S234148

SUPREME COURT OF CALIFORNIA

CALIFORNIA CANNABIS COALITION, ET AL.

Plaintiffs and Respondents,

v.

CITY OF UPLAND, ET AL.

Defendants and Petitioners.

Superior Court, San Bernardino County (Case No. CIVDS1503985)
Court of Appeal, Fourth District, Division 2 (Case No. E063664)

CITY OF UPLAND'S ANSWER TO BRIEF OF AMICUS SAN DIEGO CHARGERS FOOTBALL COMPANY

Jonathan M. Coupal, SBN 107815
Trevor A. Grimm, SBN 34258
Timothy A. Bittle, SBN 112300
Brittany A. Sitzer, SBN 304313
Howard Jarvis Taxpayers Foundation
921 Eleventh Street, Suite 1201
Sacramento, CA 95814
Telephone: (916) 444-9950
Facsimile: (916) 444-9823

Attorneys for Petitioners

S234148

SUPREME COURT OF CALIFORNIA

CALIFORNIA CANNABIS COALITION, ET AL.

Plaintiffs and Respondents,

v.

CITY OF UPLAND, ET AL.

Defendants and Petitioners.

Superior Court, San Bernardino County (Case No. CIVDS1503985)
Court of Appeal, Fourth District, Division 2 (Case No. E063664)

CITY OF UPLAND'S ANSWER TO BRIEF OF AMICUS SAN DIEGO CHARGERS FOOTBALL COMPANY

Jonathan M. Coupal, SBN 107815
Trevor A. Grimm, SBN 34258
Timothy A. Bittle, SBN 112300
Brittany A. Sitzer, SBN 304313
Howard Jarvis Taxpayers Foundation
921 Eleventh Street, Suite 1201
Sacramento, CA 95814
Telephone: (916) 444-9950
Facsimile: (916) 444-9823

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES:

STATUTES:

I

THE SAN DIEGO TAX CHARGERS IS NOT A FRIEND OF THE SOVEREIGN PEOPLE OF UPLAND, NOR IS THE CITY THEIR ENEMY

The amicus brief by the San Diego Chargers broke ranks with the other amici and the parties who, in their briefs, referred to the City of Upland as "the City." This amicus strategically chose a different label, "the City Government." (Amicus Brief at 3, *et seq.*) And for city voters it chose the label "the Sovereign People." (*Id.*) The transparent purpose of these labels is to subliminally condition the Court to view this case as a contest between the People and the Government. It is not. The contest in this case is between a statewide initiative and a local initiative.

Concerned that its characterization of the City as the People's foe might be discredited by the fact that the Howard Jarvis Taxpayers Foundation has taken up the City's defense, this amicus slaps a label on Jarvis too. We are a "special interest group" of "special interest lawyers." (Amicus Brief at 3, *et seq.*) The purpose again is transparent. The Chargers want to portray themselves as the impartial champion of the voters of Upland.

However, the Upland marijuana dispensary initiative was on the ballot in November, and Upland's voters have now spoken. The initiative failed badly, having garnered only 34% of the vote. It appears, then, that the City and its "special interest lawyers" were on the People's side after all, protecting them from an unauthorized low-turnout special election where a mobilized minority might have produced a different result, which is one of the reasons Proposition 218 contains its election date requirement.

So whose side are the Chargers on? In their application for leave to file an amicus brief, the owners of the team disclosed their financial interest in Measure C, an initiative that was on the San Diego ballot in November. Measure C would have imposed a special tax in San Diego forcing the Sovereign People to pay for the construction of a new stadium for the millionaire owners of the Chargers football team. As their application explains, "The decision in this case may affect whether Measure C passes." (Application to File Amicus Brief at 2.) For if this Court rules that a tax increase proposed by an initiative is not subject to Article 13C, section 2, "then only a simple majority [would have been] needed to pass Measure C," despite the two-thirds vote requirement in section 2 for special taxes. (*Id.*)

To remind the Court of the true, self-serving interest of this amicus in the case at bar, the City will hereafter apply its own label to the San Diego Chargers Company – "Tax Chargers." Although, to be honest, Tax Chargers no longer has any interest in this case or the People of Upland. For Measure C, San Diego's stadium tax, also failed, having received not even a majority of the vote.

