S234148

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SUPREME COURT OF CALIFORNIA

CALIFORNIA CANNABIS COALITION, ET AL.

Plaintiffs and Respondents,

v.

CITY OF UPLAND, ET AL.

Defendants and Petitioners.

After Issuance of a Writ of Mandate and
the Denial of a Petition to Rehear a Published Decision
of the Court of Appeal, Fourth District, Division 2 (Case No. E063664)

PETITION FOR REVIEW

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THE URGENCY OF THIS CASE

The importance of this case to taxpayers cannot be overstated. The published decision in this case, unless reversed, will be remembered in history as the case that killed the constitutional right of California taxpayers to vote on new taxes.

Four times over the span of two generations, the statewide electorate has affirmed its support of the right to vote on taxes. (Proposition 13 in 1978, Proposition 62 in 1986, Proposition 218 in 1996, and Proposition 26 in 2010).

The Court of Appeal, after a tortured effort to distinguish prior cases, and with no case to support what it was about to do, opened a loophole in these taxpayer protections that so obviously threatens the right to vote on taxes, news reporters and commentators connected the dots immediately.

Defendant City of Upland, having already invested a significant sum of money litigating this case in the superior court and the court of appeal, decided to cut its losses and accept defeat. But the decision below is so disastrous for taxpayers that the Howard Jarvis Taxpayers Association offered to represent the City pro bono for the purpose of petitioning this Court for review.

To answer an important question of first impression, to resolve a conflict among the courts of appeal created by this decision, and to literally save the right of taxpayers to vote on new taxes, petitioners and their public-interest counsel now beseech this Court to grant review.

QUESTION PRESENTED

This case presents a single question: Can the proponents of a new tax evade constitutional prerequisites by introducing the tax as an initiative rather than a resolution of the governing body?

GROUNDS FOR REVIEW UNDER RULE 8.500

Review is necessary to secure uniformity among the reported decisions of this Court and the courts of appeal, and to settle an important legal question of great public interest. (Rules of Court, Rule 8.500(b)(1).)

DENIAL OF REHEARING BELOW

The Court of Appeal issued its decision on March 18, 2016. Petitioners filed a timely Petition for Rehearing on April 5, 2016, raising the same assignments of error argued herein. The Court of Appeal denied the Petition for Rehearing on April 11, 2016. A copy of the Opinion, certified for publication, is attached hereto as Exhibit A.

SUMMARY OF FACTS AND PROCEDURAL HISTORY

The facts recited below are taken directly from the decision of the Court of Appeal since they are undisputed.

A. The Initiative

Plaintiff/Respondent California Cannabis Coalition ("CCC") drafted and sponsored a proposed medical marijuana initiative. The key provisions would repeal an existing Upland city ordinance prohibiting medical marijuana dispensaries, and would adopt regulations permitting and establishing standards for the operation of such dispensaries within the City. The Initiative would require each medical marijuana dispensary to pay the City an "annual Licensing and Inspection Fee" of $75,000.

The Initiative requested it be considered at a special election. The signatures of at least 15% of registered voters were needed to qualify the Initiative for a special election to be held sooner than the next regular election. The County Registrar reported there were enough. The City Council accepted the Registrar's certificate of sufficiency and ordered an Agency Report.

B. The Agency Report

The Agency Report concluded the Initiative's $75,000 licensing and inspection fee would exceed the estimated actual costs the City would incur from issuing a license for a medical marijuana dispensary and conducting annual inspections of the dispensary. The Report estimated the actual annual costs would total a little over $15,000. Because the $75,000 fee would exceed the City's anticipated costs, the Report found that the fee, to the extent of the excess, constituted a proposed tax.[1] The Report labeled the tax a "general tax" because the Initiative did not specify how the excess revenue should be spent.[2]

C. The City Council Resolution

After receiving the Agency Report, the City Council adopted Resolution No. 6267, finding the Initiative's $75,000 fee is actually a proposed general tax to the extent it exceeds the City's estimated actual licensing and inspection costs. Under article 13C, section 2, of the California Constitution, a proposed general tax "shall be consolidated with a regularly scheduled general election for members of the governing body of the local government." (Cal. Const., art. 13C, § 2(b).) Resolution No. 6267 therefore provided notice and direction for submitting the Initiative to the voters at the next general election for city council members, which is November 8, 2016.

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[1] Cal. Const., art. 13C, § 1(e) ("'tax' means any levy, charge, or exaction of any kind imposed by a local government, except the following: ... (3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits ... [provided] the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity").

[2] Cal. Const., art. 13C, § 1(a) ("'General tax' means any tax imposed for general governmental purposes").

D. The Lawsuit

Plaintiff/Respondent CCC filed a petition for writ of mandate, alleging that the Initiative qualified for a special election under Elections Code section 9214, and the City's failure to call a special election therefore violates the Elections Code statute. CCC also argued that the Elections Code statute is not preempted by the constitution's article 13C, section 2 (requiring general taxes to be presented at a general election for city council candidates, not a special election) because the tax proposed by the Initiative is not subject to article 13C, section 2, in that the tax would not be "imposed by a local government." CCC's petition therefore requested a writ of mandate compelling the City Council and City Clerk to place the Initiative on a special election ballot in compliance with Elections Code section 9214.

The trial court sided with the City. Without separately addressing whether article 13C, section 2 applies to initiatives that propose a tax, the trial court denied CCC's writ petition, finding that the $75,000 fee qualified as a tax and therefore the Initiative was required to be placed on the next general election ballot.

E. The Decision of the Court of Appeal

The Court of Appeal reversed. The opinion is lengthy because it includes a lot of background and rebuttal. But the specific section addressing whether article 13C, section 2, applies to CCC's Initiative is short and contains little analysis. It states, "Article 13C, section 1(e) defines a tax as 'any levy, charge, or exaction of any kind *imposed by a local government*,' subject to seven specified exceptions. Article 13C, section 1(e) does not expressly include fees imposed by initiative. Because Article 13C is silent in this regard, we decline to construe Article 13C as applying to taxes imposed by initiative." (Slip Op., attached as Exhibit A, at 19 (citations omitted, emphasis in orig.))

The Court of Appeal did not limit its decision to the proper election date, nor could it logically do so. Rather, the Court ruled broadly that taxes "imposed by initiative" are exempt from the rules otherwise applicable to local government. Sometimes the opinion describes this as an exemption from "Article 13C, section 2" and sometimes as an exemption from all of "Article 13C." (*E.g.*, Slip Op. at 18 ("Article 13C, section 2 does not apply to the Initiative."); *id.* at 19 ("we decline to construe Article 13C as applying to taxes imposed by initiative."))

In either case, section 2 is the section of the constitution that requires voter approval of new taxes, including majority voter approval of general taxes and two-thirds voter approval of special taxes.

If section 2 does not apply to initiatives, then any proponent of a new tax–even the City Council–can circumvent the taxpayers' constitutional right to vote on the tax simply by proposing it in the form of an initiative.

ARGUMENT

I
THE GIGANTIC LOOPHOLE CREATED BY THE COURT OF APPEAL

Section 2 of article 13C includes not just the election date requirement, but also the general requirement of voter approval as a condition of new taxes, including majority voter approval of general taxes and two-thirds voter approval of special taxes. The decision of the Court of Appeal exempts taxes proposed by initiative from all of section 2.

There is no way to read the decision less broadly because all of section 2 applies to taxes "imposed by local government," and the Court expressly held that taxes proposed by initiative are not imposed by local government: "Article 13C, section 2 does not apply to the Initiative. This is because Article

13C, section 2 is limited to taxes imposed by local government and is silent as to imposing a tax by initiative." (Slip Op. at 18.) "Taxation imposed by initiative is not taxation imposed by local government." (*Id.* at 25.)

The loophole created by the Court of Appeal makes it easy now for any public agency to impose a new tax, or increase an existing tax, with no fear that the voters will turn it down–because the voters will never get to vote on the tax. Here's how it works. Let's say you're the City of Bell and you want to give all of your employees a generous raise in pay. To fund it, you want to double the utility tax paid by your mostly low income population. So you call a meeting of the City's public employee unions. You tell them to mobilize city employees to collect signatures on an initiative proposing the tax increase. Instruct them to pitch the initiative as the "Green Parks and Clean Water Initiative" since all city departments, including Parks and Water will benefit. Once all city employees sign the initiative and collect enough additional signatures to reach a mere ten percent of the City's registered voters (Elec. Code § 9215), the initiative can be turned in to the Registrar of Voters for verification. Then, as soon as the Registrar verifies the signatures, you the City Council can act on the initiative. Elections Code section 9215 provides:

> [T]he legislative body shall do one of the following:
>
> (a) Adopt the ordinance, without alteration [or]
>
> (b) Submit the ordinance, without alteration, to the voters.

By choosing Option (a), you the City Council can adopt the tax increase yourselves, in lieu of holding an election. Even though the California Constitution requires an election, that requirement does not apply to taxes proposed by initiative according to the Court of Appeal in the case at bar.

This loophole is so obvious that the media realized it as soon as the Court of Appeal announced its decision, and have widely publicized it. For

example, under the headline "Will Ruling Make it Easier to Raise Taxes?," the San Diego Union Tribune reported:

> "In a decision that could have a sweeping impact across California, a new state appeals court ruling may ease approval of local tax increases if they are placed on the ballot by citizen's initiative instead of by a governmental agency. ... 'It has a far reaching impact across the state,' San Diego City Attorney Jan Goldsmith said of the ruling Wednesday. 'There was a belief there was a two-thirds requirement and this changes that. There's no question it's a seminal case.'" (Exhibit B, attached.)

While the Union Tribune article focused on the demise of the two-thirds vote, an article in California Planning & Development Report noted that the entire right to vote on taxes had been eviscerated. Marveling at the "apparently magical power of the initiative process to end-run two generations of laws that make it more difficult to ... adopt new taxes in California," the article observed, "Local governments can simply adopt an initiative rather than put it on the ballot." (Exhibit C, attached.)

