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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HOWARD JARVIS TAXPAYERS ASSOCIATION, APARTMENT ASSOCIATION OF GREATER LOS ANGELES, INC., NEWCASTLE COURTYARDS, LLC, a California limited liability company; JONATHAN BENABOU, as Trustee on behalf of THE MANI BENABOU FAMILY TRUST; and ROES 1 through 500

Plaintiffs,

vs.

CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, COUNTY OF LOS ANGELES RECORDER'S OFFICE, DOES 1 through 500, and ALL PERSONS INTERESTED IN THE MATTER OF MEASURE ULA,

Defendants.

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

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'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION FOR JUDGMENT ON THE PLEADINGS

Reservation ID: 760338369080
Date: September 21, 2023
Time: 8:30 a.m.
Place: Stanley Mosk Courthouse, 111 N. Hill St., Dept. 72 Los Angeles, California 90012

Complaints Filed: December 21, 2022

January 6, 2023

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I. INTRODUCTION

This Motion for Judgment on the Pleadings seeks dismissal of two challenges to the validity of Measure ULA, a citizen-initiated ballot measure to impose a municipal excise tax on sales of real property exceeding $5 million in the City of Los Angeles ("Los Angeles"). The revenue from Measure ULA is to be used to address the City's urgent and pressing housing and homelessness crisis. Measure ULA was adopted in November 2022 by a majority of the voters in Los Angeles and is a lawful exercise of the constitutionally enshrined initiative power of the voters, in whom "[a]ll political power is inherent." (Cal. Const., art. II, § 1.).

Despite the clear will and power of the voters to adopt Measure ULA, Plaintiffs Howard Jarvis Taxpayers Association and Apartment Association of Greater Los Angeles (collectively, "HJTA") and Plaintiffs Newcastle Courtyards LLC and Jonathan Benabou, as trustee on behalf of the Mani Benabou Family Trust (collectively, "Newcastle") filed challenges to the validity of the measure. Each of Plaintiffs' combined total of seventeen claims fail as a matter of law. The California courts, including the Supreme Court, have repeatedly upheld the power of the voters to adopt citizens' initiatives. This power is not invalidated by article XIII A, section 4 of the California Constitution, the Los Angeles City Charter, or under any of the other theories that Plaintiffs collectively allege.

On behalf of All Persons Interested in the Matter of Measure ULA, 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 (collectively, "Defendants") respectfully request dismissal of HJTA and Newcastle's attempts to invalidate Angelenos' lawful exercise of their constitutional right to "alter or reform [the Government] when the public good may require." (*Ibid*).

II. PROCEDURAL HISTORY AND STATEMENT OF FACTS

Los Angeles is the epicenter of the housing and homelessness crises. In Los Angeles, more than half of renter households are paying more than 30% of their entire

household income on housing—that is more than "***any other major American city.***"[1] (HJTA Compl., Ex. A at p. 1.) The majority of City seniors who rent their homes spent more than 30% of their household income on housing. (*Ibid*.) "One of the primary dynamics underlying the housing crisis is that rents are increasing faster than wages." (*Id.* at p. 2.) Los Angeles also has an outsized population of homeless persons. (See *id.* at p. 1.) Almost ***three quarters*** of the approximately 41,000 individuals experiencing homelessness on any given night in Los Angeles remain entirely unsheltered, "amount[ing] to a humanitarian crisis, largely caused by government inaction." (*Id.* at p. 2.) That population only continues to grow: "Every day, 227 people in LA become homeless," (Newcastle Compl., Ex. A at p. 40) and 2020 alone saw a "16.1% increase [in] homeless persons in the City, largely because of the economic pressures of lost jobs, evictions or rising rents." (HJTA Compl., Ex. A at p. 2.)

This rapidly-growing crisis called for a lasting solution, with input and support from homelessness and affordable housing experts, as well as the Angeleno community at large. Defendants thus joined a coalition of "homeless service providers, affordable housing nonprofits, labor unions, and renters' rights groups," who came together to draft Measure ULA, an ordinance aiming to give Angelenos a "new and powerful opportunity to actually move people off of the streets and into housing." (Newcastle Compl., Ex. A at p. 32.)

Measure ULA aims to create revenue for the City to "establish and authorize programs to increase affordable housing and provide resources to tenants at risk of homelessness." (HJTA Compl., Ex. A at p. 1.) The revenue is generated from an excise tax on the sale or transfer of property, proceeds of which are kept within a special trust fund, the "House LA Fund." (*Id.* at p. 6.) The excise tax, entitled "Homelessness and Housing Solution Tax," works as follows: If a property transfer exceeds $5 million, but is less than $10 million, Measure ULA imposes an excise tax of "4% of the consideration or value" at the time of transfer. (*Id.* at p. 4 [Measure ULA, § 21.9.2 subd. (b)(1)].) If the transfer

[1] Unless otherwise noted, all emphases to the record are added and internal citations omitted.

exceeds $10 million, the tax increases to 5.5% of the consideration or value of the transfer (*Ibid.* [subd. (b)(2)].). Measure ULA includes an exemption for "qualified affordable housing organization[s]" that meet certain corporate structure and purpose criteria. (*Ibid.* [§ 21.9.14].) Measure ULA further lays out the types of programs that the revenue will be used for, and specific financial allocations of the revenue toward each program. (*Id.* at pp. 8–18 [§ 22.618.3].) Lastly, Measure ULA creates a "House LA Citizens Oversight Committee," consisting of fifteen appointed community members to ensure that the revenue and programs are implemented consistent with the Measure and "in a way that is transparent and accountable to the residents of the City." (*Id.* at p. 19 [§ 22.618.6].)

Measure ULA was successfully put on the ballot to be voted upon at the General Municipal Election on November 8, 2022. (Newcastle Compl., Ex. A at p. 1.) The Measure was also endorsed by "over 175 organizations." (*Id.* at p. 32.) Pursuant to Los Angeles ballot procedure, both proponents and opponents provided statements to be included in the ballot material submitted to the voters. (*Id.* at pp. 32–40.)

On November 8, 2022 Angelenos were asked:

> Shall an ordinance funding and authorizing affordable housing programs and resources for tenants at risk of homelessness through a 4% tax on sales/transfers of real property exceeding $5 million, and 5.5% on properties of $10 million or more, with exceptions; until ended by voters; generating approximately $600 million - $1.1 billion annually; be adopted?

(*Id.* at p. 29.)

A majority of Angeleno voters answered with a resounding ***yes***. (HJTA Compl. ¶ 1.)

Despite the expressed will of Los Angeles voters, Plaintiffs are challenging the Measure ULA tax under California's validation proceeding statutes, (Gov. Code, § 50077.5 and Code Civ. Proc., §§ 860–870.5) asking this court to determine its ultimate validity. (Code Civ. Proc., §§ 860, 863.) California requires that validation proceedings "be given preference over all other civil actions before the court in the manner of setting the same for hearing or trial, and in hearing the same, to the end that such actions shall be speedily heard and determined." (Code Civ. Proc., § 867.)

On December 21, 2022, HJTA filed a complaint in this Court pursuant to the

validation statutes, challenging Measure ULA under the Los Angeles City Charter and article XIII A, section 4 of the California Constitution ("Section 4" or "Proposition 13"). On January 6, 2023, Newcastle also filed a complaint pursuant to the validation statutes in this Court, alleging sixteen causes of action. That same day, Newcastle filed a nearly identical complaint in the Central District of California.[2] Defendants timely answered these actions as interested parties to support Measure ULA's validity. This Court consolidated the HJTA action and Newcastle state action under Code of Civil Procedure section 865 on April 25, 2023 and later approved the briefing schedule for this Motion.

