

# SUPREME COURT COPY

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**FILED**

Case Number: S234148

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**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA** Deputy

CALIFORNIA CANNABIS COALITION

Plaintiffs/Appellants

v.

CITY OF UPLAND

Defendants/Petitioners

Appeal from a Decision by Court of Appeal,  
Fourth Appellate Court, Division Two—Case No. E063664

San Bernardino County Superior Court  
Honorable David Cohn  
Case No. CIVDS1503985

**APPLICATION FOR PERMISSION TO FILE  
AND  
AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT AND  
PETITIONERS**

**Nick Bulaich  
305 Second Street  
Watsonville, CA 95076  
Tel. (831) 728-5640**

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**To the Honorable Chief Justice of the California Supreme Court:**

Pursuant to Rule 8.520 (f) of the California Rules of the Court, Nick Bulaich, a resident of the City of Watsonville, respectfully requests leave to file attached amicus curiae brief in support of City of Upland: Defendant & Petitioners in the case of CALIFORNIA CANNABIS COALITION v. CITY OF UPLAND, Case Number S234148.

**INTEREST OF APPLICANT**

Applicant has been directly involved in many citizen initiatives put before the vote of the people and has researched numerous local and State tax/fee issues. These are areas of great interest to applicant, who has previously submitted amicus curiae briefs to this Court for a case related to an initiative (*Vargas v. City of Salinas* (2009) 46 Cal.4th 1) and on a Proposition 218 related case (*Bighorn-Desert View Water Agency v. Verjil* (Kelley) (2006) 39 Cal.4th 205).

**HOW AMICUS BRIEF WILL HELP THE COURT**

The applicant has reviewed the decision from the Fourth Appellate Court, pertinent established Court decisions, the California Constitution, and applicable California Codes. Since the applicant has been directly involved in local initiatives, in addition to studying various tax/fee issues, the applicant has a personal insight to offer on the issue before the Court.

Therefore, the applicant respectfully requests leave to file the amicus curiae brief that is attached to this application.

Date: August 30 2016

Respectfully submitted,

Nick Bulaich

Nick Bulaich---Applicant

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## **I. INTRODUCTION.**

For this case, the main issue before the Court is to determine if a citizen initiative that proposes to seek voter approval for a local tax increase is required to be placed solely on a general election ballot.

The decision by the Fourth Appellate Court, if allowed to stand, would weaken Article XIII C of the California Constitution by creating an avenue for the bypassing of voter approval requirements for local tax increases. It would also create inconsistent and confusing interpretations of language in the California Constitution and Codes.

California voters have repeatedly stated that when it comes to the issues of taxes, their stance is clear: "Let the People Vote" on whether or not to increase the taxes that they pay to the government. The wishes of the voters should not be sacrificed. Reversing the lower Court's decision will preserve those wishes and still maintain the people's right to initiative for proposing a tax increase, but only requiring it to go to a general election.

Amicus Curiae supports the Defendants/Petitioners in this case and firmly believes the decision of the Appellate Court should be reversed.

## **II. ISSUES PRESENTED.**

The crux of this case funnels down to several word definitions and phrases. Once defined, it should be easy for the Court to settle the other aspects of the case. These issues will be argued for the Court to review:

- a) A legislative body is equal to a governing body.
- b) "Local government"...what does it mean?
- c) A "local government" is not equal to a "local governing body."
- d) Determining who imposes a tax.
- e) "Let the people vote to tax themselves."

### **III. BRIEF HISTORY.**

The California Cannabis Coalition ("CCC") authored a "medical marijuana initiative petition" for the City of Upland ("City") that would create regulations pertaining to medical marijuana dispensaries and establish an "annual Licensing and Inspection Fee" to be paid to the City.

CCC garnered signatures from over 15 percent of the City's registered voters, which for many initiatives forces a city to hold a "special election" for voters to decide the issue. The City refused to call for a special election on the grounds the initiative's proposed fee was a general tax which can only go on a regularly scheduled general election. Soon after the City's decision, CCC took the issue to the trial court which ruled in favor of the City. On appeal, the Fourth Appellate Court reversed the trial court's ruling. The City's appeal was granted by the Supreme Court.