II
THE COURT OF APPEAL CONFUSED "IMPOSE" AND "PROPOSE"

The Court of Appeal based its ruling on the theory that "[t]axation imposed by initiative is not taxation imposed by local government." (Slip Op. at 25.) The Court ruled that article 13C, section 2, by its own terms applies only to taxes "imposed by local government." (*Id.* at 18.)

Subdivision (b) of section 2 contains language the Court found critical in this case. It provides, "*No local government*" may impose or increase any general tax without majority voter approval, sought at the general election for

members of the governing body of the local government.

The Court erred, however, because it confused "impose" and "propose." A distinction can be drawn between the two methods of *proposing* a tax; that is, a tax can be proposed by the City Council via resolution or it can be proposed by the voters via initiative. But it is impossible to draw a distinction between taxes "*imposed* by local government" and taxes "*imposed* by voters." It is impossible because, under California's constitutional plan, local government cannot impose taxes without voter approval – which means that *all taxes* are imposed by the voters. Similarly, when voters act via initiative they are acting as legislators of the local government, so *all taxes*, even taxes proposed by initiative, are taxes of the local government.

A. Every Local Tax is "Imposed by Voters" Upon Themselves

Article 13C, section 2, provides, "No local government may impose, extend, or increase any general tax *unless and until* that tax is submitted to the electorate and approved by a majority vote." In other words, the tax is not enacted "unless and until" the voters approve it. That was the express holding of this Court in *Santa Clara County Local Transportation Authority v. Guardino*. "[T]he sections prescribing the voter approval requirements of the measure declare that no local entity may 'impose' a general or special tax 'unless and until' the tax is 'submitted to ... and approved by' the required proportion of the electorate. *It is apparent that if a tax is not deemed 'imposed'– which in this context means enacted – 'unless and until' it is 'approved' by the voters, the approval is a precondition to such enactment.* Without that approval, the measure will not take effect – in other words, will not become law." (*Santa Clara County Local Transp. Auth. v. Guardino*

(1995) 11 Cal.4th 220, 240 (citations omitted).)[3]

Since no local taxes can be "imposed – which in this context means enacted" under California's constitutional plan "unless and until" they are approved by the local voters, it is clear that *all local taxes*, whether *proposed* by Council resolution or voter initiative, are "imposed" by the voters upon themselves. The Court of Appeal erred in purporting to draw a distinction between taxes "imposed" by voters and taxes "imposed" by local government.

B. Voters by Initiative Act as Legislators of the Local Government

Another reason it is impossible to draw a distinction between taxes "imposed by voters" and taxes "imposed by local government" is that voters acting by initiative are exercising the same legislative power exercised by elected officials, and are adding to the same body of law. Ordinances enacted by initiative become part of the local Municipal Code just as if they were passed by elected officials. That is because the voters are acting *as legislators of the local government.*

Division 9, Chapter 3, article 1 of the Elections Code, which governs initiatives proposed by city voters, begins with this statement: "Ordinances may be enacted *by and for* any incorporated city pursuant to this article." (Elec. Code § 9200.) In other words, when city voters pass an initiative, it is an "ordinance enacted *by* [the] city."

As this Court stated in *Perry v. Brown*, the initiative power reserved by the voters is "the authority to *directly* propose and adopt" statutes and ordinances. (*Perry v. Brown* (2011) 52 Cal.4th 1116, 1140 (emphasis in orig.).) Voters acting by initiative are exercising "legislative authority." (*Id.*, 52 Cal.4th at 1156.) *Widders v. Furchtenicht* held likewise: "The initiative

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[3] Unless noted otherwise, all emphasis is added.

process 'is not a public opinion poll. It is a method of enacting legislation.'" (*Widders v. Furchtenicht* (2008) 167 Cal.App.4th 769, 782.)

Thus, the Court of Appeal's attempt to distinguish between taxes "imposed by voters" and taxes "imposed by local government" sets up a false dichotomy. Taxes imposed by local voters *are* taxes imposed by local government. And vice versa.

C. Taxes Collected by Government are Imposed by Government

This Court in *Howard Jarvis Taxpayers Assn. v. City of La Habra* held that taxes collected by government are "imposed" by government. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal. 4th 809, 823-24.) The Court of Appeal here, in holding that taxes imposed by initiative are not taxes imposed by local government, must have realized it was creating an apparent conflict with this Court's decision in *La Habra*, for it spent three pages trying to distinguish that case. But the conflict remains.

La Habra involved a utility tax that was being collected by the City of La Habra despite having never been approved by voters. The voter approval requirement applicable to La Habra's utility tax was found in Proposition 62, the statutory predecessor to Proposition 218 which added article 13C to the constitution. Like article 13C today, Proposition 62 provided: "No local government ... may impose any general tax unless and until such general tax is ... approved by a majority vote of the voters." (Gov. Code § 53723.)

Taxpayers sued to invalidate the tax, but the City demurred because a three-year statute of limitations applied and more than three years had elapsed since the City first "imposed" the tax. (*La Habra*, 25 Cal. 4th at 813.) This Court, however, ruled that every monthly collection of the tax constituted an "imposition" of the tax without voter approval.

> "[T]he City appears to contend that Proposition 62 can be violated only at the time a tax ordinance is first enacted because, in the City's view, all Proposition 62 prohibits is 'imposition' of a tax without voter approval, and imposition is limited to the time of initial enactment. *Both premises are faulty.* ... Clearly the intent of Proposition 62's enactors was not merely to preclude enactment of a tax ordinance without voter approval, but to preclude *continued imposition or collection* of such a tax as well." (*La Habra*, 25 Cal.4th at 823-24.)

As a statute of limitations case, *La Habra* had no occasion to discuss lawmaking by initiative. Nevertheless, *La Habra* reveals an additional flaw in the Court of Appeal's attempted distinction between taxes "imposed by the voters" and taxes "imposed by the local government." For if taxes are imposed anew every time the tax is collected, then it is irrelevant whether the tax was originally proposed by a resolution of the City Council or by voter initiative. Beginning with its first collection by the city, and with every collection thereafter, the tax is "imposed by the local government." The Court of Appeal in the case at bar, in ruling otherwise, put itself at odds with this Court's holding in *La Habra.*

The decision in the case at bar is also at odds with *Schmeer v. County of Los Angeles*, which considered the question "who gets to collect and keep the money" dispositive in determining whether a tax is "imposed by local government" for purposes of article 13C. The court held, "The term 'tax' in ordinary usage refers to a compulsory payment made to the government or remitted to the government." (*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1326.) Similar to *La Habra*, then, *Schmeer* would hold that a tax collected by the city is "imposed by the local government."

III
ARTICLE 13C, SECTION 2
EXPRESSLY APPLIES TO INITIATIVES

So far Petitioners have shown that the decision below, if not reversed, kills California's right to vote on taxes because it creates a way for the proponents of new taxes to avoid article 13C, section 2, by simply proposing the tax in the form of an initiative. Article 13C, section 2 contains not only the requirement at issue in this case (that new taxes be presented at the same election as candidates for local office), it contains the exceedingly-more-important requirement that new taxes receive voter approval.

Petitioners have also shown that the foundation of the decision below is built on sand. The Court of Appeal, noting that article 13C, section 2 applies to taxes "imposed by local government," ruled that taxes proposed by initiative are therefore exempt from article 13C, section 2, because taxation "imposed by voters" is not taxation "imposed by local government." (Slip Op. at 25.) The Court erred for the reasons explained above: (1) Since voter approval is a prerequisite for the imposition of every new tax, every new tax – regardless of who proposes it – is imposed by voters; (2) Even when voters propose a new tax by initiative, they are acting as legislators of the local government, so they are imposing a tax of the local government; and (3) Regardless of who proposes it, a tax collected by the local government is imposed by local government.

There is, however, an even greater reason for disapproving the decision below: it ignores the very wording of article 13C, section 2 which, applying well settled rules of constitutional construction, expressly indicates its intent that all taxes – regardless of who proposes them – must be placed on the ballot and receive voter approval.

The people's right to legislate by initiative is "generally co-extensive with the legislative power of the local governing body." (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 775.) "When the Legislature enacts a statute pertaining to local government, it does so against the background of the electorate's right of local initiative, and the procedures it prescribes for the local governing body are presumed to parallel, rather than prohibit, the initiative process, absent clear indications to the contrary." (*DeVita*, 9 Cal.4th at 786.) "A statutory initiative is subject to the same state and federal constitutional limitations as are the Legislature and the statutes which it enacts." (*Legislature v. Deukmejian* (1983) 34 Cal. 3d 658, 674.)

> "Thus, if the state Legislature has restricted the legislative power of a local governing body, that restriction applies equally to the local electorate's power of initiative. For example, in *deBottari v. City Council* (1985) 171 Cal.App.3d 1204 [etc.], we noted that Government Code section 65860 'prohibits enactment of a zoning ordinance that is not consistent with the general plan.' (*deBottari*, at p. 1210 [etc.].) We concluded that a local referendum which, if passed, would have caused a city's zoning ordinances to be inconsistent with the city's general plan, was invalid. (*Id.* at pp. 1210-1212 [etc.].) If the rule were otherwise, the voters of a city, county, or special district could essentially exempt themselves from statewide statutes." (*Mission Springs Water Dist. v. Verjil*, (2013) 218 Cal.App.4th 892, 921 (holding that a statute requiring the board of directors to set rates at an amount sufficient to cover costs applied equally to the voters' ratesetting initiative).)

In sum, because the power of local voters to legislate by initiative is generally co-extensive with the legislative power of the local governing body, state law limitations applicable to the local governing body are equally applicable to the voters "absent clear indications to the contrary."

