel or controversial. [Recent](#) California ballot measures are retroactive to the start of the calendar year. A proposed [anti-tax ballot measure](#) for the same ballot is as well. This well-established retroactivity period is also recognized by national taxpayer advocates, as in paragraph 50 of [this complaint](#).

3. Moving During the Year

The letter argues that the Act would tax people who move out of California during 2026 “without any ability to vote on the measure.” But that is simply not a constitutional rule. State taxes routinely apply based on residency or activity during a tax year, and those liabilities do not disappear if a person later moves. The Constitution does not require that everyone who pays a tax must be eligible to vote on the law that created it, nor could it reasonably be read to do so, as at both the state and federal level most taxes are passed by legislation, not ballot initiative.

4. Novelty

The letter also claims that the Act’s “unprecedented novelty” makes it especially vulnerable, citing [Biden v. Nebraska](#). That case has nothing to do with state taxing power or with the constitutionality of voter-enacted taxes. It concerned whether a federal executive agency had statutory authority to cancel student loan balances. The Court’s analysis turned on separation of powers and statutory interpretation. It did not announce a constitutional rule that a policy becomes unlawful because it is "new," and it has nothing to do with state taxing power.

At most, the Court treated "unprecedented" agency action as relevant to whether Congress clearly authorized it. That is an administrative law point about delegated authority. It has no application to a voter-enacted state tax.

In any event, as the Institute on Tax and Economic Policy [has reported](#), broad-based state-level taxes on wealth were widespread at the beginning of the twentieth century. Until 1930, these “[General Property Tax\[es\] w\[ere\] a core element of the U.S. fiscal system, providing a large share of state and local revenues.](#)” Fourteen states still had a general wealth tax on all intangible property in 1965. And of course nearly every city and state in the U.S. today collects a narrow version of a wealth tax: the property tax, which is just a wealth tax whose base is limited to real estate (and in some places other assets such as automobiles).

5. Mobility and Alleged “Billionaire Flight”

The Spiro letter predicts an exodus of capital and innovation and asserts that wealthy taxpayers will relocate to avoid the CBTA. These predictions are not new. They routinely appear whenever voters or legislatures consider higher taxes on high-income or high-wealth households. And they are routinely proved false.

For example, when the 2012 Proposition 30 in California raised tax rates on million-dollar earners, critics claimed the wealthy would flee the state. Instead, few people moved in response, and state revenues grew rapidly, as academic research [has found](#). Since 2012, California’s share of U.S. millionaires has actually risen considerably, from about 15.5% to almost 18% in the most recent data.

Of course, some people do move in response to taxes, but the question is whether tax-driven relocation is large enough, in practice, to defeat the revenue goals of a targeted tax or otherwise pose significant economic problems. The best reading of the evidence is that it is not. Research summarized in [Money Moves: Taxing the Wealthy at the State Level](#) finds that the number of high-income taxpayers who actually change residence in response to tax rate changes or new taxes is relatively quite small, and that much of what looks like

“mobility” in some administrative data is often better understood as purely on-paper efforts to avoid tax rather than true relocation. The CBTA was carefully drafted so as not to be vulnerable to these sorts of tax games.

It is also worth noting the gap between rhetoric and reality. Wealthy taxpayers and their advocates have repeatedly predicted tax-driven flight in response to ballot measures and state and local tax proposals, including, for example, during the recent campaign over the Massachusetts “Fair Share” surtax ballot measure. This rhetoric has never proven true. For a recent example, see this New York Times feature about recurring “rich flight” warnings in New York City tax debates, “[Rich New Yorkers Threaten to Leave. Then They Find Out How Hard That Is.](#)”

6. Alleged “Forced Liquidations” and Illiquidity Concerns

The Spiro letter predicts that a wealth tax will force “liquidations” of illiquid assets, including closely-held businesses and other nonpublic holdings. That argument has no basis in reality. Among other problems, it ignores the payment and deferral mechanisms built into the Act itself.

First, the Act allows taxpayers to satisfy any liability either in a lump sum or in five equal annual installments. Although taxpayers who choose to spread their payment out over five years will pay a small additional deferral charge, their average annual outlay is still on the order of a little more than one percent of net worth. Most billionaires can easily draw cash from or borrow against their assets to meet an annual payment obligation of that scale, and so should not require any “fire sale” of assets.