II

THE CITY AGREES THAT THIS COURT HAS A DUTY TO JEALOUSLY GUARD THE PEOPLE'S INITIATIVE POWER

Tax Chargers begins with a five-page argument that this Court has a solemn duty to jealously guard the People's precious initiative power, as if the City were arguing otherwise. The City is not arguing otherwise. In fact, the City is defending the initiative power, by which the statewide electorate passed Proposition 218, adding article 13C, section 2, to the California Constitution.

Tax Chargers, and the Proponent they support, are arguing that a statute in the Elections Code should trump a constitutional initiative, Proposition 218, and are suggesting that this would somehow be a victory for the initiative power. Their argument is obviously illogical.

Despite portraying itself as a guardian of the initiative power, Tax Chargers also illogically argues that a statewide initiative, Proposition 218, must be "strictly construed" because it is "inherently undemocratic." (Amicus Brief at 8.) The case it cites for this theory, *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, lends no support. In *Farrell*, this Court strictly construed the term "special taxes" in Proposition 13 to mean taxes levied for a specific purpose, rather than broadly construing the term to mean all taxes, because special taxes would be subject to an "inherently undemocratic" two-thirds vote requirement. (*Id.* at 52.)

Farrell relates to Proposition 13's two-thirds vote requirement for special taxes rather than the subject at bar, which is Proposition 218's election date requirement for general taxes. Moreover, in *Rider v. County of San Diego* (1991) 1 Cal.4th 1, this Court "re-examined and retracted its earlier pronouncement that Proposition 13 should be strictly construed in the light of the undemocratic nature of the supermajority vote requirement." (*Howard Jarvis Taxpayers Assn. v. State Bd. of Equalization* (1993) 20 Cal.App.4th 1598, 1603.)

Finally, even though the pre-*Rider* case of *Farrell* strictly construed a term in Proposition 13 (which provided no guidance for its interpretation), the First District Court of Appeal recently stated, "We doubt the applicability of this rule to cases decided under Proposition 218, which provides that it should

be 'liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.'" *Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 699 (quoting Historical Notes, 2B West's Ann. Cal. Codes (2013) following art. XIII C, § 1, p. 363).

Jealously guarding Proposition 218, and liberally construing it "to effectuate its purposes of limiting local government revenue," rather than strictly construing it as inherently undemocratic as Tax Chargers suggests, this Court must find that it applies to all attempts to raise taxes, even those proposed by a local initiative.

III

THE CITY IS NOT SEEKING TO LIMIT OR REPEAL ANY PART OF THE INITIATIVE POWER

According to Tax Chargers, "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 ... add[ed] Article 13C to the California constitution." (Amicus Brief at 2.) Arguing that specific issue then becomes the thrust of the rest of Tax Chargers' brief.

That issue, however, is not "the specific issue" before this Court. The issues before the Court were designated by the partes per Rule 8.520(b) of the California Rules of Court. They appear on page 1 of the City's Opening Brief. They do not include the question of whether the statewide electorate has limited the power of local voters to impose taxes, because that is not an issue in this case. Tax Chargers is acting as both arsonist and firefighter, attributing a fabricated position to the City, then dismantling it, as if by doing so Tax Chargers has accomplished something.

At issue in this case is the date for holding the election on an initiative that proposes a general tax. The City contends that the election must be "consolidated with a regularly scheduled general election for members of the governing body" as required by article 13C, section 2(b). Nowhere in the constitution, either in the provisions reserving the initiative power or elsewhere, is there any specification of election dates for a qualified initiative – except in article 13C, section 2, which the Proponent in this case is trying to avoid. Enforcing section 2's election date requirement thus in no way limits or impliedly repeals any aspect of the People's initiative power.

Article 2, section 10 authorizes the Legislature to establish rules, including election dates, for implementing the right of initiative. It states, "The Legislature shall provide the manner in which petitions shall be circulated, presented, and certified, and measures submitted to the electors." No one would argue that the Legislature, in setting specific election dates for initiatives (see, *e.g.*, Elec. Code § 1405), somehow limited or impliedly repealed part of the People's initiative power. If the Legislature has authority to prescribe election dates, then so does the statewide electorate by amending the constitution.

