

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S234148

SUPREME COURT
FILED

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CALIFORNIA CANNABIS COALITION,
NICOLE DE LA ROSA, and JAMES VELEZ **George Navarrete Clerk**
Plaintiffs and Respondents,

Deputy

v.

CITY OF UPLAND and STEPHANIE MENDENHALL,
Defendants and Petitioners.

After an Opinion by the Court of Appeal,
Fourth Appellate District, Division Two
(Case No. E063664)

On Appeal from the Superior Court of San Bernardino County
(Case No. CIVDS1503985, Honorable David Cohn, Judge)

**APPLICATION TO FILE BRIEF AMICUS CURIAE AND
BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION
IN SUPPORT OF DEFENDANTS AND PETITIONERS**

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**APPLICATION TO FILE BRIEF AMICUS
CURIAE OF PACIFIC LEGAL FOUNDATION**

Pursuant to Rule of Court 8.520(f)(2), Pacific Legal Foundation (PLF) respectfully applies for permission to file this amicus brief in support of Defendants and Petitioners City of Upland and Stephanie Mendenhall, city clerk.

Donor-supported PLF is the oldest public interest law foundation of its kind in America. Founded in 1973, PLF provides a voice in the courts for mainstream Americans who believe in limited government, private property rights, individual freedom, and free enterprise. Thousands of individuals across the country support PLF, as do numerous organizations and associations. PLF is headquartered in Sacramento, California, and has offices in Washington, D.C., Washington State, and Florida.

PLF has a long history of participating in legal actions to protect the interests of taxpayers and the integrity of government by enforcing constitutional, statutory, and regulatory restraints on taxing and spending. PLF has participated as amicus curiae in numerous cases interpreting the scope of voter-enacted limitations on the taxing power. *See, e.g., Schmeer v. Cty. of Los Angeles*, 213 Cal. App. 4th 1310 (2013); *Citizens for Fair REU Rates v. City of Redding*, 186 Cal. Rptr. 3d 359 (2015) (petition for review granted); *Apartment Ass'n of Los Angeles Cty., Inc. v. City of Los Angeles*, 24 Cal. 4th 830 (2001); *Sinclair Paint Co. v. State Bd. of Equalization*, 15 Cal. 4th 866

(1997); *Santa Clara Cty. Local Transp. Auth. v. Guardino*, 11 Cal. 4th 220 (1995); *Knox v. City of Orland*, 4 Cal. 4th 132 (1992); *Carman v. Alvord*, 31 Cal. 3d 318 (1982).

PLF's litigation experience will assist the Court by examining the four tax-cutting initiatives, explaining why they were adopted and the importance of preserving the voters' right to vote on taxes, fees, and assessments.

**BRIEF AMICUS CURIAE OF
PACIFIC LEGAL FOUNDATION IN SUPPORT
OF DEFENDANTS AND PETITIONERS**

INTRODUCTION

PLF urges this Court to reverse the decision of the Fourth District Court of Appeal in *California Cannabis Coalition v. City of Upland*, 245 Cal. App. 4th 970 (2016) (*CCC v. Upland*). The question addressed by PLF in this case is whether the proponents of a new tax can evade constitutional prerequisites by introducing the tax as an initiative rather than a resolution of the governing body. The lower court held that taxes imposed by initiative are exempt from Article XIII C of the California Constitution. *Id.* at 974. Under this ruling, local governments need not apply the constitutional requirements applicable to new taxes—a vote of the electorate in a general election. *See* Cal. Const. art. XIII C, § 2(b), (c), and (d).

Article XIII C imposed new restrictions on general and special taxes. Most importantly, for purposes of this case, Article XIII C requires voter

approval of all taxes imposed by any local government (Sec. 2(a)), and approval of general taxes by a majority vote in a regularly scheduled general election (Sec. 2(b)). Article XIII C, Sec. 3, allows the reduction or repeal of any local tax, assessment, fee, or charge by initiative. It is silent as to new taxes imposed by initiative.