Second, the Act contains an Optional Deferral Account (“ODA”) specifically designed for the unusual case in which taxpayers would genuinely find it difficult to pay their tax bill. A taxpayer can qualify for an ODA if their wealth tax liability exceeds the combined value of their publicly traded assets. In that circumstance, the Act permits deferral of tax on the nonpublic assets until they are sold (or in certain other circumstances in which cash is drawn from the assets). The ODA thus addresses the core “fire sale” scenario the critics invoke, without undermining the collectability or administrability of the tax.

7. Alleged Delays and Uncertainty from Litigation

Critics also claim that the Act will be bogged down in litigation for years, delaying implementation and revenue. It is true that major tax measures predictably draw lawsuits. But the arguments raised in the Spiro letter and the Baker Botts post are frivolous or low-merit theories that courts have repeatedly rejected in closely analogous tax contexts.

Moreover, the Act anticipates such frivolous litigation challenges and includes a mechanism for expedited review of facial challenges, channeling such litigation to the California Supreme Court to quickly resolve these challenges without delaying revenue collection. It is further worth noting that tax litigation generally does not operate as a bar to revenue collection. Federal law has long reflected a “pay first, litigate later” principle in tax cases. For federal taxes, the [Anti-Injunction Act](#) generally prevents suits seeking to restrain assessment or collection. For state taxes in federal court, the [Tax Injunction Act](#) similarly restricts federal-court interference when state remedies are available. These doctrines underscore a basic point: tax challenges are typically resolved through post-payment remedies rather than pre-enforcement injunctions.

8. Dormant Commerce Clause

The Supreme Court has interpreted the Commerce Clause of the U.S. Constitution to prohibit state tax or regulation that discriminates against interstate commerce. Taxpayers who are conducting an interstate business [cannot be unfairly burdened](#) with higher taxes than their intra-state counterparts. For example, if taxpayers earn income in multiple states, each taxing state [must grant a credit](#) for taxes paid to another state, or otherwise take steps to make sure that the same income is not taxed multiple times.

There is no serious argument that the CBTA would violate the Commerce Clause. The CBTA is fairly apportioned and non-discriminatory, and that is all that the Court demands of state tax laws. Billionaires will pay the same tax whether their holdings cross state borders or not. The Act specifically provides taxpayers with credits if they pay a similar tax to other states (see Section 50307). If every state adopted the equivalent of the CBTA—a key test the Court uses to look for discrimination against interstate commerce—there would still be no difference in tax burdens between households that owned all their wealth in one place versus those whose wealth spanned the country or the globe.

Furthermore, it is a matter of [longstanding law](#) that states can tax taxpayers on all of their worldwide income, and this principle extends to taxes on wealth as well. Thus, if a resident taxpayer sold an intangible asset located outside of the state or country, that income is taxable in the resident state. Similarly, states [can impose](#) estate taxes on intangible assets of their (deceased) residents, no matter where those assets are. “Wealth,” the Court wrote in one such [case](#), was “property in [the taxpayer’s] hands from which she was under the highest obligation, in common with her fellow citizens of Tennessee, to contribute to the support of the government whose protection she enjoyed.” Despite this broad legal authorization for the state to tax worldwide income, the CBTA permits taxpayers to argue that taxing all of their wealth would unfairly attribute their wealth to California, such as in the case where a billionaire whose wealth accumulated

elsewhere were to have established California residency shortly before the beginning of 2026. There is thus no plausible argument that the Act taxes too much non-California wealth.

9. State Constitutional Law Concerns

Baker Botts also argues that the CBTA would violate the California Constitution, but the firm does not appear to have read the text of the Act closely. The California [Constitution caps](#) the top wealth or property tax rate on intangible assets at .04%, and also [requires that](#) all property taxes be “assessed at the same percentage of fair market value.” These limits would not apply to the CBTA. Section 4 of the Act amends the California Constitution so that these two limits would not apply to the one-time tax billionaire wealth.

Instead, these objections support our general point that the CBTA is clearly precedented. Indeed, a tax on the value of a person’s personal property is so familiar that there are already multiple provisions in the California Constitution addressing how that tax can be imposed, and that is why the Act must include language modifying these older provisions.