Tax Chargers doesn't want to talk about the election date for general taxes (the actual issue in this case). It wants to talk about the voter approval threshold for special taxes. As the sponsor and financial beneficiary of Measure C, San Diego's special tax to fund a new football stadium, Tax Chargers hoped to hijack the case at bar to obtain a pronouncement from this Court that Measure C passed if it received a majority, but less than two-thirds of the vote. That issue, however, besides being moot now that voters rejected the tax, is not before the Court. The Court therefore should not offer an

advisory opinion. (*Pacific Legal Fdn. v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.)

Moreover, the issue that *is* before the Court involves Proposition ***218***. The voters imposed the two-thirds vote requirement on special taxes in 1978 with Proposition ***13***. (See Cal. Const., art. 13A, § 4.) In almost 40 years no one has complained that statewide voters could not impose a voter approval threshold on local voters.

Tax Chargers argues that this Court in *Kennedy Wholesale* struck down the idea that local special tax initiatives need a two-thirds vote. But Tax Chargers is misreading that case. The plaintiff in *Kennedy Wholesale* challenged a statewide initiative, Proposition 99, by which California voters imposed a tax on tobacco products to help fund tobacco-related programs. The main issue in the case was whether Proposition 13's article 13A, section 3 implicitly repealed the voters' power to raise taxes by statutory initiative. Section 3 provides, "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." (Cal. Const., art. 13A, § 3.) The plaintiff took section 3 to mean that only the Legislature can raise state taxes, a theory which this Court rejected. (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 249.)

As an alternative, the plaintiff argued that section 3's two-thirds legislative vote requirement applied equally to the electorate because their powers are generally co-extensive. (*Id.* at 251.) This Court rejected that theory too, stating first that "legislative *procedures*, such as voting

requirements" do not apply to the electorate. (*Id.*, emphasis in original.) But the Court also noted that "*section 4* hurts plaintiff's argument."[1] Section 4 provides that "Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district." (Cal. Const., art. 13A, § 4.) Section 4, this Court said, "demonstrates, unambiguously, that the voters knew how to impose a supermajority voting requirement *upon themselves* when that is what they wanted to do. That the voters *expressly adopted such a requirement* in section 4 strongly suggests that they did not do so implicitly in section 3." (*Kennedy Wholesale*, 53 Cal.3d at 252.)

Applying *Kennedy Wholesale* to the actual issue before this Court, Proposition 218's election date requirement is not a "legislative procedure." That is, it is not a procedure the governing body must follow to adopt its own ordinance or resolution. As Tax Chargers admits, "legislative procedures" are "deliberative steps a governing body undertakes before finalizing the form of an ordinance." (Amicus Brief at 37.) The election on a proposed tax is not a "deliberative step [the] governing body undertakes." The governing body does not vote on a proposed tax at an election. The governing body votes at its meeting. The voters vote at the election. As Tax Chargers concedes, the rule that legislative procedures don't apply to the electorate "rest[s] in part on the infeasibility of enforcing such requirements on the People." (Amicus Brief at 32.) Requirements of mailed notice, environmental studies, general plan amendments, etc., are therefore inapplicable to voter initiatives. As this case demonstrates, however, there is nothing infeasible about presenting a tax initiative to the voters at a "regularly scheduled general election for members of the governing body" as required by article 13C, section 2(b).

---

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

IV

THE PURPOSE OF PROPOSITION 218 IS TO CURB *TAXES*, NOT POLITICIANS

Tax Chargers next argues that Proposition 218's requirements do not apply to initiatives because the purpose of Proposition 218 is not to curb all taxes, only those proposed by politicians. It is unnecessary, however, to follow Tax Chargers' rabbit trail to discern the purpose of Proposition 218. For, as held in *Bay Area Cellular*, Proposition 218 declares its own purpose – to limit taxes. (162 Cal.App.4th at 699. See also *Howard Jarvis Taxpayers Assn. v. City of Los Angeles* (2000) 85 Cal.App.4th 79, 82.)

Tax Chargers devotes a lot of ink to quoting ballot arguments from other propositions in 218's "progeny" in an effort to avoid the purpose clearly stated in the very text of Proposition 218. (Amicus Brief at 12, *et seq.*) According to Tax Chargers, a finding that Proposition 218 applies to taxes proposed by initiative "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 ... and instead conclude that the real evil the People intended to check was their own sovereignty." (Amicus Brief at 27.)

