

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 30

22STCV39662

October 24, 2023

**HOWARD JARVIS TAXPAYERS ASSOCIATION, et al. vs
CITY OF LOS ANGELES, et al.**

2:51 PM

Judge: Honorable Barbara M. Scheper
Judicial Assistant: C. Wilson
Courtroom Assistant: B. Byers

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter;

The Court, having taken the matter under submission on 10/23/2023 for Hearing on Motion for Judgment on the Pleadings Howard Jarvis Taxpayers Assoc. et al, now rules as follows:

Howard Jarvis Taxpayers Assoc., et. al. vs. City of Los Angeles, et. al., Case No. 21STCV20310

Ruling re: Motions for Judgment on the Pleadings

Defendant City of Los Angeles (the City) moves for judgment on the pleadings against the Complaint filed by Plaintiffs Howard Jarvis Taxpayers Association and Apartment Association of Greater Los Angeles (collectively, the Jarvis Plaintiffs); the Complaint filed by Plaintiffs Newcastle Courtyards, LLC and Jonathan Benabou, as Trustee on behalf of the Mani Benabou Family Trust (collectively, the Newcastle Plaintiffs); and the Answer filed by Shama Enterprises, LLC.

Defendants Southern California Association of Non-Profit Housing, Inc., Korean Immigrant Workers Advocates of Southern California, and Service Employees Intl. Union Local 2015, on behalf of All Persons Interested in the Matter of Measure ULA, move for judgment on the pleadings against the Jarvis Complaint and the Newcastle Complaint.

The Jarvis Plaintiffs move for judgment on the pleadings in their favor on their Complaint.

The Court grants judgment on the pleadings for Defendants.

A motion for judgment on the pleadings may be made after the time to demur has expired and an answer has been filed. (Code Civ. Proc., § 438, subd. (f).) A motion by a defendant may

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be made on the grounds that the complaint or cross-complaint “does not state facts sufficient to constitute a cause of action against that defendant.” (Code Civ. Proc., § 438, subd. (c)(B)(ii).) A motion for judgment on the pleadings has the same function as a general demurrer but is made after the time for demurrer has expired. Except as provided by statute, the rules governing demurrers apply. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.)

Like a general demurrer, “ordinarily, a [motion for judgment on the pleadings] does not lie as to a portion of a cause of action, and if any part of a cause of action is properly pleaded, the [motion] will be overruled.” (*Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452.) In considering a motion for judgment on the pleadings, courts consider whether properly pled factual allegations—assumed to be true and liberally construed—are sufficient to constitute a cause of action. (*Stone Street Capital, LLC v. Cal. State Lottery Com’n* (2008) 165 Cal.App.4th 109, 116.)

In the November 8, 2022 Election, voters in the City of Los Angeles approved “Initiative Ordinance ULA” (Measure ULA), entitled, “Los Angeles Program to Prevent Homelessness and Fund Affordable Housing (‘House LA’).” (Jarvis Comp. ¶ 1; Jarvis RJN, Ex. B.) Measure ULA proposed a special documentary transfer tax on all real estate sales or transfers of over \$5 million, with all funds from the tax to be allocated to various housing and homelessness-related programs administered by the Los Angeles Housing Department. (See Jarvis RJN, Ex. A.)

On December 21, 2022, the Jarvis Plaintiffs filed this reverse validation action against Measure ULA pursuant to Code Civ. Proc. § 863. Under that section, “[a] member of the public can file a reverse validation challenge seeking a judicial declaration that a public agency’s action is invalid.” (*Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 200.)

On January 6, 2023, Newcastle Plaintiffs filed a Complaint to invalidate Measure ULA, which also asserted a number of constitutional claims against the City, the County of Los Angeles, and the County of Los Angeles Recorder’s Office.

