SUPREME COURT COPY

No. S234148

SUPREME COURT OF CALIFORNIA

CALIFORNIA CANNABIS COALITION, ET AL.,
Plaintiffs and Respondents,

vs.

CITY OF UPLAND, ET AL.,
Defendants and Petitioners.

SUPREME COURT
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APPEAL FROM THE COURT OF APPEAL, FOURTH DISTRICT, DIVISION 2
CASE NO. E063664
HON. DAVID S. COHN, JUDGE, SUP. CT. NO. CIVDS1503985

PROPOSED *AMICUS CURIAE* BRIEF OF THE CHARGERS FOOTBALL COMPANY IN SUPPORT OF PLAINTIFFS AND RESPONDENTS CALIFORNIA CANNABIS COALITION ET AL.

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, Rule 8.208(e), counsel states that the Chargers Football Company is a California Limited Liability Company. The following individuals have an ownership interest of 10 percent or more: Alex G. Spanos; Faye Spanos; Dean A. Spanos; Michael A. Spanos; Dea Spanos Berberian; and Alexandra Spanos Ruhl. Counsel is not aware of any other person or entity that has a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

Dated: November 1, 2016

MUNGER, TOLLES & OLSON LLP
Ronald L. Olson
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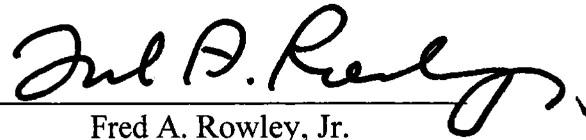
By: 
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INTERESTS OF *AMICUS CURIAE*

The Chargers Football Company is one potential beneficiary of Measure C, a San Diego ballot initiative qualified by the People of the City of San Diego that would raise funds for a new convention center and sports stadium via a modest surcharge on San Diego's hotel tax. Measure C has been endorsed by San Diego Mayor Kevin Faulconer, former Mayor and Chief of Police Jerry Sanders, Congressmen Juan Vargas, Scott Peters, and Darrel Issa, the Middle Class Taxpayer's Association, the San Diego Regional Chamber of Commerce, and numerous local unions. It will create thousands of jobs and increase tourism in San Diego. This case raises uncertainty about whether Measure C will be subject to the procedural requirements in Article 13C, in particular, whether Measure C can be passed by a simple majority (as is the rule for initiatives put forward by the People) or whether it will require a two-thirds supermajority (as is the requirement for special taxes presented to the People for approval by a local government). Given this uncertainty, and given the significance of Measure C to the city's economy, the San Diego City Attorney has asked this Court to expedite resolution of the case. These same interests, along with the Chargers' own interest in securing a stadium financing plan, are the basis for this *amicus* brief.

INTRODUCTION

The initiative power stands at the heart of California's unique Constitution. While many state constitutions derive the elected government's power from the People, the California Constitution goes further, enshrining the People's power to exercise their sovereignty directly through the initiative process. Central to that initiative power is the authority to control and adjust taxes: when the Constitution was amended to include the power of initiative in 1911, "taxation was not only a permitted subject for the initiative, but was an intended *object* of that power." (*Rossi v. Brown* (1995) 9 Cal.4th 688, 699, italics added.) And since the inception of the initiative, with its central subject of taxation, this Court has recognized and adhered to a "solemn duty jealously to guard the sovereign people's initiative power," and to construe all laws so as to preserve that power. (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241.) This case calls on the Court to act once more as guardian of the People's sovereign rights.

The specific issue before the Court is whether the People sought to limit their own, precious right directly to adjust and control their own taxes when they passed initiatives implementing Proposition 13 and adding Article 13C to the California constitution. The procedural requirements of Article 13C by their terms apply to taxes "imposed by local government," and were intended specifically to limit taxation by "spendthrift politicians" in elected government. (E.g., Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Primary Elec. (June 6, 1978) p. 59.) Bound by these requirements' text and purpose, the Court of Appeal here held that Article 13C does not apply "to taxes imposed by initiative" and thus directly by the People. (Op., p. 17.)

The City of Upland ("the City Government")—represented by a special interest group, the Howard Jarvis Taxpayers Foundation—asks the Court to read Article 13C so as to *defeat* its objective of "expand[ing] [the People's] voting rights." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (November 5, 1996) p. 77.) According to the City Government and its special interest lawyers, the unstated consequence of the initiatives underlying Article 13C was to *diminish* the People's power over taxes, binding voters as if they were politicians themselves and imposing on initiatives the same procedural requirements applicable to local governmental entities. Never mind that the ballot materials for Proposition 13 and its progeny exclusively warn of taxes imposed by "spendthrift politicians," without any mention of taxes proposed by initiative. Never mind that those ballot materials uniformly promise to return taxation power to the People. And never mind that Article 13C's reference to "taxes imposed by local government" cannot sensibly be read to embrace a tax born of the People's own will. According to the City and its special interest lawyers, Article 13C's actual intent is *antidemocratic*, setting up obstacles to the future exercise of the People's initiative power.

This Court should reject the City Government's counter-textual and revisionist construction and affirm the Court of Appeal. This Court has long recognized that procedural requirements regarding the exercise of power by governmental entities—like those in Proposition 13 and its progeny—do not apply to the sovereign People. The text and history of Article 13C confirms that its procedural restrictions apply to governmental entities alone, not to the sovereign People. And even if the operative phrase "local government" were ambiguous, venerable canons of construction oblige this Court to interpret Article 13C expansively to support, rather than to constrain, the People's initiative power.

ARGUMENT

I. This Court Has a "Solemn Duty Jealously to Guard the Sovereign People's Initiative Power" to Regulate Taxes

A. The Initiative Power "Is One of the Most Precious Rights of Our Democratic Process," and Its "Most Important Function" Is Taxation

Under California's progressive constitution, "[a]ll political power is inherent in the people." (Cal. Const., art. 2, § 1.) The People's direct sovereignty literally precedes all forms of delegated government, as it is enshrined in Article 2 of the constitution, while the provisions establishing the State of California appear in Article 3, and the provisions establishing the Legislative, Executive, and Judicial branches of government are set forth in Articles 4, 5, and 6, respectively.[1] Article 2 of the Constitution, entitled "Voting, Initiative and Referendum, and Recall," expressly provides that "[g]overment is instituted for [the people's] protection, security, and benefit, and they have the right to alter or reform it when the public good may require." (Cal. Const., art. 2, § 1.) That sovereign right is embodied, in considerable part, in the initiative power.

"The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them." (Cal. Const., art. 2, § 8, subd. (a).) Although initially described in terms of state-wide measures, the initiative power extends to local matters as well: "[i]nitiative ... powers may be exercised by the electors of each city or county." (Cal. Const., art. 2, § 11, subd. (a).)

As this Court has long recognized, the People's power of initiative is "one of the most precious rights of our democratic process." (*Associated*

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[1] Moreover, in delineating the power the People "vested" in the legislature, the constitution reiterates the People's sovereign initiative power. (Cal. Const., art. 4, § 1.)