This argument, repeated ten times in Tax Chargers' brief, that the real purpose of Proposition 218 was to stop "spendthrift politicians," not taxes, is derived from a 1978 ballot argument for Proposition 13. A sentence in The Rebuttal to the Argument Against Proposition 13 states, "We must not let the spendthrift politicians tax us into poverty." (June 1978 Ballot Pamphlet at 59.)

The first problem with using this sentence to interpret Proposition 218

is that it was written for a different proposition that contained no provision similar to the election date requirement at issue here. In fact, Tax Chargers lists 17 quotes from ballot arguments for other propositions that contained no election date provision, and argues these are proof that the voters who passed Proposition 218 did not intend its election date requirement to apply to taxes proposed by initiative.

The second problem is that ballot arguments are weak indicators of voter intent even as to the proposition for which they were written. It is expected that in their compressed word limit, ballot arguments will isolate and emphasize only those points that will have the greatest sway on voters. They appear in the Voter Information Guide above a warning: "Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency." (Gov. Code § 88002.) As this Court has noted, "[o]ne difficulty with relying on ballot arguments is that they are stronger on political rhetoric than on legal analysis." *Carlos v. Superior Court* (1983) 35 Cal.3d 131, 143 n.11.

A third problem with deriving voter intent from ballot arguments is that they are not required to explain or even disclose all of the changes a measure will make to the law. Using Tax Chargers' favorite "spendthrift politicians" sentence as an example, nothing about the sentence purports to be a comprehensive description of Proposition 13's purposes. In other words, it states *one* purpose of Proposition 13, but is obviously not exhaustive since Proposition 13 added four sections to the state constitution, each with its own moving parts. The sentence says nothing one way or the other about taxes proposed by initiative. Tax Chargers is making the same mistake as the Court of Appeal – divining voter intent from silence.

Instead of attempting to measure the intent of voters by quoting biased ballot arguments from other propositions, a better extrinsic indicator of Proposition 218's intent would be the *impartial* ballot materials for Proposition 218 *itself*. These clearly indicate an intent to control taxes, not politicians. The official Title prepared by the Attorney General was "Voter Approval for Local Government Taxes. Limitations on Fees, Assessments, and Charges. Initiative Constitutional Amendment." (Nov. 1996 Voter Information Guide at 72.) "Voter Approval for Local Government Taxes" would encompass all taxes at the local government (as opposed to state government) level, not just those proposed by an elected body. As Tax Chargers admits, generic terms such as "local government," "city," or "county" are ambiguous. Such terms are generally presumed to include the electorate acting in its legislative capacity. (Amicus Brief at 19. See also City's Opening Brief at 7-11.)

The official Summary prepared by the Attorney General, as it pertains to elections, states that Proposition 218 "[r]equires majority of voters approve increases in general taxes and reiterates that two-thirds must approve special tax." (Nov. 1996 Voter Information Guide at 72.) This statement contains no limiting language regarding the origin of a tax proposal, but speaks to all general and special taxes regardless of their source. Any voter reading the official Summary would conclude that all taxes require voter approval, not just those proposed by an elected body.

The Analysis prepared by the Legislative Analyst, insofar as it addresses elections on taxes, explains: "The measure states that all future local general taxes, including those in cities with charters, must be approved by a majority vote of the people. The measure also requires existing local general taxes established after December 31, 1994, without a vote of the people to be

placed before the voters within two years." (Nov. 1996 Voter Information Guide at 74 (emphasis omitted).) Like the Attorney General's Title and Summary, the Analysis by the Legislative Analyst contains no limiting language regarding the origin of a tax proposal, but comprehensively states that "***all*** future local general taxes, including those in cities with charters, must be approved by a majority vote of the people." "[T]he word 'all' means 'all' and not 'some.'" (*Hudec v. Superior Court* (2013) 218 Cal.App.4th 311, 318; *Joshua D. v. Superior Court* (2007) 157 Cal.App.4th 549, 558.) Any voter reading the Analysis of the Legislative Analyst would conclude that ***all*** taxes require voter approval, not just those proposed by an elected body.

