

FILING FEE EXEMPT PURSUANT TO
GOVERNMENT CODE § 6103

1 Kevin D. Siegel (SBN 194787)
E-mail: ksiegel@bwslaw.com
2 J. Leah Castella (SBN 205990)
E-mail: lcastella@bwslaw.com
3 Tamar M. Burke (SBN 328724)
E-mail: tburke@bwslaw.com
4 Eileen L. Ollivier (SBN 345880)
E-mail: eollivier@bwslaw.com
5 BURKE, WILLIAMS & SORENSEN, LLP
1 California Street, Suite 3050
6 San Francisco, CA 94111-5432
Tel: 415.655.8100 Fax: 415.655.8099
7

Hydee Feldstein Soto, City Attorney (SBN 106866)
8 Scott Marcus, Chief Assist. City Attorney (SBN 14980)
Valerie L. Flores, Chief Assist. City Attorney (SBN 138572)
9 Daniel Whitley, Deputy City Attorney (SBN175146)
E-mail: daniel.whitley@lacity.org
10 OFFICE OF THE CITY ATTORNEY
200 North Main Street
11 City Hall East, 7th Floor
Los Angeles, CA 90012
12 Tel: 213.978.7786 Fax: 213.978.77111

13 Attorneys for Defendant
CITY OF LOS ANGELES
14

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

17 HOWARD JARVIS TAXPAYERS
ASSOCIATION and APARTMENT
18 ASSOCIATION OF GREATER LOS
ANGELES,
19

20 Plaintiffs,

21 v.

22 CITY OF LOS ANGELES, and ALL
PERSONS INTERESTED IN THE MATTER
23 OF MEASURE ULA of the November 8,
2022, ballot, a real property transfer tax,
24

25 Defendants.

26 AND RELATED CONSOLIDATED CASE
27
28

Lead Case No. 22STCV39662
(Consolidated with Case No.: 23STCV00352)

*Assigned for All Purposes to the Honorable
Joseph Lipner; Department 72*

**NOTICE OF ERRATA RE DEFENDANT
CITY OF LOS ANGELES'
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
OPPOSITION TO PLAINTIFFS
HOWARD JARVIS TAXPAYERS
ASSOCIATION ET AL.'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

Reservation IDs: 254311419406 (Lead Case)
and 757938091417 (Consolidated Case)

Date: September 26, 2023

Time: 8:30 AM

Dept.: 72

Action Filed: December 21, 2022, and
January 6, 2023

1 **TO THE COURT AND TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF**
2 **RECORD:**

3 PLEASE TAKE NOTICE that Defendant CITY OF LOS ANGELES (“City”) respectfully
4 request this Court to substitute **Exhibit A** for Defendant City of Los Angeles’ Memorandum of
5 Points and Authorities in Support of Opposition to Plaintiffs Howard Jarvis Taxpayers Association
6 et al.’s Motion for Judgment on the Pleadings which the City electronically filed and served on
7 August 11, 2023, as the Tables of Contents and Authorities contained a few clerical errors, to wit:
8 (1) the Table of Contents misstated page numbers; (2) the Table of Authorities mis-referenced a
9 couple of citations in the body of the brief, e.g., to City Charter section 450(a), and (3) the
10 acronym HJTA had letters transposed in a few instances.

11 The attached Memorandum of Points and Authorities corrects those clerical errors (and
12 includes no other edits).

13 Dated: August 14, 2023

BURKE, WILLIAMS & SORENSEN, LLP

14
15 By: 

16 Kevin D. Siegel
17 J. Leah Castella
18 Tamar M. Burke
19 Eileen L. Ollivier
20 Attorneys for Defendant
21 CITY OF LOS ANGELES
22
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PROOF OF SERVICE

**Howard Jarvis Taxpayers Assoc., et al. v. City of Los Angeles, et al.
Los Angeles County Superior Court**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 1 California Street, Suite 3050, San Francisco, CA 94111-5432.

On August 14, 2023, I served true copies of the following document(s) described as:

NOTICE OF ERRATA RE DEFENDANT CITY OF LOS ANGELES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO PLAINTIFFS HOWARD JARVIS TAXPAYERS ASSOCIATION ET AL.'S MOTION FOR JUDGMENT ON THE PLEADINGS

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address pmruiz@bwslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on August 14, 2023, at San Francisco, California.



Paola Mendez-Ruiz

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SERVICE LIST
Howard Jarvis Taxpayers Assoc., et al. v. City of Los Angeles, et al.
Los Angeles County Superior Court
Lead Case No. 22STCV39662
(Consolidated with Case No.: 23STCV00352)

Jonathan M. Coupal
Timothy A. Bittle
Laura E. Dougherty
HOWARD JARVIS TAXPAYERS
FOUNDATION
1201 K Street, Suite 1030
Sacramento, CA 95814
Tel: (916) 444-9950
Fax: (916) 444-9823
Email: laura@hjta.org

Attorneys for Plaintiffs HOWARD JARVIS
TAXPAYERS ASSOCIATION AND
APARTMENT ASSOCIATION OF
GREATER LOS ANGELES

Bart Alan Seemen
WILLIAMS & SEEMEN
5900 Sepulveda Blvd. Suite 432
Sherman Oaks, CA 91411
Tel: (818)898-8300
E-mail: bas@latrialteam.com

Attorney for Interested Person SHAMA
ENTERPRISES, LLC

Keith M. Fromm
LAW OFFICES OF KEITH M. FROMM
907 Westwood Blvd., Suite 442
Los Angeles, CA 90024
Tel: (310) 500-9960
E-mail: keithfromm@aol.com

Attorneys for Plaintiffs and Petitioners
NEWCASTLE COURTYARDS, LLC, AND
JONATHAN BENABOU, AS TRUSTEE ON
BEHALF OF THE MANI BENABOU
FAMILY TRUST