In the case at bar, the Court of Appeal held that state law procedures governing the election date and voter approval of new taxes apply *only* to the governing body; they do *not* apply equally to the voters. But according to this Court in *DeVita*, to reach that conclusion the Court of Appeal needed "clear indications" that the applicable state law was not intended to apply to voters. The Court of Appeal, however, identified only one indicator: silence. It said that article 13C "does not expressly include fees imposed by initiative. Because Article 13C is silent in this regard, we decline to construe Article 13C as applying to taxes imposed by initiative." (Slip Op. at 19.)

Petitioners submit that silence is not a "clear indication" one way or the other. Petitioners also submit, however, that article 13C is *not* silent, but in fact contains a "clear indication" that it was intended to apply to all taxes, whether proposed by voter initiative or by a resolution of the governing body.

To overcome the presumption of co-extensive authority and co-extensive limitations on that authority, courts look at the applicable statutory or constitutional language to determine whether there is an intent to exclude voter initiatives. One of the "paramount factors" is the terminology employed when referring to the entity. General terms such as "local government" or "public agency" are extremely weak indicators of intent to exclude voter initiatives. In the middle of the scale, terms such as "legislative body" or "governing body" are stronger. The strongest indicator of an intent to exclude voter initiatives is specific terminology such as "city council" or "board of supervisors." (*DeVita*, 9 Cal.4th at 776; *Totten v. Ventura County Bd. of*

Supervisors (2006) 139 Cal.App.4th 826, 834.)

Here, article 13C, section 2 uses two different terms in the very paragraph with which the Court of Appeal was concerned, illuminating its intent – contrary to the holding of the Court of Appeal – that taxpayer protections should apply equally to all proposed taxes, regardless of who proposes them. It states:

> "No ***local government*** may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the ***governing body of the local government***, except in cases of emergency declared by a unanimous vote of the ***governing body***." (Cal. Const., art. 13C, § 2(b).)

The specific reference to "the *governing body* of the local government" stands in contrast to the more inclusive term "local government," inferring that "local government" *includes* the electorate acting by initiative. Thus, all "local government" taxes, whether proposed by a voter initiative or a resolution of the governing body, must receive majority voter approval at a regularly scheduled candidate election. Only the "governing body" can, by a unanimous declaration of emergency, propose a tax at a special election.

The holding of the Court of Appeal turned article 13C, section 2 on its head by ruling that the election date and voter approval requirements do *not* apply to voter initiatives, but that voters *can* propose a tax at a special election. The Court gravely erred and should be reversed.

IV
THE COURT OF APPEAL'S INTERPRETATION OF ARTICLE 13C, SECTION 2 IS UNSOUND BECAUSE IT WILL LEAD TO "ABSURD" RESULTS

When interpreting a provision of the state constitution, courts are supposed to "adopt a construction 'that will effectuate the voters' intent ... and avoid absurd results." (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 409 (quoting *People v. Stringham* (1988) 206 Cal.App.3d 184, 196-197.)

The preceding section of this Petition explained that the language of article 13C, section 2, uses an inclusive phrase, "[n]o *local government* may impose," to subject all local taxes to its voter approval and election date requirements, whether proposed by a voter initiative or a resolution of the governing body. Section 2 then uses an exclusive term, "the *governing body* of the local government" to limit who may, by a declaration of emergency, propose a tax at a special election. Petitioners submit, therefore, that the "plain meaning" of article 13C, section 2, is that even taxes proposed by initiative must receive voter approval at a candidate election.

However, even if the meaning of section 2 were ambiguous due to silence, as the court below claimed, the ambiguity should have been resolved in favor of the overarching taxpayer protection goals of article 13C, part of the "Right to Vote on Taxes Act." "Where more than one statutory construction is arguably possible, our 'policy has long been to favor the construction that leads to the more reasonable result.'" (*Los Angeles Unif. School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 771 (quoting *Webster v. Superior Court* (1988) 46 Cal.3d 338, 343.) "The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

In the case at bar, the Court of Appeal's interpretation of article 13C,

section 2, will lead to absurd results contrary to the intent and spirit of the Act of which article 13C is a part.

Article 13C is a part of Proposition 218, the "Right to Vote on Taxes Act." (Hist. Notes following art. XIII C, § 1, West's Ann. Cal. Const., vol. 2A.) In its "Findings and Declarations" section, Proposition 218 states: "[L]ocal governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of *voter approval* for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers *without their consent*." (*Id.*) Proposition 218 also contains a "Liberal Construction" clause requiring that "[t]he provisions of this act shall be liberally construed to effectuate its purposes of limiting local government revenue and *enhancing taxpayer consent*." (*Id.*)

Proposition 218, then, is replete with emphases on the right to vote on taxes. It would be anathema to the expressed intent of Proposition 218 to let stand a published decision that creates a loophole permitting all future tax increases to be enacted without any voter approval whatsoever.

CONCLUSION

For the reasons above, this Court should grant review.

DATED: April 26, 2016.

Respectfully submitted,

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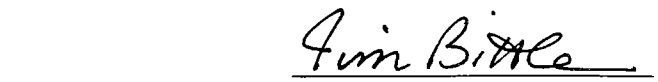

TIMOTHY A. BITTLE
Counsel for Petitioners

WORD COUNT CERTIFICATION

I certify, pursuant to Rule 8.204(c) of the California Rules of Court, that the attached petition and memorandum, including footnotes, but excluding the caption page, tables, and this certification, as measured by the word count of the computer program used to prepare this pleading, contains 4,949 words.

DATED: April 26, 2016.

Tim Bittle

TIMOTHY A. BITTLE
Counsel for Petitioners

DECLARATION OF TIMOTHY BITTLE AUTHENTICATING ATTACHED EXHIBITS

I, Timothy A. Bittle, declare as follows:

I am an attorney, duly licensed by the State of California, admitted to practice before this Court, and counsel of record for Petitioners in this action. I have personal knowledge of the facts to follow and if called upon as a witness, my testimony would be the same.

Exhibit A is a true and correct copy of the published decision in the Court of Appeal of the State of California, Fourth Appellate District, Division Two, in *California Cannabis Coalition, et al. v. City of Upland, et al.*, 245 Cal.App.4th 970, filed March 18, 2016.

Exhibit B is a true and correct copy of The San Diego Union-Tribune article "Will Ruling Make It Easier to Raise Taxes?" by David Garrick dated March 23, 2016. The document was obtained from The San Diego Union-Tribune website: http://www.sandiegouniontribune.com/news/2016/mar/23/chargers-stadium-appeals-court-ruling-tax-hike/2/.

Exhibit C is a true and correct copy of The California Planning & Development Report article: "Insight: Will Upland Ruling Allow Stadiums -- And Others -- to Evade Two-Thirds Vote?" by William Fulton dated March 27, 2016. The document was obtained from The California Planning & Development Report website: https://www.cp-dr.com/node/3908.

I certify upon penalty of perjury that the foregoing is true and correct and that this declaration was executed this 26th day of April, 2016, in the City of Sacramento, California.

Tim Bittle

TIMOTHY A. BITTLE

Exhibit A

Filed 3/18/16

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CALIFORNIA CANNABIS COALITION et al., Plaintiffs and Appellants, v. CITY OF UPLAND et al., Defendants and Respondents.	E063664 (Super.Ct.No. CIVDS1503985) OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge. Reversed with directions.

Roger Jon Diamond for Plaintiffs and Appellants.

Jones & Mayer, James R. Touchstone and Krista MacNevin Jee for Defendants and Respondents.

I

INTRODUCTION

Petitioner California Cannabis Coalition, a California nonprofit corporation, and Nicole De La Rosa and James Velez (collectively, CCC), appeal judgment entered after

the trial court denied CCC's petition for writ of mandate (writ petition). CCC's writ petition requested the trial court to order the City of Upland and city clerk, Stephanie Mendenhall, (collectively, the City) to hold a special election on CCC's medical marijuana dispensary initiative (Initiative).

CCC contends the trial court erred in ruling CCC's Initiative could not be voted on during a special election under Article XIIIC (Article 13C), section 2 of the California Constitution, because the Initiative imposes a charge on medical marijuana dispensaries, which in effect is a general tax rather than a regulatory fee. CCC objects to the trial court requiring the Initiative to be placed on the next general election ballot, instead of presenting it to the voters earlier by holding a special election. CCC further argues the City council prematurely determined, before the election on the Initiative, that the Initiative constituted a tax rather than a regulatory fee.

CCC requests this court reverse the trial court judgment and order the trial court to issue a writ of mandate compelling the City to hold a special election on the Initiative. CCC suggests, in the interest of expediency, this court treat the instant appeal as a writ petition and directly order the City to call a special election on the Initiative, to be consolidated with the June 7, 2016 primary.

We conclude Article 13C, section 2 does not apply to CCC's Initiative. Article 13C, sections 1 and 2 refer to taxes imposed by local government. Article 13C is silent as to taxes imposed by initiative. Article 2, sections 8 and 11 of the California Constitution and Elections Code sections 1405 and 9214, on the other hand, provide the people with initiative powers and state procedures for holding elections on initiatives.

Under Article 2 and Elections Code section 1405 and 9214, the City is required to place the Initiative on a special election ballot. The trial court's ruling and judgment denying CCC's writ petition is therefore reversed, and the trial court is directed to issue a writ of mandate compelling the City to place the Initiative on a special ballot in accordance with Article 2, sections 8 and 11, and Elections Code sections 1405 and 9214. We reject CCC's request to treat this appeal as a petition for writ of mandate so that this court can issue a writ directly to the City directing it to place the initiative on the next ballot, because CCC has not cited any persuasive authority, and we are not aware of any, allowing this court to do so.