The appellate court's review of Proposition 218 focused on four words—"imposed by local government." *See, e.g., CCC v. Upland*, 245 Cal. App. 4th at 983, 987-88. This extremely narrow view led the court to conclude that the voters intended to include taxes imposed by local government, but not those imposed by initiative. *Id.* at 988. Yet there is no evidence that the voters understood or considered the distinction between taxes imposed by local government and those imposed by initiative. Courts cannot rewrite language to conform to an assumed intent not apparent from the language. *People v. Superior Court*, 48 Cal. 4th 564, 571 (2010).

The issue is an important one because California taxpayers have repeatedly expressed their desire to vote on new and increased taxes, fees, and assessments. But local governments sought creative ways to avoid the peoples' mandate, and this created a larger problem—a lack of confidence in government. *See, e.g., Apartment Ass'n of Los Angeles Cty., Inc.*, 24 Cal. 4th 830, 848 (2001) (Brown, J., dissenting) (For nearly two decades following the adoption of Proposition 13, voters witnessed politicians evade voter approval of taxes and other charges.). Here, the government officials did the right thing,

submitting the matter for a vote. Yet Respondents argue for another loophole to prevent the voters from exercising their right to approve new taxes.

As demonstrated below, a broader view of Proposition 218, as well as Propositions 13, 62, and 26, reinforces the taxpayers' desire to vote on taxes, without regard to the method by which they are imposed. Article XIIC (Proposition 218) must be construed by examining the history of California's tax initiatives, which began with Proposition 13. *See Citizens Ass'n of Sunset Beach v. Orange Cty. Local Agency Formation Comm'n*, 209 Cal. App. 4th 1182, 1195 (2012) (examining the history of Proposition 218 to understand its intent).

ARGUMENT

I

THE CALIFORNIA TAX REVOLT BEGAN WITH PROPOSITION 13

In 1978, California taxpayers challenged the ability of local governments to increase property taxes without voter approval. *See Julie K. Koyama, Financing Local Government in the Post-Proposition 13 Era: The Use and Effectiveness of Nontaxing Revenue Sources*, 22 Pac. L.J. 1333, 1337 (1991) (prior to Proposition 13, local governments generally had the power to impose any taxes and fees by a vote of their governing bodies). Local governments took full advantage of their power to increase property taxes, and California taxpayers were burdened with the some of the highest property

taxes in the nation. See U.S. Dep't of Commerce, Bureau of the Census, *Governmental Finances in 1976-77*, at 64, table 25 (1978) (showing only Alaska, Massachusetts, and New Jersey had higher per capita property taxes than California).¹ In fact, "California property taxes exceeded the national norm by approximately 52 percent." Stacey Simon, *A Vote of No Confidence: Proposition 218, Local Government, and Quality of Life in California*, 25 *Ecology L.Q.* 519, 538 n.120 (1998) (citing David O. Sears & Jack Citrin, *Tax Revolt: Something for Nothing in California* 21 (1982)).

On June 6th, 1978, the largest turnout of California voters since 1958 resoundingly approved the measure by a margin of two to one. Kathryn Julia Woods, *California's Voters Revolt Lynwood, California and Proposition 13, A Snapshot of Property's Slipping from Whiteness's Grasp*, 37 *UWLA L. Rev.* 171, 188 (2004); see William A. Fischel, *How Serrano Caused Proposition 13*, 12 *J.L. & Pol.* 607, 622 (1996) ("Rich and poor, north and south, rural and urban, big and small, almost every community in the state gave [Proposition 13] a majority.").

Proposition 13's basic one-percent limit in Article XIII A, § 1, did not mention "special assessments"; it only mentioned ad valorem property taxes. And the two-thirds vote provision in Article XIII A, § 4 only mentioned "special taxes"; it did not refer to "assessments" or "special assessments."

¹ http://www2.census.gov/govs/pubs/govt_fin/1977_govt_fin.pdf

Consequently, local governments exploited perceived loopholes by subjecting taxpayers to excessive assessments, fees, and charges that frustrated the requirement of voter approval.