III. LEGAL STANDARD

A motion for judgment on the pleadings is resolved using the same standard as a demurrer. (*Beames v. City of Visalia* (2019) 43 Cal.App.5th 741, 786.) The court treats as admitted all material facts properly pleaded but does not assume the truth of contentions, deductions, or conclusions of fact or law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966–967.) The court then considers whether the complaint "alleges facts sufficient to state a cause of action under any theory." (*Tarin v. Lind* (2020) 47 Cal.App.5th 395, 404.)

When a defendant successfully demonstrates that the legal theories in the complaint are unviable, the burden shifts to the plaintiff "to demonstrate the manner in which the complaint might be amended" to cure the defect. (*Assn. of Community Organizers for Reform Now v. Dept. of Industrial Relations* (1995) 41 Cal.App.4th 298, 302.) If the plaintiff cannot show that new facts could cure defects in the complaint, the court may deny leave to amend and enter judgment on the pleadings. (*Campbell v. Regents of Univ. of Cal.* (2005) 35 Cal.4th 311, 320.)

[2] Newcastle's federal court action is currently pending resolution of Defendants' motions to dismiss. (See *Newcastle Courtyards v. City of Los Angeles* (C.D. Cal.) No. 23-CV-00104, Dkts. 41, 45.) The district court judge has already issued a tentative ruling indicating that the motions will be granted. (Dkt. 61.)

IV. ARGUMENT

It is a cornerstone of California democracy that "all power of government ultimately resides in the people." (*National Paint and Coatings Assn. v. State of California* (1997) 58 Cal.App.4th 753, 760–61.) The California electorate's initiative power is not a right granted to the people, but "a power reserved by them." (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 934 (*California Cannabis*).) When this reserved initiative power is exercised by voters, it is done so "with precious few limits on that power." (*Id.* at p. 935.) The courts have a duty "to jealously guard this right of the people." (*Rossi v. Brown* (1999) 9 Cal.4th 688, 695 (*Rossi*), quoting *Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.)

Thus, it is judicial policy to liberally construe the initiative power upon challenge and to "narrowly construe provisions that would burden or limit its exercise." (*California Cannabis*, *supra*, 3 Cal.5th at p. 946.) The electorate's reserved initiative power cannot be constrained absent a clear expression of intent to do so. (See *id.* at p. 931 ["Without 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."].)

A. **Measure ULA Is Constitutional Under Article XIII A, Section 4 of the California Constitution (Proposition 13) (HJTA Claim 1; Newcastle Claim 3)**

Both Plaintiffs allege that Measure ULA violates article XIII A, section 4 of the California Constitution (HJTA Compl. ¶¶ 16–19; Newcastle Compl. ¶¶ 95–125.)[3] These

[3] Newcastle states that "[i]n the alternative, or in addition, the ULA taxes violate Propositions 218 and 26." (Newcastle Compl. ¶ 104.) Newcastle does not, however, provide ***any*** allegations beyond describing Proposition 218 and providing the enactment date for Proposition 26. (*Id.* ¶ 105.) These claims are therefore not adequately pleaded. Nonetheless, both are inapplicable here. Proposition 218 (implemented as Cal. Const., arts. XIII C and XIII D) requires (1) that ***local governments*** refer ordinances imposing taxes or property-related assessments, fees, and charges to voters for approval (Cal. Const., art.

claims fail as a matter of law.

Section 4, which was added to the Constitution by Proposition 13, provides:

> 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.

Section 4 imposes two restrictions on the ability of "Cities, Counties, and special districts" to levy certain taxes. It does not mention citizens' initiatives. Instead, it requires that those identified ***legislatures*** (1) "may impose special taxes . . . [only] by a two-thirds vote of the qualified electors," and (2) cannot impose "ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property."

Section 4 cannot constrain the ability of citizens' initiatives to impose these taxes. ***First***, California statutory construction rules require deference to, and preservation of, the initiative power in the absence of any indicia to the contrary— Section 4 is silent on citizens' initiatives. ***Second***, applying this principle, Courts of Appeal have repeatedly determined that Section 4 does not apply to citizens' initiatives. ***Third***, none of Plaintiffs' cited authority supports their claim that Section 4 can or should invalidate citizens' initiatives.

XIII C, § 2); and (2) prohibits certain property-related fees. (*Id.*, art. XIII D, § 6.) Proposition 26 redefined "tax" under article XIII C.

To start, there is no argument that Measure ULA is an "assessment, fee, or charge" under article XIII D, as Newcastle repeatedly admits. (See Cal. Const., art. XIII D, § 2 subds. (b) and (e); Newcastle Compl. ¶¶ 104, 106 [referring to Measure ULA "taxes"].) Thus, Proposition 218's prohibitions on assessments, fees, and charges are inapplicable. Further, California courts have repeatedly held that requirements applicable to "local governments" in articles XIII C and D do not limit citizens' initiatives. (See, e.g., *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1074 [rejecting arguments that the supermajority requirements in article XIII C section 2, and XIII D section 3 apply to citizens' initiative]; *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 [finding that the term "local government" in article XIII C, section 2 does not include the electorate].)

1. *California Courts Resolve Constitutional Conflicts in Favor of Preserving the Initiative Power*

The California constitution empowers the people to enact laws by initiative "when the public good may require." (Cal. Const., art. II, § 1.) California courts have long recognized the importance of the initiative to California and its Constitution, holding that if a law "can reasonably be interpreted ***not to limit that power***," courts 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, 249–250 (*Kennedy Wholesale*), citing *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 248 and *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241, italics omitted ["[T]he initiative power is 'one of the most precious rights of our democratic process'"].) Indeed, "the law shuns repeal by implication." (*Bd. of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 868.) To accept Plaintiffs' positions that Section 4 invalidates Measure ULA, the Court would have to conclude that Proposition 13 partially repealed the voters' initiative power, ***even though*** Section 4 does not reference citizens' initiatives.

Finding that Section 4 partially repealed the citizens' initiative power would be inconsistent with California Supreme Court precedent. In *Kennedy Wholesale*, the Court considered article XIII A, section 3 of the California Constitution (added by Proposition 13), which states: "any changes in State taxes . . . must be imposed by an Act passed by not less than two-thirds of . . . the Legislature . . . ." (*Kennedy Wholesale*, *supra*, 53 Cal.3d at p. 248, citing Cal. Const., art. XIII A, § 3.) The challengers argued that section 3 implied that ***only*** the Legislature—not the citizens—could raise taxes. The Court rejected this argument because "to interpret section 3 as giving the Legislature exclusive power to raise taxes would implicitly repeal" the initiative power in the constitution. (*Id.* at p. 249.) Furthermore, the Court "consider[ed] indicia of the [Proposition 13] voters' intent," (*id.* at p. 250), and noted its populist nature:

> Proponents of Proposition 13 described the measure as directed ***against*** "***spendthrift politicians***" and as "***[r]estor[ing] government of, for and by the people***." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Primary Elec. (June 6, 1978) p. 59.) If, as the proponents' argument

> suggests, a preference for direct democracy over the legislative process played a role in motivating the passage of Proposition 13, the conclusion that the voters intended to limit their own power would be difficult to justify.

(*Ibid.*)[4] Moreover, the Court also noted that other sections of Proposition 13 ***do*** unambiguously restrict the initiative power through the use of broad language. *Kennedy Wholesale, supra*, at p. 253 "[Section 1 is] an ***absolute ban*** on new ad valorem taxes on real property . . . which applies both to the Legislature and to the electorate."].) That language is not present in Section 4.

In *Kennedy Wholesale*'s wake, courts have continued to apply its principles of textual interpretation, (1) rejecting implicit repeals and "harmoniz[ing] . . . potentially conflicting constitutional provisions"; (2) "resolv[ing] any reasonable doubts" in favor of the initiative power; and (3) considering the evidence before the voters to provide context "bearing on the meaning of the text in question." (*City and Count. of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 716 (*Proposition C*).) For example, in considering the validity of a measure under Proposition 218, the California Supreme Court refused to broaden the scope of "local government" to include the electorate. (*California Cannabis, supra*, 3 Cal.5th at pp. 945–946 ["[W]ithout an unambiguous indication that a provision's purpose was to constrain the initiative power [the Court] would not construe it to impose such limitations."].)