Jeffrey Lee Costell
Joshua S. Stambaugh
Sara M. McDuffie
COSTELL & ADELSON LAW CORP.
100 Wilshire Blvd., Suite 700
Santa Monica, CA 90401
Tel: (310) 458-5959
E-mail: jlcostell@costell-law.com;
jstambaugh@costell-law.com;
smcduffie@costell-law.com

1 Morgan Chu
Kyle McGuire
2 Emily Grant
Jared Looper
3 Nicole Miller
IRELL & MANELLA, LLP
4 1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067
5 T: (310) 203-7000
Email: mchu@irell.com; mgniwich@irell.com;
6 nmiller@irell.com; MeasureULA@irell.com;

Attorney for Defendants SOUTHERN CALIFORNIA ASSOCIATION OF NON-PROFIT HOUSING, INC., KOREAN IMMIGRANT WORKERS ADVOCATES OF SOUTHERN CALIFORNIA DBA KOREATOWN IMMIGRANT WORKERS ALLIANCE, AND SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 2015

7 Gregory Bonett
Faizah Malik
8 Brandon Payette
Kathryn Eidmann
9 PUBLIC COUNSEL
610 S. Ardmore Avenue
10 Los Angeles, California 90005
T: (213) 385-2977
11 F: (213) 385-9089
Email: fmalik@publiccounsel.org;
12 gbonett@publiccounsel.org;
keidmann@publiccounsel.org

13 Nicholas R. Colletti
14 COLLINS & COLLINS LLP
2011 Palomar Airport Road, Suite 207
15 Carlsbad, CA 92011
Tel: 760-274-2110
16 Fax: 760-274-2111
E-mail: ncolletti@ccmslaw.com

Attorneys for Defendants and Respondents COUNTY OF LOS ANGELES

17 Brian K. Stewart
18 COLLINS & COLLINS LLP
790 E Colorado Blvd, 6th Floor
19 Pasadena, CA 91101
Tel: 626-243-1100
20 Fax: 626-243-1111
E-Mail: bstewart@ccllplaw.com

21 Hydee Feldstein Soto, City Attorney
22 Scott Marcus, Chief Assist. City Attorney
Valerie L. Flores, Chief Assist. City Attorney
23 Daniel Whitley, Deputy City Attorney
OFFICE OF THE CITY ATTORNEY
24 200 North Main Street, 920 City Hall East
Los Angeles, CA 90012
25 Tel: 213.978.7786
Fax: 213.978.7711
26 Email: Daniel.Whitley@lacity.org

Attorney for Defendant CITY OF LOS ANGELES

27
28

EXHIBIT A

1 Kevin D. Siegel (SBN 194787)
E-mail: ksiegel@bwslaw.com
2 J. Leah Castella (SBN 205990)
E-mail: lcastella@bwslaw.com
3 Tamar M. Burke (SBN 328724)
E-mail: tburke@bwslaw.com
4 Eileen L. Ollivier (SBN 345880)
E-mail: eollivier@bwslaw.com
5 BURKE, WILLIAMS & SORENSEN, LLP
1 California Street, Suite 3050
6 San Francisco, CA 94111-5432
Tel: 415.655.8100 Fax: 415.655.8099

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7 Hydee Feldstein Soto, City Attorney (SBN 106866)
8 Scott Marcus, Chief Assist. City Attorney (SBN 14980)
Valerie L. Flores, Chief Assist. City Attorney (SBN 138572)
9 Daniel Whitley, Deputy City Attorney (SBN175146)
E-mail: daniel.whitley@lacity.org
10 OFFICE OF THE CITY ATTORNEY
200 North Main Street
11 City Hall East, 7th Floor
Los Angeles, CA 90012
12 Tel: 213.978.7786 Fax: 213.978.77111

13 Attorneys for Defendant
CITY OF LOS ANGELES

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MEMORANDUM OF POINTS AND
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26 AND RELATED CONSOLIDATED CASE
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January 6, 2023

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1 **I. INTRODUCTION**

2 California citizens enjoy a reserved, inherent power to propose and adopt legislation by
3 initiative. (*Rossi v. Brown* (1995) 9 Cal.4th 688, 695-97.) The courts “jealously guard this right of
4 the people,” which is “one of the most precious rights of our democratic process.” (*Id.* at 695.) The
5 courts “apply a liberal construction to this power wherever it is challenged in order that the right not
6 be improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserved
7 power, courts will preserve it.” (*Ibid.*; see also *California Cannabis Coalition v. City of Upland*
8 (2017) 3 Cal.5th 924, 930, 934-35, and other Supreme Court cases quoted and cited therein.)

9 A city charter may broaden the city’s voters’ power of initiative, by extending it to non-
10 legislative matters, but may not diminish it. (*Rossi v. Brown*, 9 Cal.4th at 698, 704; see also *id.* at
11 697-99 [rejecting claim that charter diminished voters’ reserved, inherent power to enact municipal
12 legislation by voter-initiative].)

13 The claims by plaintiffs here – Howard Jarvis Taxpayers Association and Apartment
14 Association of Greater Los Angeles (collectively, “HJTA”) – are diametrically in conflict with this
15 settled, jealously guarded power of initiative. HJTA contends that City Charter section 450(a)
16 eviscerated the City’s voter’s authority to adopt Measure ULA, a voter-sponsored initiative
17 imposing real property transfer taxes, on conveyances over \$5 million, as special taxes to fund
18 affordable housing and tenant assistance programs. HJTA’s theory is that Section 450(a)
19 diminishes the voters’ power of initiative to enact municipal legislation, by prohibiting the voters
20 from proposing and adopting legislation which Proposition 13 would have precluded the City
21 Council (but not the voters) from proposing and adopting. HJTA is wrong.

22 First, the Courts of Appeal have uniformly held that Article XIII A, section 4 of the
23 California Constitution (added by Proposition 13) does not affect the voters’ reserved power to
24 approve voter-sponsored tax measures, but only applies to government-sponsored tax measures.