II

FACTS AND PROCEDURAL BACKGROUND

On March 19, 2015, CCC filed a petition for writ of mandate and motion for peremptory writ of mandate (writ motion). The facts alleged in the writ petition are undisputed. CCC alleges in the writ petition the following facts. CCC is a California nonprofit corporation. CCC sponsored and drafted a proposed medical marijuana initiative petition. The key provisions of the Initiative are that the Initiative would repeal existing City code provisions prohibiting medical marijuana dispensaries and would adopt regulations permitting and establishing standards for the operation of medical marijuana dispensaries within the City. The proposed Initiative allows the City to permit a maximum of three medical marijuana dispensaries. An applicant must obtain a business license and applicable City permits. According to the Initiative, a medical marijuana dispensary must pay the City an "annual Licensing and Inspection fee" of

$75,000 (Initiative § 17.158.100). Initiative proponents, Nicole De La Rosa and James Velez, presented the Initiative petition to the City.

Before circulating the Initiative petition, Nicole De La Rosa and James Velez filed with the City a notice of intention to circulate the Initiative petition. The City attorney prepared a title and summary for the Initiative. Thereafter, a notice of intention to circulate the Initiative petition was published and circulated.

The Initiative requested it be considered at a special election. At least 5,542 signatures (15 percent of registered voters) were needed for the Initiative to qualify for a special election, which would be held sooner than the next regular election. The County of San Bernardino Registrar reported there were 6,865 signatures on the Initiative petition. On February 9, 2015, the City council accepted the county certificate of sufficiency from the San Bernardino County Registrar of Voters and ordered an Agency Report.

The City Agency Report

The Agency Report dated March 4, 2015 (Agency Report), was prepared jointly by City departments under Elections Code section 9212, to address the anticipated impacts of the Initiative on the City. The Agency Report concluded the Initiative's $75,000 licensing and inspection fee exceeded the estimated actual costs incurred from issuing a license for a medical marijuana dispensary and conducting annual inspections of the dispensary. The City estimated the actual annual costs would total $15,014.28. Because the $75,000 licensing and inspection fee imposed by the Initiative exceeded the anticipated costs of licensing and inspection of a medical marijuana dispensary, the City

concluded in the Agency Report that the $75,000 fee is a general tax, which must be presented to voters at a regularly scheduled election under Article 13C. In reaching this conclusion, the City relied on the reports provided by the City's departments, which are included in the Agency Report.

The City Attorney reported in the Agency Report that the annual $75,000 licensing and inspection fee was a general tax, which under the California Constitution, must be submitted to voters at a regularly scheduled election and cannot appear on a special election ballot. The Development Services Department (Development Services) reported in the Agency Report that the estimated cost of processing a typical permit for a medical marijuana dispensary was $9,379.28, with an estimated $7,000 in cost-recovery from additional fees charged for processing the application. Development Services estimated the annual inspection cost for a single medical marijuana dispensary totaled $4,000. Development Services estimated a medical marijuana dispensary would generate $84,480 per year in sales tax revenue.

The City Administrative Services Director, Stephanie Mendenhall, summarized in the Agency Report the City departments' reported costs for obtaining a medical marijuana dispensary permit and for an annual permit inspection as follows. The fire department determined its initial costs for processing a typical medical marijuana dispensary permit would be $1,443, with the additional annual cost of $292 for two biannual inspections to ensure compliance with the Uniform Fire Code. Development Services estimated an initial cost of $9,279.28 for processing a typical permit and $4,000 annually for an annual permit inspection by the Building and Planning Divisions. The

total estimated cost for obtaining a medical marijuana permit amounted to $10,722.28. The total estimated cost for annual permit inspections was $4,292. Mendenhall further reported in the Agency Report that the estimated cost of a standalone special election was $179,800. The estimated cost of placing the Initiative on the 2016 Statewide Election (regularly scheduled election) was $25,000.

March 9, 2015 City Council Meeting

On March 9, 2015, the City council met. The City received the Agency Report and the City attorney provided additional information contained in the Agency Report. The City council discussed whether the Initiative's $75,000 licensing and inspection fee is a tax and whether it must be placed on a special or general election ballot. The City council adopted Resolution No. 6267, finding the Initiative's $75,000 fee is actually a tax because it exceeds the actual licensing and inspection costs, and the Initiative does not specifically provide any legally binding mandate for use of the excess revenue generated from the $75,000 fee. The excess revenue would thus by default be deposited into the City's general fund used for general governmental purposes. The City determined the Initiative did not qualify for a special election under Elections Code sections 1405 and 9214, because under Article 13C the Initiative imposed a general tax. Resolution No. 6267 therefore provides notice and direction for ordering the Initiative submitted to the voters at the next general election on November 8, 2016.

Writ Petition Allegations

CCC alleges in its writ petition that the Initiative is not subject to Article 13C because the Initiative fee is not a tax and is not imposed by a local government. Rather,

if adopted, the Initiative fee would be imposed by the voters by initiative. CCC also alleges that, even if the $75,000 licensing and inspection fee is a tax, the remedy would be to allow the Initiative to go on the special election ballot. Then, if erroneously approved, the court could strike the Initiative or strike only the section imposing the $75,000 fee. CCC concludes that the City's failure to place the Initiative on a special ballot therefore violates Elections Code section 9214.

CCC further alleges the City refuses to allow CCC to participate in any discussion or hearing determining whether the Initiative imposes a general tax. In addition, Initiative section 17.158.100 allegedly is only a minor part of the overall Initiative and would only affect the three proposed medical marijuana dispensaries. CCC asserts in its writ petition the City took the position the Initiative imposes a general tax because the City is against the Initiative. CCC further alleges the City's position allegedly is a pretext and serves no legitimate purpose. CCC concludes the City's refusal to place the Initiative on a special election ballot violates CCC's rights under the Elections Code and California Constitution. CCC's writ petition therefore requests the trial court to issue a writ of mandate compelling the City and City clerk to place the Initiative on a special election ballot in compliance with Elections Code section 9214.

Hearing on Writ Motion and Petition

The City filed an answer and amended answer to CCC's writ petition and opposition to CCC's writ motion. The City argued CCC's writ motion was premature and procedurally improper, and the Initiative imposes a tax, requiring placing the Initiative on a general election ballot. The City also lodged materials with the trial court

in support of the City's opposition to CCC's writ motion. The materials included a binder of information entitled "Marijuana and the Drug Cartels," and an accountant report dated February 22, 2015, entitled "Compliance Summary & Checklist for Lawful Operation of medical marijuana dispensary in the City of Upland California" (accountant report). These materials were submitted to the City council for consideration regarding the Initiative during the March 9, 2015 City council meeting.

The accountant report was prepared by New Era Certified Public Accountants, LLP (New Era), which specializes in accounting and tax preparation services for medical marijuana dispensaries. The accountant report provided a list of compliance areas, including licensing and permits, and estimated related costs incurred by cities and counties. New Era estimated the total annual cost of the enforcement procedures itemized in the accountant report totaled $56,540 per dispensary, plus an additional annual $10,000 per dispensary to cover possible fees resulting from a noncompliant dispensary failing to comply with applicable regulations and guidelines, which could lead to revocation or suspension of a license.

On May 19, 2015, the trial court heard oral argument on CCC's writ motion. Without addressing whether Article 13C, section 2 applies to initiatives that impose a tax, the trial court denied CCC's writ petition and motion, finding that the $75,000 fee imposed by the Initiative qualified as a tax and therefore the Initiative was required to be placed on the next general election ballot. On June 5, 2015, the trial court entered judgment in favor of the City and against CCC on each allegation in CCC's writ petition. Although CCC filed a premature notice of appeal of the May 19, 2015, ruling before

entry of judgment, this court ordered the premature notice of appeal construed as an appeal of the judgment.

III

THE APPEAL IS NOT MOOT

"Generally, an appeal will be dismissed as 'moot when any ruling by this court can have no practical impact or provide the parties effectual relief. [Citation.]' [Citations.]" (*Alliance for a Better Downtown Millbrae v. Wade* (2003) 108 Cal.App.4th 123, 128 (*Wade*).) This case presents an actual controversy.

The parties agree that CCC's appeal is not moot. (See *Jeffrey v. Superior Court* (2002) 102 Cal.App.4th 1, 4-5.) However, by the time this decision becomes final, it may be too late to place the Initiative on the June 2016 ballot. (Elect. Code, § 1405.) CCC has requested, and this court granted on January 6, 2016, expedited review and calendar preference. Even if it is too late to place the Initiative on the June 7, 2016 election ballot, this appeal would not be moot because the issue will remain as to whether Article 13C applies to the Initiative.

IV

STANDARD OF REVIEW

When reviewing the trial court's ruling denying CCC's petition for a writ of mandate to compel a special election on the Initiative, this court "'"need only review the record to determine whether the trial court's findings are supported by substantial evidence."' [Citations.] However, we review questions of law independently. [Citation.] Where, as here, the facts are undisputed and the issue involves statutory

interpretation, we exercise our independent judgment and review the matter de novo. [Citation.]" (*Wade, supra,* 108 Cal.App.4th at p. 129.) The issues raised here, of whether imposition of the Initiative's $75,000 fee is a tax or a fee and whether pursuant to Article 13C, section 2, the Initiative must be placed on a special election ballot, are questions of law for this court to decide on an independent review of the facts. (*Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022, 1040 (*Weisblat*).) "The construction of [a] statute or an initiative, including the resolution of any ambiguity, is a question of law that we review de novo." (*Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1317 (*Schmeer*).)

V

LAW APPLICABLE TO WRITS OF MANDATE

A challenge to ministerial acts by local officials under Code of Civil Procedure section 1085, may be brought by a petition for writ of mandate. "To obtain such a writ, the petitioner must show (1) a clear, present, ministerial duty on the part of the respondent and (2) a correlative clear, present, and beneficial right in the petitioner to the performance of that duty. [Citations.]" (*Wade, supra,* 108 Cal.App.4th at pp. 128-129.) The City clerk's act of placing CCC's Initiative on a general or special election ballot qualifies as a ministerial duty because it is "an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists." (*Id.* at p. 129.)