Measure ULA cannot be invalidated by Proposition 13 under *Kennedy Wholesale*'s principles. Plaintiffs' reading of Proposition 13 would require the Court to accept the untenable position that Proposition 13 implicitly repealed the voters' constitutional initiative power. But, ***any*** alleged ambiguities in a law purporting to limit the power of the electorate require the Court to resolve all ambiguities in favor of the voters.

[4] Proposition 13 was thus not intended to merely curb taxes, as Newcastle alleges (see Newcastle Compl. ¶ 111), but to reserve the ability to raise taxes to the People instead of "spendthrift politicians," as the California Supreme Court has recognized.

2. *Section 4 Does Not Apply to Citizen's Initiatives as a Matter of Settled Law*

Consistent with *Kennedy Wholesale* and the intent behind Proposition 13, the Court of Appeal has limited Section 4's restrictions to ***only*** "Cities, Counties and special districts," (Cal. Const., art. XIII A, § 4) and explicitly rejected Plaintiffs' position that Section 4 applies to special taxes imposed by initiative.

In the landmark case, *City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703 (*Proposition C*), the Court of Appeal held that the supermajority requirement in Section 4 did not apply to citizens' initiatives. Proposition C, entitled "Additional Business Taxes to Fund Homeless Services," was a special tax passed through the initiative power. (*Id.* at p. 708.) Proposition C's challengers alleged that because the measure was a special tax, it was subject to the supermajority requirement of Section 4. (Cal. Const. art., XIII A, § 4. [special taxes enacted by "Cities, Counties and Special districts" require a "two-thirds vote of the qualified electors of such district"].) The *Proposition C* court relied on three principles to hold that:

> [W]hen read in harmony with article II's reservation of the initiative power and in light of the evidence of voter intent discussed above, Article XIII A, section 4 . . . ***does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative, and to do so by majority vote***.

(*Proposition C*, *supra*, at p. 721.) Following the guidance of *Kennedy Wholesale* discussed above, the court reasoned: ***First***, applying Section 4 to citizens' initiatives would constitute an implied repeal of the people's power to act by initiative. (*Id.* at pp. 715–716, citing *Kennedy Wholesale*, *supra*, 53 Cal.3d at p. 249.) ***Second,*** the court must adhere to the rule that any doubts must be resolved in favor of "precious right" of the initiative power. (*Id.* at p. 716; see also *Kennedy Wholesale, supra*, at p. 250.) ***Third***, the Proposition 13 ballot materials (which enacted Section 4) could not support the *Proposition C* challengers' position that Proposition 13 narrowed the citizens' power to raise or impose taxes by initiative. (*Proposition C*, *supra*, at p. 716 ["This populist theme . . . [i]s inconsistent with the [challengers'] claim that voters intended Proposition 13 to limit their own power to

raise taxes by initiative."]; see also *Kennedy Wholesale*, *supra*, at pp. 250–251.) This precedent is fatal to Plaintiffs' Section 4 challenge to Measure ULA.

The *Proposition C* ruling was not an isolated holding. Since then, three appellate decisions have adopted its reasoning and rejected the position that Section 4 restricts citizens' initiatives. (See *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1071 ["section 4's two-thirds vote requirement does not apply to local initiative statutes."]; *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, 235 ["we conclude the trial court here erred in concluding Proposition 13 imposes a supermajority voting requirement on the electorate for passage of voter initiatives."]; *Howard Jarvis Taxpayers Assn. v. City and County of San Francisco* (2021) 60 Cal.App.5th 227, 242 ["Absent such a clear indication, we will not construe the two-thirds requirement to apply to such initiatives"].)

Measure ULA cannot be invalidated by Proposition 13 under *Proposition C*'s clear ruling that Section 4 is unambiguous in that Section 4 "***does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative***." (*Proposition C*, *supra*, 51 Cal.App.5th at p. 721.) It is settled law that Section 4 does not repeal or abridge the citizens' power to impose taxes by initiative.

3. *Plaintiffs Cite No Precedential Authority Supporting Their Position*

Plaintiffs seek to circumvent this rule by citing Court of Appeal cases that predate *Kennedy Wholesale* and *Proposition C*, and in any event only hold that, under Section 4, city councils of charter cities may, upon voter approval, adopt real estate transfer taxes as general taxes, but not as special taxes. (See, e.g., *Cohn v. City of Oakland* (1990) 223 Cal.App.3d 261 [cited in HJTA Compl. ¶ 16 and Newcastle Compl. ¶ 100]; *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137 (*Fielder*) [cited in HJTA Compl. ¶ 16 and Newcastle Compl. ¶ 108]; *Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120 (*Fisher*) [cited in HJTA Compl. ¶ 16].) But neither these cases nor the others cited by

Newcastle[5] address ***citizens' initiatives***, which are not limited by Section 4.

Thus, none of the authority cited in Plaintiff's complaints support the claim that Section 4 should or even can invalidate a citizens' initiative, and *Proposition C* controls.

B. **Section 450 of the Los Angeles City Charter Does Not Limit the Electorate's Reserved Initiative Power (HJTA Claim 1)**

HJTA attempts to use the City Charter as a back door to add a limitation on the citizens' reserved initiative power where there is none. HJTA's claim fails as a matter of law, because charter cities cannot limit the initiative power. Even if they could, Section 450 does not include any explicit limitation on the initiative power, and thus must be construed to preserve the initiative power under the statutory construction principles discussed in Section IA.1, *ante*.

1. *Charter Cities Cannot Limit the Initiative Power That Is Reserved by the People in the California Constitution*

Section 450 is not "a substantive limit on legislation by initiative" as HJTA alleges, (HJTA Compl. ¶ 14) because city charters cannot restrict the initiative power. (See, e.g., *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 240 ["[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"]; *Rossi, supra,* 9 Cal.4th at p. 704 ["[A] city charter may not restrict the broad power of initiative and referendum granted by the Constitution.'"].) For example, in *Newport Beach Fire and Police Protective League v. City Council of City of Newport Beach* (1960) 189 Cal.App.2d 17, the Court of Appeal held that a city charter provision requiring a two-thirds vote of the electorate violated the constitutional reservation of

[5] Newcastle cites several cases for the proposition that charter cities are "subject to legislation enacted to implement Proposition 13." (See Newcastle Compl. ¶¶ 110, citing *City of Rancho Cucamonga v. Mackzum* (1991) 228 Cal.App.3d 929; *John Tennant Memorial Homes, Inc. v. City of Pacific Grove* (1972) 27 Cal.App.3d 372; *Century Plaza Hotel Co. v. City of Los Angeles* (1970) 7 Cal.App.3d 616.) But none of these cases suggest Proposition 13 limits ***citizens' initiatives***.

initiative power, which only required majority approval for passage. (*Id.* at pp. 22–23.) In so holding, the Court stated, "[e]very [city] charter must be 'consistent with and subject to this Constitution' and may not limit the power known as the initiative which is reserved to the people." (*Id.* at p. 21.) Further, "[t]o permit a city charter to regulate the extent to which voter approval is essential to the adoption of an initiative measure would be to permit control tantamount to authority to withdraw from the people a power reserved to them by the Constitution." (*Id.* at p. 23.)