Both the Jarvis Complaint and the Newcastle Complaint seek to invalidate Measure ULA pursuant to Article XIII A, § 4 of the California Constitution, on the basis that Measure ULA is a “‘special tax’ that is prohibited for all local governments, including charter cities.” (Jarvis

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Comp. ¶ 2; Newcastle Comp. ¶ 96.)

Article XIII A, Section 4

“Proposition 13 ‘added article XIII A to the state Constitution to assure effective real property tax relief by means of an “interlocking package” of four provisions. . . . The first two of these four provisions . . . ‘capped the ad valorem real property tax rate at 1 percent (art. XIII A, § 1)’ and ‘limited annual increases in real property assessments to 2 percent (art. XIII A, § 2).’ The third provision ‘required that any increase in statewide taxes be approved by two-thirds of both houses of the Legislature.’ [art. XIII A, § 3.] . . . The fourth provision . . . requires ‘that any special tax imposed by a local government entity be approved by two-thirds of the qualified electors (Art. XIII A, § 4).’ ” (*City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 710 (*Proposition C*).

Art. XIII A, § 4 provides in full, “Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.”

“The people's initiative power is contained in article II, sections 8 and 11. The former section provides, ‘The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them.’ (Art. II, § 8, subd. (a).) The latter contains the local power, providing that ‘[i]nitiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide.’ (*Id.*, § 11, subd. (a).)” (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 934 (*City of Upland*).

“[T]he initiative power is ‘one of the most precious rights of our democratic process’ [Citations] and . . . we must ‘*resolve any reasonable doubts in favor of the exercise of this precious right.*’ ” (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 250 [emphasis in original].) Courts are to “resolve doubts about the scope of the initiative power in its favor whenever possible [Citation], and we narrowly construe provisions that would burden or limit the exercise of that power.” (*City of Upland*, 9 Cal.5th at 936.) “[T]he people's power to

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propose and adopt initiatives is at least as broad as the legislative power wielded by the Legislature and local governments” (*Id.* at 935), and “may be even broader than the initiative power reserved in the Constitution.” (*Rossi v. Brown* (1995) 9 Cal.4th 688, 696.) When the initiative power was added to the Constitution, “taxation was not only a permitted subject for the initiative, but was an intended object of that power.” (*Id.* at 699.) “There is no restriction . . . ‘on the use of the initiative in the area of taxation.’ ” (*City of Upland*, 3 Cal.5th at 936.)

Courts have concluded that Art. XIII A, § 4’s supermajority requirement does not apply to citizens’ initiative power to raise special taxes by a majority vote. (*Proposition C*, 51 Cal.App.5th at 714; *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1070 (*Proposition G*); *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, 226.)

Newcastle Plaintiffs contend that Measure ULA violates Section 4 as “a transaction tax or sales tax on the sale of real property.” (Newcastle Comp. ¶ 95.) However, Section 4’s plain language indicates that the taxes listed after “except” are exceptions to the “special taxes on such district” that may be imposed by cities, counties, and special districts via supermajority vote. Because Section 4’s supermajority requirement on cities, counties, and special districts does not apply to the power of initiative, the reference to “a transaction tax or sales tax on the sale of real property” is also inapplicable to initiatives. This interpretation of Section 4 is supported by the general rule that limitations on the initiative power should be narrowly construed. (*City of Upland*, 9 Cal.5th at 936.)

City Charter Section 450(a)

Jarvis Plaintiffs’ challenge to Measure ULA relies on Section 450 of the Los Angeles City Charter, which reads as follows:

Any proposed ordinance which the Council itself might adopt may be submitted to the Council by a petition filed with the City Clerk, requesting that the ordinance be adopted by the Council or be submitted to a vote of the electors of the City. Any proposed ordinance amending or repealing an ordinance previously adopted by a vote of the electors may be submitted to the Council by a petition

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filed with the City Clerk requesting that the ordinance be submitted to a vote of the electors of the City.

(Jarvis RJN, Ex. I [98].)