25 Second, properly interpreted in light of its plain text, legislative history, and Supreme Court
26 precedents, Charter section 450(a) does not, and could not, take away the voters’ reserved, inherent
27 right to propose and adopt, by majority vote, taxes on conveyances of real property within the City

1 to fund affordable housing and tenant assistance services. Rather, Charter section 450(a) is a
2 subject matter restriction that specifies that the voters may propose ordinances for the ballot with
3 respect to municipal legislation (e.g., the subject tax ordinance), as opposed to non-municipal or
4 non-legislative matters (e.g., administrative and executive matters). Further, HJTA’s
5 misconception of Charter section 450(a) is untenable because, pursuant to Supreme Court
6 precedent, the Charter could not diminish the voters’ power to adopt Measure ULA.

7 Thus, as discussed below, this Court should reject HJTA’s legally defective, anti-democratic
8 effort to invalidate Measure ULA, and thereby ensure that the City can continue to collect voter-
9 approved real property transfer taxes to fund programs to prevent and remedy homelessness.

10 II. STATEMENT OF FACTS

11 While HJTA’s legal theory lacks merit, its motion accurately summarizes key facts: On
12 November 8, 2022, the City’s voters approved a voter-sponsored initiative, Measure ULA, which
13 imposes additional real property transfer taxes of 4% on conveyances over \$5,000,000 and 5.5%
14 on conveyances of \$10,000,000 or more. Measure ULA taxes are “special taxes”¹ to fund
15 affordable housing and tenant assistance programs, which will increase and improve the housing
16 supply for tens of thousands of Angelenos. (HJTA Compl., ¶ 18 and Exh. A [Measure ULA – first
17 page (City Attorney Summary); Section 1 (findings and purpose); Section 2 (adding L.A. Muni.
18 Code § 21.8.2 to impose taxes).)² On December 7, 2022, the City Council certified the voters’
19 approval of Measure ULA. (HJTA’s Request for Judicial Notice (“HJTA’s RJN”), Exh. C.)

20 On December 21, 2022, HJTA filed this reverse validation action challenging the validity
21 of Measure ULA, pursuant to Government Code section 50077.5 and Code of Civil Procedure
22 sections 860 – 870.5. In two duplicative causes of action, HJTA alleges that Charter section
23 450(a) prohibited the City’s voters from exercising their power of initiative to adopt Measure

24 _____
25 ¹ A “special tax” is “any tax imposed for specific purposes, including a tax imposed for
26 specific purposes, which is placed into a general fund.” (Cal. Const., art. XIII C, § 1(d).)

27 ² Charter cities commonly charge real property transfer taxes, AKA documentary transfer
28 taxes, at rates above the base rate set by state law, pursuant their self-governance authority under
Home Rule Doctrine. (See, e.g., *CIM Urban Reit 211 Main St. (SF), LP v. City and County of San
Francisco* (2022) 75 Cal.App.5th 939, 949-50.)

1 ULA. HJTA interprets City Charter section 450(a) to restrict voters’ legislative power of initiative
2 to legislation the City Council could propose and enact, and thereby seeks to import restrictions to
3 government-sponsored tax measures, pursuant to Proposition 13 (specifically Article XIII A,
4 section 4 of the California Constitution), to voter-sponsored initiatives, thereby taking away the
5 voters’ reserved, inherent authority to propose and adopt local tax legislation. (HJTA Compl.,
6 ¶¶ 13, 15-16, 18-19, 20-21.)

7
8 **III. STANDARDS**

9 HJTA accurately summarizes standards for motions for judgement on the pleadings but
10 ignores standards regarding judicial review of challenges to the validity of legislation.

11 HJTA bears a high burden to establish Measure ULA is invalid. “Statutes must be upheld
12 unless they are clearly, positively and unmistakably unconstitutional.” (*Jensen v. Franchise Tax*
13 *Bd.* (2009) 178 Cal.App.4th 426, 434, citing *Voters for Responsible Retirement v. Board of*
14 *Supervisors* (1994) 8 Cal.4th 765, 780.) HJTA “cannot prevail by suggesting that in some future
15 hypothetical situation constitutional problems may possibly arise as to the particular *application of*
16 *the statute.... Rather, [they] [] must demonstrate that the act’s provisions inevitably pose a present*
17 *total and fatal conflict with applicable constitutional prohibitions.” (Tobe v. City of Santa Ana*
18 *(1995) 9 Cal.4th 1069, 1084; see also United States v. Salerno (1987) 481 US 739, 745 [a facial*
19 *challenge to legislation is “the most difficult challenge to mount successfully, since the challenger*
20 *must establish that no set of circumstances exists under which the Act would be valid”].)*

21 **IV. DISCUSSION**

22 HJTA leads with three arguments to advance the following propositions: (1) Measure ULA
23 is a special tax, (2) Measure ULA is a real property transfer tax, and (3) Article XIII A, section 4 of
24 the California Constitution (added by Proposition 13 in 1978) would have prohibited the City
25 Council from proposing and placing on the ballot a real property transfer tax as a special tax.
26 (Motion at 9:18 – 12:27.) While the first two proposition are factually accurate, the third
27 proposition is inapplicable as the voters, not the City Council, proposed and placed the ULA taxes
28 on the ballot.

1 As discussed in Section IV-A below (and in the City’s motion), Article XIII A, section 4 of
2 the California Constitution (“Section 4”) only applies to government-sponsored tax measures, not
3 to *voter-sponsored* tax measures. HJTA’s cases are inapposite because they concern government-
4 sponsored tax measures, not voter-sponsored measures. By contrast, *every* case that has
5 considered a voter-sponsored tax measures has held that Section 4 does not apply to voter-
6 sponsored tax measures.