In an attempt to evade this controlling authority, HJTA relies on inapposite cases, which hold merely that power to legislate by initiative is not subject to the same procedural requirements as the City Council. (See HJTA Compl. ¶ 14, citing *Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1046 ["Were appellants' interpretation . . . correct, it would mean that before an initiative petition could be submitted to the City Council, its proponents would have to satisfy all of the necessary procedural requirements for enactment of an ordinance by the Council—an absurd conclusion, and one at odds with the populist spirit of the initiative process."] and *Howard Jarvis Taxpayers Assn. v. City and County of San Francisco, supra*, 60 Cal.App.5th at pp. 236–237 ["the charter . . . does not import into the initiative process any procedural limitation on board action"].) These cases include some non-binding discussion of "substantive" limitations on the initiative power, but these dicta do not support HJTA's overreaching interpretation of Section 450 to restrict the initiative power to that "which the Council may itself adopt." The California Supreme Court has made clear that "[t]he people's reserved power of initiative is greater than the power of the legislative body," and consequently that "a city charter ***may not*** restrict the broad power of initiative and referendum granted by the Constitution." (*Rossi, supra*, 9 Cal.4th at pp. 704, 715–16.)

2. *Section 450 Does Not Contain Any Clear Language Expressing Limitations on the Initiative Power*

Even if the Los Angeles City Charter could restrict the initiative power (and, as explained above, it cannot), Section 450 ***reiterates*** the electorate's reservation of initiative

power—it does not ***restrict*** it. It reads in relevant part:

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

This section uses permissive language (i.e., "any" instead of "all; "may" instead of "shall," and no categorical restrictions such as "may not" or "shall not") to ***empower*** the electorate with a procedure for exercising its initiative power, such as by "submitt[ing] to the Council by a petition filed with the City Clerk." Because Section 450 contains no restrictive language expressing an intent to constrain the initiative power, a finding that Section 450 ***does*** restrict the initiative power (i.e., the interpretation sought by HJTA) would necessitate drawing an inference that is at best tenuous, which is not allowed under the law. (*Howard Jarvis Taxpayers Assn. v. County of Orange* (2003) 110 Cal.App.4th 1375, 1385 ["As a rule, courts should not presume an intent to legislate by implication"].)

Thus, HJTA's Section 450 claim fails as a matter of law.

C. **Measure ULA Does Not Violate Government Code Section 53725 or Otherwise Violate State Law (Newcastle Claim 4)**

Newcastle's fourth claim alleges that Measure ULA violates Government Code section 53725 ("Section 53725"), and that homelessness is of "statewide concern," without identifying any state statute addressing the concern of homelessness that is in conflict with Measure ULA. (Newcastle Compl. ¶¶ 126–133.) These allegations fail for three independent reasons. ***First***, Section 53725, which prohibits a "local government or district" from "impos[ing] any ad valorem taxes on real property" and from "impos[ing] any transaction tax or sales tax on the sale of real property within the city, county or district," (Gov. Code, § 53725, subd. (a)) does not apply to charter cities. ***Second***, Section 53725 does not apply to citizens' initiatives. ***Third***, Newcastle's repeated allegations that homelessness is of "statewide concern" fail to articulate any legal basis for invalidating Measure ULA. Newcastle scatters these allegations throughout its complaint, but fails to

identify statutes other than Section 53725 that it believes conflict with Measure ULA. (See, e.g., Newcastle Compl. ¶¶ 26–43, 115–124.)[6]

1. *Section 53725 Does Not Apply to Charter City Legislation on Municipal Affairs*

First, Section 53725 does not apply to charter cities. "Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs," (*State Building and Construction Trades Council of Cal. v. City of Vista* (2012) 54 Cal.4th 547, 555) and "the power to impose taxes" is a fundamental municipal affair, as Newcastle acknowledges. (*Ex parte Braun* (1903) 141 Cal. 204, 210; see also Newcastle Compl. ¶ 118 ["municipal taxation is a 'municipal affair' . . . in that it is a necessary and appropriate power of municipal government"].) The only exception, which Newcastle has not established, is that "[t]he Legislature may preempt such conflicting charter city legislation ***only where*** the matter addressed is one of ***such statewide concern*** as to warrant the Legislature's action." (*Fielder*, *supra*, 14 Cal.App.4th at pp. 137, 143.) Section 53725 raises no such "statewide concern" here that justifies state preemption of Measure ULA's municipal tax.

Fielder, a case Newcastle cites extensively in its complaint, is fatal to Newcastle's claim. (See Newcastle Compl. ¶¶ 38, 108, 115–124.) The *Fielder* court found that Section 53725 did not apply to a Los Angeles real estate transfer tax because "the transfer tax is purely local in its effects." (*Fielder*, *supra*, 14 Cal.App.4th at p. 146.) Newcastle asserts that "the homelessness which the ULA seeks to address is not 'confined in operation to the City of Los Angeles.'" (Newcastle Compl. ¶ 124, quoting *Fielder*.) But this language from *Fielder* refers to the geographical reach of the transfer tax itself, not any issue the tax seeks

[6] In addition to tying their "statewide concern" allegation to Section 53725(a) (Newcastle Compl. ¶ 127), Newcastle also seems to make a state preemption argument, claiming that Measure ULA illegally usurps potentially available resources from the state (*id.* ¶ 113), that the state "occupie[s] the field," (*id.* ¶ 114) and that Measure ULA "must yield" to the statewide concern of "reduction of homelessness." (*id.* ¶ 115.) Newcastle offers no legal or factual argument to support these bare allegations.

to address. Similarly, in *Fisher*, the Court of Appeal found that Section 53725 did not preempt a city's real estate transfer tax because it "affects a core area of municipal concern—the power to tax in support of local government," and "the burden of the tax rests only on the City's citizens and taxpayers and those doing business within its limits," and therefore did not address a subject of statewide concern. (*Fisher*, *supra*, 20 Cal.App.4th at pp. 130–131). These precedents are binding in this case.

Because Section 53725 does not preempt a charter city's ability to impose municipal taxes, it does not invalidate or preempt Measure ULA.

2. *Section 53725 Does Not Apply to Taxes Enacted by Citizens' Initiative*

Even if Newcastle could establish that Section 53725 addressed a matter of a statewide concern and therefore preempts Measure ULA (which they have not done), Section 53725 does not apply to citizens' initiatives like Measure ULA. The California Supreme Court's *California Cannabis* opinion is instructive here. That case held that the phrase "No ***local government*** may impose" in article XIII C of the California Constitution (§ 2, subds. (b) and (d)) did not apply to the electorate; it only limited the "local government" as drafted, because that article includes no "clear, unambiguous indication that it was within the ambit of [the] provision's purpose to constrain the people's initiative power[.]" (See *California Cannabis*, *supra*, 3 Cal.5th at pp. 935–36, 945–46.) Similarly, here, Section 53725, subdivision (a) uses a nearly identical phrase, "No local government or district may impose." Under the reasoning of *California Cannabis*, Section 53725, subdivision (a) likewise only binds "local government[s] or district[s]" but not citizens' initiatives.

In addition, to the extent that Newcastle argues that Section 53725 prohibits Los Angeles from collecting Measure ULA taxes, the *California Cannabis* opinion is again instructive. In analyzing article XIII C, the *California Cannabis* court looked to authority addressing Proposition 62, which enacted, among other statutes, Section 53725. It noted

that Proposition 62 also included the phrase "No local government or district may impose . . . ," and interpreted "impose" to mean "to enact" and not "to collect." (*Id*. at p. 944.)

Thus, the language of Section 53725 is nearly identical to language that has already been interpreted by the California Supreme Court to ***exclude*** applicability to citizens' initiatives while ***allowing*** local governments to collect taxes imposed by initiative. The Court should adopt that same reasoning here.