Plaintiffs interpret Section 450 as limiting the initiative power to only an “ordinance which the Council itself might adopt.” Because Article XIII A, § 4 prohibits the Los Angeles City Council from passing special taxes on the sales or transfers of real property, Plaintiffs argue, Measure ULA is not an “ordinance which the Council itself might adopt,” and so under Section 450 it may not be adopted via initiative.

As Defendants point out, courts have consistently found that city charter provisions cannot limit the constitutional power of initiative. “[A] city charter may not restrict the broad power of initiative and referendum granted by the Constitution.” (*Rossi*, 9 Cal.4th at 704; Art II, § 11.) All city charters “must be ‘consistent with and subject to [the] Constitution’ [Citations] and may not limit the power known as the initiative which is reserved to the people.” (*Newport Beach Fire and Police Protective League v. City Council of City of Newport Beach* (1961) 189 Cal.App.2d 17, 21.) “If the charter differs from the Constitution in any respect, it does not thereby diminish the power reserved by the Constitution.” (*Hunt v. Mayor and Council of City of Riverside* (1948) 31 Cal.2d 619, 622.) “[A]s between the provisions of the Constitution and the provisions of a city charter, those which reserve the greater or more extensive [initiative or] referendum power in the people will govern.” (*Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 240.)

Jarvis Plaintiffs cite cases describing Section 450 and other city charter provisions as “substantive limit[s] on the initiative power.” (*Proposition C*, 51 Cal.App.5th at 724; *Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1046 [“[Los Angeles City Charter § 460] means only that the City Council cannot submit to the voters any proposed ordinance which it is not within the lawful jurisdiction of the council to enact”]; *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 104 [noting that under city charter provision, “the electorate has no greater power to legislate than the board itself possesses”].) However, most of the portions cited are dicta, and in interpreting the charter’s provision, “all reasonable doubts must be resolved in favor of the people’s exercise of the reserved initiative power.” (*Rossi*, 9 Cal.4th at 711.)

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Following this interpretative guide, the Court finds that Section 450 does not invalidate Measure ULA. Section 450’s language does not express any clear intention to limit the initiative power, and “[w]ithout a direct reference in the text of a provision—or a similarly clear, unambiguous indication that it was within the ambit of a provision’s purpose to constrain the people’s initiative power—we will not construe a provision as imposing such a limitation.” (*City of Upland*, 3 Cal.5th at 931.) Moreover, Plaintiffs’ argument that Section 450 imports Article XIII’s limitations on the City’s powers and applies them to the people’s power of initiative violates the principle that “a city charter may not restrict the broad power of initiative and referendum granted by the Constitution.” (*Rossi*, 9 Cal.4th at 704.)

Gov. Code § 53725

Newcastle Plaintiffs allege that Measure ULA is invalid because it violates Gov. Code § 53725. (Newcastle Comp. ¶ 133.) That section provides, “[e]xcept as permitted in Section 1 of Article XIII A of the California Constitution, no local government or district may impose any ad valorem taxes on real property. No local government or district may impose any transaction tax or sales tax on the sale of real property within the city, county or district.” (Gov. Code § 53725, subd. (a).)

This claim fails as a matter of law. Article XI, section 5 of the California Constitution “gives charter cities autonomy in ‘municipal affairs,’” providing that “City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to *municipal affairs* shall supersede all laws inconsistent therewith.” (*Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120, 125.) “[T]he levy of taxes for city purposes is a municipal affair.” (*Ibid.*) Los Angeles is a charter city, and so Government Code § 53725 does not limit the City’s powers of taxation.

Newcastle Plaintiffs’ State Law Preemption Claim

As discussed above, the state Constitution provides charter cities autonomy in “municipal

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affairs,” such that city ordinances concerning municipal affairs supersede conflicting state laws. (*Fisher*, 20 Cal.App.4th at 125; Art. XI, § 5.) “[T]his constitutional ‘home rule’ doctrine reserves to charter cities the right to adopt and enforce ordinances that conflict with general state laws, provided the subject of the regulation is a ‘municipal affair’ rather than one of “statewide concern.” (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 45.)