The nature of assessments were constrained only by “the limits of human imagination.” *Citizens Ass’n of Sunset Beach*, 209 Cal. App. 4th at 1196. Special districts increased assessments by more than 2400% in 15 years; cities raised benefit assessments by almost 10 times their original amount. *Id.* at 1195; *see* Cal. Const. art. XIII A, § 4 (only cities, counties, and “special districts” are subject to the two-thirds voter requirement). Specific examples included: (1) “A view tax in Southern California—the better the view of the ocean you have the more you pay”; (2) “In Los Angeles, a proposal for assessments for a \$2-million scoreboard and a \$6-million equestrian center to be paid for by property owners”; (3) “In Northern California, taxpayers 27 miles away from a park are assessed because their property supposedly benefits from that park”; and (4) “In the Central Valley, homeowners are assessed to refurbish a college football field.”²

Assessments, fees, and charges adopted after Proposition 13, and without voter approval, were challenged in the courts. But the courts construed Proposition 13 narrowly, holding that it did not pertain to (1) benefit

² Ballot Pamp., *Argument in Favor of Proposition 218*, 76 (Nov. 5, 1996), http://repository.uchastings.edu/cgi/viewcontent.cgi?article=2138&context=ca_ballot_props.

assessments, or (2) taxes levied for a specific purpose. Simon, *supra*, at 526-29. These decisions, combined with continuing attempts by local governments to evade the requirements of Proposition 13, shifted the focus of taxpayer anger from high taxes to a distrust of government.

II

PROPOSITION 62—VOTERS ATTEMPT TO CLOSE THE LOOPHOLES

In the years following the adoption of Proposition 13, voters came to realize that the government had found ways to avoid implementing its requirements. Proposition 62, entitled “Voter Approval of Taxes” was adopted in 1986 to attempt to address the problem. Proposition 62 required (1) two-thirds voter approval of special taxes, and (2) majority approval of general taxes. It also defined all taxes as either special taxes or general taxes. *See id* at 529-30.

The statutes³ approved by Proposition 62 were, for the most part, ineffective.⁴ It would take yet another initiative—Proposition 218—to force local governments to abide by the voters desire to vote on all taxes, regardless of their label. But the importance of Proposition 62, for purposes of this case, is that the voters shifted the object of their frustration from excessive taxation

³ Cal. Gov’t Code §§ 53720-53730.

⁴ Portions of the law were found unconstitutional by two appellate courts, but those decisions were ultimately reversed by this Court. Simon, *supra*, at 530.

to a distrust of government. (The “ballot pamphlet argument in favor of Proposition 62 boldly proclaimed, ‘Proposition 62 will decide whether government controls the people, or people control the government.’”) *Id.* at 538. That distrust continued and gained momentum in subsequent years. *See, e.g., Understanding Proposition 218*, Legislative Analyst’s Office, Dec. 1996, at Ch. 1⁵ (“Proposition 218 seeks to curb some perceived abuses in the use of assessments and property-related fees”); Ballot Pamp., *Argument in Favor of Proposition 26, 60* (Nov. 2, 2010) (“Local politicians play tricks on voters by disguising taxes as fees so they don’t have to ask voters for approval.”).⁶

III

PROPOSITION 218—THE RIGHT TO VOTE ON TAXES ACT

The Statement of Purpose findings and declaration of purpose in Proposition 218 were stated, in part, as follows:

[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

⁵ http://www.lao.ca.gov/1996/120196_prop_218/understanding_prop_218_1296.html

⁶ <http://vigarchive.sos.ca.gov/2010/general/propositions/26/arguments-rebuttals.htm>

methods by which local governments exact revenue from taxpayers without their consent.

Ballot Pamp., *Proposition 218: Text of Proposed Law*, § 2, at 108 (Nov. 5, 1996); see *Bay Area Cellular Telephone Co. v. City of Union City*, 162 Cal. App. 4th 686, 692-93 (2008).

The voters advanced two goals with Proposition 218. First, the voters continued the battle to vote on increased taxes, assessments, fees, and charges by closing the special taxes/assessment loophole. “In general, the intent of Proposition 218 is to ensure that **all taxes and most charges** on property owners are subject to voter approval.” *Understanding Proposition 218, supra*, Ch. 1 (emphasis added). Second, the voters expressed their growing lack of confidence in government by exerting more control over government spending and decision making. See, e.g., Simon, *supra*, at 538-39; *Understanding Proposition 218, supra*, Ch. 1 (“Proposition 218 changes the governance roles and responsibilities of local residents and property owners, local government, and potentially, the state. . . . Proposition 218 shifts most of the power over taxation from locally elected governing boards to residents and property owners.”).