3. *Newcastle's Various Allegations That "Homelessness Is a Matter of Statewide Concern" Fail to Support Any Legal Theory*

Newcastle makes various allegations that "homelessness is a statewide concern" as part of other claims or untethered from any clear legal claim. (Newcastle Compl. ¶¶ 33, 42, 112, 115-119, 123.) Newcastle seems to allege a state preemption claim, but fails to explain or demonstrate how Measure ULA would actually conflict any state statute which addresses homelessness. Statewide concerns only preempt a charter city tax when the tax is "in direct and immediate conflict with a state statute or statutory scheme." (*The Pines v. Santa Monica* (1981) 29 Cal.3d 656, 660.) Further, "[t]hat the state has preempted a field of statewide concern for purposes of regulation does not itself prevent local taxation of the persons or activities regulated." (*Ibid.*) "Because the tax power is so fundamental, state intent to preempt it must be clear." (*Id.* at p. 662.)

Newcastle fails to demonstrate any conflict between any state statute and Measure ULA. For example, Newcastle alleges that "[h]omelessness originates in extramunicipal concerns rather than merely concerns within the City of Los Angeles itself" because homeless individuals "come to (and leave) the City of Los Angeles from essentially everywhere . . . ." (*Id.* ¶ 124.) But this does not show any ***statutory conflict***—it merely demonstrates that Los Angeles is not alone in its need to address homelessness.

Newcastle's references to various proposals by the state legislature to address homelessness do nothing to establish that any actual conflict exists between Measure ULA and any state statute. (*See* Newcastle Compl. ¶¶ 33–36.) Only "[i]n the event of a true conflict between a state statute reasonably tailored to the resolution of a subject of

statewide concern and a charter city tax measure" must a charter city's tax measure yield. (*Cal. Federal Savings and Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 7.)

Because there is no conflict between Measure ULA and Section 53725 or any other statewide concern, and because Section 53725 does not apply to citizens' initiatives like Measure ULA, the Court should dismiss Newcastle's Section 53725 claim.

D. **Measure ULA Is Not Otherwise Unconstitutional (Newcastle Claims 1-2, 5-9, 13-16)**

Newcastle identifies at least ten scattershot claims that purportedly render Measure ULA invalid or unconstitutional. Each claim is unviable as a matter of law. Amendment would be futile, as no facts can be alleged to salvage them.

For clarity, Defendants will address these claims in subject matter categories rather than the order in which they are alleged. ***First***, Measure ULA does not violate any principles of equal protection or substantive due process (claims 1, 2, and 14). ***Second***, Measure ULA is an excise tax on the sale of property—not a special assessment, exaction, or taking (claims 5, 6, and 7). ***Third***, Measure ULA does not implicate speech and therefore cannot violate the First Amendment or liberty of speech clause (claim 9). ***Fourth***, Measure ULA is not unconstitutional retroactive legislation (claim 8). ***Fifth***, Measure ULA's delegation of authority to the Housing Department to adopt certain exemption procedures is lawful and not unconstitutionally vague (claims 15 and 16).

1. *Measure ULA Does Not Violate Equal Protection or Substantive Due Process Principles Because It Is a Rational Economic Measure Designed to Alleviate Los Angeles' Housing Crisis (Newcastle Claims 1, 2, and 14)*

In three separate claims, Newcastle argues that Measure ULA is unconstitutional on equal protection (claims 1 and 2) and substantive due process (claim 14) grounds. (Newcastle Compl. ¶¶ 57–94, 242–245.) But "[t]he party who challenges the constitutionality of a classification in a tax statute bears a very heavy burden; it must negate ***any conceivable basis*** [that] might support the classification." (*California Assn. of*

Retail Tobacconists v. State of California (2003) 109 Cal.App.4th 792, 842).) Newcastle does not come close to meeting that heavy burden.

First, Newcastle argues that Measure ULA has no rational basis because under *Stewart Dry Goods Co. v. Lewis* (1935) 294 U.S. 550, the use of gross sales as a proxy for ability to pay a tax is arbitrary and irrational. (Newcastle Compl. ¶¶ 57–82.) Second, Newcastle argues that there is no other rational basis for applying the tax to property valued over $5,000,000. (*Id.* ¶¶ 83–94.) Third, Newcastle argues that Measure ULA violates some unidentified and unexplained right arising out of the substantive due process limits in the United States and California constitutions. (*Id.* ¶¶ 242–245.) Newcastle's claims fail on all three counts.

(a) **The Rational Basis Test Applies to All Three Claims**

Newcastle's claims 1 and 2 are both brought under the equal protection clauses of the United States and California Constitutions, both of which are subject to a rational basis test. (Newcastle Compl. ¶¶ 58–62, 84–87.) "[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.'" (*Id.* ¶ 86, citing *City of Santa Cruz v. Patel* (2007) 155 Cal.App.4th 234, 247 (*Patel*) and *Ashford Hospitality v. City and County of San Francisco* (2021) 61 Cal.App.5th 498, 503-04 (*Ashford*).) Furthermore, Measure ULA has no classification along protected class lines that would warrant heightened scrutiny. (*FCC v. Beach Communications, Inc.* (1993) 508 U.S. 307, 313 ["In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights 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."] (*Beach Communications*); *Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 434 [wealthy individuals do not form a suspect class deserving of heightened scrutiny].)

Newcastle's substantive due process claim is likewise subject to rational basis review, which applies where the right implicated by a law "is not a fundamental

constitutional right" and "has no basis in the constitution's text or in our Nation's history." (*Dobbs v. Jackson Women's Health Organization* (2022) 142 S.Ct. 2228, 2283 (*Dobbs*); *Washington v. Glucksberg* (1997) 521 U.S. 702, 721.) The test under California law is similar, wherein "[t]he substantive due process doctrine . . . acts as a limitation on unreasonable and arbitrary legislation" and "a Legislature does not violate due process so long as an enactment is . . . reasonably related to a proper legislative goal." (*California Rifle and Pistol Assn. v. City of W. Hollywood*, 66 Cal.App.4th 1302, 1330 (*California Rifle*), citing in part *People v. Kilborn* (1996) 41 Cal.App.4th 1325, 1328.) Under this doctrine, the law need only have a rational basis—the same deferential test applied under the equal protection clause. (*Dobbs*, *supra*, at p. 2284; *California Rifle*, *supra*, at p. 1307.)

(b) **Measure ULA Is Justified By Multiple Rational Bases**

Under the rational basis doctrine, the government is free to justify any law with a legitimate rationale, regardless of whether the entity passing the law in fact considered that justification. (*Beach Communications*, *supra*, 508 U.S. at p. 313; *id.* at p. 315 ["[I]t is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature."], ["[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data."]; *Ashford*, *supra*, 61 Cal.App.5th at p. 504 fn. 4, quoting and citing *Beach Communications*, *supra*, 508 U.S. at p. 315.) Courts have found that it is vital to give wide latitude and deference to municipal tax laws. (*Patel*, *supra*, 155 Cal.App.4th at pp. 247–248 ["deference" under rational basis review "is particularly important in the context of complex tax laws"]; *Ashford*, *supra*, at pp. 503–504.) Courts cannot overturn such a tax on equal protection grounds "'unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [the Court] can only conclude that the [the people's] actions were irrational.'" (*Patel*, *supra*, at pp. 247–248, citing *Gregory v. Ashcroft* (1991) 501 U.S. 452, 471.)

In *Ashford*, which is directly on point, a California Court of Appeal considered and rejected an equal protection clause challenge to a similar excise tax on the conveyance of

real property. Like Measure ULA, the tax in *Ashford* required payment of a portion of the sales price,[7] had multiple tiers, and was not marginal (i.e., the tax rate applicable to each tier applied to the entire sale price for the property). (*Ashford*, *supra*, 61 Cal.App.5th at pp. 501–02.) Like Newcastle, the challenger in that case alleged the tax did not have a rational basis under *Stewart Dry Goods*, because it used the gross value of the property as a proxy for ability to pay the tax. (*Id.* at pp. 505–06). The court rejected the challenger's argument, because the classification adopted by the tax was supported by a number of rational bases other than ability to pay. The court identified, for example, "the amount of work required to process the transfer of higher valued property and the city's interest in fairly allocating the costs of servicing higher valued properties." (*Id.* at p. 505.) Thus, the Court of Appeal agreed that "the city [had] rationally chosen to treat the sale or transfer of a higher valued property differently from the sale of a lower valued property" based on factors other than ability to pay. (*Id.* at p. 503.)