7 As discussed in Sections IV-B and IV-C below, City Charter section 450(a) does not
8 diminish, and could not diminish, the City’s voters’ reserved, inherent power of initiative to
9 propose and enact municipal legislation. HJTA’s importation of inapplicable Section 4
10 restrictions through Charter section 450(a) as a means to diminish the voters’ power of initiative,
11 such that its scope is lessened to that of the City Council’s is improper and without legal support.

12 **A. Section 4 Restricts Government-Sponsored, Not Voter-Sponsored, Tax Measures.**

13 HJTA cites three cases which collectively hold that a charter city may enact real property
14 transfer taxes as general taxes, but not as special taxes. *Cohn v. City of Oakland* (1990) 223
15 Cal.App.3d 261; *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137; *Fisher v. County of*
16 *Alameda* (1993) 20 Cal.App.4th 120. HJTA’s reliance on these cases is misplaced because none
17 concerns a voter-sponsored tax measure,

18 In *Cohn*, plaintiff challenged the increase of a real property transfer tax imposed by the
19 City of Oakland, as a general tax. (*Cohn*, 223 Cal.App.3d at 263.) The City-imposed tax was not
20 prohibited by Section 4 because it was a general tax. (*Ibid.*) *Fielder* and *Fisher* similarly involved
21 government-sponsored special tax measures, rather than voter-sponsored measures tax measures.
22 (*Fielder*, 14 Cal.App.4th at 140, 146; *Fisher*, 20 Cal.App.4th at 123, 130-31). The courts in these
23 cases did not consider whether Section 4 might have applied had the voters proposed and enacted
24 the taxes. Thus, the cases are inapt. (*People v. Avila* (2006) 38 Cal.4th 491, 566 [“It is axiomatic
25 that cases are not authority for propositions not considered”].)

26 By contrast, four on-point precedents establish, without exception, that Section 4 of Article
27 XIII A applies only to government-sponsored tax measures, and has no applicability to voter-

1 sponsored measures. (*City and County of San Francisco v. All Persons Interested in the Matter of*
2 *Proposition G* (2021) 66 Cal.App.5th 1058, 1070-72 (“*All Persons re Prop G*”); *Howard Jarvis*
3 *Taxpayers Association v. City and County of San Francisco* (2021) 60 Cal.App.5th 227, 242
4 (“*HJTA v. CCSF*”); *City of Fresno v. Fresno Building Healthy Communities* (2020) 59
5 Cal.App.5th 220, 234-35 (“*City of Fresno*”); *City and County of San Francisco v. All Persons*
6 *Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 714-18 (“*All Persons re*
7 *Prop C*”).) In these cases, the First and Fifth Districts held that Section 4 applies only to tax
8 measures sponsored by the government, and therefore that city voters retained and lawfully
9 exercised their reserved, inherent authority to adopt local taxes – irrespective of any limitations
10 included in Section 4 (e.g., two-thirds voter-approval threshold for special taxes). (*All Persons re*
11 *Prop G*, 66 Cal.App.5th at 1070-72; *HJTA v. CCSF*, 60 Cal.App.5th at 242; *City of Fresno*, 59
12 Cal.App.5th at 234-35; *All Persons re Prop C*, 51 Cal.App.5th at 714-18.) The Court of Appeal
13 decisions are based, in part, on Supreme Court holdings that Proposition 13 and its progeny, e.g.,
14 Proposition 218 of 1996, limit elected officials’ taxation authority, not the voters’ taxation
15 authority. (See, e.g., *All Persons re Prop C*, 51 Cal.App.5th at 722-24.)

16 Here, Measure ULA is a voter-sponsored initiative measure, approved by 58% of the
17 voters, imposing real property transfer taxes as special taxes to fund affordable housing and tenant
18 assistance programs. Because Section 4 does not restrict the voters’ power of initiative, HJTA has
19 no basis to contend or suggest that the voters’ approval of Measure ULA violated Proposition 13.

20 **B. City Charter Section 450(a) Does Not Limit the Voters’ Power of Initiative to Propose**
21 **and Enact Legislation.**

22 Because controlling precedent does not support its argument, HJTA claims that, even if
23 generally permitted by the California Constitution, Charter section 450(a) narrows LA voters’
24 reserved, inherent power of initiative, by restricting it to the scope of the City Council’s authority
25 as limited by Section 4 of Article XIII A. This novel argument fails.

26 Before reviewing HJTA’s contentions regarding Charter section 450(a), it is important to
27 understand two interrelated principles and rules which protect the people’s power of initiative and
28

1 preclude efforts to interpret city charters to narrow that power.

2 “[C]onstitutional and charter provisions must be construed liberally in favor of the people’s
3 right to exercise the reserved powers of initiative and referendum.” (*Rossi v. Brown*, 9 Cal.4th at
4 695.) The court’s “jealously guard” this “precious right of our democratic process” which, while
5 inherent and reserved, has been enshrined in the Constitution since 1911. (*Id.* at 695, 700; see also
6 *California Cannabis*, 3 Cal.5th at 930, 934-35, and Supreme Court cases cited therein.)

7 In accordance therewith, a city’s charter may *broaden* city voters’ initiative power; it *may*
8 *not diminish it*. (*Rossi v. Brown*, 9 Cal.4th at 698, 704.) City charters – which are adopted and
9 amended by the voters³ – may extend city voters’ initiative power to non-legislative matters. As
10 to broadening the power, the Supreme Court upheld a San Francisco charter provision that
11 extended the voters’ initiative power to non-legislative declarations of policy. (*Farley v. Healey*
12 (1967) 67 Cal.2d 325, 328-29 [because San Francisco Charter extended initiative power to non-
13 legislative policy matters, San Francisco voters were entitled to place an initiative on ballot to
14 declare it city policy to favor cease-fire and withdrawal of U.S. troops from Vietnam].)⁴

15 As to contentions that a city charter diminished the power of initiative, the Supreme Court
16 has soundly rejected such efforts. In *Rossi v. Brown*, the Supreme Court considered San Francisco
17 Charter provisions which (1) authorized San Francisco voters to propose and adopt ballot
18 measures regarding “ ‘any ordinance, act or other measure within the power conferred upon the
19 board of supervisors to enact,’ ” but (2) prohibited referenda to repeal tax ordinances. (*Rossi v.*
20 *Brown*, 9 Cal.4th at 693, 697, 698.) The Court of Appeal had erroneously held that voters lacked
21 authority to place a measure on the ballot to repeal a tax measure based on the theory that,

22 _____
23 ³ Cal. Const., art. XI, § 3; *Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120
24 Cal.App.4th 374, 386.