Issuance of a writ of mandate is not necessarily a matter of right. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 593.) Rather, issuance of a writ

of mandate lies within the discretion of the court. However, where one has a substantial right to protect or enforce, which may be accomplished by such a writ, and there is no other plain, speedy and adequate remedy, the petitioner is entitled as a matter of right to the writ. (*Ibid.*) It would be an abuse of discretion to refuse it. (*Ibid.*)

VI

ARTICLE 13C DOES NOT APPLY TO CCC'S INITIATIVE

CCC contends that, even assuming the $75,000 fee imposed by the Initiative qualifies as a tax, Article 13C, section 2 does not apply because Article 13C is limited to taxes imposed by government, not by initiative. Therefore Article 13C does not preclude the Initiative from being placed on a special election ballot under Elections Code sections 1405 and 9214.

A. Laws Applicable to Placing a Measure on an Election Ballot

Article 2, sections 8 and 11, and Elections Code sections 1405 and 9214 instruct on placing an Initiative on an election ballot. Article 13C provides voting requirements for taxes imposed by local government.

Elections Code Section 9214

Elections Code section 9214 provides that, "If the initiative petition is signed by not less than 15 percent of the voters of the city according to the last report of registration by the county elections official to the Secretary of State . . . and contains a request that the ordinance be submitted immediately to a vote of the people at a special election, the legislative body shall do one of the following:

"(a) Adopt the ordinance, without alteration, at the regular meeting at which the

certification of the petition is presented, or within 10 days after it is presented.

"(b) Immediately order a special election, to be held pursuant to subdivision (a) of Section 1405, at which the ordinance, without alteration, shall be submitted to a vote of the voters of the city.

"(c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b)."

In the instant case, the Initiative petition was signed by over 15 percent of the City voters, thereby qualifying the Initiative for placement on a special election ballot under Elections Code section 9214. The City council ordered a report pursuant to section 9212, on the impact of the Initiative on the City. After the City Agency Report was presented to the City, the City ordered a regular election, instead of a special election.

Propositions 13, 218, and 26

The City argues the Initiative imposes a general tax and therefore Elections Code section 9214 is superseded by Article 13C, which requires the Initiative to be placed on the next regularly scheduled general election, on November 8, 2016. Article 13C, was enacted when voters passed Proposition 218 in 1996, "to implement Proposition 13, the predecessor initiative that voters passed in 1978 to constrain the taxation powers of state and local government." (*Weisblat, supra,* 176 Cal.App.4th at p. 1033, *Schmeer, supra,* 213 Cal.App.4th at p. 1317.)

Determining whether a fee or levy is a tax "has been a recurring task since 1978 when California voters added article XIIIA, commonly known as the Jarvis-Gann Property Tax Initiative or Proposition 13 (art. 13A), to our state Constitution. [Citations.] The purpose of the initiative was to assure effective real property tax relief." (*Weisblat, supra,* 176 Cal.App.4th at p. 1034.) Article 13A, section 4 restricts local taxes and permits local governmental entities to impose "special taxes" only if approved by a two-thirds vote of the electorate. (*Weisblat,* at p. 1034.) "Unlike taxes, fees are not subject to the voter approval limitation of Article 13A, section 4." (*Id.* at p. 1035.) The California Supreme Court in *Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 (*Sinclair*), noted that a "'tax' has no fixed meaning, and that the distinction between taxes and fees is frequently 'blurred,' taking on different meanings in different contexts. [Citations.]" (*Id.* at p. 874; italics added.)

In response to *Sinclair* and the proliferation of governmental entities raising revenues through sales taxes without voter approval, Proposition 218, entitled the "Right to Vote on Taxes Act," passed in 1996. (*Schmeer, supra,* 213 Cal.App.4th at p. 1319.) Proposition 218 added to the California Constitution Articles 13C and 13D, which imposed additional approval requirements on the imposition of taxes by state and local government. (*Schmeer,* at p. 1319; *Weisblat, supra,* 176 Cal.App.4th at p. 1038; *Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 692 (*Bay Area Cellular*).) Proposition 218 states its purpose is the following: "The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local

governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent." (Ballot Pamp., Gen. Elec. (Nov. 5, 1996) text of Prop. 218, § 2, p. 108, reprinted in Historical Notes, 2B *West's Ann. Cal. Const.* (2013) art. 13C, § 2, p. 363; see *Bay Area Cellular, supra,* 162 Cal.App.4th at pp. 692-693.)

"Proposition 218, like Proposition 13, limits the power of local governments to impose taxes. [Citation.] 'Section 5 of Proposition 218 required that the provisions of the act be "liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent."' [Citation.]" (*Weisblat, supra,* 176 Cal.App.4th at p. 1039, quoting *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364, 1378 (*Pajaro*) and *Bay Area Cellular, supra,* 162 Cal.App.4th at p. 692.)

Article 13C, Sections 1 and 2

Section 2(a) of Article 13C, added by Proposition 218, provides that "All taxes imposed by any local government shall be deemed to be either general taxes or special taxes." Article 13C, section 1(a) defines "general tax" as "any tax imposed for general governmental purposes'; that is, "when its revenues are placed into the general fund and are available for expenditure for any and all governmental purposes. [Citation.]" (*Howard Jarvis Taxpayers Assn. v. City of Roseville* (2003) 106 Cal.App.4th 1178,

1185.) Under Article 13C, section 2(b) of Proposition 218, "[n]o local government may impose, extend, or increase any general tax" until the matter is "submitted to the electorate and approved by a majority vote." (Art. 13C, § 2, subd. (b).)

Article 13C, section 1(d) defines a "special tax" as "any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." "'[A] tax is special whenever expenditure of its revenues is limited to specific purposes; this is true even though there may be multiple specific purposes for which [the] revenues may be spent.' [Citation.] Under Proposition 218, '[n]o local government may impose, extend, or increase any special tax' until the matter is 'submitted to the electorate and approved by a two-thirds vote.' (Art. 13C, § 2, subd. (d).)" (*Weisblat, supra,* 176 Cal.App.4th at pp. 1039-1040.)

In 2010, California voters approved Proposition 26, which added section 1(e) to Article 13C. "Proposition 26 expanded the definition of taxes so as to include fees and charges, with specified exceptions; required a two-thirds vote of the Legislature to approve laws increasing taxes on any taxpayers; and shifted to the state or local government the burden of demonstrating that any charge, levy or assessment is not a tax." (*Schmeer, supra,* 213 Cal.App.4th at p. 1322.) Proposition 26 amended section 3 of Article 13A and section 1 of Article 13C. Proposition 26 attempted to close perceived loopholes in Propositions 13 and 218. (*Schmeer,* at p. 1322.)

As concisely stated in *Schmeer,* "Proposition 26, in an effort to curb the perceived problem of a proliferation of regulatory fees imposed by the state without a two-thirds vote of the Legislature or imposed by local governments without the voters' approval,

defined a 'tax' to include 'any levy, charge, or exaction of any kind imposed by' the state or a local government, with specified exceptions." (*Schmeer, supra,* 213 Cal.App.4th at p. 1326.)

B. Construing Voter Initiatives

Here, the dispositive issue is whether Article 13C applies to the Initiative, which imposes a $75,000 fee. We need not reach the issue of whether the fee is a tax under Article 13C because, regardless, Article 3, section 2 does not apply to the Initiative. This is because Article 13C, section 2 is limited to taxes imposed by local government and is silent as to imposing a tax by initiative.

In construing Article 13C, we are required to apply the same principles governing the construction of a statute. (*Schmeer, supra,* 213 Cal.App.4th at p. 1316.) "Our task is to ascertain the intent of the electorate so as to effectuate the purpose of the law. [Citation.] We first examine the language of the initiative as the best indicator of the voters' intent. [Citation.] We give the words of the initiative their ordinary and usual meaning and construe them in the context of the entire scheme of law of which the initiative is a part, so that the whole may be harmonized and given effect. [Citations.] [¶] If the language is unambiguous and a literal construction would not result in absurd consequences, we presume that the voters intended the meaning on the face of the initiative and the plain meaning governs. [Citations.] If the language is ambiguous, we may consider the analyses and arguments contained in the official ballot pamphlet as extrinsic evidence of the voters' intent and understanding of the initiative. [Citation.]" (*Id.* at pp. 1316-1317.)

C. Is the Initiative subject to Article 13C, section 2?

CCC argues that Article 13C does not apply to the Initiative because it is limited to taxes imposed by local government. We agree. Article 13C, section 1(e) defines a tax as "any levy, charge, or exaction of any kind *imposed by a local government*," subject to seven specified exceptions. (Art. 13C, § 1(e); italics added.) Article 13C, section 1(e) does not expressly include fees imposed by initiative. Because Article 13C is silent in this regard, we decline to construe Article 13C as applying to taxes imposed by initiative.

The City relies on *Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809 (*La Habra*) for the proposition a tax imposed by local government refers to, not only enactment of a tax by local government, but also its continuing collection by and payment to a local government. But *La Habra* is not on point. It concerns Proposition 62, which in 1986, added Government Code sections 53727[1] and 53728.[2] These

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[1] Government Code section 53727 states: "(a) Neither this Article, nor Article XIII A of the California Constitution, nor Article 3.5 of Division 1 of Title 5 of the Government Code (commencing with § 50075) shall be construed to authorize any local government or district to impose any general or special tax which it is not otherwise authorized to impose; provided, however, that any special tax imposed pursuant to Article 3.5 of Division 1 of Title 5 of the Government Code prior to August 1, 1985 shall not be affected by this section.

"(b) Any tax imposed by any local government or district on or after August 1, 1985, and prior to the effective date of this Article, *shall continue to be imposed* only if approved by a majority vote of the voters voting in an election on the issue of imposition, which election shall be held within two years of the effective date of this Article. Any local government or district which fails to seek or obtain such majority approval shall cease to impose such tax on and after November 15, 1988." (Italics added.)

provisions address taxes imposed by government without voter approval, before Proposition 62 took effect, which the city continues to collect.