The rational bases credited by the *Ashford* court apply equally to Measure ULA. Measure ULA's $5,000,000 and $10,000,000 thresholds for sales of real property are justified by "the amount of work required to process the transfer" of these "higher valued properties," as well as "fairly allocating the costs of servicing higher valued properties." (See *Ashford*, *supra*, 61 Cal.App.5th at p. 505; Newcastle Compl., Ex. A at p. 49 (Measure ULA § 22.618.3 subd. (b)) [designating up to 8% of tax revenue to "compliance, implementation and administration"].)

Measure ULA's classifications are also justified by other rational bases. For example, applying the Measure ULA tax only to real property transfers above $5,000,000 balances Los Angeles' desire to generate tax revenue with its desire to avoid disincentivizing sales of real property. By imposing a documentary transfer tax limited to transfers exceeding $5 million in value, the city can raise substantial revenue while

[7] The tax in *Ashford* was not articulated as a percentage tax on sales of real property, but effectively was one. For example, properties sold for more than $25 million were taxed at a rate of $15 for each $500, equivalent to 3% of the selling price.

exempting the vast majority of real estate sales from the tax. For example, the tax would have applied to only 3% of all real estate sales in 2019. (Newcastle Compl., Ex. A at p. 32.) Furthermore, there is an administrative cost to collecting taxes on each transaction, and large transactions yield the most revenue per transaction. Therefore, by focusing on high-value transactions, the city may get the largest tax benefit per administrative cost.

Finally, *Stewart Dry Goods* does not apply because, as with the tax in *Ashford* which was similar to Measure ULA all material respects, the classifications adopted by Measure ULA are supported by grounds other than use of gross value as a proxy for ability to pay. (*Ashford*, *supra*, 61 Cal.App.5th at p. 505 [distinguishing *Stewart Dry Goods*].)

Thus, Newcastle's Equal Protection and Substantive Due Process claims fail because Measure ULA is supported by a number of rational bases, which are due deference, and which must be accepted under controlling law regardless of whether those bases actually motivated the drafters and supporters of the law.

2. *Measure ULA Is a Tax on the Transfer of Property, Not a Taking (Newcastle Claims 5, 6, and 7)*

In three different claims, Newcastle argues that Measure ULA is an improper taking. (Newcastle Compl. ¶¶ 134–188.) Newcastle's asserted theories include that Measure ULA is an unconstitutional exaction (*id.* ¶¶ 134–161), that it is an unconstitutional special assessment (*id.* ¶¶ 162–175), and that it is a confiscation of property (*id.* ¶¶ 176–188). Each of these theories fail as a matter of law.[8] There is no serious argument that Measure ULA's classic excise tax on the sale of real property is a taking; it does not implicate federal or state constitutional takings clauses.

(a) **Measure ULA Is Not a Monetary Exaction on Landowners for a Conditional Government Benefit (Newcastle Claim 5)**

Newcastle's exaction claim fails because Measure ULA is not an exaction (let alone

[8] California takings law is coextensive with federal law and California courts generally construe the federal and California takings clauses congruently. (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 664.)

an unconstitutional exaction) and not a taking. (Newcastle Compl. ¶¶ 134–161.)

A monetary exaction occurs where the government conditions the grant of a government benefit (most commonly, a permit) on the payment of money. (*Ballinger v. City of Oakland* (9th Cir. 2022) 24 F.4th 1287, 1298 (*Ballinger*).) This doctrine is ***only*** implicated if the government exacts a property interest from a landowner in exchange for a benefit conveyed ***to the landowner***. (*Koontz v. St. Johns River Water Mgmt. Dist.* (2013) 570 U.S. 595, 604.) A tax is not a monetary exaction. (*Id.* at p. 597, citing *Brown v. Legal Foundation of Wash.* (2003) 538 U.S. 216 ["It is beyond dispute that '[t]axes and user fees . . . are not takings.'"].)

A monetary exaction is unconstitutional where it "would have constituted a taking of property without just compensation" had it been imposed outside of the conferral of a benefit to the landowner. (*California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 460 (*California Building*).) There are two types of takings: physical and regulatory. A physical taking occurs when the government "physically takes possession of an interest in property for some public purpose." (*Brown v. Legal Foundation of Wash.* (2003) 538 U.S. 216, 233.) A regulatory taking occurs when a regulatory action is so severe as to be "functionally equivalent to a direct appropriation of or ouster from private property," for example, by depriving an owner of "***all*** economically beneficial use" of the property. (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 529 (*Lingle*).)

If (and only if) it is established that there is indeed a monetary exaction that would otherwise constitute a taking, courts then inquire whether there is a nexus and rough proportionality between the government's demands and the social cost of the condition. (*Lingle, supra*, 544 U.S. at pp. 605–606.) This test is the same under the United States and California takings clauses, (*California Building, supra,* 61 Cal.4th at pp. 460–62) and it need not be reached here.

Under the facts of this case, there is no serious argument that Measure ULA's tax is an unconstitutional monetary exaction. Measure ULA offers no "conditioned benefit" to the landowner that would bring its tax within the definition of an "exaction." Newcastle's

claim fails on this ground alone, but even if there were a government benefit conditioned on payment of the tax to make Measure ULA a monetary exaction, it still would not constitute a taking if imposed outside the context of this imagined benefit.

Here, Los Angeles is not physically taking any part of property subject to Measure ULA, let alone dedicating it to public use, as a tax of up to 5.5% of the property sale price does not physically take anything away from the landowner. Los Angeles is also not depriving all economic use of the property, nor coming close to functionally appropriating or ousting property owners. (See *Horne v. Dept. of Agriculture* (2015) 576 U.S. 350, 364 ["A regulatory restriction on use that does not entirely deprive an owner of property rights may not be a taking under *Penn Central*."].) A tax of 5.5% of the sale price in no way "depriv[es] all economic use of the property," (*California Building*, *supra*, 61 Cal.4th at p. 462) and is not so burdensome as to be a taking "functionally equivalent to a direct appropriation of or ouster from private property." (*Lingle*, *supra*, 544 U.S. at p. 529.)

Nor can Newcastle cannot claim a taking from the reduced value of any property affected by the Measure ULA tax, for "the fact that a land use regulation may diminish the market value that the property would command in the absence of the regulation . . . does not constitute a taking of the diminished value of the property." (*California Building*, *supra*, 61 Cal.4th at p. 466; see also *id.* at p. 460.) As the California Supreme Court has stated, extending the exaction doctrine "to all governmental fees affecting property value or development would open to searching judicial scrutiny the wisdom of myriad government economic regulations, a task the courts have been loath to undertake pursuant to either the takings or due process clause." (*San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal.4th 643, 672 (*San Remo Hotel*).)

Because the Measure ULA tax is not an exaction, this Court need not reach the questions of nexus and proportionality. (*Ballinger*, *supra*, 24 F.4th at p. 1300 [not reaching issues of nexus or proportionality under *Nollan* and *Dolan* after holding relocation fee did not constitute an exaction].) Newcastle's exaction claim should be dismissed.