V

THE TEXT OF ARTICLE 13C SUPPORTS THE CITY, NOT TAX CHARGERS

After discussing the line of statutory construction cases that ascribe a presumption of voter *inclusion* to generic terms such as "city" or "local government," and a presumption of voter *exclusion* to specific terms such as "city council" or "governing body," the City in its Opening Brief explained that article 13C, section 2 uses two different terms in the very paragraph that is the focus of this case, illuminating the voters' intent that taxpayer protections should apply equally to all proposed taxes, regardless of who proposes them. It states:

> "No ***local government*** may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. ... The election required by this subdivision shall be consolidated with a regularly scheduled general election for members

> of the ***governing body*** *of the local government*, except in cases of emergency declared by a unanimous vote of the ***governing body***." (Cal. Const., art. 13C, § 2(b).)

The phrase "governing body of the local government" clearly treats "governing body" as a subset of "the local government," inferring that "local government" *includes* the electorate acting by initiative. Thus, all "local government" taxes, whether proposed by a voter initiative or a resolution of the governing body, must receive majority voter approval at a regularly scheduled candidate election. Only the "governing body" can, by a unanimous declaration of emergency, propose a tax at a special election.

Tax Chargers, while admitting that generic terms such as local government and city "can mean either the city's governing body or the people of the city" (Amicus Brief at 19), nonetheless argues that the definition of "local government" in section 1 of article 13C somehow renders the generic term "local government" and the specific term "governing body" synonyms.

The section 1 definition reads: "'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." Tax Chargers argues, "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." (Amicus Brief at 19.) The City strongly disagrees. "Entity" is at least as ambiguous as "city" or "local government," if not more so. Black's Law Dictionary defines "entity" as "a ***generic*** term ***inclusive of person***, partnership, organization, or business." (Black's Free Online Legal Dictionary, 2d ed., http://thelawdictionary.org/entity.) Tax Chargers has no

case law or example to support its novel theory that "entity" means "governing bodies such as a city council." This argument, then, cannot overcome section 2's use of two different terms and the canon of construction that "where different words or phrases are used in the same connection in different parts of a statute, it is presumed the [voters] intended a different meaning." (*Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 343; *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117.) This Court has said that when drafters use different words in the same provision, "the inference is compelling that a difference in meaning was intended." (*Kleffman*, 49 Cal.4th at 343; *People v. Jones* (1988) 46 Cal.3d 585, 596. See also *DuBois v. Workers Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388 ["[i]f possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose"].)

Tax Chargers also claims that the definition of "agency" in article 13D "further illuminates" the meaning of "local government" in article 13C. The City again disagrees. The definition sections of articles 13C and 13D each begin with a caveat that their definitions define words "[a]s used in *this* article." (Cal. Const., art. 13C, § 1; art. 13D, § 2.) Since articles 13C and 13D were simultaneously added to the constitution by Proposition 218, the fact that each article has its own definitions and each definition section limits itself to words "[a]s used in *this* article" suggests that their definitions are not necessarily interchangeable. (*Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 213.) In any event, article 13D's definition of "agency" to mean "local government" as defined in article 13C adds nothing to the analysis. (Cal. Const., art. 13D, § 2(a).)

Although the definitions section of article 13C does not help Tax

Chargers, it does help the City. Section 1 defines taxes as follows: "'General tax' means ***any*** tax imposed for general governmental purposes." (Cal. Const., art. 13C, § 1(a).) "'Special tax' means ***any*** tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund." (*Id.* at § 1(d).) These definitions encompass "any" tax without specifying who proposed the tax.

Finally, Tax Chargers points to section ***3*** of article 13C as textual proof that section ***2*** does not apply to taxes proposed by initiative. Section 3 states:

> "Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives."

The phrase "[t]he power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments," argues Tax Chargers, "establishes a dichotomy and a hierarchical relationship between '[t]he power of initiative to affect local taxes' and 'local governments.'" (Amicus Brief at 23.) No it doesn't. Read in context, that phrase does not juxtapose "the power of initiative" and "local governments." It simply means that at *all* levels of local government, big or small, chartered or not, initiatives can be used to affect local taxes.