Home Builders, Inc. v. City of Livermore (1976) 18 Cal.3d 582, 591 [internal quotation marks and citation omitted].) "Drafted in light of the theory that all power of government ultimately resides in the people, the [California constitution] speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them." (*Ibid.*) Although the People's power of initiative is, in some respects, coextensive with the government's power of legislation, this Court has made clear that "[t]he people's reserved power of initiative *is* greater than the power of the legislative body." (*Rossi*, *supra*, 9 Cal.4th at p. 715, italics in original.) When the government passes laws, it exercises the portion of the People's sovereignty concurrently delegated to the legislative branch. The People of California do reserve that legislative power unto themselves (Cal. Const., art. 4, § 1), but that reserved power is merely part of the broader essential sovereignty that "ultimately resides in the people" (*Associated Home Builders*, *supra*, at p. 591; cf. *Rossi*, *supra*, 9 Cal.4th at p. 715). Moreover, "[t]he 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 power arose from a populist effort to restore the People's sovereignty in the face of the government's apparent capture by special interests. "The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900s." (*Associated Home Builders*, *supra*, 18 Cal.3d at p. 591.) "The progressive movement, both in California and in other states, grew out of a widespread belief that moneyed special interest groups controlled government, and that the people had no ability to break this control." (*Strauss v. Horton* (2009) 46 Cal.4th 364, 420 [internal quotation marks and citations omitted], *as modified* (June 17, 2009), *abrogated on other grounds by Obergefell v.*

Hodges (2015) 135 S. Ct. 2584.) The initiative helped restore the People's sovereignty and autonomy. (See *ibid.*)

From the very beginning, the initiative power has encompassed taxation. (See generally *Rossi*, *supra*, 9 Cal.4th at pp. 699-706.) "When the statewide initiative power was added to the Constitution in 1911 ..., taxation was not only a permitted subject for the initiative, but was an intended object of that power." (*Id.* at p. 699.) "[T]he power of control over taxation" was "the most important right of self-government which [the People] possess[ed]." (*Id.* at p. 701, italics removed.) Indeed, not long after their victory in 1911, the progressives fought off repeated anti-populist efforts to deprive the People of their power to regulate taxes through the initiative process, a struggle that "would have been unnecessary if the initiative could not be used to enact and repeal [tax] legislation." (*Id.* at p. 700) The progressives recognized that if regressives "can destroy the people's *use of the initiative in the most important function, taxation*, it will be the beginning of efforts which will lead to the destruction of the entire initiative power of the people." (*Id.* at p. 701 [internal quotation marks and citation omitted, italics in original].) Thus, the People's right to regulate taxes directly is not peripheral to, but at the heart of, the initiative power and the historical movement to restore sovereignty to the People.

Accordingly, this Court has held that "there is no restriction on the use of the initiative in the area of taxation. The electorate [can] use the initiative process to prospectively adopt or annul (repeal) statutes imposing taxes."[2] (*Id.* at p. 702.)

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[2] Indeed, according to the special interest group representing the City, *Rossi*'s holding on this score was "constitutionalize[d]" by Proposition 218. (See Howard Jarvis Taxpayers' Association, "Text of Prop. 218 with Analysis" (Jan. 1997), *available at* http://www.hjta.org/propositions/proposition-218/text-proposition-218-analysis/.)

B. To "Jealously Guard" the People's Initiative Power, this Court Will, Wherever Possible, Give the Power Its Maximum Breadth, While Narrowly Construing Any Limits Upon It

Because the initiative right is so "precious" to the People and so fundamental to California's "democratic process," it is "the duty of the courts to jealously guard this right." (*Associated Home Builders*, *supra*, 18 Cal.3d at p. 591 [internal quotation marks and citation omitted].) This Court has therefore "stress[ed]" that

> [i]t is a fundamental precept of our law ... that the power of initiative must be *liberally construed* ... to promote the democratic process. ... [I]t is our solemn duty jealously to guard the sovereign people's initiative power, it being one of the most precious rights of our democratic process. ... *[W]e are required to resolve any reasonable doubts in favor of the exercise of this precious right.*

(*Brosnahan*, *supra*, 32 Cal.3d at p. 241 [internal quotation marks and citations omitted, italics in original].) Put otherwise, "it has long been our judicial policy to apply a liberal construction to this [initiative] power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it." (*Associated Home Builders*, *supra*, 18 Cal.3d at p. 591 [internal quotation marks and citation omitted]; accord, e.g., *Rossi*, *supra*, 9 Cal.4th at p. 711 [collecting cases].)

From this Court's "solemn duty jealousy to guard the sovereign people's initiative power" flow several specific canons of construction. The first, already noted, is that any *grant* of initiative power must be liberally construed. (See, e.g., *Rossi*, *supra*, 9 Cal.4th at p. 711.) The "corollary" to this, and the second canon, is that any *limit* on the People's initiative power must be expressly stated and will be narrowly construed. (See, e.g., *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 776; *Kennedy*

Wholesale, Inc. v. State Bd. of Equalization (1991) 53 Cal.3d 245, 252.) The third canon follows from the second: "the existence of procedural requirements for the adoptions of local ordinances [or statewide statutes] generally does not imply a restriction of the power of initiative or referendum." (*DeVita*, *supra*, 9 Cal.4th at p. 785.) Finally, even where a statewide law *does* expressly limit the local initiative power, the limitation must "be strictly construed" because it is "inherently undemocratic." (*City & County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 52.)

These canons are not just specific strictures on how this Court must interpret the sections of Article 13C at issue here, but also a general expression of this Court's longstanding commitment to its "solemn duty jealously to guard" the People's initiative power. And because the "most important function" of that power is to regulate taxes (*Rossi*, *supra*, 9 Cal.4th at pp. 700-701), the courts have consistently applied the canons to construe the tax-initiative power broadly and purported limits on that power narrowly. (E.g., *State Comp. Ins. Fund v. State Bd. of Equalization* (1993) 14 Cal.App.4th 1295, 1300 [construing initiative imposing tax on insurers and authorizing modification the tax rate broadly to include amendments by initiative]; *Estate of Claeyssens* (2008) 161 Cal.App.4th 465, 470-471 [applying cannons to reject construction of statutes that impermissibly amended initiative prohibiting estate taxes]; *Estate of Cirone* (1984) 153 Cal.App.3d 199, 206 ["any doubt as to the operability of Proposition 6 should be resolved by holding there is no restriction on the power of the electorate to make its repeal of the inheritance tax applicable to the estates of those dying on the day of the enactment of the initiative"].)

In place of these settled canons, the City Government would have this Court apply a "presumption of co-extensive authority and co-extensive limitations." (Opening Br. at 9; Reply Br. at 2.) According to the City Government, "[it] is presumed that *limits* on the power of government

apply to both the governing body and the voters." (Opening Br. at 8-9, italics in original.) That is precisely the same argument, citing the *identical* authority, *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, that this Court rejected a quarter century ago in *Kennedy Wholesale*. There, the plaintiff quoted the same passage from *Deukmejian* as does the City Government here, but this Court explained that *Deukmejian* "does not hold that legislative procedures, such as voting requirements, apply to the electorate," and reiterated that *procedural* limits on how the government may exercise power, unlike *substantive* limits, are presumed *not* to apply to the People's initiative. (*Kennedy Wholesale*, *supra*, 53 Cal.3d at pp. 251-252, italics removed.) This presumption has been consistently applied ever since. Indeed, it was already "well established in our case law" by 1995. (See *DeVita*, *supra*, 9 Cal.4th at p. 785 [collecting cases].) Given that the City Government cites the relevant page of *DeVita* and acknowledges "decades of caselaw holding ... that initiatives do *not* need to comply with procedures ... that the Legislature has imposed only on governing bodies" (Reply Br. at 6), the City Government's reliance on *Deukmejian* is not just unavailing, but bewildering.

II. Proposition 13 and Its Progeny Preserved, Extended, and Vindicated the People's Sovereign Initiative Power

Faced with the Court's "solemn duty" to safeguard the initiative power, and with the canons carrying out that duty, the City Government seeks to recast Proposition 13 and its progeny as directed not at "spendthrift politicians" but the taxing power itself, even if exercised by the sovereign People. The City Government insists that the People intended to restrict their own future exercise of initiative authority by imposing limitations that "applies to all new taxes whether proposed by the governing body or initiative." (Opening Br. at 6.) That is flatly wrong.

As with the 1911 constitutional changes discussed above, Proposition 13 and its progeny were born from a conviction that "spendthrift politicians"—often in the thrall of special interests—had ceased to govern in the interests of the People. (1978 Ballot Pamp. at p. 59.) Specifically, the electorate was persuaded that, at all levels, California governments were pursuing a tax policy that ignored the needs, and the voice, of the People. By curbing the taxation power of governmental entities and requiring the consent of the People before taxes are raised, Propositions 13, 62, 218, and 26 recognize, and aim to strengthen, the People's fundamental control over taxes.