(b) Measure ULA Is Not an Unconstitutional Special Assessment (Newcastle Claim 6)

Newcastle alleges, without merit, that Measure ULA is an unconstitutional special assessment. (Newcastle Compl. ¶¶ 162–175.) Measure ULA is a tax. It is not a special assessment, and therefore is not subject to any limitations on such assessments. "[S]pecial assessments are not taxes at all," but rather "more in the nature of loans to property owners for improvements befitting their property, with bonds representing that loan and secured by the property itself." (*County of Placer v. Corin* (1980) 113 Cal.App.3d 443, 450, fn. 5.) Measure ULA is a tax because it is levied for the general public benefit of reducing homelessness. (See *id.* at p. 451 [a fee is a tax and not an assessment when it funds a general public benefit]; *MCI Communications Servs., Inc. v. City of Eugene, Ore.* (9th Cir. 2009) 359 F.App'x 692, 695 [providing internet access at homeless shelters provides a benefit to the public at large].) Thus, the special assessment inquiry does not apply.

Even if the Court concludes that Measure ULA is a special assessment, the limitations on special assessments[9] promulgated by article XIII D (not the takings clause, as Newcastle erroneously states) do not apply to taxes approved by citizens' initiative. (*California Cannabis*, *supra*, 3 Cal.5th at pp. 939–941 [article XIII D does not apply to citizens' initiatives.]; see Section IA.1, *ante*.) Newcastle's special assessment claim fails.

(c) Measure ULA Is Not a Taking of an Identifiable Piece of Property (Newcastle Claim 7)

Finally, Newcastle alleges that Measure ULA is a taking of an identifiable piece of property. (Newcastle Compl. ¶¶ 176–188.) It is not. The takings clause does not apply to money paid to the government when the government does not specify a specific account because "[u]nlike real or personal property, money is fungible." (*United States v. Sperry Corp.* (1989) 493 U.S. 52, 62 fn. 9; see also *Ehrlich v. City of Culver City* (1996) 12

[9] These limitations, which the Court need not reach here, require that the special assessment must be proportional and that its benefit must ***not*** inure to the general public. (Cal. Const., art. XIII D, § 2, subd. (b); § 4, subd. (a).)

Cal.4th 854, 892 (conc. opn. of Mosk, J).) Fees are only implicated by the takings clause if they are ad hoc, discretionary fees which may warrant scrutiny under the exaction doctrine. (*San Remo Hotel, supra*, 27 Cal.4th at pp. 671–672.) As explained above, Measure ULA does not implicate this doctrine. The Court should reject Newcastle's third takings challenge.

3. *Measure ULA Does Not Violate the First Amendment or the Liberty of Speech Clause (Newcastle Claim 9)*

Newcastle claims that Measure ULA violates freedom of speech guarantees in the U.S. and California Constitutions because it places a condition upon deed recordation. (Newcastle Compl. ¶¶ 206–213.) Newcastle fails to meet its burden to show that Measure ULA implicates free speech concerns in the first instance, as required by law.[10] (*Midway Venture LLC v. County of San Diego* (2021) 60 Cal.App.5th 58, 84 (*Midway Venture*).)

To be subject to free speech scrutiny, an ordinance must target "conduct with a significant expressive element," (*Midway Venture*, 60 Cal.App.5th at p. 84, quoting *Arcara v. Cloud Books, Inc.* (1986) 478 U.S. 697 (*Arcara*)) that is, conduct that intends "to convey a particularized message," where "there [is] a great likelihood the message [will] be understood by those observing it." (*Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 769–770.) In determining whether a statute targets expressive conduct, a court may consider the statute "on its face" and its "stated purpose," (*Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 565 (*Sorrell*)) but not, absent narrow circumstances, legislative purpose or motive. (See *United States v. O'Brien* (1968) 391 U.S. 367, 383, fn. 30.)

On its face, Measure ULA mandates a transfer tax upon the sale of certain real property. (Newcastle Compl., Ex. A at 44 (Measure ULA § 21.9.2, subd. (a).) But neither

[10] California courts analyze questions of conduct versus speech analogously under both federal and state constitutional regimes. (See, e.g., *People v. Morone* (1983) 150 Cal.App.3d Supp. 18, 22, fn. 5; *Krontz v. City of San Diego* (2006) 136 Cal.App.4th 1126, 1139–1140; See also Los Angeles Alliance for Survival v. City of Los Angeles (2000) 22 Cal.4th 352, 367 ["Merely because our provision is worded more expansively . . . does not mean that it is broader than the First Amendment in all its applications."].)

the act of selling property, the recordation of a deed, nor the imposition of a transfer tax are expressive conduct. (See *Midway Venture*, 60 Cal.App.5th at p. 84; *King v. Federal Bureau of Prisons* (7th Cir. 2005) 415 F.3d 634, 637 ["[A]n order to sell…is not the kind of verbal act that the First Amendment protects."]; cf. *HomeAway.com, Inc. v. City of Santa Monica* (9th Cir. 2019) 918 F.3d 676, 685 [law regulating property rentals did not implicate First Amendment concerns because it "regulate[d] nonexpressive conduct—namely, booking transactions—not speech"].)

Even if any act implicated by Measure ULA, such as the recordation of a deed,[11] could be deemed to be expressive conduct, there would still be no free speech violation because any abridgment of such conduct would be incidental to the legitimate exercise of taxing land sales. (See *Raef v. App. Div. of Super. Ct* (2015) 240 Cal. App. 4th 1112, 1126 ["[W]hen 'speech' and 'nonspeech' elements are combined, and the 'nonspeech' element . . . triggers the legal sanction, the incidental effect on speech rights will not normally raise First Amendment concerns."]; *Arcara, supra*, 478 U.S. at p. 708 (conc. opn. of O'Connor, J.) ["Any other conclusion would lead to the absurd result that any government action that had some conceivable speech-inhibiting consequences, such as the arrest of a newscaster for a traffic violation, would require analysis under the First Amendment."].)

Newcastle's free speech claim thus fails.

4. *Measure ULA Does Not Violate the Ex Post Facto Clause (Newcastle Claim 8)*

Newcastle makes a frivolous allegation that the ex post facto clause (U.S. Const., art. I, § 10, cl. 1) forbids Measure ULA as unconstitutional retroactive legislation. (Newcastle Compl. ¶¶ 189–205.) ***First***, the ex post facto clause only applies to criminal laws. (*Calder v. Bull* (1798) 3 U.S. (3 Dall.) 386, 390–92; see also *Johannessen v. United*

[11] For example, Measure ULA's transfer tax would apply regardless of whether a deed is recorded in connection with the sale. (Cf. *926 N. Ardmore Ave., LLC v. County of Los Angeles* (2017) 3 Cal.5th 319, 332 ["It is settled that 'recordation of a deed [is not] the touchstone of taxability . . . .'"].)

States (1912) 225 U.S. 227, 242 [it is "settled that this prohibition is confined to laws respecting criminal punishments, and has no relation to retrospective legislation of any other description"].) ***Second***, Measure ULA has no retroactive application whatsoever: the measure passed in November 2022 and only applies to sales taking place on or after April 1, 2023. (Newcastle Compl., Ex. A at p. 45 (Measure ULA § 21.9.2, subd. (b).)

Newcastle's cited case (Newcastle Compl. ¶ 204) addresses statutory interpretation and not the constitutionality of retroactive laws. (See *Covey v. Hollydale Mobilehome Estates* (9th Cir. 1997) 116 F.3d 830, 835, italics added ["[C]ongressional enactments and administrative rules will *not be construed to have retroactive effect* unless their language requires this result."].)

5. *Measure ULA Properly Delegates Authority to the LA Housing Department to Implement Affordable Housing Exemptions (Newcastle Claims 15 and 16)*

Newcastle next alleges that Measure ULA violates the separation of powers doctrine and is unconstitutionally vague because it improperly delegates administrative rulemaking power to the Los Angeles Housing Department. (Newcastle Compl. ¶¶ 144–146; 246–252.) Newcastle is incorrect. Measure ULA resolves all fundamental policy issues, and merely directs the Housing Department to promulgate simple procedures relating to affordable housing exemptions. For the same reason, the law is not vague.