### **IV. ARGUMENT.**

#### **A. "LEGISLATIVE BODY" = "GOVERNING BODY."**

By definition, from the California Government Code, a city council can be the "legislative body" for a particular city.

"As used in this title, 'legislative body' means board of trustees, city council, or other governing body of a city." (Government Code § 34000.)<sup>1</sup> (Underlines added for emphasis.)

According to the City's website in respect to their City Council:

"The City Council is the governing body of the City of Upland" and the City Council is made up of "an elected five person governing body."<sup>2</sup> (Underlines added for emphasis.)

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<sup>1</sup> All Code references will be to California Codes unless otherwise noted.

<sup>2</sup> See link at City of Upland website:  
[http://www.ci.upland.ca.us/#City\\_Council](http://www.ci.upland.ca.us/#City_Council)



In addition, a "governing body" (or "local governing body") can mean the same as a "legislative body":

"Local governing body' means the legislative body of the city, county, or special district which has authority to provide solid waste handling services." (California Public Resources Code § 40150.) (Underlines added for emphasis.)

Since a "legislative body" has an *equal* meaning to that of a "governing body", the City Council for the City of Upland is its "legislative body" or "governing body." In addition, it is clearly obvious that the "governing body" for the City can also be known as the City's "local governing body."

#### **B. "LOCAL GOVERNMENT"...WHAT DOES IT MEAN?**

Sometimes a definition is problematic because one needs to spend extra time defining some of the words used in the definition itself before being able to fully comprehend it. For this case, the definition for "local government" is the problem, but it is not a hard one to resolve. Let's start with how the California Constitution defines it.

"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., Article XIII C, § 1(b).)

For this case, as defined by the Constitution, the "City" (City of Upland) is a "city", thus they are a "local government." Surprisingly, the Appellate Court basically stopped right there as far as looking into what else can be part of a city. To correctly analyze the definition at issue, one should appropriately define the word "city."

## 1. "City" ...what does it mean?

The word "city" has multiple meanings. Black's Law Dictionary (7th Edition) gives three definitions for the word.

- "1. A municipal corporation, usu. headed by a mayor and governed by a city council.
2. The territory within a city's corporate limits.
3. Collectively, the people who live within this territory."  
(Underline added for emphasis.)

Using simple logic, if "the people" can also mean a "city", and a "city" is a "local government", then "the people" are also part of the "local government." Hence, when the people do an initiative, the initiative is part of the local government.

A point of interest to make is that it would be easy to put all three of the Black's definitions under a bigger category labeled "local government" and it would not create any kind of conflict or misunderstanding, but by making "local government" have the same meaning as a "local governing body", none of three Black's definitions for a city can fit such a definition.

Furthermore, almost 100 years ago, this Court made a decision that is relative to this case.

"The word 'town' is defined by Webster as 'In general any large collection of houses and buildings, public and private, constituting a distinct place with a name and not incorporated as a city.'" (*People v. Van Nuys Lighting District* (1896) 173 Cal. 792, 795.)  
(Underlines added for emphasis.)

Obviously, the same basic definition can apply to a "city" once it has become incorporated as such. The definition cited in the *Van Nuys* case did not limit the "collection of houses and buildings" of a town to only those that are "public", since it also included "private" houses and buildings.

More importantly, in the same case, the Court added further to the definition of a "town":

"Also as 'An aggregation of inhabitants and a collection of occupied dwellings and other buildings.'" (*People v. Van Nuys Lighting District (supra)* 173 Cal. 792, 795 citing *Siskiyou Lumber etc. Co v. Rostel*, 121 Cal. 511, 513.) (Underline added for emphasis.)

Yes, the "inhabitants" (aka "the people") fit the definition for a "town" and a "city." The beautiful citation by the Court speaks for itself.