Others have [suggested](#) that the Act is really a revision and thus not a proper amendment to the state Constitution. The Act does not change voting thresholds at any level of government and certainly does not redistribute power between the people, state legislature and local governments and, as such, is not a revision. The Act expands one tax to address a very specific set of needs, much like many previous amendments. Thus the Act is fundamentally different from the kinds of sweeping alteration of California government that the California Supreme Court has [found to be a revision](#).

10. Equal Protection Clause

As every first-year law student knows, economic regulations, like taxation, are subject to the most deferential form of review. This makes sense because public policy often uses imperfect distinctions and it would be inappropriate for courts, as courts, to second-guess these distinctions and especially inappropriate for a federal court to second-guess decisions made by state legislators and voters. Thus, in 1992, the [Supreme Court upheld](#) California’s Proposition 13 even though two homeowners, with similar income and identical homes and receiving identical local services, could end up with property tax bills that differed by many multiples. Nevertheless, primarily because there was enough of a connection with an interest in neighborhood stability, Prop 13 was upheld. The [analysis under](#) the California Constitution is similarly deferential.

11. Federalism Considerations

The Act fits well within the history and structure of the U.S. Constitution, as well as the trajectory of recent Supreme Court decisions. A challenge to the Act would likely face strong headwinds in today’s Supreme Court, which has generally elevated state sovereignty and adopted narrower readings of federal power, including in the area of taxation. For example, Chief Justice Roberts [has written](#) that “the ... Commerce Clause is not a roving license for federal courts to decide what [taxes] are appropriate for state and local government to undertake[.]” Justices Alito, Gorsuch, and Thomas have [also agreed](#) that states have very broad powers to tax events with only remote or “virtual” connection to the state. And again, Justices Thomas and Gorsuch [would limit](#) the federal government’s power to impose wealth taxes at least in part so the states can do so.

12. Bill of Attainder

A [bill of attainder](#) is a legislative act that determines guilt and imposes punishment on a specific individual or group of individuals. The Supreme Court has struck down laws on bill of attainder grounds only five times, and none in this century. Nonetheless, tax protestors often assert bill of attainder as a basis to not pay taxes at all—a claim [routinely](#) (and somewhat tiredly) rejected by the courts.

Baker Botts argues this Act is different, because it applies to just over 200 billionaires. But the fact that there are so few extraordinarily wealthy individuals in California does not make the Act punishment. The tax does not penalize them, but instead obliges them to make more of a fair contribution towards California’s fiscal burdens than they currently make under the traditional income tax, and is being proposed as an urgent solution to raise funds to backfill federal and state funding cuts to health care and food assistance. Among many other reasons this Act is not a bill of attainder, its valid, non-punitive purpose defeats this claim. [SeaRiver Maritime Financial Holdings, Inc. v. Mineta](#) (9th Cir. 2002).

“Not every law which burdens some persons or groups is a bill of attainder; after all, practically every law burdens someone.” [Franceschi v. Yee](#) (9th Cir. 2018). As the Supreme Court [said](#), “However expansive the prohibition against bills of attainder, it surely was not intended to serve as a variant of the equal protection doctrine, invalidating every Act of Congress or the States that legislatively burdens some persons or groups but not all other plausible individuals.”

13. Right to Travel

The Baker Botts post argues that the Act violates the constitutional “right to travel.” However, the Supreme Court’s right-to-travel [cases involve](#) laws that discriminate against new arrivals by withholding benefits or imposing a special penalty based on how recently a

person moved to the state. The Act does not impose a durational residency requirement, does not create a separate class of “new residents,” and does not treat movers worse than non-movers. It applies a generally applicable tax rule pegged to a familiar tax-administration concept: residency as of a fixed date within a tax year.

As explained above, tax obligations routinely turn on whether a person was a resident (or otherwise was within a state’s legal power to tax) during a particular tax period, and those obligations do not disappear because the taxpayer later moves. That is not a “penalty on travel”; it is a routine feature of tax administration generally used by existing state income taxes and other state taxes. Billionaires who move (after long enjoying the benefit of California’s laws and economy) face the same tax as those who do not. Equal treatment is not a “penalty.”