A. In *Kennedy Wholesale*, this Court Refuted the Notion that Proposition 13 Was Aimed at Limiting the People's Sovereignty

The relationship between Proposition 13 and the People's initiative power over taxation does not come before this Court on a blank slate. To the contrary, the Court has addressed the matter in numerous cases, the most significant of which is its decision in *Kennedy Wholesale*.

In *Kennedy Wholesale*, this Court considered the legality of a tobacco tax imposed by the People through an initiative. (53 Cal.3d at p. 248.) A tobacco distributor had sued, claiming that the tobacco tax was invalid because its enactment had not complied with the procedures for raising a tax added to the California constitution by Proposition 13. (*Ibid.*) Specifically, the distributor relied upon Article 13A, Section 3, which provides that "any changes in State taxes enacted for the purpose of increasing revenues ... must be imposed by an Act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature." (*Ibid.* [quoting § 3].) This Court rejected that construction, and various others, holding that it conflicted with the text of Section 3, the canons governing initiatives, and the history of Proposition 13.

To begin with, Section 3 is "silen[t] regarding its effect on the reserved power of initiative." (*Id.* at p. 249.) This Court noted the "strong ... presumption against implied repeals," and explained that this already-powerful canon carried yet greater force there given "that the initiative power is one of the most precious rights of our democratic process." (*Id.* at p. 250 [internal quotation marks and citations omitted].) Moreover, the Court recognized that "procedural requirements addressed to the Legislature's deliberations cannot reasonably be assumed to apply to the electorate without evidence that such was intended." (*Id.* at p. 252.) Not only could the tobacco distributor furnish no such evidence, but the evidence was decisively to the contrary.

The Court deemed it clear that the People had passed Proposition 13 to reinforce their *own* power over taxation, and that People regained this control by imposing limits on *politicians'* taxing power:

> Nothing in the official ballot pamphlet supports the inference that the voters intended to limit their own power to raise taxes in the future by statutory initiative. To the contrary, the arguments in favor of Proposition 13 adopt a populist theme that cannot easily be reconciled with plaintiff's interpretation of the measure. Proponents of Proposition 13 described the measure as directed against "spendthrift politicians" and as "[r]estor[ing] government of, for and by the people." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Primary Elec. (June 6, 1978) p. 59.) If, as the proponents' argument suggests, a preference for direct democracy over the legislative process played a role in motivating the passage of Proposition 13, the conclusion that the voters intended to limit their own power would be difficult to justify.

(*Kennedy Wholesale*, *supra*, 53 Cal.3d at p. 250.) This populist history, together with the text of Section 3 and the applicable canons of construction left no room for doubt that the People had the power to pass the challenged tobacco tax. The Plaintiff, this Court explained, "ha[d] not demonstrated

that the voters who adopted Proposition 13 intended to limit the reserved power of initiative." (*Id.* at p. 253.) It followed that the cigarette tax did "not violate section 3," since "section 3 can reasonably be interpreted not to limit that power," and the Court was "'*required to resolve any reasonable doubts in favor of the exercise of this precious right.*'" (*Ibid.* [quoting *Broshnahan*, *supra*, 32 Cal.3d at p. 241, italics in *Kennedy Wholesale* and *Broshnahan*].)

B. The Ballot Materials for Proposition 13 and Its Progeny Prove that these Populist Initiatives Limited Politicians' Power, Not the People's

The conclusion reached by this Court in *Kennedy Wholesale*—that Proposition 13 represented a progressive, populist victory, rather than a limit on the People's power—is confirmed by the ballot materials surrounding Proposition 13 and its progeny, Propositions 62, 218, and 26, the last two of which together shaped Article 13C. These ballot materials were written in large part by the same special interest group currently speaking for the City Government. While that group now insinuates that those propositions deprived the People of their precious initiative right, the ballot materials demonstrate that the propositions sought to vindicate the People's direct power over taxation as against politicians who, the propositions' proponents complained, had become profligate in taxing and spending.[3]

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[3] The special interest group speaking for the City of Upland attempts to accredit itself as "the drafters of Proposition 218." (Reply Br. at 1.) But this Court will not "rel[y] on evidence of the drafters' intent that was not presented to the voters," and will instead look only to the ballot materials and propositions themselves. (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 905, *as modified* (Aug. 20, 2003).) This Court has rejected just such an assertion of say-so power by the same special interest group in the past, (see *Kennedy Wholesale*, *supra*, 53 Cal.3d at p. 250 n.2), and the group's about-face on direct democracy furnishes further reason to reject its

1. Proposition 13

While *Kennedy Wholesale* itself quoted some of Proposition 13's ballot materials, there are further passages worth highlighting. These passages confirm that the People acted not to limit their own sovereignty but rather to limit the power of politicians and the government to tax and spend wastefully and selfishly:

- *Proposition 13 makes sense for California. ... Restores government of, for and by the people.*
- We must vote proposition 13 into law June 6, 1978. We must not let the spendthrift politicians tax us into poverty.
- What Ronald Regan describes as the "spenders coalition" of spendthrift politicians and powerful special interests are spending millions to defeat Proposition 13.
- More than 15% of all government spending is wasted! Wasted on huge pensions for politicians which sometimes approach $80,000 per year! Wasted on limousines for elected officials or taxpayer paid junkets.

(1978 Ballot Pamp. at pp. 58-59, italics in original.)

2. Proposition 62

Less than a decade after Proposition 13's passage, its proponents put forward Proposition 62. Unlike Propositions 13, 218, and 26, which shaped constitutional provisions at issue in this case, Proposition 62 was a statutory initiative. Nevertheless, it is part of the same family of propositions and its policy statements are illuminating:

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claims here. The group's former president recently acknowledged, in frank terms, that in light of "changing demographics, Howard Jarvis ... probably wouldn't recognize his state," and predicted that "the tax-revolt mind-set [may] die where it all began." (Fox, *The Terms of Surrender in California's Tax Revolt*, Wall Street Journal (Sept. 28, 2016).)

- Proposition 62 will decide whether government controls the people, or people control the government.
- [Proposition 62's opponents] want government to control the people by unlimited taxation rather than people controlling the government.
- Proposition 13 returned the power to control tax increases to the people, where it belongs.
- A YES vote on Proposition 62 gives back your right to vote on any tax increases proposed by your local governments.
- When politicians can raise taxes on their own without a vote of the people, you can bet your bottom dollar those taxes are going to go up and up.
- Proposition 62 requires new or increased local, general purpose taxes be approved by a majority vote at an election, after a two-thirds vote by a legislative body of the local government or agency puts the tax on the ballot.

(Ballot Pamp., Proposed Stats. and Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 4, 1986), argument in favor of Prop. 62, p. 43.)

3. Proposition 218

Proposition 218 "placed in the Constitution some of the statutory language added to the Government Code by Proposition 62," including the procedural requirements the City Government seeks to apply to the People's initiative power. (*Borikas v. Alameda Unified Sch. Dist.* (2013) 214 Cal.App.4th 135, 145 fn. 13.) Its ballot materials articulated the same purpose as had Propositions 13 and 62: stopping politicians from imposing taxes without voter approval. Indeed, far from suggesting that the People might be restricting their precious initiative power, the ballot materials specifically promised that "Proposition 218 expands your voting rights." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (November 5, 1996) p. 77.) Beyond this guarantee, the

proponents of Proposition 218 stated over and again that it did nothing but limit the power of politicians and protect the People's right to vote on taxes:

- VOTE YES ON PROPOSITION 218. IT WILL GIVE YOU THE RIGHT TO VOTE ON TAX INCREASES!
- Proposition 218 simply gives taxpayers the right to vote on taxes and stops politicians' end-runs around Proposition 13.
- Proposition 218 simply extends the longstanding constitutional protection against politicians imposing taxes without voter approval.
- Proposition 218 will allow you and your neighbors—not politicians—to decide how high your taxes will be.
- Proposition 218 guarantees your right to vote on local tax increases … .
- If politicians want to raise taxes they need only convince local voters that new taxes are really needed.
- Under Proposition 218, officials must convince taxpayers that tax increases are justified. Politicians and special interest groups don't like this idea. But they can't win by saying "taxpayers should not vote on taxes" … .
- How imaginative can politicians be with assessments? Here are a few examples … .
- TAXPAYERS HAVE *NO RIGHT TO VOTE* ON THESE TAX INCREASES AND OTHERS LIKE THEM UNLESS PROPOSITION 218 PASSES!
- FOR THE RIGHT TO VOTE ON TAXES, VOTE YES ON PROPOSITION 218!