## **2. Framers and voters...what were they thinking?**

"In November 1996, California voters adopted Proposition 218, which added articles XIII C and XIII D to the California Constitution." (*Bighorn-Desert View Water Agency v. Verjil (Kelley)* (2006) 39 Cal.4th 205, 208.)

The Howard Jarvis Taxpayers Association ("HJTA") were the framers of Proposition 218. "In fact, Howard Jarvis Taxpayers Association, the sponsor of Proposition 218... ." (*McBrearty v. City of Brawley* (1997) 59 Cal.App.4th 1441, 1450.) The President of HJTA at the time was one of the co-signers of the ballot argument in favor of the Proposition.<sup>3</sup> Courts have the right to look at ballot summaries and arguments that are provided to voters in order to assist them in the interpretation of language.

"In addition, when, as here, the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245-246.) (Underline added for emphasis.)

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<sup>3</sup> Ballot argument information obtained from Secretary of State website at: <http://vigarchive.sos.ca.gov/1996/general/pamphlet/218yesarg.htm>

From the earlier cited ballot argument information from the Secretary of State website, the "Argument in Favor of Proposition 218" had an opening paragraph in all capitalized letters with the following language:

"VOTE YES ON PROPOSITION 218. IT WILL GIVE YOU THE RIGHT TO VOTE ON TAX INCREASES!"

The closing sentence of the same cited argument, once again in all capital letters, said the following:

"FOR THE RIGHT TO VOTE ON TAXES, VOTE YES ON PROPOSITION 218."

The message was obvious, by supporting Proposition 218, the voters would get a guaranteed right to vote on taxes. The framers were telling the voters that and the voters easily understood the message. Although the "argument" at times mentioned "politicians" (understandably so), at no time was there any language used to suggest some "taxes" would be exempt from needing voter approval. It is incomprehensible to think that the voters, *at the time of the passage of Proposition 218*, were thinking that the rules of Proposition would not apply to tax increases proposed by initiative. Clearly, it was understood by the framers and the voters that all taxes would need voter approval before they can be imposed.

**C. "LOCAL GOVERNMENT" ≠ "LOCAL GOVERNING BODY."**

As will be shown, a "local government" is NOT equal to a "local governing body." Without a doubt, they have different meanings.

Below are some examples of sections from the Constitution that prove the point. Amicus asks the Court to replace "local government" with

"local governing body" in each of the sections to see that they would not have equal meanings by using the replacement language. Brief comments follow each section to clarify the importance of said sections for this case.

"Property owned by a local government, except as otherwise provided in Section 11(a)." (Cal. Const., Article XIII § 3(b).) (Underline added for emphasis.)

Can a "local governing board" own public property? Some politicians might like the idea, but it's doubtful the public would support it.

In addition, "property owned by a local government" is public property which is essentially owned by the people. This logically suggests the "people" are part of "local government" and further strengthens the point that an "initiative" (done by the people) is part of "local government."

"Bonds issued by the State or a local government in the State." (Cal. Const., Article XIII § 3(c).) (Underline added for emphasis.)

Is the "local governing body" the one issuing the public bonds? Under such a scenario, the members of the governing body would then be the ones responsible for the public indebtedness brought about from the issuance of the public bonds. It is an absolute guarantee that all politicians would be against such an idea, but the public would surely love it.

There are further examples from a different Article of the Constitution that further clarify the issue.

"The total annual appropriations subject to limitation of the State and of each local government shall not exceed the appropriations limit of the entity of government for the prior year adjusted for the change in the cost of living and the change in population, except as otherwise provided in this article. (Cal. Const., Article XIII B § 1.) (Underline added for emphasis.)

"Nothing in this Article shall be construed to impair the ability of the State or of any local government to meet its obligations with respect to existing or future bonded indebtedness." (Cal. Const., Article XIII B § 7.) (Underline added for emphasis.)

Once again, the above sections would have different meanings if the phrase "local government" were to be replaced with the phrase "local governing body."

Of further interest from Article XIII B, is that its definition for "local government" is very similar to the definition used in Article XIII C.