In *La Habra, supra,* 25 Cal.4th 809, the city adopted an ordinance establishing a utility users tax to raise revenue for general government purposes. The *La Habra* court held the statute of limitations had not run on the petitioner's challenge to the City of La Habra's continuing collection of a tax without obtaining voter approval of the tax. In reaching its holding, the court stated in *La Habra* that "the City's allegedly illegal actions include not only the Ordinance's initial enactment, but also the City's *continued collection*, through the agency of the service providers, of an unapproved tax." "Government Code section 53728, moreover, provides a remedy against a city's continued collection of a tax that has not been approved by the voters, requiring the responsible county official to withhold property tax transfers in a dollar amount equal to the illegal collections. Clearly the intent of Proposition 62's enactors was not merely to preclude enactment of a tax ordinance without voter approval, but to *preclude continued*

[footnote continued from previous page]

[2] Government Code section 53728 states: "If any local government or district imposes any tax without complying with the requirements of this Article, or in excess of its authority as clarified by Section 53727, whether or not any provision of Section 53727 is held not applicable to such jurisdiction, the amount of property tax revenue allocated to the jurisdiction pursuant to Chapter 6 of part 0.5 of Division 1 of the Revenue and Taxation Code (commencing with Section 95) shall be reduced by one dollar ($1.00) for each one dollar ($1.00) of revenue attributable to such tax for each year that the tax is collected. Nothing in this section shall impair the right of any citizen or taxpayer to maintain any action to invalidate any tax imposed in violation of this Article."

imposition or collection of such a tax as well." (*La Habra, supra,* 25 Cal.4th at p. 824; italics added.)

In *La Habra, supra,* 25 Cal.4th at pages 823-824, the court further explained: "[T]he City appears to contend that Proposition 62 can be violated *only* at the time a tax ordinance is first enacted because, in the City's view, all Proposition 62 prohibits is 'imposition' of a tax without voter approval, and imposition is limited to the time of initial enactment. Both premises are faulty. Government Code section 53727, subdivision (b), which governs taxes imposed prior to the measure's passage, provides that no such tax '*shall continue to be imposed*' without a vote within two years of the measure's effective date, and that a taxing jurisdiction that fails to obtain a majority vote 'shall cease to impose such tax on and after November 15, 1988.' Clearly, *in this provision, "imposition" is not limited to the time of initial enactment*, and nothing in Proposition 62 suggests that it was used in a more restricted sense in Government Code section 53723,[3] the prohibitory provision at issue here. Government Code section 53728, moreover, provides a remedy against a city's *continued collection* of a tax that has not been approved by the voters, requiring the responsible county official to withhold property tax transfers in a dollar amount equal to the illegal collections. *Clearly the intent of Proposition 62's enactors was not merely to preclude enactment of a tax*

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[3] Government Code section 53723 states: "No local government, or district, whether or not authorized to levy a property tax, may impose any general tax unless and until such general tax is submitted to the electorate of the local government, or district and approved by a majority vote of the voters voting in an election on the issue."

ordinance without voter approval, but to preclude continued imposition or collection of such a tax as well." (Italics added.)

The instant case is distinguishable from *La Habra*. *La Habra* is founded on Proposition 62 and statutory language that expressly prohibits, not only taxes imposed by government without voter approval, but also taxes imposed by local government before adoption of Proposition 62, which the government has *continued* to impose without obtaining voter approval of the taxes. There is no similar language in Proposition 218 (Article 13C) or Proposition 26, from which this court can reasonably infer Propositions 218 and 26 are intended to encompass taxes local government collects after they have been imposed by initiative, in which there has been voter approval.

The purpose and intent of Propositions 13 and 218 is to limit the power of local governments to impose taxes by imposing voting requirements. "'Section 5 of Proposition 218 required that the provisions of the act be "liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent."' [Citation.]" (*Weisblat, supra,* 176 Cal.App.4th at p. 1039, quoting *Pajaro, supra,* 150 Cal.App.4th at p. 1378 and *Bay Area Cellular, supra,* 162 Cal.App.4th at p. 692; italics added; see *Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal.App.4th 679, 681-682.) As explained in *Howard Jarvis Taxpayers Assn. v. City of Roseville* (2002) 97 Cal.App.4th 637, 640, in adopting Proposition 218 adding Article 13C, "the people found and declared "'that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge

increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the *methods by which local governments exact revenue from taxpayers without their consent.*"'" (Italics added.)

Likewise, the purpose of Proposition 26, which amended Article 13C by adding section 1(e), was to "curb the perceived problem of a proliferation of regulatory fees *imposed by the state* without a two-thirds vote of the Legislature or *imposed by local governments* without the voters' approval" by defining "a 'tax' to include 'any levy, charge, or exaction of any kind imposed by' the state or a local government, with specified exceptions." (*Schmeer, supra,* 213 Cal.App.4th at p. 1326; italics added.) As stated in Proposition 26's "Findings and Declarations of Purpose," Proposition 26 was passed in response to "the recent phenomenon whereby the Legislature and local governments have disguised new taxes as 'fees' in order to extract even more revenue from California taxpayers without having to abide by these constitutional voting requirements. Fees couched as 'regulatory' but which exceed the reasonable costs of actual regulation or are simply imposed to raise revenue for a new program and are not part of any licensing or permitting program are actually taxes and should be subject to the limitations applicable to the imposition of taxes." (Ballot Pamp., Gen. Elec. (Nov. 2, 2010) text of Prop. 26, § 1, subd. (e), p. 114; see *Weisblat, supra,* 176 Cal.App.4th at p. 1323.) Proposition 26 further states that, "[i]n order to ensure the effectiveness of these constitutional limitations, this measure also defines a 'tax' for state and local purposes so that neither the Legislature nor local governments can circumvent these restrictions on

increasing taxes by simply defining new or expanded taxes as 'fees.'" (Ballot Pamp., Gen. Elec. (Nov. 2, 2010) text of Prop. 26, § 1, subd. (f), p. 114; see *Weisblat, supra,* 176 Cal.App.4th at p. 1323.)

Taxation imposed by initiative is not taxation imposed by local government. We do not construe the term "impose" to include, not only creating or enacting a tax, but also collecting or receiving tax proceeds after the tax has been enacted. The dictionary defines "impose" as "to establish." (*Ponderosa Homes, Inc. v. City of San Ramon* (1994) 23 Cal.App.4th 1761, 1770 (*Ponderosa*), citing Webster's Third Internat. Dict. (1970) p. 1136, in construing "impose" as used in the Mitigation Fee Act; see *Proposition 218 Implementation Guide, September 2007 Edition*, p. 60, by the League of Cities, found at <https://www.cacities.org/UploadedFiles/LeagueInternet/c2/c2f1ce7c-2b14-45fe-9aaa-d3dd2e0ffecc.pdf> and *Proposition 26 Implementation Guide, April 2011*, pp. 9-10, by the League of Cities, found at <http://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Hot-Issues/Proposition-26-Implementation-Guide>. Webster's New World Dictionary defines "impose" as "to place or set (a burden, tax, fine, etc. *on* or *upon*) as by authority." (Webster's New World Dict. (3d college ed. 1988) p. 678.)

Although not binding authority, the Proposition 26 Implementation Guide, citing *Ponderosa, supra,* 23 Cal.App.4th at p. 1770, discusses the meaning of the term "impose," as follows: "By its terms, Proposition 26 applies only to fees that are 'imposed' by government. Fees imposed by private parties (like telephone charges and many solid waste collection fees) are not within the scope of Proposition 26. Moreover, many fees collected by local governments are not 'imposed' by them, either because local

government is collecting a fee imposed by the state or because the fee is voluntarily paid. Courts can be expected to rely, as they have in similar contexts, on the dictionary meaning of 'impose,' which is to establish or apply by authority or force." (*Proposition 26 Implementation Guide, April 2011*, by the League of Cities, pp. 9-10, found at <http://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Hot-Issues/Proposition-26-Implementation-Guide>.)

In *Ponderosa, supra,* 23 Cal.App.4th 1761, the court addressed the question of "whether the 'imposition of fees' in [*Ponderosa*] occurred when the City first set the traffic mitigation fees as a condition on its tentative subdivision map approval, or when Ponderosa paid an installment on the fees already required by the City." (*Id.* at p. 1669.) Ponderosa Homes, Inc. (Ponderosa Homes) argued that no cause of action protesting development project fees Government Code section 66020 accrues "'until the challenged fee is paid, because section 66020, subdivision (a) establishes as the two prerequisites for a fee protest both the tender of the required payment in full and written notice that the payment is being tendered under protest.'" (*Ponderosa* at p. 1770.)[4] The *Ponderosa* court disagreed, stating: "The phrase 'to impose' is generally defined to mean to establish or apply by authority or force, as in 'to impose a tax.' (Webster's Third New Internat. Dict. (1970) p. 1136.) *There is a logical distinction between the act of imposing*

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[4] Government Code section 66020 states in relevant part: "(a) Any party may protest the imposition of any fees, dedications, reservations, or other exactions *imposed* on a development project, as defined in Section 66000, *by a local agency* by meeting both of the following requirements . . ." (Italics added.)

something and the act of complying with that which has been imposed. As applicable here, *the phrase refers to the creation of a condition or fee by authority of local government; it is not synonymous with the act of complying with that condition or fee. Just as creation is different from compliance, so is 'imposition' of a fee different from payment thereof.*" (*Ponderosa,* at p. 1770; italics added.)

The court in *Ponderosa* further explained that "[t]he statutory definition of 'imposition of fees' does not contradict this interpretation. Section 66020, subdivision (h) states that 'imposition of fees, dedications, reservations, or other exactions occurs . . . when they are imposed or levied on a specific development.' The statute does not say that imposition occurs 'when they are paid or complied with.'" (*Ponderosa, supra,* 23 Cal.App.4th at p. 1770, citing Webster's Third New Internat. Dict., *supra*, p. 1301.) The court in *Ponderosa* therefore concluded that Ponderosa Homes's payment of the required map processing fee "simply constituted the satisfaction of the condition already imposed earlier," and was not paid at the time the government imposed the fee. (*Id.* at p. 1771.)