(*Id.* at pp. 76-77.)[4]

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[4] The proponents of Proposition 218 elaborated the same themes in

4. Proposition 26

Proposition 26 was no different. Again, the ballot materials promised to increase the People's power over taxes and limit the power of "state and local politicians":

- YES ON PROPOSITION 26: STOP POLITICIANS FROM ENACTING HIDDEN TAXES

- State and local politicians are using a loophole to impose Hidden Taxes

- Most tax increases at the local level require voter approval. Local politicians have been calling taxes "fees" so they can bypass voters and raise taxes without voter permission—taking away your right to stop these Hidden Taxes at the ballot.

- Proposition 26 requires politicians to meet the same vote requirements to pass these Hidden Taxes as they must to raise other taxes ....

- DON'T LET THE POLITICIANS CIRCUMVENT OUR CONSTITUTION TO TAKE EVEN MORE MONEY FROM US

- Politicians have proposed more than *$10 billion* in Hidden Taxes.

- PROPOSITION 26: HOLD POLITICIANS ACCOUNTABLE

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their campaigning. For example: "Proposition 218 tackles the age-old question: Who should control the most important function of government, taxation? Those who think the safest place for this power is with the people will vote yes on Proposition 218." (See Howard Jarvis Taxpayers' Association, "Prop. 218: Closing the Assessment Loophole in Prop. 13" (Jan. 1997), *available at* http://www.hjta.org/propositions/proposition-218/closing-assessment-loophole-proposition-13/ [expressing concerns about "bureaucrats" and "government officials" raising taxes].)

- State politicians already raised taxes by $18 billion. Now, instead of controlling spending to address the budget deficit, they're using this gimmick to increase taxes even more! It's time for voters to STOP the politicians by passing Proposition 26.

- Local politicians play tricks on voters by disguising taxes as "fees" so they don't have to ask voters for approval. They need to control spending, not use loopholes to raise taxes! It's time to hold them accountable for runaway spending and to stop Hidden Taxes at the local level.

- Proposition 26 will send a message to politicians that it's time to clean up wasteful spending in Sacramento.

- Proposition 26 fixes a loophole that allows politicians to impose new taxes on businesses and consumers by falsely calling them "fees".

- Proposition 26 stops politicians from increasing Hidden Taxes … .

- Politicians and special interests oppose Prop. 26 because they want to take more money from working California families by putting "fees" on everything they can think of. Their interest is simple—more taxpayer money for the politicians to waste, including on lavish public pensions.

(Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (November 2, 2010) pp. 60-61, italics in original.)

* * *

The City Government asks this Court to accept the notion that all of these references to "stopping politicians" were meant also to encompass the People. That construction is refuted by the distinctions drawn in, and the terms used by, the ballot pamphlets themselves. The materials for Propositions 13, 218, and 26 expressly distinguish between "politicians," who "impos[e] taxes without voter 'approval,'" and "taxpayers" who are entitled to "the right to vote on taxes." The ballot materials make clear that it is only taxes imposed by "spendthrift politicians," and not taxes imposed

by the voters themselves, that concerned the proponents of Propositions 13, 218, and 26 and the voters who enacted them. Their whole point was to "[r]estore[] government of, for and by *the People*" when it came to taxation.

III. Because a Tax "Imposed by Local Government" Can Reasonably Be Read to Cover Only Taxes Enacted by a Local Governing Body, this Court Must Preserve the People's Precious Initiative Power

The City's revisionist account of Proposition 13, and its related effort to cast aside the canons that apply to the initiative power, is brought into sharp relief when considering the question presented here: When Article 13C places procedural requirements on how a "local government may impose, extend, or increase any general tax," is "local government" intended to encompass the People acting through their initiative power, or only to encompass local governmental entities such as a city council? Reading that language in light of the canons, the Court of Appeal "decline[d] to construe Article 13C as applying to taxes imposed by initiative." (Op., at p. 17.) That construction is firmly supported by Article 13C's text and history, and the Court's obligation to safeguard the initiative power. For the People surely did not intend to limit that power, or their sovereignty, by the phrase "local government."

A. "Local Government" Can Reasonably Mean a "Local Governmental Entity" Such as City Council While Excluding the Sovereign People

In interpreting the meaning of Section 2 of Article 13C, the Court's ultimate goal is to ascertain the intent of the People in passing Propositions 218 and 26. To do so, the Court begins with the text of the constitutional provision and its ordinary, or specially defined, meaning. (See *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 212.) Here, the critical term is "local government," and the question is whether a *local*

government has imposed a tax when the tax is qualified for the ballot and passed by the People through the initiative process.

1. The Text of Article 13C Does Not Support the City Government's Interpretation of "Local Government"

Section 1 of Article 13C defines "local government" to cover a variety of "local or regional governmental entit[ies]": "'Local government' means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity." (Cal. Const., art. 13C, § 1, subd. (b).) The list itself does not directly resolve the question presented, because terms like "city" can mean either the city's governing body or the people of the city.[5] But the catchall residual clause *does* illuminate whether the People intended "local government" to embrace voters exercising initiative powers. The doctrine of *ejusdem generis* teaches that where there is a list of specific things followed by a more general "or other" catchall provision, the specific and the general should be read to govern similar things. (E.g., *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193, 1202.) Here, the catchall provision suggests that the list covers "governmental entities" or governing bodies such as a city council, not the People acting through an initiative. (Cf. *Building Industry Ass'n v. City of Camarillo* (1986) 41 Cal.3d 810, 818 ["The term 'governing body' excludes the electorate."].)

The meaning of "local government" is further illuminated by Article 13D, enacted alongside Article 13C by Proposition 218. Article 13D

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[5] (See, e.g., Black's Law Dictionary (9th ed. 2009) 279 [defining "city" primarily as "[a] municipal corporation, usu[ally] headed by a mayor and governed by a city council" but also as "[t]he territory within a city's corporate limits" or "[c]ollectively, the people who live in this territory"]; Webster's New International Dictionary (3d ed. 1966) 412 [similar].)

imposes a variety of procedural requirements—such as notice-and-hearing obligations—on "agencies" before they can raise certain fees. "'Agency' means any local government as defined in subdivision (b) of Section 1 of Article XIIIC."[6] (Cal. Const., art. 13D, § 2(a).) For purposes of Article 13D, then, "local government" is synonymous with "agency," and "when a word has been used in different parts of a single enactment, courts normally infer that the word was intended to have the same meaning throughout." (See *Bighorn-Desert*, *supra*, 9 Cal.4th at p. 213.) Just as it would contort the English language to call the People an "agency," so too would it stretch ordinary parlance beyond recognition to call the sovereign People a "governmental entity." (See, e.g., *Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 175 fn. 7, *as modified* (May 2, 2001) [recognizing precedent holding that "the electorate was not a public agency within the meaning of [the California Environmental Quality Act]"]; *California School Boards Ass'n v. State* (2009) 171 Cal.App.4th 1183, 1206 ["the Legislature or any state agency" as used in Article XIIIB does not "include the voters"]; cf. Cal. Gov. Code § 11000 ["As used in this title, 'state agency' includes every state office, officer, department, division, bureau, board, and commission."]; Cal Gov. Code § 56668 [distinguishing between "comments of any affected local agency" and "comments from the ... voters, or residents of the affected territory"].) And, indeed, it is clear that Article 13D does *not* consider the People an "agency" because it draws a consistent distinction between the acts of an "agency" and the mandate of "the electorate." (E.g., Cal. Const., art. 13D, § 6(c).)