"'Local government' means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the State." (Cal. Const., Article XIII B § 8(d).)

Now compare the aforementioned definition to the one contained in Article XIII C:

"'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., Article XIII C § 1(b).)

The two definitions, although specific to particular Articles of the Constitution, certainly seem to be in a logical harmony with each other. In addition, amicus cannot find any legal citation that suggests Proposition 218 changed the definition of "local government" to the way the Appellate Court is interpreting it.

Does this Court really want to redefine "local government" to be synonymous with "local governing body" so to cause confusion and conflicts with other Articles of the Constitution?

## 1. Where's the "body"?

Take away a single word or add one and you can quickly change the meaning of something.

"The difference between the almost right word and the right word is really a large matter--it's the difference between the lightning bug and the lightning."<sup>4</sup> *Mark Twain*

As mentioned before, the Appellate Court's decision seems to equate a "local government" to a "governing body." They repeatedly used the word "City" as if it has the same meaning as a "city council." (See Slip Opinion, pgs. 27-28.) In their analysis of Election Code § 9214, they made the following comment in their decision:

"Therefore the City is required to place the Initiative on a special election ballot." (Slip Opinion, pg. 28.)

It is helpful to see the Election Code section that the Appellate Court discussed in justifying their opinion:

"If the initiative petition is signed by not less than 15 percent of the voters of the city according to the last report of registration by the county elections official to the Secretary of State pursuant to Section 2187, effective at the time the notice specified in Section 9202 was published, or, in a city with 1,000 or less registered voters, by 25 percent of the voters or 100 voters of the city, whichever is the lesser number, and contains a request that the ordinance be submitted immediately to a vote of the people at a special election, the legislative body shall do one of the following: ...." (Election Code § 9214.) (Underline added for emphasis.)

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<sup>4</sup> Taken from Twain's "Letter to George Bainton, 10/15/1888." See quote at: <http://twainquotes.com/Word.html>

For the above cited part of the Election Code, it is not the "City" that is required to do one of the options in the section, it is the "legislative body" of the City that is required to do so.

In this case, as mentioned before, the "legislative body" is the "City Council" and a "legislative body" is not equal to a "local government." This point can be further strengthened by additional examples.

"A local government formed after the effective date of this section, the boundaries of which include all or part of two or more counties, shall not levy a property tax unless such tax has been approved by a majority vote of the qualified voters of that local government voting on the issue of the tax." (Cal. Const., Article XI, § 14.) (Underline added for emphasis.)

If a "legislative body" and a "local government" are synonymous as the Appellate Court seems to suggest, the replacement of one phrase with the other should leave the meaning for the above mentioned section as the same. Doing such a replacement creates the following language:

"A legislative body formed after the effective date of this section, the boundaries of which include all or part of two or more counties, shall not levy a property tax unless such tax has been approved by a majority vote of the qualified voters of that legislative body voting on the issue of the tax." (Underline added for emphasis.)

It is obvious that the two passages do not have equal meanings. For the passage with the replacement language, it says that the qualified voters of the area in question are part of the "legislative body." This would conflict, as applicable to this case, with the State's definition of a "legislative body" which would be a city council. (Government Code § 34000.) For this case, the legislative body for the City is made up of a five person City Council, and nobody else.



Furthermore, it is not the "legislative body" that has the power to vote on the tax at issue, but equating "legislative body" to "local government" would create such a meaning. Again, it is apparent that a "legislative body" cannot have an equal meaning as a "local government."

The California Constitution specifically allows two methods for proposing a charter to be "amended, revised, or repealed." One method is by an "initiative" and the other is by a "governing body." (Cal. Const., Art. XI, § 3(b).) This is reiterated by case law.

"Under the California Constitution there are only two methods for proposing an amendment to a city charter: (1) an *initiative* qualified for the ballot through signed voter petitions; or (2) a *ballot measure* sponsored by the governing body of the city. California Constitution, article XI, section 3, subdivision (b) provides: "The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed *by initiative or by the governing body.*" (*Hernandez v. County of Los Angeles* (2008) 167 Cal. App. 4th 12, 21.) (Italics in original citation, but underline added for emphasis.)