Courts must take the following steps in analyzing whether a municipal ordinance is preempted by state law: “ ‘First, a court must determine whether there is a genuine conflict between a state statute and a municipal ordinance. [Citations.] Only after concluding there is an actual conflict should a court proceed with the second question; i.e., does the local legislation impact a municipal or statewide concern?’ [Citations.] Finally, if a genuine conflict is presented and the state statute qualifies as a matter of statewide concern, ‘we next consider whether it is both (i) reasonably related to the resolution of that concern, and (ii) ‘narrowly tailored’ to limit incursion into legitimate municipal interests.’ ” (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 46.)

Newcastle Plaintiffs argue that Measure ULA is preempted by state law, because homelessness is a matter of statewide concern. (Newcastle Comp. ¶¶ 114-118.) While Newcastle Plaintiffs emphasize their argument that homelessness is a matter of statewide concern, this issue is the second step of the analysis; first, it must be determined that “there is a genuine conflict between a state statute and a municipal ordinance.” (*Traders Sports, supra*, 93 Cal.App.4th at 46.) Here, Newcastle Plaintiffs have failed to identify any state statute that creates a genuine conflict with Measure ULA.

“A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” (*Barajas v. City of Anaheim* (1993) 15 Cal.App.4th 1808, 1813.) “[L]ocal legislation enters an area that is fully occupied by general law when the Legislature has expressly manifested its intent to fully occupy the area [citation], or when it has impliedly done so in light of one of the following indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the

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adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality [citations].” (*Ibid.* [citing *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-98].)

In their Opposition, Newcastle Plaintiffs suggest three statutes as candidates for conflict. First, Newcastle Plaintiffs argue that Measure ULA conflicts with the Documentary Transfer Tax Act, insofar as that act fully occupies the field of documentary transfer taxes; they further assert that Measure ULA requires the County of Los Angeles to violate the Documentary Transfer Tax Act in collecting Measure ULA’s taxes. Newcastle Plaintiffs have presented no legal authority in support of these arguments, and have not cited to any provision of the Documentary Transfer Tax Act itself. Accordingly, the Court rejects this argument.

Second, Newcastle Plaintiffs argue that Measure ULA conflicts with the California Revenue and Taxation Code because Measure ULA will reduce the number of high-priced property sales, delaying reassessment and eventually reducing the amount of property taxes that the County may collect. These circumstances, even if assumed as true, would not show a “genuine conflict” between Measure ULA and the taxation code. In addition, the argument again lacks any supporting authority or citation to any specific provision of the Revenue and Taxation Code.

Newcastle Plaintiffs last argue that Measure ULA conflicts with Health and Safety Code § 50000 *et seq.*, which states that “the subject of housing is of vital statewide importance to the health, safety, and welfare of the residents of this state” (§ 50001), and declares the Legislature’s intent to establish programs related to low income housing. (§ 50006.) These provisions fail to show any genuine conflict with Measure ULA. As discussed above, the issue of whether homelessness is a “matter of statewide importance” is reserved for the second stage of the preemption analysis. Furthermore, the mere fact that the Legislature has established housing programs in this act is clearly insufficient to show that this field of housing is “fully occupied by state law.” (See *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 887 [finding that the financing of school facilities is not impliedly preempted by state law].)

Because Newcastle Plaintiffs have not shown that a genuine conflict exists between Measure ULA and a state statute, their preemption argument fails.