25 ⁴ Absent an expansion by a charter provision, the voters’ power of initiative to adopt a
26 measure (and associated power of referendum to approve or reject council action) extends only to
27 legislative matters. (See *Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514,
28 515 fn. 4, and 525 [non-charter/general law city voters have no power of initiative with respect to
non-legislative matters, e.g., an adjudicatory decision on a land use permit]; *San Bruno Committee
for Economic Justice v. City of San Bruno* (2017) 15 Cal.App.5th 524, 530, 533 fn. 5 [non-
charter/general law city voters had no power of referendum re repeal city council’s approval of
contract to sell real property, a non-legislative, executive action].)

1 although the measure was presented in the form of an initiative, it was in substance a charter-
2 prohibited referendum to repeal a tax. (*Id.* at 693-94.) The Supreme Court reversed, reasoning
3 that the voters retained initiative power to propose an ordinance that had the effect of repealing tax
4 legislation, thereby protecting the voters’ initiative power irrespective of a charter provision that
5 arguably precluded their authority to set aside tax legislation (and expressly so precluded repeal by
6 referendum). (*Id.* at 696.)

7 Reviewing HJTA’s contentions in light of these principles and rules, the claims clearly fail.

8 As a preliminary matter, the City Council enacts legislation by ordinance, as specified in
9 Charter section 240. (Request for Judicial Notice filed and served herewith (“Supp. City RJN”),
10 Exh. A [“All legislative power of the City except as otherwise provided in the Charter is vested in
11 the Council and shall be exercised by ordinance”].) In turn, City Charter section 450(a) provides
12 in pertinent part: “Any proposed ordinance which the Council itself might adopt may be submitted
13 to the Council by a petition filed with the City Clerk, requesting that the ordinance be adopted by
14 the Council or be submitted to a vote of the electors of the City.” (HJTA’s RJN, Exh. I; see also
15 Request for Judicial Notice filed in Support of City’s Motion for Judgment on the Pleadings
16 (“Original City RJN”), Exh. A.)

17 In other words, the voters may propose legislation on subjects the Council may address
18 (e.g., zoning, business regulations, building codes, rent control, taxes) by submitting a petition to
19 the City Clerk, with a proposed ordinance, requesting the Council to either adopt the ordinance or
20 place it on the ballot. Indeed, City Charter section 240 specifies that the Council enacts legislation
21 by ordinance. (Supp. City RJN, Exh. A.) Thus, the purpose of Charter section 450(a) is to specify
22 that City voters may propose legislation by submitting an ordinance to the City Council and
23 requesting the Council to adopt it or put it on the ballot.⁵

24 This construction is confirmed by reference to an earlier Charter section articulating City
25 voters’ power of initiative. Prior to 1985, the City Charter stated that the voters’ initiative power

26

27 ⁵ Here, of course, the Council was obligated by Section 4 of Article XIII A to put the
28 proposed ordinance on the ballot rather than adopt it without voter approval.

1 included administrative and executive matters upon which the Council could act.⁶ In 1985, the
2 City’s voters amended the Charter to strike that reference in what was then Charter section 272.
3 (Original City RJN, Exhs. B, C, D.) But the Charter did not, does not, and could not limit the
4 voters’ power of initiative with respect to legislative matters. That was confirmed in Charter
5 section 450(a), which makes clear that the voters *retain* the power of initiative with respect to
6 legislative matters (ordinances), but *do not* have the power of initiative power when it comes to
7 administrative or executive matters. (Original City RJN, Exh. A; cf. *Kleiber v. City etc. of San*
8 *Francisco* (1941) 18 Cal.2d 718, 721, 117 P.2d 657 [San Francisco Charter provides that “action by
9 the board of supervisors shall be by ordinance or resolution and that ‘every legislative act shall be
10 by ordinance’ ”].)⁷

11 Moreover, Charter section 450(a) is devoid of any language evidencing an intent to
12 constrain the voters’ authority to approve voter-sponsored local taxes. Given that “the law shuns
13 repeals by implication” (*HJTA v. CCSF*, 60 Cal.App.4th at 234), this Court must reject HJTA
14 strained (mis)construction of Charter section 450(a) which seeks by implication to narrow the
15 voters’ authority to propose and adopt municipal legislation by initiative (which narrowing is
16 prohibited in any event, as the Supreme Court ruled in *Rossi v. Brown*).

17 Accordingly, Charter section 450(a) does not, and could not, restrict City voters’ power of
18 initiative to propose and adopt an ordinance imposing local taxes, including real property transfer
19 taxes to fund programs to remedy and alleviate homelessness, as are now at issue.

20 Any doubts about the foregoing must be resolved in favor of preservation of the voters’
21 reserved, inherent power of initiative, which the courts jealously guard. (*Rossi v. Brown*, 9 Cal.4th
22 at 695; see also *California Cannabis*, 3 Cal.5th at 930, 934-35.) Thus, in light of: (1) the quartet
23 of on-point cases confirming that the voters’ power of initiative is unaffected by Section 4 of
24 Article XIII A; (2) the text and legislative history of Charter Section 450(a); and (3) the

25 ⁶ As discussed in footnote 5 above, absent such an expansion by charter, the voters’ power
26 of initiative (and associated power of referendum) extends only to legislative matters.