"The people's reserved power of initiative is fundamentally distinguishable from the power of the legislative body." (*Hernandez v. County of Los Angeles (supra)* 167 Cal. App. 4th 12, 22 citing *Rossi v. Brown* (1995) 9 Cal. 4th 688, 715.) (Underline added for emphasis.)

Although the *Hernandez* case deals with a charter city, it is on point for this case, because it shows the separation of an "initiative" from a "governing body." For the issue before the Court, it is irrelevant whether or not the initiative is for a charter city. Clearly, the decision in *Hernandez* did not equate a "governing body" to a "local government."

It is important to further discuss that the State Constitution points out the difference between the two methods of proposal that are allowed to amend, revise, or repeal a respective charter. Although the City is a

"general law" city and the section cited below pertains to charter cities or a city seeking to become one, the section is germane to this case because it shows the differentiation between a "governing body" and a "local government."

"The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body." (Cal. Const., Article XI, § 3(b).) (Underline added for emphasis.)

There are three key reasons for focusing on said section. The first reason is to point out its consistency with the earlier mentioned definition for a "legislative body" which is clearly the same as a "governing body." One could replace the underlined "governing body" in the aforementioned subsection with "legislative body" or "local governing body" and the meaning would be the same. Without a doubt, each respective "body" ("legislative" or "local governing") is a separate method of proposing to amend a charter from that of an "initiative."

The second point of importance is that if one were to use the Appellate Court's reasoning in that a "local government", as used in Article XIII C of the Constitution, does not include "initiative" then one would have to accept "local government" would mean the same as a "governing body." As demonstrated earlier in this amicus, this is not a logical interpretation because it would create conflicting language in other parts of the Constitution. (See pages 7-11 of this amicus brief.)

For the third and final point, it is actually a question for the Court. If one wanted to, for the purpose of brevity, shorten the sentence from Article XI § 3(b) so that "initiative" and "governing body" could be lumped together into a broad all-inclusive word or phrase, what would the word or phrase be? It certainly seems like "local government" would fit the bill.

To add to this point, let's turn to a key part of Article XIII C that was actually cited by the Appellate Court (Slip Opinion, pg. 25), but one that the amicus feels the lower Court missed out on.

"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." (Cal. Const., Article XIII C, § 3.) (Underline added for emphasis.)

Although the cited section deals specifically with using an initiative for "reducing or repealing any local tax, assessment, fee or charge" which is not applicable in this case, the usage of the phrase "local government" in the section is most informative.

Article XIII C stops the State Legislature and a local government charter, in specific instances, from imposing higher signature requirements than that of statewide initiatives. Although amicus already discussed how a city charter can be changed (See pgs. 11-12 of this amicus brief), at this stage, it needs repeating:

"Amendment or repeal may be proposed by initiative or by the governing body." (Cal. Const., Article XI, § 3(b).) (Underlines added for emphasis.)

A charter "amendment or repeal" can be proposed by "initiative" or by the "governing body", but Section 3 of Article XIII C stops both of the methods from proposing to amend a charter to establish a higher signature requirement in the case of reducing or repealing local taxes, assessments, fees or charges. Yet, and this is most important, Article XIII C used the phrase "*local government* charter" to obviously include both methods (initiative *and* governing body) that can be used to propose the amending of

a charter. The framers of Article XIII C felt no need to use language to state both methods. Obviously, said framers had no need to do such a thing, because the phrase "local government" included both of the methods.

Using the Fourth Appellate Court's logic, it is easy to imagine a future scenario in which a charter amendment is proposed by initiative to set a higher signature threshold for initiatives that propose to reduce or repeal taxes, and since such a charter amending initiative is not proposed or imposed by a newly defined "local government" (governing body only), then it will be allowed to make such a change in respect to signature requirements.