(a) **Measure ULA Lawfully Delegates Authority to the Los Angeles Housing Department (Newcastle Claim 15).**

Newcastle claims erroneously that Measure ULA violates the separation of powers doctrine by "unconstitutionally delegat[ing]" to the Los Angeles Housing Department promulgation of "procedure[s]" for demonstrating whether an applicant qualifies for an affordable housing exemption. (Newcastle Compl. ¶¶ 144–146; 246–249.)

A delegation of power is unlawful "only when a legislative body . . . leaves the resolution of a fundamental policy issues to others, . . . fails to provide adequate direction for the implementation of that policy," or fails to provide safeguards adequate to prevent

the abuse of the delegated power. (*Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2017) 3 Cal.5th 1118, 1146, 1150–1151 (*Gerawan Farming*).) Here, Newcastle has not alleged any such failures or abuses of delegated power, and indeed, there have been none.

First, "resolution of a fundamental policy issue" requires resolution of the major questions after study and debate, leaving only "the power to fill up the details" to agencies. (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 419; *Kugler v. Yocum* (1968) 69 Cal.2d 371, 376 (*Kugler*).) That is precisely what was done here. The initiative process involved debate about the merits of Measure ULA, and the voters made the fundamental policy decision to impose a 4 to 5.5% tax on sales of real property to fund the construction of low-income housing and to provide anti-eviction and homelessness services. The voters also made the policy decision to exempt certain entities with "a history of affordable housing development" or "management" and potentially non-profits who acquired property "to produce income restricted affordable housing." (Newcastle Compl. ¶¶ 145–146, quoting Measure ULA §§ 21.9.14 and 21.9.16.) The California Supreme Court has said: "(w)hile the legislative body cannot delegate its power to make a law, it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend." (*Kugler*, *supra*, at p. 376.) That is what Measure ULA does—it resolves the fundamental policy questions and only delegates to the Housing Department the power to identify entities with of a history of affordable housing development, a "fact or state of things upon which" Measure ULA's action "depend[s]."

Second, direction for the implementation of a policy is "adequate" when it provides statutory guidance on what factors to consider in implementing that policy. (See *Carson Mobilehome Park Owners' Assn. v. City of Carson* (1983) 35 Cal.3d 184, 190–191 (*Carson*).) Here, Measure ULA directs the Los Angeles Housing Department to restrict the exemption to those with a history of "affordable housing development" or "management," while considering the factors in the Los Angeles administrative code, such as improving

access to permanently affordable housing for vulnerable populations, addressing the City's residents' need for affordable housing and tenant protections, increasing the supply of affordable housing served by transit, and deploying this policy in a way that addresses racial segregation and racial discrimination. (Newcastle Compl. ¶¶ 145–146; Los Angeles Administrative Code, division 22, chapter 24, art. 9.) Measure ULA provides more guidance than the delegation of authority approved by the California Supreme Court in *Carson*, wherein the law merely stated that rent increases be "just, fair, and reasonable" based on consideration of various factors. (*Carson*, *supra*, at p. 190.) Measure ULA is far more specific, and likewise "sets forth a . . . list of factors" to consider in implementing the exemption. (*Gerawan Farming*, *supra*, 3 Cal.5th at p. 1149.) Measure ULA thus provides an adequate guidance for the implementation of the affordable housing exemption.

Third, there are adequate safeguards to prevent abuse by the Los Angeles Housing Department. For example, the Los Angeles Housing Department has a citizens' oversight commission designed to prevent abuse of power. (Los Angeles Administrative Code, division 22, chapter 24, art. 9, section (h).) Any taxpayers wanting to challenge the denial of an exemption may also challenge the tax and demand a refund. (See Los Angeles Mun. Code § 21.9.10; Rev. and Tax. Code § 7277.)

Newcastle's unlawful delegation claim thus fails.

(b) **Measure ULA Is Not Unconstitutionally Vague (Newcastle Claim 16).**

Newcastle alleges that Measure ULA is unconstitutionally vague because the Los Angeles Housing Department has not yet implemented regulations governing the affordable housing exemptions to the Measure ULA tax. (Newcastle Compl. ¶¶ 250–252.) But to be "deemed void for vagueness," a statute must "either forbid[] or require[] 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 and Workforce Development Agency* (2019) 30 Cal.App.5th 997, 1013.) "[G]reater leeway is permitted regarding civil enactments," and "the mere presence of some degree or

uncertainty of the wording of a statute does not make the statute void for vagueness." (*Ibid.*) A statute will have the requisite degree of certainty as to meaning "if any reasonable and practical construction can be given its language or if its terms may be made reasonably certain by reference to [its legislative history or purposes]." (*Id.* at 1014.)

The tax exemptions are not unconstitutionally vague. First, and fatally, Newcastle does not identify any language that is not susceptible to a reasonable practical construction. Second, Newcastle argues that the fact that the Los Angeles Housing Department has not yet implemented the tax exemptions means that the regulation is vague as to who will receive exemptions. (Newcastle Compl. ¶¶ 251, 144–148.) There is no "vagueness" issue here: it simply means that no one presently qualifies for the affordable housing exemptions to Measure ULA's tax. Moreover, Measure ULA is not vague simply because the Housing Department has not yet implemented regulations because "the terms of the Act itself are sufficiently precise that those who are subject to it can reasonably understand what is required, and the agencies charged with its execution can reasonably understand what they must do." (*Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 505.)[12]

Newcastle's vagueness challenge to Measure ULA thus fails.

E. **Newcastle's Requests for Relief Must Fail (Newcastle Claims 10-13)**

1. *Section 1983 Damages Are Unavailable Here (Newcastle Claim 11)*

Section 1983 (42 U.S.C. § 1983) damages are not available when the basis of the claim is a tax and the plaintiff has adequate remedies in state law. (*General Motors Corp. v. City and County of San Francisco* (1999) 69 Cal.App.4th 448, 460.) If Measure ULA were invalidated, anyone subject to the tax would be entitled to collect a tax refund. (See Los Angeles Mun. Code § 21.9.10; Rev. and Tax. Code § 7277.) Thus, Newcastle has adequate remedies at state law, and its Section 1983 claim should be dismissed. (Newcastle Compl. ¶¶ 214–217.)

[12] This claim is also premature at this stage. (*West Coast Univ., Inc. v. Bd. of Registered Nursing* (2022) 82 Cal.App.5th 624, 647.)

2. *Newcastle's Ancillary Claims Fail (Newcastle Claims 10-13)*

Newcastle alleges several claims for relief that depend on the predicate state and federal constitutional challenges discussed above. (Complaint ¶¶ 214–241 [42 U.S.C § 1983, Writ of Mandate, Declaratory Relief, and Declaration of Invalidity claims].) Because each predicate claim fails, the Court should dismiss the claims for relief as well.

V. CONCLUSION

The Court should dismiss all of Plaintiffs HJTA and Newcastle's claims and deny leave to amend. Plaintiffs cannot cure any of the defects identified above because they cannot plead any set of facts that would rescue their unviable legal theories. Upon granting this motion and resolving the parallel cross-motions for judgment on the pleadings for the parallel complaint, the Court should enter a single, conclusive final judgment in this action. (Code Civ. Proc., § 870, subd. (a); *Committee for Responsible Planning v City of Indian Wells* (1990) 225 Cal.App.3d 191, 197–198.)

Dated: June 23, 2023

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PROOF OF SERVICE

I, Skyler Terrebonne, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.

On June 23, 2023, I served an original version of the foregoing document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS** on each interested party, as stated in the attached service list, by electronic service, via upload to OneLegal. On June 26, 2023, I served a corrected version of the foregoing document, adding CRS information, on each interested party, as stated in the attached service list, by email.

Executed on June 26, 2023, at Los Angeles, California.

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

Skyler Terrebonne

(Type or print name) (Signature)

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