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Newcastle Plaintiffs' Article XIII C and XIII D arguments

“Eighteen years after Proposition 13, Proposition 218 ‘added articles XIII C and XIII D to the state Constitution.’ [Citation.] Article XIII D further limits the authority of local governments to assess real property taxes and charges. And ‘[a]rticle XIII C buttresses article XIII D by limiting the other methods by which local governments can exact revenue using fees and taxes not based on real property value or ownership.’ [Citation.] Article XIII C categorizes all local taxes as ‘either general taxes or special taxes’ (Art. XIII C, § 2, subd. (a)), and provides, ‘Local governments may not impose, increase, or extend: (1) any general tax, unless approved by a majority vote at a general election; or (2) any special tax, unless approved by a two-thirds vote. (Art. XIII C, § 2, subds. (b), (d).)’ ” (*Proposition C*, 51 Cal.App.5th at 711.)

Art. XIII C and D are cited only collectively with Art. XIII A in Newcastle’s Complaint, without any explanation of how Measure ULA violates XIII C and D. (Newcastle Comp. ¶¶ 222-223, 240.) Newcastle’s Oppositions fail to make any substantive arguments re: XIII C and D, and only briefly mention XIII D two times in passing. (Vol. 1, pp. 29:14, 30:2.) Accordingly, the Court need not address this issue further.

Newcastle Plaintiffs' Equal Protection Claims

Newcastle Plaintiffs assert a number of claims under the U.S. Constitution against Defendants, alleging that Measure ULA violates the Equal Protection Clause, the Due Process Clause, the First Amendment, the Takings Clause, and the prohibition on *ex post facto* laws in Art. 1 Sec. 10.

Newcastle Plaintiffs argue in their Opposition that Measure ULA is subject to strict scrutiny under the Equal Protection Clause and Due Process Clause because it distinguishes based on “wealth.” This argument is meritless. Taxes are subject to rational basis review under the Equal Protection clause. (*Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 435.) Newcastle Plaintiffs admit this in their Complaint, which alleges that “[t]here is no rational basis under the ULA to require [the taxes imposed],” and cites the rule that “[i]n considering whether a tax is consistent with equal protection principles, ‘courts will look for a rational basis for the class of persons selected to pay the tax.’ ” (Newcastle Comp. ¶¶ 85-87; *City of Santa Cruz v.*

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Patel (2007) 155 Cal.App.4th 234, 247.) Binding authority expressly contradicts Newcastle Plaintiffs' contention that "wealth" is a suspect classification. (*Jensen*, 178 Cal.App.4th at 435 [holding that "wealthy individuals are not part of a suspect class requiring strict scrutiny"].) Consequently, applying the rational basis test, Measure ULA "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (*F.C.C. v. Beach Communications, Inc.* (1993) 508 U.S. 307, 313.)

Newcastle Plaintiffs argue in the alternative that the rational basis test cannot be resolved on the pleadings, but instead requires evidence and factual findings. This argument also fails. Under rational basis review, "a legislative choice is not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." (*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 435.) "[T]hose attacking the rationality of the legislative classification have the burden 'to negative every conceivable basis which might support it,' [citation]. [Citation.] 'Moreover, the burden of demonstrating the invalidity of a classification under this standard rests squarely upon *the party who assails it.*' [Citation.]" (*Ibid.*)

Here, Measure ULA taxes transfers of property valued between \$5,000,000 and \$10,000,000 at the rate of 4% of the consideration or value, and taxes transfers of property valued at \$10,000,000 or greater at the rate of 5.5% of the consideration or value. (Jarvis RJN, Ex. B [25].) Newcastle Plaintiffs allege that Measure ULA's taxes lack a rational basis under the U.S. Supreme Court's ruling in *Stewart Dry Goods Co. v. Lewis* (1935) 294 U.S. 550, as a tax based on gross receipts rather than net profits. (Newcastle Comp. ¶¶ 64-67.)