Likewise, here, based on our review of Propositions 13, 218, and 26 as whole and taking into consideration the stated intent of these propositions (preventing government from imposing taxes without voter approval), we conclude the drafters, proponents, and voters of Propositions 13, 218 and 26 did not intend the language, "imposed by local government," to encompass taxes imposed by initiative, but later collected or received by local government.

The only mention of the initiative power in Article 13C is in section 3, which clarifies that, "[n]otwithstanding any other provision of this Constitution, including, but

not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of *reducing or repealing* any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and *neither the Legislature nor any local government charter shall impose* a signature requirement higher than that applicable to statewide statutory initiatives." (Italics added.) Even though there is no mention also of initiatives that impose, increase, or extend a local tax, there is no language in Article 13C stating it applies to such initiatives. To conclude otherwise would interfere with the initiative power provided in Article 2, sections 8 and 11 of the California Constitution.

CCC's Initiative and Article 2, sections 8 and 11, "must be construed liberally in favor of the people's right to exercise the reserved powers of initiative and referendum. The initiative and referendum are not rights 'granted the people, but . . . power[s] reserved by them. Declaring it "the duty of the courts to jealously guard this right of the people" [citation], the courts have described the initiative and referendum as articulating "one of the most precious rights of our democratic process" [citation]. "[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it."'" (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695 (*Rossi*); *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.) This is because, "as its name suggests, the initiative allows voters to *propose* new legislation" (*Jahr v. Casebeer* (1999) 70 Cal.App.4th 1250, 1259; see Cal. Const., art. II, § 8), and allows "local as well as

statewide voters to take legislative action without the aid or interference of their elected officials." (*Id.* at p. 1259; see Cal. Const., art. II, § 11; *AFL-CIO v. Deukmejian* (1989) 212 Cal.App.3d 425, 430.)

Article II, section 8 of the California Constitution creates the statewide initiative power. (*Rossi, supra,* 9 Cal.4th at p. 695.) It provides in pertinent part:

"(a) The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.

"(b) An initiative measure may be proposed by presenting to the Secretary of State a petition that sets forth the text of the proposed statute . . . and is certified to have been signed by electors equal in number to 5 percent in the case of a statute . . . of the votes for all candidates for Governor at the last gubernatorial election.

"(c) The Secretary of State shall then submit the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election. The Governor may call a special statewide election for the measure. . . ."

Article 2, section 11 of the Constitution further provides: "(a) Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide." "The local initiative power may be even broader than the initiative power reserved in the Constitution." (*Rossi, supra,* 9 Cal.4th at p. 696.) The initiative procedures that the Legislature has enacted are included in Elections Code sections 1405 and 9214. The constitutional grant of authority to the

Legislature to pass laws regarding taxation does not limit the people's plenary power of initiative, and that power may be used to enact or repeal taxes. (*Rossi,* at p. 709.)

The City has agreed to place CCC's Initiative on the next regularly scheduled general election ballot, in November 2016. CCC argues, however, that the City's refusal to place the Initiative on a special ballot unlawfully interferes with CCC's right of initiative by delaying voting on the Initiative until the next general election in November 2016. We agree. Article 2, sections 8 and 11, provide that at the request of an initiative's proponents, an initiative shall be placed on the ballot in accordance with procedures provided by the Legislature. Elections Code section 9214 provides that if the Initiative is not adopted by City ordinance, the City shall either immediately order a special election, to be held pursuant to subdivision (a) of section 1405, or the City shall order a report pursuant to Elections Code section 9212. The City ordered a report pursuant to Elections Code section 9212 and presented the report to the City council, which was then required to either adopt the Initiative by City ordinance within 10 days or order a special election for the Initiative.

Elections Code section 1405 provides in relevant part:

"(a) Except as provided below, the election for a county, municipal, or district initiative that qualifies pursuant to Section 9116, 9214, or 9310 shall be held not less than 88 nor more than 103 days after the date of the order of election.

"(1) When it is legally possible to hold a special election on an initiative measure that has qualified pursuant to Section 9116, 9214, or 9310 within 180 days prior to a regular or special election occurring wholly or partially within the same territory, the

election on the initiative measure may be held on the same date as, and be consolidated with, that regular or special election.

"(2) When it is legally possible to hold a special election on an initiative measure that has qualified pursuant to Section 9116, 9214, or 9310 during the period between a regularly scheduled statewide direct primary election and a regularly scheduled statewide general election in the same year, the election on the initiative measure may be held on the same date as, and be consolidated with, the statewide general election."

Here, the Initiative qualifies under section 9214 for a special election, since the Initiative petition was signed by at least 15 percent of the City voters and the initial Initiative petition contained a request that the initiative be submitted immediately to a vote of the people at a special election. Therefore the City is required to place the Initiative on a special election ballot. Where the City council "refuses to discharge its duty and fix a proper time for the election, it may be compelled to do so by mandamus." (*Blotter v. Farrell* (1954) 42 Cal.2d 804, 812-813.) The trial court therefore abused its discretion by denying CCC's writ petition to compel the City to place CCC's Initiative on a special ballot, as required under Article 2, sections 8 and 11, and Elections Code sections 1405 and 9214.[5]

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[5] CCC urges this court to include in this decision and in the disposition guidance on when the special election on the Initiative should be set. Doing so would be premature and constitute an inappropriate advisory opinion, since this is matter which will turn on the facts and circumstances existing when the case is remanded to the trial court. The parties have not had an opportunity to fully consider the scheduling of the special election, taking into consideration the applicable law and circumstances affecting

[footnote continued on next page]

VII

DISPOSITION

The trial court's ruling and judgment denying CCC's writ petition is reversed, and the trial court is directed to issue a writ of mandate compelling the City to place the Initiative on a special ballot, in accordance with Article 2, sections 8 and 11, and Elections Code sections 1405 and 9214. CCC is awarded its costs on appeal as the prevailing party.

CERTIFIED FOR PUBLICATION

CODRINGTON
J.

We concur:

HOLLENHORST
Acting P. J.

McKINSTER
J.

[footnote continued from previous page]
the scheduling of the special election and whether the Initiative election must be consolidated with another election under the Elections Code and California Constitution.

Exhibit B

Will ruling make it easier to raise taxes?

Chargers stadium proposal, other tax initiatives could avoid two-thirds majority


(/staff/david-garrick/)

By David Garrick (/staff/david-garrick/) | 8:35 p.m. March 23, 2016

The proposed location for a "convadium" south of Petco Park. — *K.C. Alfred*

San Diego — In a decision that could have a sweeping impact across California, a new state appeals court ruling may ease approval of local tax increases if they are placed on the ballot by citizen's initiative instead of by a government agency.

The ruling by the Fourth District Court of Appeal could allow such tax increases, including one the Chargers may propose for a new downtown stadium (http://www.sandiegouniontribune.com/news/2016/mar/22/chargers-nfl-stadium-hotel-tax-hike/), to be approved by a simple majority instead of two-thirds o voters.

Attorneys from across California offered divergent opinions on Wednesday about whether the ruling does indeed eliminate the two-thirds requirement, and also disagreed about its chances of eventually being overturned by the state Supreme Court.

Most agreed, however, that it was a landmark ruling that casts doubt for the first time on whether citizen's initiatives that include tax increases must be approved by two-thirds of voters.

"It has a far reaching impact across the state," San Diego City Attorney Jan Goldsmith said of the ruling c Wednesday. "There was a belief there was a two-thirds requirement and this changes that. There's no question it's a seminal case."

In addition to the Chargers proposal, which could increase local hotel taxes, the ruling could lower voter approval to a simple majority for school bond measures, sales tax hikes or other increases as long as such proposals begin with a citizen's initiative.

The threat of a potential overturn by the state Supreme Court, however, makes it unlikely citizen's groups will quickly start pursuing such initiatives.

In addition to the threat of an appeal, taxpayer advocacy groups may also petition the appellate court to reverse its decision or decertify the ruling, which would eliminate it as a legal precedent for other cases.

Jon Coupal, president of the Howard Jarvis Taxpayers Association, said he expects the ruling, which was issued last Friday, to be overturned.

He said Proposition 218 in 1996 and Proposition 13 in 1978 amended the state constitution to require a two-thirds vote for all tax increases where revenue would be spent on something specific.

Tax increases for general purposes require only a simple majority.

"The constitutional requirement for the two-thirds vote is there and we think it's immutable," said Coupal, criticizing the appellate court for exempting citizen's initiatives. "The argument that the people can do something that a legislative body cannot is a little troublesome."

Coupal said initiative law doesn't allow citizens to go beyond the power of the government agency they are imposing their ballot measure on.

The ruling, however, says citizen's initiatives aren't subject to some of the constitutional amendments voters made when they approved Propositions 13, 218 and 26, because those measures aimed to limit taxes imposed by governments, not citizens.

"Taxation imposed by initiative is not taxation imposed by local government," the appellate court said in the 29-page ruling. "We conclude the drafters, proponents and voters of Propositions 13, 218 and 26 did not intend the language 'imposed by local government' to encompass taxes imposed by initiative..."

That conclusion is based on the constitution defining a tax as "any levy, charge, or exaction of any kind imposed by a local government," but not including any mention of such levies or charges being imposed by an initiative.

Coupal, who helped write Proposition 218, said the two-thirds requirement is crucial because tax increases are not something to be taken lightly.

"We use a two-thirds vote for those matters requiring a greater consensus," he said, noting that the U.S. Constitution stipulates that higher approval threshold on 12 separate occasions.

He also said it would be reckless for any group to consider this ruling a green light to move forward with an initiative and expect to need only majority approval.

"Anybody who tried to rely on this case to impose a special tax with a special purpose with less than a two-thirds vote would be in a world of trouble," he said. "This is a very narrow decision."