As section 3 has been interpreted, it actually hurts Tax Chargers' argument. For this Court in *Bighorn-Desert View Water Agency v. Verjil* held that the "power of initiative to *affect* local taxes" is no greater than the power specified by the previous sentence, the power to "reduce or repeal" local taxes: "The scope of the initiative power is set by the previous sentence, stating that 'the initiative power shall not be prohibited or otherwise limited in matters of *reducing or repealing* any local tax, assessment, fee or charge.' Thus, analysis of the text of section 3 of article XIII C supports the conclusion that the initiative power granted by that section extends only to 'reducing or repealing' taxes, assessments, fees, and charges.'" (*Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th at 218 (emphasis in original).)

Read literally, *Bighorn* suggests that voters at the local government level do not have the power to increase taxes by initiative. Reinforcing that conclusion, the first sentence of section 3 begins with the statement "Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II." In other words (as *Bighorn* seems to suggest), section 3 could be read to mean that, notwithstanding the general reservation of the initiative power in article 2, section 8, and elsewhere in the constitution, the power of initiative to affect taxes at the local level is limited to reducing or repealing taxes. To be clear, the City is ***not*** making that argument here. The City is merely pointing out that section 3 does not help Tax Chargers. Nothing in the text of Proposition 218 helps Tax Chargers. The text supports the City's position that the taxpayer protections of Proposition 218 apply to all taxes, whether proposed by a resolution of the governing body or through a voter initiative.

VI

THE THREAT OF MISCHIEF IS NOT ALLAYED BY TAX CHARGERS' SUPPOSED "REMEDIES"

Finally, Tax Chargers ridicules the City's concern that affirming the Court of Appeal could lead to mischief. The City offered the example of a City Council and one of its employee unions colluding to place a tax increase on the ballot as a proposed initiative that, once certified as having sufficient signatures, could be adopted by the Council in lieu of holding an election, thus depriving voters of their right to vote on taxes.

Tax Chargers claims that "in *Tuolumne* [*Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029], this Court rejected exactly the same argument the City Government advances here." (Amicus Brief at 35.) Tax Chargers then quotes *Tuolumne* as follows:

> "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. (Ibid.) 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." (*Tuolumne,* 59 Cal.4th at 1043, citing Elec. Code.)

Thus Tax Chargers doesn't disagree that mischief could occur, it simply argues that there are "political checks on such corruption." (Amicus Brief at 35.) Tax Chargers seems to have forgotten, however, that the remedy it proposes is unavailable in the case of taxes. "The referendum is the power of the electors to approve or reject statutes or parts of statutes *except* ... statutes providing for tax levies." (Cal. Const., art. 2, § 9.) "Under this definition, tax measures are exempt from referendum." (*Bighorn*, 39 Cal.4th at 212, fn.3. See also *Rossi v. Brown* (1995) 9 Cal.4th 688, 697.)

Tax Chargers also suggests that "[s]hould such mischief become endemic, the People as a whole could remedy it with a statewide initiative. The history of Propositions 13, 62, 218, 26, and other tax propositions shows that the People ... simply pass new initiatives to address these problems." (Amicus Brief at 36.) Perhaps to the millionaire owners of the San Diego Chargers it appears "simple" to pass a statewide initiative, but to a donation-dependent nonprofit like the sponsor of the initiatives listed, the effort is herculean. That is one reason why they included Proposition 218's liberal construction clause so that courts would interpret this initiative to protect taxpayers, making it unnecessary to pass another.

Tax Chargers' alternate argument is that governing bodies can***not*** adopt a tax initiative in lieu of holding an election because article 13C, section 2, prohibits such a thing. (Amicus Brief at 37-38.) It is a curious argument that seems to concede the case to the City. Tax Chargers reasons that "a tax

initiative adopted by a local government as an exercise of its discretion would be a tax 'imposed by any local government.' ... The discretionary decision to adopt a popularly proposed initiative is exactly the governmental yea-or-nay decision covered by Article 13C. ... Thus, such a tax would be subject to Article 13C's procedural requirements, while a tax 'adopted by the voters' would not." (*Id.*)

The problem with Tax Chargers' reasoning is that article 13C, section 2's protections apply *before* anything is "adopted by the voters." The voter approval and election date requirements apply to *proposed* taxes. So Tax Chargers is conceding that if the governing body adopts a tax initiative in lieu of holding an election, then section 2's requirement of an election will kick in, and that election must be "consolidated with a regularly scheduled general election for members of the governing body" as required by article 13C, section 2(b). But if the governing body does not attempt the futile act of adopting the initiative in lieu of an election, then section 2 would *not* kick in and the governing body must call a special election if the initiative qualified for one. In other words, under Tax Chargers' argument, governing bodies have the power exercised by the Upland City Council in the case at bar to place a tax initiative on the regularly scheduled general election ballot rather than call a special election. The only thing the Upland City Council forgot to do was first pretend to adopt the initiative on its own in lieu of an election. Tax Chargers' theory, besides elevating form over substance and making a mockery of the law, basically concedes that the taxpayer protections of article 13C, section 2, should apply whether a new tax is proposed by a resolution of the governing body or through a voter initiative.