27 ⁷ Administrative acts have been described as “those which are necessary to carry out
28 legislative policies and purposes already declared by the legislative body.” (*San Bruno*
Committee, 15 Cal.App.5th at 530.)

1 proscription against a city charter diminishing the voters’ power of initiative, the Court must reject
2 HJTA’s misconstruction of Charter section 450(a).

3 In other words, to (mis)interpret Charter section 450(a) to import Section 4 restrictions –
4 which only apply to government-sponsored tax measures – to pare back the voters’ power of
5 initiative would be contrary the language and history of Charter section 450(a), conflict with
6 uncontradicted on-point precedents, and unlawfully construe Charter section 450(a) to diminish
7 the voters’ power of initiative in direct contradiction to controlling Supreme Court precedent.

8 Accordingly, Charter section 450(a) does not limit the voters’ power of initiative to adopt
9 tax legislation, and the voters validly exercised that power to adopt Measure ULA.

10 **C. HJTA’s Efforts to Circumvent the Controlling Law Fail.**

11 **1. HJTA’s Hypothetical Does Not Support Its Claim.**

12 HJTA contrives a hypothetical: “It is easy to imagine a city council itself rounding up
13 enough signatures on a petition to propose, in the form of an initiative, an ordinance that would be
14 unlawful for the city council to pass on its own. Then, when the petition is presented, all it need
15 do is “[a]dopt the ordinance, without alteration,” and voila! An ordinance becomes law that was
16 supposed to be beyond the city council’s power.” (Motion at 14:5-9.) However, *California*
17 *Cannabis* rejects this very hypothetical.

18 Under the hypothetical “city council ... collude[s] with a public employee union to place a
19 levy on the ballot as a means of raising revenue for a goal supported by both,” “council accepts the
20 union's contract proposal – which will be funded by increasing a utility tax,” “the union could
21 mobilize city employees to collect signatures on an initiative proposing the tax increase,” and
22 “[o]nce enough signatures are collected ... the city council could simply adopt the ordinance
23 without submitting the tax increase to the voters,” thereby “effectively skirt[ing]” Proposition
24 218’s requirement that the tax be submitted to the electorate. (*California Cannabis*, 3 Cal.5th at
25 947.) After noting that such “facts are not presented here,” the Supreme Court declined to restrict
26 the voters’ power of initiative based on such a hypothetical. (*Ibid.*)

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28

1 The First District similarly rejected an effort to restrict the voters’ power of initiative based
2 on an elected official’s involvement with, and support of, a voters’ initiative to impose a new tax
3 on behalf of the local government served by the official. Plaintiff HJTA asserted that any such
4 “collusion” warranted imposition of Section 4 restrictions on the tax measure proposed and
5 adopted by the voters. The Court rejected the effort, explaining that in enacting Proposition 13 (as
6 well as Proposition 218), the statewide electorate expressed no intent to restrict voter-initiatives to
7 impose taxes, even when supported by elected officials, and that absent “a clear indication” of
8 such intent, the courts must not pare back the voters’ reserved, inherent power. (*HJTA v. CCSF*,
9 60 Cal.App.5th at 242; see also *id.* at fn. 11.)

10 Here, as in *HJTA v. CCSF* and *California Cannabis*, HJTA provides no legal basis to
11 support the argument that Measure ULA is unconstitutional because the City Council could,
12 hypothetically, circumvent the limitations of Section 4 by supporting, but not formally proposing
13 or sponsoring, a real property transfer tax as a special tax. As such, this Court too must reject
14 HJTA’s effort to challenge the validity of Measure ULA by pure hypothetical. (See also *Tobe*, 9
15 Cal.4th at 1084; and *United States v. Salerno*, 481 US at 745 [plaintiff challenging validity of
16 legislation must demonstrate legislation is invalid in all its applications, not that it might be
17 invalid under a hypothetical scenario].)

18 **2. HJTA’s Contention that Section 450(a) Operates as a Substantive Limit Fails.**

19 HJTA fabricates a false distinction between Measure ULA and the controlling precedents
20 by misconstruing the Supreme Court’s decision in *California Cannabis* and by contriving a
21 substantive versus procedural limitation that is not based in case law and has no applicability here,
22 where Section 4 of Article XIII A is entirely inapplicable and the voters retain their reserved power
23 of initiative with respect to local taxes.

24 In *California Cannabis*, the Supreme Court considered a similar provision to the California
25 Constitution added by Proposition 218 in 1996, which states: “No local government may impose,
26 extend, or increase any general tax unless and until that tax is submitted to the electorate and
27 approved by a majority vote ... [at] a regularly scheduled general election for members of the

1 governing body of the local government.” (Cal. Const., art. XIIC, § 2.) The Court held that this
2 provision applies only to tax measures proposed by local governments (not voter-initiatives], as
3 the Courts of Appeal subsequently held with respect to the very similar language in Section 4 of
4 Article XIII A, and therefore that measure could be put on the ballot at a special election.
5 (*California Cannabis*, 3 Cal.5th at 936.)

6 The Court also considered whether section 2 of Article XIIC operated as a substantive
7 constraint on local governments’ taxation authority, and thus a substantive constraint on the
8 voters’ taxation authority. The Court ruled it did not. (*Id.* at 942.)

9 The Court explained that where a local legislative body lacks authority to legislate in a
10 substantive area, e.g., because the State has occupied the field, the limitation on local legislation
11 also applies to the voters. (*Ibid.*) But, the Court held, section 2 of Article XIIC did not constitute
12 such a substantive limitation, and only applied to government-sponsored tax measures. (*Id.* at
13 942-43.)⁸

14 Here, as in *California Cannabis*, Section 4 has zero applicability to voter-sponsored
15 initiatives as four on-point precedents have unequivocally and conclusively held. And Charter
16 section 450(a) does not, and could not, operate to import the restrictions of Section 4 to diminish
17 the voters’ reserved, inherent power of initiative. HJTA’s effort to fabricate a rule that Charter
18 section 450(a) surreptitiously diminished the voters’ power of initiative thus contravenes the
19 holdings in *Cannabis Coalition* and *Rossi v. Brown*, which precludes HJTA’s diminishment
20 theory.