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[6] Similarly, Article 13 refers to "a city, county, and special district" as a "local agency." (Cal. Const., art. 13, § 25.5(b)(2) [incorporating Cal. Rev. & Tax. Code § 95].)

Dictionary definitions confirm that the People are not a "local governmental entity." Definitions contemporaneous with the passage of Proposition 13 in 1978 make clear that "local government" means a local "governmental authority" or "governing body," not the local People acting as sovereign. (See Black's Law Dictionary (4th ed. 1951) 824 ["The government or administration of a particular locality; especially, the governmental authority of a municipal corporation, as a city or country, over its local and individual affairs, exercised in virtue of power delegated to it for that purpose by the general government of the state or nation."]; Black's Law Dictionary (5th ed. 1979) 846 ["City, County, or other governing body at a level smaller than a State."].) That commonsense definition continued to hold in the ensuing decades when the People enacted Propositions 218 and 26. (See, e.g., Black's Law Dictionary (9th ed. 2009) 764 [defining "local government" as "[t]he government of a particular locality, such as city, county, or parish; a governing body at a lower level than the state government"]; accord Webster's New International Dictionary (3d ed. 1966) 982 [defining "government"].)[7] In

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[7] The City Government cites *De Vita*, for the proposition that "terms such as 'local government' or 'public agency' are extremely weak indicators of intent to exclude voter initiatives." This argument gets *De Vita* exactly backwards. To begin with, *De Vita* never discussed those terms, but rather the terms "legislative body" and "governing body." The Court considered whether a legislative *grant* of power to a local "governing body" impliedly "preclude[ed]" the local People's initiative power. (9 Cal. 4th at p. 776) Applying the canon that the Court will always avoid limiting the initiative power when possible, *De Vita* found no implied bar to the initiative power. (*Id.* at p. 784.) That is not because "governing body" might mean the electorate (see *Building Industry Assn.*, *supra*, 41 Cal.3d at p. 818 ["The term 'governing body' excludes the electorate."]), but because the Court declined to find an intent for it to be an exclusive grant of power in light of the Court's duty to uphold the initiative power. Here, that duty cuts the opposite way.

short, dictionaries confirm the basic intuition that "local government" or "local governmental entity" generally means a "local governing body," a term that "excludes the electorate." (*Building Industry Ass'n*, *supra*, 41 Cal.3d at p. 818.)

Section 3 of Article 13C likewise suggests that "local government" does not encompass the People acting by initiative. Section 3 is entitled "Initiative Power for Local Taxes, Assessments, Fees, and Charges." (Cal. Const., art. 13C, § 3.) If the People intended to limit their initiative power, such a limitation would presumably be found here. But Section 3 says nothing about limiting that power. Instead, it reaffirms the initiative power in two respects. First, it states that "[t]he power of initiative to affect local taxes, assessments, fees and changes shall be applicable to all local governments … ." (*Ibid.*) Second, it states that "the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge." (*Ibid.*) Taken together, they have been construed to expand the People's initiative power to reduce fees and assessments. (See *Bighorn-Desert*, *supra*, 39 Cal.4th at pp. 218-219.) As amici the League of California Cities recognized, Section 3 "was not intended to alter the essential nature of the initiative power, *but takes the nature of that power as a given*." (League of California Cities, "Proposition 218 Implementation Guide" (September 2007 ed.) at p. 82, italics added.) There is nothing in Section 3 that even hints at a repeal or limitation of the People's power to raise or otherwise regulate taxes, and this Court shuns implied repeals of the initiative power. (See *Kennedy Wholesale*, *supra*, 53 Cal.3d at p. 249.)

Moreover, Section 3 shows that the People knew how to address the initiative power explicitly, and thus would have made clear that the initiative power was covered by Section 2 if that had been their intent. Far from indicating that the People exercising their initiative power become the

local government, Section 3 establishes a dichotomy and a hierarchical relationship between "[t]he power of initiative to affect local tax" and "local governments." (Cal. Const., art. 13C, § 3.) As noted, it provides that "[t]he power of initiative to affect local taxes … shall be applicable to all local governments." (*Ibid.*) This language would make no sense if "local governments" encompassed the very initiative power set above "local governments." And constitutional provisions must be construed in "common-sense" manner, not in such a way that renders their meaning incoherent.[8] (E.g., *People v. Prather* (1990) 50 Cal.3d 428, 437.)

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[8] The City Government notes that Section 2(b) refers to both the "local government" and "the governing body of the local government," and argues that unless "'local government' *includes* the electorate acting by initiative," there would be no need to distinguish between a local government and its governing body. (Opening Br. at 11.) The premise of this argument—that a "local government" encompasses only a "governing body" and the sovereign People—is plainly untrue given the significant, and often unelected, bureaucracy that manages local government.

Moreover, the City Government reads too much into the second half of Section 2(b). That portion describes the timing of the election at a tax imposed by the local government shall be "submitted to the electorate," similar to how Government Code Section 53724(c) requires that such an election be "consolidated with … a regularly scheduled local election at which all of the electors of the local government or district are entitled to vote." Section 2(b) states that the "election required by this subdivision shall be consolidated with the 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).) Here, "the governing body of the local government" must surely mean the city council or county board of supervisors, because "special districts" (which are surely a form of local government) can have governing bodies not subject to general election at all, and certainly governing bodies that lack authority to declare an emergency. (See, e.g., *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 9, *as modified on denial of reh'g* (Feb. 13, 1992).) To read that timing provision as redefining "local government" would have the effect of excluding many special districts from coverage.

Thus, the words of Article 13C do not support the meaning thrust on them by the City Government.

2. The Context of Article 13C Further Discredits the City Government's Interpretation of "Local Government"

Propositions 62 and 26 each likewise strongly suggest that "local government" as used in Article 13C does not include the People acting through initiative. As noted earlier, Proposition 218 constitutionalized in Article 13C various provisions enacted in the Government Code by Proposition 62. Among these are Government Code Section 53721, corresponding to Section 2(a) of Article 13C, and Sections 53722 through 53724, corresponding to Sections 2(b) and 2(d) of Article 13C. Sections 53722 and 53723 set forth the voter approval required when a "local government ... impose[s]" either a "special tax" (requiring a super majority) or a "general tax" (requiring a simple majority). Section 53724 establishes the process by which that approval is obtained. Significantly, it states that "[a] tax subject to the vote requirements prescribed by Section 53722 or Section 53723 shall be proposed by an ordinance or resolution of the legislative body of the local government or district." (Cal. Gov. Code § 53724, subd. (a).) This makes clear that Proposition 62 addressed only taxes proposed by "the legislative body" and *not* taxes proposed by the People. While Section 2 of Article 13C lacks the specificity of Section 53724, there is no indication that the People's purpose had broadened from taxes imposed by governmental entities and government bodies to taxes imposed by the People.

A final indication of the People's intent can be found in Proposition 26's "Findings and Declaration of Purpose." (See, e.g., *Robert L., supra*, 30 Cal.4th at pp. 905-906 [looking to the "Findings and Declarations" section of an initiative to determine the voters' intent].) While not

expressly defining “local government,” this section indicates the term’s meaning by treating it as the local equivalent of “the Legislature.” It explains that Proposition 26 is meant to address “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.” (2010 Ballot Pamp., text of Prop. 26, § 1, subd. (e), at p. 114, italics added.) “In 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.’” (*Ibid*, § 1, subd. (f), emphasis added.) The proposition’s pairing of “the Legislature and local governments” provides further evidence that the latter phrase encompasses governmental entities akin to a legislature (such as a city council), but not the People (*i.e.*, “taxpayers”). Indeed, the proposition’s historical account would be false if it were recounting “fees” imposed through local initiatives, as there is simply no record of any such efforts by the People.[9] The way “local government” is used in Proposition 26’s further supports the conclusion that it does not include the People acting by initiative.