This aforementioned scenario, which is not as far-fetched as it might seem because such things happen when words are given new definitions, would cause another part of Article XIII C (in this scenario, section 3) to be sacrificed.

"Moreover, a construction consistent with common sense and reasonableness is called for, and considerations of phraseology should be limited to the end that the purpose of the statute will not be sacrificed. [Citations.]" (*Jacobs v. State Bd. of Optometry* (1978) 81 Cal.App.3d 1022, 1031-1032.)

Again, amicus respectfully asks the Court if they can point out a better phrase than "local government" that can include "initiative" and "governing body" in the phrase.

If Article XIII C had used the phrase a "local government body" or the "body of a local government" rather than a "local government", the Petitioners case probably would have been greatly weakened, but that is not the case here. A "body" is missing from the "local government" phrase within Article XIII C, but the Appellate Court added one where it did not belong.

"Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure [Citation.] and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language." (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 543.) (Underline added for emphasis.)

Since we are on the topic of a missing "body", amicus finds it irresistible to let an opportunity slip away of interjecting a *habeas corpus* related phrase into the mix. Although the actual legal usage of the Latin phrase "*habeas corpus ad deliberandum et recipiendum*" is not applicable here, its definition of "that you have the body to consider and receive" is fitting for this case. (Black's Law Dictionary.)

In respect to Article XIII C, there is no "body" that is connected to the phrase of "local government" because the framers obviously never intended for one to be there, hence it should not be "considered" or "received" into its interpretation. A "local government body" or "local governing body" is not the same as a "local government", and this Court should not support such an interpretation by adding "body" where it does not belong.

#### **D. WHO IMPOSES A TAX...THAT IS THE QUESTION!**

Amicus agrees with the Petitioners' comments about the Proponent's confusion between the words "impose" and "propose" (Petitioners' Opening Brief, pgs. 12-13), thus amicus will not repeat language to point out the obvious difference between the two words.

Instead, amicus will focus on the word "impose" and use a couple of scenarios to hopefully allow the Court to look at the word in a different way. Ultimately, amicus feels the Court really needs to determine who is the one or body that does the "imposing" of a tax.

### 1. A definition for "impose."

For the word "impose", Black's Law Dictionary offers the following definition:

"To levy or exact (a tax or duty)."

Seems simple enough, but what is meant by "levy" or "exact." Well, for "levy" in the verb form, the most appropriate definition from Black's is the following:

"To impose or assess (a fine or a tax) by legal authority <levy a tax on gasoline>."

This does not help the situation much, because it is easy to see much argument can be created about what is meant by "legal authority."

Okay, since Black's used the word "exact" as an alternative word for "levy", let's look at their definition for "exact." For such, we will have to take the definition for "exaction", the noun form of the verb "exact", because that is how Black's presented it.

**"exaction, n.** 1. The act of demanding more money than is due; extortion. 2. A fee, reward, or other compensation arbitrarily or wrongfully demanded. ---**exact, vb.**"

Oops, maybe it is better to stay away from those "levy" and "exact" definitions because it probably is not a good idea to get into labeling the imposing of taxes as "extortion" or "wrongfully demanded", although many taxpayers might feel that way. Blame Black's...it their definition, but amicus will refrain from anymore, shall we call it, "Black's humor" (pun intended) in respect to taxes. A better idea might be to focus on who does the imposing.

## **2. Who imposed that darn tax?**

According to Article XIII C, § 2(b) of the California Constitution, in order for a "local government", which by definition can be a city, to impose a new general tax, the proposed tax must be "approved by a majority vote" of the electorate. There appears to be no dispute in that one way the new general tax can be put to the voters is by having a "local governing body" vote to place the proposed tax on the ballot for possible voter approval. For a tax that was proposed by a "local governing body" and ultimately passed by the voters, a question arises that amicus respectfully asks the Court to consider and answer:

### ***WHO "IMPOSED" THE TAX?***

If the idea of such a tax originally came from a city staffer, did said staffer impose the tax? If the initial proposal came from a single member of the local governing body, was that individual the one that imposed the tax? Could it be that the majority members, of the local governing body that voted to put the proposed tax to the voters, were the ones that imposed the tax? Were the voters themselves, with their majority vote in supporting a new tax, the ones who imposed the tax?