21 Indeed, the First District recently rejected a strikingly similar claim. In *All Persons re*
22 *Prop G*, the Court considered a San Francisco Charter provisions that defines an initiative as “ ‘a
23 proposal by the voters with respect to any ordinance, act or other measure which is within the
24

25 ⁸ It appears that HJTA’s real objection is to the Supreme Court’s conclusion in *California*
26 *Cannabis*, which HJTA asserts (without support) is a case of “contentious interpretation.”
27 (Motion at 13:10.) But HJTA provides no legal or factual reason to disregard precedent that
28 firmly holds that Article XIIC (added by Proposition 218) only limits governments’ authority, not
the voter’s power of initiative. (*California Cannabis*, 3 Cal.5th at 943.) HJTA’s disagreement
with the Supreme Court’s decision is not a proper basis for this Court to disregard that precedent.

1 powers conferred upon the Board of Supervisors to enact.’ ” (*All Persons re Prop G*, 66
2 Cal.App.5th at 1078.) The challengers asserted that because Section 4 barred the Board of
3 Supervisors from enacting a special tax unless it received supermajority approval, the San
4 Francisco Charter “imposes a substantive limit on the initiative power,” and thus subjected a
5 voter-sponsored initiative to this limitation. (*Ibid.*) The First District disagreed. The Court
6 reiterated that “the law shuns repeals by implication” and held that the San Francisco Charter did
7 not impose any substantive constraint on the voters’ authority to approve voter-sponsored tax
8 measures. (*Ibid.*) Moreover, there was no evidence that San Francisco voters intended, through
9 the city charter, to limit their authority to approve voter-sponsored tax measures. (*Ibid.*)

10 Here, the answer is the same. Like the San Francisco Charter, the City’s Charter provides
11 that the voters may enact any legislation that the City Council may enact – which enshrines the
12 voters’ authority to adopt legislation on municipal matters – and imposes no substantive constraint
13 on the voters’ authority to approve voter-sponsored tax measures. Moreover, even if Charter
14 section 450(a) could be construed as a substantive limitation on the initiative power, which it
15 cannot, *Rossi v. Brown* and *Farley v. Healey* plainly holds that a city charter may not diminish the
16 voters’ reserved, inherent power of initiative.

17 In sum, as *All Persons re Prop G*, *HJTA v. CCSF*, *All Persons re Prop C*, and *City of*
18 *Fresno* make clear, voters’ authority to propose and adopt tax measures by initiative is not affected
19 by Proposition 13. Thus Charter section 450(a) cannot legitimately be construed as a substantive
20 limit to the voters’ authority to adopt Measure ULA.

21 Undeterred, HJTA cites *Safe Life Caregivers v. City of Los Angeles* (2016) 243
22 Cal.App.4th 1029, 1046, and *City and County of San Francisco v. Patterson* (1988) 202
23 Cal.App.3d 95, 100-01 (“*CCSF v. Patterson*”), in an attempt to support their contention that
24 substantive limits on legislation by initiative is “normal.” The reliance is misplaced. As
25 discussed, Charter section 450(a) does not limit the power of the voters to enact legislation by
26 initiative, it just makes clear that such power is not *extended* to non-legislative matters (as some
27 city charters do) or non-municipal matters. *Safe Life Caregivers* does not suggest otherwise.

28

1 Rather, it merely declares that the *procedural* rules governing the City’s adoption of zoning
2 ordinances were not imposed on the voters through Charter section 450(a), which the Court
3 described as “a limit on substantive subject matter and not an incorporation of procedural
4 requirements imposed on the council.” (*Safe Life Caregivers*, 243 Cal.App.4th at 1046.) The
5 substantive limit is that the Charter does not extend the power of initiative to non-legislative
6 matters (e.g., administrative matters) or non-municipal subjects. *Safe Life Caregivers* does not
7 hold, as HJTA suggests, that Charter section 450(a) limits the voters’ power to enact legislation
8 via initiative. Thus, *Safe Life Caregivers* provides no support to HJTA.

9 *CCSF v. Patterson* is equally unhelpful to HJTA. It involved an initiative ordinance to
10 alter the discretionary powers of San Francisco’s Board of Supervisors and the independent Board
11 of Directors of the San Francisco Unified School (an agency of the State) to lease or sell land,
12 absent voter approval. (*CCSF v. Patterson*, 202 Cal.App.3d at 98, 104.) However, the proposed
13 ordinance was substantively invalid, because: (1) the subject of public education is preempted by
14 state law and thus “the board of supervisors has no power to regulate actions within the exclusive
15 jurisdiction of the school district board; and, a fortiori, neither do the people through the power of
16 initiative” (*id.* at 101); and (2) the power of San Francisco’s Board of Supervisors to lease or sell
17 property can be limited only by amendment of the San Francisco Charter, rather than ordinance
18 (*Id.* at 103). Thus, as to the former, the voters lacked substantive authority to interfere with the
19 School Board’s authority, just as the Board of Supervisors did (which ruling is consistent with the
20 Supreme Court’s subsequent ruling in *California Cannabis*, discussed above). As to the latter, the
21 voters also lacked authority to adopt legislation that violated the San Francisco Charter, just as the
22 Board of Supervisors would.⁹

23 Here, by contrast, there is no comparable substantive limit on the City voters’ legislative
24 authority to propose and adopt real property transfer taxes to fund affordable housing and tenant
25 assistance programs. Thus, HJTA’s reliance *CCSF v. Patterson* is entirely misplaced.