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[9] The history set forth in Proposition 218 would similarly be false if “local government” were meant to include the People: “[L]ocal governments have subjected taxpayers to excessive tax, assessment, fee and charge increases … .” (1996 Ballot Pamp., text of Prop. 218, § 2, at p. 108.)

B. Because "Any Local Government" Does Not Unambiguously Include the People Acting through Initiative, Article 13C Does Not Limit the Sovereign People's Precious Initiative Power

For the City Government to prevail in its effort to restrict the People's initiative power, it must do far more than show that its reading of Article 13C is a permissible reading or even the best reading. Rather, the City Government must show that its reading is the *only* reasonable reading, a standard the City Government cannot meet given its strained and implausible construction of the operative phrase "imposed by local government." At worst, Article 13C is ambiguous as to whether a tax imposed by the People through a local initiative is "imposed by local government," and any ambiguity must be interpreted in favor of the People's precious initiative power. For that reason, it is this Court's "solemn duty" to reject the City Government's interpretation. (See *Brosnahan*, *supra*, 32 Cal.3d at p. 241.)

The most obvious reason that the City Government's interpretive approach fails is that it contradicts every canon of construction applicable to restrictions on the People's initiative power. This Court would need to read the People's initiative power over taxes narrowly, making it no greater than the power of a city council. That would contravene both the canon requiring the initiative power to be construed broadly, and the settled principle that the People's power is more fundamental than that of delegated officials. (See *Associated Home Builders*, *supra*, 18 Cal.3d at p. 591.) This Court would need to read a limitation on taxation expansively, in order to apply it to initiative-based taxes, in contravention of the canon requiring limitations on government power to be read narrowly and strictly to avoid impinging on the People's initiative rights. And if this were not if enough, the Court would need to treat Article 13C as an "inherently undemocratic" statewide limitation on the local People's future initiative

power. Controlling precedent would foreclose the Court from taking any one of these interpretative steps, let alone all of them. (See *ante* pp. 7-8.)

Although the City Government repeatedly asserts that it is vindicating Proposition 13's core purpose (e.g., Petition at 6; Opening Brief at 18), its construction would require this Court to ignore the endless refrain in the ballot materials that Propositions 13, 62, 218, and 26 were intended to stop "spendthrift politicians" out to enrich themselves (see *ante* pp. 12-17), and instead conclude that the real evil the People intended to check was their own sovereignty. Such a conclusion would be untenable. Indeed, despite expressing some sharp anti-taxation sentiments, the ballot materials scrupulously insist that the propositions would *not* inhibit the power to tax, but would instead simply require that the People have a say in the process so that "feckless politicians" could not impose "hidden taxes" without obtaining popular approval. Thus, for example, the Proposition 26's proponents wrote:

> Here's what Prop. 26 really does: ...
>
> > • *Requires a POPULAR VOTE TO PASS LOCAL HIDDEN TAXES* disguised as fees, just like the Constitution requires for most other local tax increases.

(2010 Ballot Pamp. at p. 61, italics and capitalization in original.) Proposition 218 similarly was framed in terms of giving the People the right to vote on taxes, and concludes that "Proposition 218 will allow you and your neighbors—not politicians—to decide how high your taxes will be." (1996 Ballot Pamp. at p. 76.) Proposition 13 had a similar populist message. (See *ante* at pp. 12-13.)

Thus, it is not merely that the ballot materials are emphatic about curbing politicians' power to tax and silent about constraining the People's precious initiative; the ballot also materials affirmatively guarantee that the propositions would *enhance* the People's direct power over taxation. In

fact, the impartial legislative analysis for Proposition 218 included a paragraph entitled "Initiative Powers" informing voters that passing the proposition would "broaden[] the existing initiative powers available under the State Constitution and local charters." (1996 Ballot Pamp. at p. 74.) There is simply no reasonable possibility that the People would have understood that passing these propositions would instead narrow their initiative power.

The City Government's argument that Article 13C limits the People's precious initiative power fails for the same reasons, then, that the tobacco distributor's similar argument failed in *Kennedy Wholesale*. The text permits a reading that preserves the initiative power and the text does not explicitly limit that power; the text shows that the People knew how to address the initiative power and thus would have specifically limited it had they so intended; the canons of construction require that the initiative power be preserved whenever possible; and the history of the propositions shows an intent to reinforce the power of the People and to limit only the power of politicians and governmental entities. Under those circumstances, this Court must discharge its "solemn duty" to safeguard the People's precious right of initiative. (*Brosnahan*, *supra*, 32 Cal.3d at p. 241.) The City Government's policy arguments cannot overcome that duty, but, in any event, those arguments are wrong, as is explained below.

C. A Local Government's Future Collection of a Tax Imposed by the People by an Initiative Does Not Trigger Article 13C

The City Government asks this Court to elide the fact that the People have sought to impose the dispensary tax here, and to apply Article 13C because the City Government will ultimately collect the tax. (See Answering Br. at 14-17.) But there is a plain difference between "imposing" a tax, fee, fine or penalty and "collecting" on the imposed fee,

fine, or penalty. (Compare, e.g., Black's 4th ed. at p. 328 [defining "collect" to mean "to obtain payment or liquidation of [a debt or claim]"], with *id.* at p. 888 [defining "impose" to mean "[t]o levy or exact as by authority; to lay as a burden, tax, duty or charge"].) As this Court has explained, "[t]o conclude that the 'levying' of property taxes includes the passive receipt of revenues from such taxes is an expansion of that concept directly at odds with our mandated narrow reading of section 4 [of Article 13]." (*Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 107.) The fact that the local government will later collect the tax imposed by the People does not mean that the People, when imposing the tax, must follow the procedures laid down for local governments.

The case on which the City Government primarily relies, *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809, 823-24, cannot do what the City Government asks of it. There, this Court interpreted sections of the Government Code enacted by Proposition 62 to answer the question whether, for purposes of those provisions, a tax passed by a city council before Proposition 62's passage but still collected after its passage was governed by Government Code § 52723. (*Ibid.*) The Court concluded that a tax imposed before Proposition 62's passage was still governed by Section 52723 because Government Code Section 53727 clearly contemplated as much. The Court's holding was nothing more than that "the intent of Proposition 62's enactors was not merely to preclude enactment of a [new] tax ordinance without voter approval, but to preclude continued imposition or collection of such a tax as well." (*Ibid.*) The decision in no way suggests that a tax proposed by the People through an initiative would be subject to Article 13C's procedural limitations at the time the measure was put to the electorate; if anything, it underscores the consistent theme that propositions like those at issue here are aimed at governing bodies, not the electorate. Indeed, nothing about the case

implicated the core consideration here, namely this Court's "solemn duty jealously to guard the sovereign people's initiative power."[10] (*Brosnahan*, *supra*, 32 Cal.3d at p. 241.)

The City's equation of "impose" and "collect" can neither transform the meaning of "local government," nor justify imposing procedural requirements on the People's initiative because government officials ultimately carry out the ministerial role of tax collection.

D. The City Government's Policy Arguments for Applying Article 13C's Procedural Requirements to the People's Initiative Power Are Flawed and Unpersuasive

The City Government insists that the People exercising sovereignty through the initiative process are indistinguishable from any other form of California government and that, as a matter of policy, the People should be burdened with the same procedural requirements imposed on local governments by Article 13C. That argument defies California law, binding precedent, and common sense. The People are not merely a mass of unelected officials acting as a grand city council, but a sovereign antecedent to, and with powers more fundamental than, the governmental entities that exercise powers delegated by the People.