Really, none of these possible answers sound like a correct one. A more fitting answer is to say that the tax was imposed by the "local government." It certainly sounds like a logical fit. *Who does the Court think imposed the tax for such a hypothetical scenario?*

Now for an alternative approach to a tax proposal. In the case of a hypothetical scenario where a tax increasing initiative is proposed by a group of city residents and a sufficient amount of signatures are gathered,

the initiative would come before a city council for a decision on the next step of the process. (Election Code §§ 9200-9226.)

Under this scenario, if the Appellate Court's decision were to stand, then their interpretation would give a city council ("legislative body") the right to:

"Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented." (Election Code § 9214(a) in the case of a 15% signature threshold for a special election or Election Code § 9215(a) for a regular 10% signature threshold.) (Underline added for emphasis.)

The Petitioners in their Opening Brief correctly pointed out the possible "mischief" that could arise from such a scenario. (Petitioners' Opening Brief, pgs. 17-19.)

The Court should avoid making an interpretation which might create the opportunity for "mischief" to occur.

"We are required to give statutes a reasonable and commonsense interpretation which will result in wise policy rather than mischief or absurdity." (*Pacific Law Group: USA v. Gibson* (1992) 6 Cal.App.4th 577, 582 citing *De Young v. City of San Diego* (1983) 147 Cal.App.3d 11, 18.) (Underline added for emphasis.)

In addition, the Court should take into consideration the possibility of consequences that might arise from making a "particular interpretation."

"...courts are permitted to consider, among other factors, the consequences that will flow from a particular interpretation." (*Harris v. Alcoholic Bev. etc. Appeals Bd.* (1961) 197 Cal.App.2d 759, 765.)



Under the Petitioners' stated mischievous scenario of a "legislative body" adopting a tax increase proposed by initiative without putting it to the voters, at the point the "legislative body" were to formally "adopt the ordinance" for the tax increase, the same question as mentioned earlier would pop up that amicus believes the Court should consider and answer:

***WHO "IMPOSED" THE TAX?***

For such a hypothetical scenario as mentioned, the answer to the question clearly cannot be the voters, because they did not get a chance to vote on the tax. It is illogical to say it was the proponents of the initiative, because they do not have any legal power whatsoever to force the majority of the legislative body to select the "adopt the ordinance", as it is, option. This leaves the legislative body as the one that "imposed" the tax despite the fact that under the scenario presented, the tax was proposed by an initiative. *Who does the Court think imposed the tax for this second hypothetical scenario?*

Even if one were to accept the Appellate Court's interpretation of a "local government" being the same as a "legislative body", under the aforementioned scenario, the "legislative body" would be unable to *impose* the tax without voter approval otherwise they would be in violation of Article XIII C of the Constitution which requires voter approval for tax increases.

Hypothetically speaking, this Court could come along with a decision that says an initiative process is not part of the "local government", but still require the local governing body to put a proposed tax increasing initiative on the ballot for voter approval. Such a decision would basically defeat the purpose of hearing this case and it would cause conflicts in other parts of the Constitution and Codes. Although such a concept would still

give the people what they adamantly want (*the right to vote on increases*), amicus fails to see the value of taking such a route.

So...to the question of "who imposes the tax?" The answer has to be the "local government" which includes the voters, *regardless* if the tax were proposed by initiative or by a legislative body. If the Court agrees with this answer, then a tax such as the one proposed by initiative in this case has to go on the ballot at a regularly scheduled general election.

**E. "LET THE PEOPLE VOTE...TO TAX THEMSELVES."**

Since amicus wholeheartedly agrees with the Petitioners' comments on the issue of whether or not the "fee" being discussed before the Court is a "tax" or a "fee" (Petitioners' Opening Brief, pg. 20-24), it is not necessary to delve deeply into the issue.