This argument was considered and rejected by the California Court of Appeal in *Ashford Hospitality v. City and County of San Francisco* (2021) 61 Cal.App.5th 498. There, the court concluded that a San Francisco City transfer tax assessed based on the value of the property did not violate the equal protection clause, and was "distinguishable from the gross receipts tax in *Stewart Dry Goods.*" (*Ashford*, 61 Cal.App.5th at 505.) Similar to Measure ULA, San Francisco's tax applied tiered tax rates based on the value of the property, with increased rates for higher-value properties. (*Id.* at 501-02.) The court accepted the city's contentions that "the classifications are supported by practical considerations, including the amount of work required to process the transfer of higher valued property and the city's interest in fairly allocating the

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costs of servicing higher valued properties,” and noted “ ‘that the [United States] Supreme Court has upheld tax tiers based on gross value or consideration’ in other contexts.” (*Id.* at 505-06.) The classifications in Measure ULA are substantially the same as those in *Ashford* and are rationally supported for the same reasons. Accordingly, Newcastle Plaintiffs’ Equal Protection claim fails.

The conclusion that Measure ULA passes rational basis review also precludes Newcastle Plaintiffs’ claim for Violation of Substantive Due Process, which alleges, “there is neither a reasonable, nor a substantial, relationship between the act of selling real estate and homelessness.” (Newcastle Comp. ¶ 244.) Because Measure ULA is not unreasonable or arbitrary, it does not violate the Due Process Clause.

Takings Clause

Newcastle Plaintiffs’ claims under the Takings Clause allege that Measure ULA is an unconstitutional government taking without just compensation. (Newcastle Comp. ¶ 135.) However, Newcastle Plaintiffs have presented no case in which a government’s exercise of its taxing power was construed as a “taking” under the Fifth Amendment, and this claim appears doubtful: “[T]he taking of money is different, under the Fifth Amendment, from the taking of real or personal property. The imposition of various monetary exactions—taxes, special assessments, and user fees—has been accorded substantial judicial deference. . . . government is obviously able, constitutionally, to take money from property owners as part of a valid scheme of taxation.” (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 892 (Mosk, concurring).) Newcastle Plaintiffs’ premise that the Takings Clause entitles a taxpayer to receive “just compensation” for taxes paid is also unsupported. “‘[N]othing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.’ [Citations.]” (*Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 437.)

Ex post facto law

Newcastle Plaintiffs allege that Measure ULA is an unconstitutional ex post facto law under Art. 1, Sec. 10 of the U.S. Constitution, because it taxes “the entire value of such property that had accumulated since the property had been acquired by the seller until the date it was sold after the effective date of the ULA.” (Newcastle Comp. ¶ 192.)

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The tax imposed by Measure ULA applies to sales or transfers taking place after April 1, 2023. (Jarvis RJN, Ex. B [24].) This is plainly not an *ex post facto* law. Newcastle Plaintiffs fail to show any respect in which Measure ULA is retroactive; the mere fact that property owners did not expect the tax does not show that it “*significantly* alters settled expectations[,] by changing the legal consequences of past events, or vitiating substantial rights established by prior law.” (*McHugh v. Protective Life Ins. Co.* (2021) 12 Cal.5th 213, 230.) “[L]egislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.” (*Usery v. Turner Elkhorn Mining Co.* (1976) 428 U.S. 1, 16.)

First Amendment

Under their ninth cause of action, Newcastle Plaintiffs allege that Measure ULA “violates the freedom of speech guarantees in both the United States Constitution and the California Constitution because it imposes an unreasonable burden on some property owners’ rights to give public notice of the title to their property.” (Comp. ¶ 207.) The Complaint further alleges that “[t]he recording of a deed . . . is a constitutionally protected form of speech protected by the First Amendment.” (Comp. ¶ 208.)

This claim is meritless. “[R]estrictions on protected expression are distinct from restrictions on economic activity or, more generally, on nonexpressive conduct,” and “the First Amendment does not prevent restrictions directed at commerce or conduct from imposing incidental burdens on speech.” (*Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 567.) Measure ULA’s tax on real property transfers is not directed at speech or expressive conduct, and any effect it has on speech is incidental. (See *Airbnb, Inc. v. City and County of San Francisco* (N.D. Cal. 2016) 217 F.Supp.3d 1066, 1076-78.)