1. California Law Recognizes Meaningful Differences Between Initiatives Passed by the People and Ordinances Imposed by the Government

At the heart of the City Government's policy arguments is the suggestion that it would be anomalous to distinguish between, and have differing procedural requirements for, a tax imposed by the People through an initiative and a tax imposed by a local governmental entity through an

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[10] The second case cited by the City Government addressed whether a mandatory surcharge on plastic bags collected and kept by grocery stores constituted a "tax" at all, and is thus even farther afield. (See *Schmeer v. County of Los Angeles* (2013) 213 Cal.App.4th 1310, 1326.)

ordinance. (See Opening Br. at 13-14.) To the contrary, it would be anomalous to equate the two. As discussed above, this Court has a venerable and oft-repeated maxim that "the existence of procedural requirements for the adoptions of local ordinances generally does not imply a restriction of the power of initiative." (*DeVita*, *supra*, 9 Cal.4th at p. 785 [collecting cases].) That maxim does not exist in a vacuum, but rather embodies longstanding legislative practices and settled judicial principles.

For instance, California law requires that ballot measures "include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city." (See Cal. Elec. Code § 9280.) "[T]he distinction between initiatives generated by a city council and voter-sponsored initiatives serves a significant governmental policy." (*Friends of Sierra Madre*, *supra*, 25 Cal.4th at p. 190.) Similarly, California law requires that an ordinance's enacting clause indicate whether it was imposed by the People, the local government, or an agency. (See Cal. Elec. Code § 9224; Cal. Gov. Code §§ 36931, 25120; Cal. Rev. & Tax. Code § 7280.5.) These laws embody the commonsense notion that there is a real difference between laws that come from the People and laws that come from the government. That same notion grounds Propositions 13, 218, and 26.

The distinction between powers exercised by politicians and those exercised directly by the People is also reflected in California statutes and regulatory schemes. For example, the California Environmental Quality Act ("CEQA") establishes significant procedural requirements on land-use legislation and other governmental decisions that might affect the environment. Yet despite CEQA's great environmental importance, both agency regulations and California courts exempt the People's initiative from CEQA's requirements. (See, e.g., *DeVita*, *supra*, 9 Cal.4th at p. 793 [collecting cases].) Similarly, this Court has exempted the People from

obligations of notice and public hearing in advance of zoning changes (*Associated Home Builders*, *supra*, 18 Cal.3d at p. 594), and from the obligation to balance various competing environmental and housing needs in making development plans (*Building Industry Ass'n*, *supra*, 41 Cal.3d at p. 824). While these decisions rested in part on the infeasibility of enforcing such requirements on the People, *DeVita* makes clear that they more fundamentally rest on the recognition that when California enacts a law "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."[11] (9 Cal.4th at p. 786).

Put simply, local governmental entities enacting ordinances and local People passing initiatives are not two fundamentally similar forms of "local government" but two fundamentally distinct, albeit "parallel," processes. This distinction was underscored by the California Court of Appeal in *Stein v. City of Santa Monica* (1980) 110 Cal.App.3d 458, a decision codified by California Resources Agency and cited with approval by this Court in *DeVita*, *supra*, 9 Cal. 4th at p. 794, as well as in *Friends of Sierra Madre*, *supra*, 25 Cal.4th at pp. 186-189, and *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1033. In *Stein*, the Court of Appeal rejected the argument that when the local

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[11] The City Government seems to misunderstand the import of this quotation and reads "parallel" to mean "mirror." (Opening Br. at 8.) That would entirely upend both the reasoning and the result in *DeVita*, which concluded that power exercised by local government and power exercised by the People followed distinctive paths (not subject to the same limitations) but could achieve the same result.

People act by initiative, they are merely filling the shoes of a local governmental entity:

> Petitioners argue that the initiation of rent control was a project of a public agency because the "electorate exercised the City's legislative authority in approving the amendment." In other words it is suggested the people were agents of the city in promulgating this charter amendment. The argument is unsupported by controlling authority and otherwise totally unacceptable. Presumably the initiative, Proposition "A," amending the charter to include rent control, was the result of its sponsors qualifying the measure by the filing of a legally sound petition and was properly certified to the electorate by the city. City had no discretion to do otherwise. Under the circumstances city was the agent for the sponsors rather than vice versa.

(110 Cal.App.3d at p. 461.) As these cases and statutes recognize, when the People act as sovereign, they do so in their own stead, not as surrogates for the local government.

2. Preserving the People's Power to Affect Taxes Through Initiatives Vindicates the Core Purpose of Article 13C

As demonstrated above, the core purpose of the propositions that enacted Article 13C was to "allow you and your neighbors [*i.e.*, the People]—not politicians—to decide how high your taxes will be." (1996 Ballot Pamp. at p. 76.) Despite the City Government's protestations that "this is not a case pitting the people's right of initiative against a resistant local government" (Opening Br. at 6), that is exactly what it is. The City Government's politicians—through briefing authored entirely by a special interest organization—seek to limit the People of Upland's ability to decide how to tax marijuana dispensaries. The City Government's suggestion that it is seeking to vindicate "the statewide initiative that added article 13C" is question-begging—insofar as it assumes that Article 13C sought to limit the People's initiative power—and flat-out wrong, because the City

Government's interpretation of the constitution would frustrate, rather than further, the populist purpose of Propositions 218 and 26.[12]

Like Proposition 13, Propositions 218 and 26 sought to ensure that local politicians could not raise taxes without giving the local People a say in the matter. To that end, Article 13C requires that the People "approve" taxes "imposed by any local government." This served the dual purpose of flushing out "hidden taxes" and vests the People with ultimate control over any decision to raise taxes. But concerns about "spendthrift politicians" acting contrary to the People's interest or hidden from the public eye are simply not implicated in the initiative process. An initiative is by its very nature public, and through its very passage it expresses the People's approval. As this Court explained in *DeVita*, the initiative process itself independently vindicates the goal by requiring governmental entities to consult the People because "[w]hen the people exercise their right of initiative, then public input occurs in the act of proposing and circulating the initiative itself, and at the ballot box." (9 Cal.4th, *supra*, at p. 786.)

> We find it highly doubtful that the Legislature, in the name of these nonspecific requirements for obtaining community input on general plan amendments, sought to prohibit this most direct form of such input—amendment by initiative. Obviously, when the governing body votes on a general plan amendment, the expression of public opinion on the amendment must come before that vote. When the people exercise their right of initiative, then public input occurs in the act of proposing and circulating the initiative itself, and at the ballot box. We cannot conclude that, for the sake of eliciting public involvement, the Legislature intended to preclude this more direct form of public participation.

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[12] Indeed, prior to the City Government's surrendering its litigation strategy to a special interest, the City Government's apparent concern was not an increase in taxes but rather an increase in crime associated with the connection between legalized "Marijuana and the Drug Cartels." (*See* Op. at 8.)

(*Ibid.*) There is simply no history in California of the People recklessly or by deception overburdening *themselves* with taxes at a local or statewide level. Neither when Propositions 13, 62, 218, and 26 were enacted nor today would such non-existent behavior furnish a reason for imposing procedural limits on the People's initiative power.

Instead of finding any actual instances of the People run amok, the City Government imagines hypothetical "mischief" that corrupt politicians might undertake to use the initiative process to thwart Article 13C. (Opening Br. at 17-19.) The City Government supposes that a corrupt local government, in order to raise local government workers' pay via a tax increase, would "call a meeting of the unions" and "mobilize city employees to collect signatures on an initiative." (Opening Br. at 18.) These employees would then misleadingly "pitch the measure as the 'Green Parks and Clean Water Initiative,'" and thereby trick "a mere ten percent of the City's registered voters" into voting for the tax increase. (*Ibid.*) The local government would then "adopt" the proposed initiative, rather than putting it on the ballot, thereby "kill[ing] the constitutional right of California taxpayers to vote on new taxes." (*Ibid.*) It is ironic that the City Government here proposes an avenue to circumvent the voters, but its concerns are both irrelevant and overwrought.