Just in case the Court decides to opine on the tax versus fee issue, amicus would like to offer brief comments on it. In their decision, the Appellate Court frequently cited *Weisblat v. City of San Diego* (2009)176 Cal.App.4th 1022, yet they left out an important passage from the case.

*"In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted."  
(Weisblat v. City of San Diego (supra)176 Cal.App.4th 1022, 1036  
citing Sinclair Paint Co. v. State Bd. of Equalization (1997) 15  
Cal.4th 866, 874.)*

Although the *Sinclair* case was decided after the passage of Proposition 218, the Court did not take Proposition 218 into their decision making process. (See fn. 2 on page 873 of *Sinclair*.)

The reason for bringing up the *Sinclair* citation is to ask this Court if taxes imposed pre-Proposition 218 ever needed to be separated into taxes proposed by initiative and those proposed by government bodies? Since

each method imposes taxes for "revenue purposes", does it make any difference? Should it make any difference?

On a side note, this brings up another question of interest. On the issue of laws, regulations and other items that were previously proposed to and passed by the voters at a local level; will we now need to analyze all of them, and future ones, to see if some different interpretations can be made based on the fact on whether or not such proposals were proposed by initiative or by a governing body? A Pandora's Box of conflicting interpretations might become future issues for the Courts to resolve.

Rather than opening the lid of a Pandora's Box filled with multiple meanings of the phrase "local government", it is far simpler to include "initiative" in the phrase to give the voters what they keep repeatedly asking of their governing bodies: *"Let the People vote...to tax themselves!"*

## **V. CONCLUSION.**

For decades, the voters of California have made a clear statement in which they have to keep repeating through numerous election cycles. The statement has been unwavering in that they want to "let the people vote on tax increases."

"The government of my country snubs honest simplicity, but fondles artistic villainy, and I think I might have developed into a very capable pickpocket if I had remained in the public service a year or two."<sup>5</sup> Mark Twain from *Roughing It*.

It is a sad state of affairs to watch the voters of California keep seeking "honest simplicity" in that they want to be able to vote on all tax increases, yet have to deal with many bureaucrats and politicians who use

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<sup>5</sup> See quote at: <http://twainquotes.com/Government.html>

their publicly funded time to come up with "artistic villainy" to avoid letting voters to decide on new tax increases.

It is even sadder that many voters have become so cynical of their government officials that it is so easy for them to imagine that local governing bodies will jump at the opportunity to be "capable pickpockets" to bypass the wishes of the voters if the decision from the lower Court were allowed to stand.

The people and the initiative process are part of our "local government." The Court should not create an opening for "artistic villainy" by governing bodies that will essentially destroy parts of Proposition 218.

To preserve the will of voters in their simple, yet repeated request to want the right to vote on tax increases; for the reasons stated within this amicus and for the points addressed in the Petitioner's Opening Brief, the judgment made in the Appellate Court should be reversed.

DATED: August 30, 2016

Respectfully submitted,

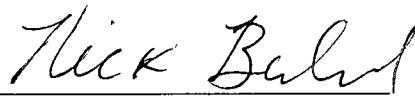


Nick Bulaich

Amicus Curiae Applicant

## CERTIFICATE OF WORD COUNT

I, Nick Bulaich, certify that the foregoing Amicus Curiae brief contains 6055 words which includes words from footnotes, as calculated pursuant to Rule of the Court 8.520(c).

A handwritten signature in black ink that reads "Nick Bulaich". The signature is written in a cursive style and is positioned above a horizontal line.

Nick Bulaich

Amicus Curiae Applicant

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I, Ilia Bulaich, am over the age of 18 and not a party to this action. My residence is 305 Second Street, Watsonville, California 95076.

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I declare under penalty of perjury that the foregoing is true and correct.

WATSONVILLE, CA  
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\_\_\_\_\_  
Place and Date

  
\_\_\_\_\_  
Ilia Bulaich