In spite of the changes mandated by Proposition 218, local governments still managed to impose fees and assessments without voter approval. See, e.g., *Poland v. Brooktrails Twp. Cmty. Serv. Dist. Bd. of Dirs.*, 179 Cal. App. 4th 1358, 1362 (2009) (charge imposed on parcels for the basic cost of

providing water or sewer service, regardless of actual use, is not subject to ballot approval); *Richmond v. Shasta Cmty. Servs. Dist.*, 32 Cal. 4th 409, 415 (2004) (assessments on property for capital improvements and fire suppression did not violate Proposition 218); *Howard Jarvis Taxpayers Ass'n v. City of Riverside*, 73 Cal. App. 4th 679, 681 (1999) (street lighting assessments were not subject to Proposition 218); *Howard Jarvis Taxpayers Ass'n v. City of San Diego*, 72 Cal. App. 4th 230, 234 (1999) (assessments to provide revenue to defray the costs of services and programs to benefit businesses were not subject to Proposition 218).

IV

PROPOSITION 26— EXPANDING VOTER PROTECTIONS

California voters approved Proposition 26 on November 2, 2010, in order to secure the right of the people to vote on levies, charges, or exactions imposed by local governments. The Findings and Declaration of Purpose explained that local governments had disguised new taxes as “fees” in order to extract revenue from California taxpayers without abiding by the voting requirements mandated by Propositions 13 and 218. Ballot Pamp., *Text of Proposition 26*, § 1, at 114 (Nov. 2, 2010).⁷ Proposition 26 closed the “loopholes in Propositions 13 and 218,” which had allowed the proliferation

⁷ http://repository.uchastings.edu/cgi/viewcontent.cgi?article=2304&context=ca_ballot_props

of state and local taxes disguised as fees without a two-thirds vote of the Legislature or the voters' approval. *Schmeer v. Cty. of Los Angeles*, 213 Cal. App. 4th at 1323, 1326.

Proposition 26 defines a "tax" to include "any levy, charge, or exaction of any kind imposed by" the state or a local government, with specified exceptions. Working in concert with Propositions 13 and 218, this means any new local government mechanism that creates revenue by extracting money from the people must have voter approval. Cal. Const. art. XIII A, § 4 (Proposition 13); art. XIII C, § 1 (Proposition 218).

Proposition 26 also enacted another key reform: local governments must prove "by a preponderance of the evidence" that any new levy, charge, or exaction is not a tax, and that the amount is no more than necessary to cover the reasonable costs of the governmental activity. Cal. Const. art. XIII C, § 1(e).

Prior to the adoption of Proposition 26, voters repeatedly sought to limit the authority of local governments to impose financial burdens on the public. But local governments found ways to thwart the will of the voters by distinguishing taxes as fees and assessments. Proposition 26 was adopted to put an end to such tactics.

CONCLUSION

The voters' intent to vote on new taxes could not be more clear. Given the voters' undeniable desire to approve or deny new taxes, fees, and assessments, the effort to exempt taxes proposed by initiative will be viewed by the voting public as another loophole. And rightly so.

For all of the foregoing reasons, PLF requests that the Court reverse the decision of the Court of Appeal.

DATED: October 28, 2016.

Respectfully submitted,

MERIEM L. HUBBARD
HAROLD E. JOHNSON

By 
MERIEM L. HUBBARD

Attorneys for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANTS AND PETITIONERS is proportionately spaced, has a typeface of 13 points or more, and contains 2,489 words.

DATED: October 28, 2016.


MERIEM L. HUBBARD

DECLARATION OF SERVICE BY MAIL

I, Tawnda Elling, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On October 28, 2016, true copies of APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANTS AND PETITIONERS were placed in envelopes addressed to:

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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 28th day of October, 2016, at Sacramento, California.


TAWNDA ELLING