First, the fear of local government collusion to misuse the initiative power is often raised as a basis for depriving the People of that power, but the argument is routinely rejected by this Court because of the political checks on such corruption. For example, in *Tuolumne*, this Court rejected exactly the argument the City Government advances here, noting that the People could always undo such mischief via a contrary initiative:

> Appellants warn that developers could potentially use the initiative process to evade CEQA review, and that direct adoption by a friendly city council could be pursued as a way to avoid even the need for an election. … [T]hese concerns

> are appropriately addressed to the Legislature. The process itself is neutral. The possibility that interested parties may attempt to use initiatives to advance their own aims is part of the democratic process.
>
> Finally, voters have statutory remedies if direct adoption of an initiative results in the enactment of an undesirable law. Section 9235 stays the effective date of most local ordinances for 30 days. During this 30-day period, voters may circulate a referendum petition. (See § 9237.) If a city receives a "petition protesting the adoption of an ordinance" signed by at least 10 percent of the city's voters, the effective date is suspended and the city must reconsider the ordinance. Upon reconsideration, the city may either repeal the ordinance in its entirety or submit the ordinance to voters in an election to be held within 88 days. (§ 9241.) The Legislature has outlined clear procedures for voters to overturn an ordinance adopted against the majority's will. Whichever path a city chooses in dealing with a voter initiative, voters have the final say.

(59 Cal.4th at p. 1043.) This Court will not limit the initiative power based on "the mere possibility that such deficiencies may occur." (*Devita*, *supra*, 9 Cal.4th at p. 793; accord *Bighorn-Desert*, *supra*, 39 Cal.4th at pp. 220-221 ["[W]e must presume that both sides will act reasonably and in good faith . . . ."].)

As *Tuolumne* explains, should such "mischief" take place on an occasional basis, the local People could undo it through a local initiative. (See generally *Save Stanislaus Area Farm Econ. v. Bd. of Supervisors* (1993) 13 Cal.App.4th 141, 148 ["Initiative and referendum matters frequently follow in response to unpopular action or inaction by the local government . . . ."].) Should such mischief become endemic, the People as a whole could remedy it with a statewide initiative. The history of Propositions 13, 62, 218, 216, and other tax propositions shows that the People do not rely on expansive judicial readings of old initiatives in order to address novel taxation trickery by local and state governments, but rather simply pass new initiatives to address these problems. Moreover, such

activity by local government officials would potentially run afoul of the Political Reform Act of 1974, Cal. Gov. Code §§ 81000, *et seq.*, or other laws. (See, e.g., *Stanson v. Mott* (1976) 17 Cal.3d 206.) And if the threat of civil or criminal liability does not check such corruption, then the People always have the power to vote out the politicians themselves. (See *Bighorn-Desert*, *supra*, 39 Cal.4th at p. 220 ["[W]e assume the board, whose members are elected, will give appropriate consideration and deference to the voters' expressed wishes … ."].)

Even apart from the City Government's unsubstantiated concerns with "mischief" by the People, a local government could not use the initiative process as an end-run in the way the City posits. That is because a tax initiative adopted by a local government as an exercise of its discretion *would* be a tax "imposed by any local government." In that situation, it would be the local government, and not the People, who made the decision to adopt the tax. An ordinance represents an imposition of the People's power, rather than the local government's, only when it "involve[s] no discretionary activity directly undertaken by the City," and is "an activity undertaken by the electorate" that does "not require the approval of the governing body." (See *Stein*, *supra*, 110 Cal.App.3d at pp. 460-461.) Unlike in *Tuolumne*, where it sufficed for the People merely to propose an initiative, here the People must both propose and *adopt* a tax to place it outside the limitations of Article 13C.

The procedural requirements imposed by Article 13C occur at a later stage of the law-making process than do the requirements in statutes like CEQA, and thus Article 13C's requirements are not avoided by the People's mere proposing of an initiative. Procedural requirements like those of CEQA prescribe deliberative steps a governing body undertake before finalizing the form of an ordinance, general plan, or similar piece of legislation. Once the People have proposed an ordinance by qualifying it

for the ballot, however, the law's form is already finalized: the local government can only adopt the proposition or submit it to the People via the ballot. (Cal. Elec. Code § 9214; see *Tuolumne*, *supra*, 59 Cal.4th at p. 1043 [explaining that from its inception in 1911, an initiative must "be either enacted or rejected without change or amendment"].) Thus, CEQA-type procedural requirements simply *cannot* apply when the People have proposed an initiative. (*Tuolumne*, *supra*, 59 Cal.4th at p. 1038.) The requirements of Article 13C, by contrast, do not address the steps a local government must take before finalizing a tax's form; rather, they address the steps a local government must *after* it is final but before the local government can impose it. The discretionary decision to adopt a popularly proposed initiative is exactly the governmental *yea*-or-*nay* decision covered by Article 13C. Common sense and ordinary English dictate that when a tax initiative is "adopted by the vote of the legislative body … without submission to the voters" (Cal. Elec. Code § 9217), the government, not the People, has imposed the tax. Thus, such a tax would be subject to Article 13C's procedural requirements, while a tax "adopted by the voters" would not. (*Ibid.*) Unlike with CEQA and its like, Article 13C still has a role to play after an initiative has been proposed but before it has been adopted by the People.

In short, there is a reasonable reading of Article 13C that both preserves the initiative power and addresses the City Government's concerns. There is thus no incompatibility between this Court's "solemn duty jealousy to guard the sovereign people's initiative power" (*Brosnahan*, *supra*, 32 Cal.3d at p. 241), and the propositions' purpose of "giv[ing] taxpayers the right to vote on taxes" (1996 Ballot Pamp. at p. 77). This Court can, should, and indeed must read Article 13C as imposing procedural limitations only on "local governmental entities," like city councils, and not on the sovereign People.

CONCLUSION

The People's power to regulate local taxes through initiative is an important and venerable one, one which the People would not have lightly and impliedly cast aside. Based on Article 13C's text and history, and binding canons of construction, this Court should not permit the City Government to limit that sovereign right.

Dated: November 1, 2016

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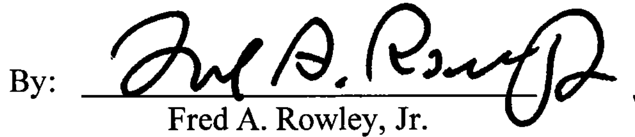
By: 
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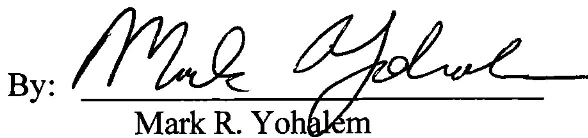
CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies, pursuant to Rule 8.204(c)(1) of the California Rules of Court, that the enclosed Opening Brief of Appellants contains approximately 11,663 words, including footnotes. Counsel relies on the word count of the Microsoft Word computer program used to prepare this brief.

Dated: November 1, 2016 MUNGER, TOLLES & OLSON LLP

By: 

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PROOF OF SERVICE

I, Michelle Godfrey, declare:

I am over the age of 18 and not a party to this action. I am employed by Munger, Tolles & Olson LLP in the County of Los Angeles, State of California. My business address is 355 South Grand Avenue, Thirty-Fifth Floor, Los Angeles, California 90071-1560.

On November 1, 2016, I served a true copy of the attached document entitled

PROPOSED *AMICUS CURIAE* BRIEF OF THE CHARGERS FOOTBALL COMPANY IN SUPPORT OF PLAINTIFFS AND RESPONDENTS CALIFORNIA CANNABIS COALITION ET AL.

on the interested parties in this action as follows:

SEE SERVICE LIST ATTACHED

I enclosed the documents in sealed envelopes addressed to the persons at the addresses listed in the Service List and placed the envelopes for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with the postage fully prepaid.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 1, 2016, at Los Angeles, California.

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