Unlawful delegation

Newcastle Plaintiffs allege that Measure ULA “unconstitutionally delegates rulemaking power,” because “not only is the imposition of the ULA discretionary based upon the decision of City bureaucracy, but there are no defined criteria upon which such discretion is even to be exercised.” (Comp. ¶¶ 144-48, 248.) Specifically, Newcastle Plaintiffs cite Measure ULA’s provisions exempting transferees with “a history of affordable housing development and/or affording housing property management experience” and non-profits “to produce income-restricted affordable housing,” where qualification for these categories is determined based a procedure set by the LA Housing Department. (Comp. ¶ 145; Jarvis RJN, Ex. B § 21.9.14.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 30

22STCV39662

October 24, 2023

**HOWARD JARVIS TAXPAYERS ASSOCIATION, et al. vs
CITY OF LOS ANGELES, et al.**

2:51 PM

Judge: Honorable Barbara M. Scheper
Judicial Assistant: C. Wilson
Courtroom Assistant: B. Byers

CSR: None
ERM: None
Deputy Sheriff: None

“An unconstitutional delegation of authority occurs only when a legislative body (1) leaves the resolution of fundamental policy issues to others or (2) fails to provide adequate direction for the implementation of that policy.” (*Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2017) 3 Cal.5th 1118, 1146.) Neither of these two conditions apply to the provisions in Measure ULA cited by Newcastle Plaintiffs. The exemptions do not “leave the resolution of fundamental policy issues to others”; rather, the Housing Department is directed to “ ‘merely implement’ the statutory program” by specifying the procedure for qualification. (*Id.* at 1447.) The provisions also do not “fail to provide adequate direction for the implementation of the policy”; they specify the types of entities that may receive the exemption and the relevant factors for qualification (“a history of affordable housing development and/or affording housing property management experience”).

Unconstitutional Vagueness

Finally, Newcastle Plaintiffs allege that Measure ULA is unconstitutionally vague. (Newcastle Comp. ¶ 250.) “[A] statute will be deemed void for vagueness if it either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess as to its meaning and differ as to what is required.” (*Nisei Farmers League v. Labor & Workforce Development Agency* (2019) 30 Cal.App.5th 997, 1013.) Plaintiffs again cite to Measure ULA’s provisions that the Housing Department determines qualification for the exemptions. (Newcastle Comp. ¶¶ 144-48.) However, this fails to show that Measure ULA “either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess as to its meaning and differ as to what is required.”

Purported Reservation of Federal Claims

Newcastle Plaintiffs filed a “Reservation of Federal Claim Rights” citing *England v. Louisiana State Board of Medical Examiners* (1964)375 U.S. 411. Where, as here, Newcastle Plaintiffs voluntarily filed a state court action alleging federal claims, *England* is inapposite.

Leave to Amend

The Court is mindful that it may only consider the complaints in this matter and any other matter subject to judicial notice. The Court is also aware that leave to amend must be liberally granted. However, under the circumstances before the Court, the Court finds that the Jarvis

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Deputy Sheriff: None

Plaintiffs' and the Newcastle Plaintiffs' fail as a matter of law and any amendment would be futile.

Accordingly, the Court grants Defendants' motions for judgment on the pleadings on the grounds that Plaintiffs fail to state facts sufficient to support any claim against any Defendant. Pursuant to CCP Section 438, the Court orders the consolidated complaint, incorporating the Jarvis Plaintiffs' complaint and the Newcastle Plaintiffs' complaint, dismissed with prejudice.

The Motion for Judgment on the Pleadings filed by City of Los Angeles on 06/23/2023 is Granted.

Order Of Dismissal is signed, filed and incorporated herein by reference,

On the Court's own motion, the Case Management Conference scheduled for 12/06/2024 is advanced to this date and vacated.

Judicial Assistant to give notice.

Counsel for Defendant City of Los Angeles to give notice to any interested party not named in the Certificate of Mailing.

Certificate of Mailing is attached.