///

CONCLUSION

For the reasons stated herein and in the City's Opening and Reply briefs, the decision of the Court of Appeal should be reversed.

DATED: December 7, 2016. Respectfully submitted,

JONATHAN M. COUPAL
TREVOR A. GRIMM
TIMOTHY A. BITTLE
BRITTANY A. SITZER

TIMOTHY A. BITTLE
Counsel for Petitioners

WORD COUNT CERTIFICATION

I certify, pursuant to Rule 8.204(c) of the California Rules of Court, that this brief, including footnotes, but excluding the caption page, tables, signatures, and this certification, as measured by the word count of the computer program used to prepare this pleading, contains 5,129 words.

DATED: December 7, 2016.

TIMOTHY A. BITTLE
Counsel for Petitioners

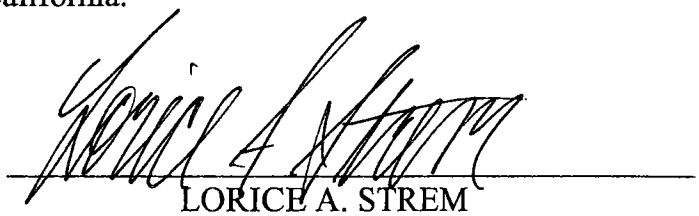
PROOF OF SERVICE

SUPREME COURT OF CALIFORNIA

I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within action. My business address is: 921 11th Street, Suite 1201, Sacramento, California, 95814. On December 7, 2016, I served the attached document described as: **CITY OF UPLAND'S ANSWER TO BRIEF OF AMICUS SAN DIEGO CHARGERS FOOTBALL COMPANY** on the interested parties below, using the following means:

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

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 7, 2016, at Sacramento, California.



LORICE A. STREM

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

Jack David Cohen
Attorney at Law
P.O. Box 6273
Beverly Hills, CA 90212
(Amicus in Support of City of Upland)

Richard Laurence Adams, II
Krista MacNevin Jee
Jones & Mayer
3777 North Harbor Boulevard
Fullerton, CA 92835

Nick Bulaich
305 Second Street
Watsonville, CA 95076
(Amicus in Support of City of Upland)

Daniel S. Hentschke
411 E. Cliff Street
Solana Beach, CA 92075
(Attorneys for The League of California Cities, Amicus in Support of City of Upland)

Robin Bradle Johansen
Remcho Johansen & Purcell, LLP
1901 Harrison Street, Suite 1550
Oakland, CA 94612
(Attorneys for The League of California Cities, Amicus in Support of City of Upland)

Michael G. Colantuono
Colantuono, Highsmith & Whatley, PC
420 Sierra College Ave., #140
Grass Valley, CA 95945
(Attorneys for The League of California Cities, Amicus in Support of City of Upland)

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

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

Meriem Lee Hubbard
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
(Amicus in Support of City of Upland)

Fred Anthony Rowley, Jr
Munger Tolles & Olson LLP
355 So. Grand Avenue, 35th Floor
Los Angeles, CA 90071
(Attorneys for The Chargers Football Company, Amicus in Support of California Cannabis Coalition)

Nikki E. Dobay
Council of State Taxation
1033 SW Yamhill Street
Suite 202
Portland, OR 97205
(Amicus in Support of City of Upland)

William A. Adams
Norton, Moore & Adams, LLP
525 "B" Street, Suite 1500
San Diego, CA
(Attorneys for The Public Interest Advocacy Clinic, Amicus in Support of City of Upland)

Ruben Sislyan
Dakkessian Law, Ltd.
445 South Figueroa Street
Los Angeles, CA 90071
(Attorneys for California Taxpayers Association, Amicus in Support of City of Upland)