Even if the ruling stands and an initiative, such as the Chargers proposal, gets a majority approval from voters, attorneys said there could be subsequent lawsuits contending that local officials in whichever jurisdiction misapplied the appellate court ruling.

Patrick Whitnell, general counsel for the League of California Cities, agreed with Coupal that the appellat court decision was narrow, stressing that it didn't specifically address the two-thirds requirement because that wasn't at issue in the case, California Cannabis Coalition v. City of Upland.

Instead, the ruling said Upland must schedule a special election for a medical marijuana initiative sponsored by the cannabis coalition that could allow three dispensaries to open in the San Bernardino County city.

City officials had insisted that a general election must be held instead of a special election because Articl 13C of the state constitution — the same section that requires a two-thirds vote for specific tax increases — mandates that tax increases be on ballots during higher-turnout general elections.

The appellate court ruled that most or all of Article 13C, including the general election requirement, doesn't apply to citizen's initiatives.

"There was some broad language, but interpreting the Upland decision to say the two-thirds vote for a special tax no longer applies in a citizen's initiative goes beyond what was at issue in that case," Whitnell said. "It would be extending the Upland decision beyond what was in front of the court."

Whitnell said the ruling, which overturned a lower court decision from last June, has created confusion since it was issued.

"It's not consistent with how municipal agencies have understood the relationship between voter initiative and a measure placed on the ballot by the city council," he said.

Whitnell said a desire to clear up the two-thirds approval threshold may prompt the state Supreme Court to review the case.

"The court would certainly be aware of the potential implications of their ruling," he said. "That would certainly be the elephant in the room."

Goldsmith, the San Diego city attorney, said that potential "wide impact" makes him think it's likely the hig court will take the case.

And he said there's some reason to believe they will uphold the appellate court ruling.

The state Supreme Court in 2014 ruled that projects proposed by citizen's initiative, unlike projects proposed by government agencies, aren't subject to the rigorous requirements of the California Environmental Quality Act.

That ruling prompted stadium proposals by citizen's initiative sponsored in Inglewood by the Rams and ir Carson by the Chargers and Raiders.

Goldsmith said the court making an exception for citizen's initiatives in the CEQA case makes it more likely they will do so again when it comes to two-thirds approval.

"It seems to be their trend," he said.

Regarding the Chargers initiative, which would increase taxes on San Diego hotel stays from 12.5 percei to 16.5 percent, and a separate citizen's initiative by attorney Cory Briggs, Goldsmith said majority approval is the law of the land for now.

"As of today if there was a citizen's initiative to increase taxes in San Diego, I would advise the city clerk and the county registrar that this is a majority vote bill because this is good law, it's published and it's coming from our own court of appeal," Goldsmith said.

That could all change, he said, if Upland decides to appeal the ruling, which could prompt the Supreme Court to "unpublish" it and put the two-thirds requirement back in place.

Upland City Attorney Richard Adams said Wednesday that his City Council is scheduled to debate possibly appealing the ruling during a session closed to the public next Monday. But he said they might not come to a decision then.

Adams called the appellate court ruling a disappointment.

Goldsmith predicted that, if there is an appeal, the state Supreme Court would decide sometime this summer whether to review the case.

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Exhibit C

CP&DR CALIFORNIA PLANNING & DEVELOPMENT REPORT

Home

Insight: Will Upland Ruling Allow Stadiums -- And Others -- Evade Two-Thirds Vote?

By William Fulton on 27 March 2016 - 3:14pm

San Bernardino County | Insight | Taxation

So, why does a court ruling on a medical marijuana ban in Upland affect the Chargers ability to build a new stadium in San Diego?

For the same reason that construction of a Wal-Mart in Sonora affects the Rams ability to build a new stadium in Inglewood, which is:

The apparently magical power of the initiative process to end-run two generations of laws that make it more difficult to approve new buildings and adopt new taxes in California.

By now you all know about the Tuolumne Tactic – the end-run of the California Environmental Quality Act sanctioned two years ago by the state Supreme Court. The trick is simple: Initiatives aren't subject to CEQA. Local governments can simply adopt an initiative rather than put it on the ballot. So, by adopting an initiative – often for a development project – the local government can end-run CEQA altogether. That's how both Inglewood and Carson got their NFL stadiums approved so fast. More recently, developers have tried the tactic to approve a logistics center in Moreno Valley and a shopping center in Carlsbad (though that approval was overturned by a referendum).

It's a pretty direct assault on 1970s and '80s left-wing California environmentalism.

Now, thanks to medical marijuana advocates, the initiative process may also be used to bypass Propositions 26 and 218 – the two ballot initiatives that embedded in the California constitution the requirement that "special taxes" (taxes dedicated to a specific purpose) require two-thirds voter approval.

And that could turn out to be a pretty direct assault on 1970s and '80s right-wing California fiscal conservatism.

At first glance, the Upland case wouldn't seem like a blockbuster because the issue in front of the appellate court was pretty narrow. (In fact, I missed the broader significance last week when I

wrote the case up and was tipped off to its important only by my friends at Voice of San Diego.) The issue in front of the appellate court was whether the initiative to overturn Upland's medical marijuana ban had to be placed on a special election ballot or could wait for a general election.

But the answer was a big one: The Fourth District concluded that Article 13c of the California Constitution doesn't apply to initiatives. That's the provision – contained originally in Proposition 218 – that says, among other things, special taxes are subject to two-thirds voter approval.

The reason the Upland ruling might come into play in San Diego is simple: If the Chargers need to win a supermajority to get their stadium funded by taxpayers, they probably need to play ball with Mayor Kevin Faulconer and others, meaning they would have to swallow things they don't like in the same tax measure. But if the Chargers only need to win a simple majority, they may go their own way.

The implications are much bigger than just the Chargers, of course. If you can pass a tax with a simple majority to fund something specific – not just stadiums but, say, police protection or affordable housing or new rail transit, just to name a few possibilities – well, that's an end-run we're likely to see over and over again.

It's also punching a hole in the two-thirds-approval armature that the Howard Jarvis Taxpayers Association and other taxpayer advocates put into place in the two decades after Proposition 13 passed in 1978 – armature they assembled in large part, ironically, via the statewide initiative process.

It's the third big hole in the armature, after the 2010 passage of Proposition 25, which ended the requirement of two-thirds legislative approval for the state budget. That move stopped the gridlock in the state budget process, which basically required Republican approval for a budget. The two-thirds voter approval requirement for school bonds has also been dropped to 55%, meaning property tax increases to fund school facilities are much easier to pass than before.

The architect of this master legal move, by the way, was longtime porn attorney Roger Jon Diamond, who represented the California Cannabis Coalition in the Upland case.

It's not clear whether the Upland ruling will hold. It's only an appellate court ruling. And the ruling turns on what is, in my mind, a somewhat dubious legal distinction: The idea that an initiative placed on a local ballot in a local election is not an action of the local government. "Taxation imposed by initiative is not taxation imposed by local government," wrote Justice Carol D. Codrington, a Schwarzenegger appointee, in her decision for the court.

Huh? The whole point of the initiative process is to allow voters to step into the shoes of elected officials (the state legislature, county boards of supervisors, and city councils) and enact

legislation that has exactly the same legally binding power. If voters in San Diego approve an increase in the hotel tax to pay for the new Chargers stadium, isn't that exactly the same thing as if the San Diego City Council or San Diego County Board of Supervisors approving such a tax? Aren't the voters "imposing" a tax on taxpayers in the same way elected officials would?

The rest of Codrington's ruling isn't exactly helpful on this point, because it spends several pages making the point that just because the city or county collects the tax, that doesn't mean the local government "imposed" it if it were passed via initiative. Fair enough, but …

The city could seek an appeal to the California Supreme Court. If this were an important case for cities around the state, the assembled legal firepower of the League of California Cities would be arrayed against the marijuana advocates. But does the League want a fight to the deal over a court case that makes it easier to raise taxes for police, transportation, and other special purposes? Maybe they'll just let it stand.

You can see advocates for transportation, open space, and affordable housing jumping on this one all over the state. Transportation agencies, for example, have struggled for decades with passing or renewing their half-cent sales taxes because they need a two-thirds vote. A simple majority would be so much easier. But it also takes the bat out of the hands of elected officials acting in their official capacity – and probably creates a legal mess as to how involved those elected officials can get in drafting the initiative. Could a county transportation commission, for example, draft a wish list of transportation projects to be funded by a tax – and then let a group of prominent citizens place it on the ballot via initiative? Yikes. A typical California problem.

Meanwhile, if what you want to do is raise taxes and then build something with the money, life keeps getting easier. If you go the initiative route, you can raise taxes without the two-thirds vote that those pesky right-wingers like and then build the project without a CEQA analysis that those pesky left-wingers like. Whether anybody thinks all this is worth doing for anything other than a football stadium remains to be seen.

PROOF OF SERVICE

SUPREME COURT OF CALIFORNIA

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within action. My business address is: 921 11th Street, Suite 1201, Sacramento, California, 95814. On April 26, 2016, I served the attached document described as: **PETITION FOR REVIEW (CALIFORNIA CANNABIS COALITION V. CITY OF UPLAND)** on the interested parties below, using the following means:

BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the interested parties at the addresses listed below. I deposited the sealed envelopes with the United States Postal service, with the postage fully prepaid. I am employed in the county where mailing occurred. The envelope or package was placed in the mail at Sacramento, California.

Roger Jon Diamond, Esq.
2115 Main Street
Santa Monica, CA 90405
(Attorney for California Cannabis Coalition, Nicole De La Rosa, and James Velez)

Hon. David Cohn, Dept. S37
San Bernardino Superior Court
247 West Third Street, Second Floor
San Bernardino, CA 92415
(Trial Court Case Number: CIVDS1503985)

Krista MacNevin Jee
Jones & Mayer
3777 North Harbor Boulevard
Fullerton, CA 92835

California Court of Appeal
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, CA 92501
(Court of Appeals Case Number: E063664)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 26, 2016, at Sacramento, California.

LORICE A. STREM