26 _____
27 ⁹ “It is well established that the charter of a municipality is its constitution. (*Id.* at 102.)
28 Thus, an ordinance cannot violate a city charter. (See *Essick v. City of Los Angeles* (1950) 34
Cal.2d 614, 621.)

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In sum, HJTA’s efforts to circumvent on-point, controlling law are devoid of merit.

V. CONCLUSION

Based on the forgoing, this Court should deny HJTA’s motion for judgment on the pleadings.

Dated: August 14, 2023

BURKE, WILLIAMS & SORENSEN, LLP

By: 

Kevin D. Siegel
J. Leah Castella
Eileen L. Ollivier
Attorneys for Defendant
CITY OF LOS ANGELES

PROOF OF SERVICE

**Howard Jarvis Taxpayers Assoc., et al. v. City of Los Angeles, et al.
Los Angeles County Superior Court**

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 1 California Street, Suite 3050, San Francisco, CA 94111-5432.

On August 14, 2023, I served true copies of the following document(s) described as

**DEFENDANT CITY OF LOS ANGELES’ MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF OPPOSITION TO PLAINTIFFS HOWARD JARVIS
TAXPAYERS ASSOCIATION ET AL.’S MOTION FOR JUDGMENT ON THE
PLEADINGS**

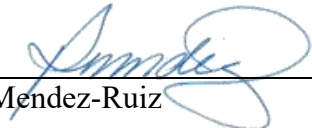
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address pmruiz@bwslaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on August 14, 2023, at San Francisco, California.



Paola Mendez-Ruiz

SERVICE LIST

Howard Jarvis Taxpayers Assoc., et al. v. City of Los Angeles, et al.
Los Angeles County Superior Court
Lead Case No. 22STCV39662
(Consolidated with Case No.: 23STCV00352)

Jonathan M. Coupal
Timothy A. Bittle
Laura E. Dougherty
HOWARD JARVIS TAXPAYERS
FOUNDATION
1201 K Street, Suite 1030
Sacramento, CA 95814
Tel: (916) 444-9950
Fax: (916) 444-9823
Email: laura@hjta.org

Attorneys for Plaintiffs HOWARD JARVIS
TAXPAYERS ASSOCIATION AND
APARTMENT ASSOCIATION OF
GREATER LOS ANGELES

Bart Alan Seemen
WILLIAMS & SEEMEN
5900 Sepulveda Blvd. Suite 432
Sherman Oaks, CA 91411
Tel: (818)898-8300
E-mail: bas@latrialteam.com

Attorney for Interested Person SHAMA
ENTERPRISES, LLC

Keith M. Fromm
LAW OFFICES OF KEITH M. FROMM
907 Westwood Blvd., Suite 442
Los Angeles, CA 90024
Tel: (310) 500-9960
E-mail: keithfromm@aol.com

Attorneys for Plaintiffs and Petitioners
NEWCASTLE COURTYARDS, LLC, AND
JONATHAN BENABOU, AS TRUSTEE ON
BEHALF OF THE MANI BENABOU
FAMILY TRUST

Jeffrey Lee Costell
Joshua S. Stambaugh
Sara M. McDuffie
COSTELL & ADELSON LAW CORP.
100 Wilshire Blvd., Suite 700
Santa Monica, CA 90401
Tel: (310) 458-5959
E-mail: jlcostell@costell-law.com;
jstambaugh@costell-law.com;
smcduffie@costell-law.com

1 Morgan Chu
2 Kyle McGuire
3 Emily Grant
4 Jared Looper
5 Nicole Miller
6 IRELL & MANELLA, LLP
7 1800 Avenue of the Stars, Suite 900
8 Los Angeles, California 90067
9 T: (310) 203-7000
10 Email: mchu@irell.com; mgniwisch@irell.com;
11 nmiller@irell.com; MeasureULA@irell.com;

Attorney for Defendants SOUTHERN CALIFORNIA ASSOCIATION OF NON-PROFIT HOUSING, INC., KOREAN IMMIGRANT WORKERS ADVOCATES OF SOUTHERN CALIFORNIA DBA KOREATOWN IMMIGRANT WORKERS ALLIANCE, AND SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 2015

7 Gregory Bonett
8 Faizah Malik
9 Brandon Payette
10 Kathryn Eidmann
11 PUBLIC COUNSEL
12 610 S. Ardmore Avenue
13 Los Angeles, California 90005
14 T: (213) 385-2977
15 F: (213) 385-9089
16 Email: fmalik@publiccounsel.org;
17 gbonett@publiccounsel.org;
18 keidmann@publiccounsel.org

13 Nicholas R. Colletti
14 COLLINS & COLLINS LLP
15 2011 Palomar Airport Road, Suite 207
16 Carlsbad, CA 92011
17 Tel: 760-274-2110
18 Fax: 760-274-2111
19 E-mail: ncolletti@ccmslaw.com

Attorneys for Defendants and Respondents COUNTY OF LOS ANGELES

17 Brian K. Stewart
18 COLLINS & COLLINS LLP
19 790 E Colorado Blvd, 6th Floor
20 Pasadena, CA 91101
21 Tel: 626-243-1100
22 Fax: 626-243-1111
23 E-Mail: bstewart@ccllplaw.com

21 Hydee Feldstein Soto, City Attorney
22 Scott Marcus, Chief Assist. City Attorney
23 Valerie L. Flores, Chief Assist. City Attorney
24 Daniel Whitley, Deputy City Attorney
25 OFFICE OF THE CITY ATTORNEY
26 200 North Main Street, 920 City Hall East
27 Los Angeles, CA 90012
28 Tel: 213.978.7786
29 Fax: 213.978.7711
30 Email: Daniel.Whitley@lacity.org

Attorney for Defendant CITY OF LOS ANGELES