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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

DEFENDANTS SCANPH, KIWA, AND SEIU LOCAL 2015's NOTICE OF ERRATA RE DEFENDANTS' REPLY TO HOWARD JARVIS TAXPAYERS ASSOCIATION ET AL.'s OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

Honorable Barbara Scheper
Reservation ID: 760338369080
Date: September 26, 2023
Time: 8:30 a.m.
Place: Stanley Mosk Courthouse,
111 N. Hill St., Dept. 30
Los Angeles, California 9001

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

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

PLEASE TAKE NOTICE that Defendants Southern California Association of Non Profit Housing, Inc. et al. ("Defendants") substitute Exhibit A for Defendants' Reply to Howard Jarvis Association Et Al.'s Opposition to Defendants' Motion for Judgment on the Pleadings, which Defendants filed electronically on September 8, 2023, in order to clarify the holding of the case *Hunt v. v. Riverside* (1948) 31 Cal.2d 619. The change appears on page 4, line 25 with the removal of the words "it did so extend, because" and on page 5, lines 2-4 with the addition of the clarifying sentence "Because the Constitution does not reserve the power of referendum over sales tax (as it does for the initiative power), the Riverside charter in *Hunt* was permitted to exclude sales tax from the local referendum power. (*Id.* at 623-24.) "

The attached Reply to Howard Jarvis Taxpayer Association Et Al.'s Opposition to Defendants' Motion for Judgment on the Pleadings contains that clarifying correction and no other edits.

Dated: September 14, 2023

Respectfully submitted,

By: 

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PROOF OF SERVICE

I, Nicole Miller, 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 September 14, 2023, I served the foregoing document describe as **DEFENDANTS SCANPH, KIWA, AND SEIU LOCAL 2015's NOTICE OF ERRATA RE DEFENDANTS' REPLY TO HOWARD JARVIS TAXPAYERS ASSOCIATION ET AL.'s OPPOSITION TO DEFENDANTS' MOTION FOR JUDGEMENT ON THE PLEADINGS** , on each interested party, as stated in the attached service list, by electronic service, via email.

Executed on September 14, 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.

Nicole Miller
(Type or print name)

(Signature)

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Exhibit A

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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. 22STCV00352) DEFENDANTS SCANPH, KIWA, AND SEIU LOCAL 2015's REPLY TO HOWARD JARVIS TAXPAYERS ASSOCIATION ET AL.'S OPPOSITION TO DEFENDANTS' MOTION FOR JUDGEMENT ON THE PLEADINGS Honorable Barbara Scheper Reservation ID: 760338369080 Date: September 26, 2023 Time: 8:30 a.m. Place: Stanley Mosk Courthouse, 111 N. Hill St., Dept. 30 Los Angeles, California 9001 Complaints Filed: December 21, 2022 and January 6, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Defendants Southern California Association of Non-Profit Housing, Inc., et al. ("Defendants") hereby reply to the Opposition to Defendants' Motion for Judgment on the Pleadings filed by Plaintiffs Howard Jarvis Taxpayer Association and Apartment Association of Greater Los Angeles (collectively, "HJTA").

I. INTRODUCTION

The California Constitution[1] affirms that "[a]ll political power is inherent in the people." (Cal. Const., art. II, § 1.) To be sure, the initiative and referendum powers were added to the Constitution in 1911 as an explicit reservation of those rights, "in light of the theory that all power of government ultimately resides in the people." (*Assoc. Home Builders etc. v. City of Livermore* (1976) 18 Cal.3d 582.) Those explicit provisions were a means of effectuating the Constitution's mandate that ***political power is inherent in the people***. They were not a grant to the people of some power that the people did not have before. (*Id.* at 591) Indeed, the initiative power is described as "one of the most precious rights of our democratic process" and it is "the duty of the courts to jealously guard the right of the people." (*Id*.)

In an effort to sidestep these fierce constitutional protections afforded to the people's inherent initiative power, HJTA decries Defendants' defenses of Measure ULA as "extreme," and concocts an analytical framework under which it claims, among other things, that for Measure ULA to be valid, Los Angeles Charter section 450 ("Section 450") of the City Charter must be invalid. HJTA Opp. at 7:20-8:7. But no court has adopted HJTA's framework before, and no Defendant has argued invalidity of Section 450.

HJTA's proposed two-part framework urges this Court to adopt, in "Part One," an interpretation of Proposition 13 that is contrary to its populist history—*i.e.*, that would limit the local initiative power in a manner inconsistent with Proposition 13's very purpose to empower the people to adopt into law measures that their elected public officials had refused or declined to adopt. *See* HJTA Opp. at 7:7-11.

In "Part Two" of its analysis, HJTA urges this Court to draw a false distinction between so-called "procedural" and "substantive" limitations on the initiative power. HJTA Opp. at 7:12-

[1] All mentions of the "Constitution" are made in reference to the California Constitution.

19. But HJTA's imagined distinction is based at best on three passing references to "substantive limitations" in dicta that cannot bear the weight that HJTA would place upon them. Accepting HJTA's theory would require this Court to narrow, or disregard, holdings of established California Supreme Court[2] law. HJTA also attempts to draw an immaterial distinction between the statewide and local initiative powers—while ignoring that both are reserved to the people, and protected by the Constitution.

But no matter HJTA's attempts to erode the people's initiative power, the fact is that the initiative power is a closely-guarded and highly valued right of the people of Los Angeles. The people validly exercised that very power last November in passing Measure ULA. [3]

II. ARGUMENT

HJTA's core argument is that because article XIII A, section 4 ("Section 4") precludes local governments from enacting special taxes, and because Section 450 limits the local initiative power to the same subject matter as the local government, that the people of Los Angeles are not empowered to impose a special tax in the City of Los Angeles by initiative. HJTA ignores both that Section 4 is inapplicable to voter initiatives, [see e.g. *City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, 708] and that Section 450 does not and cannot be interpreted to impose a subject matter limitation on the legislative

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[2] All mentions of the "Supreme Court" are made in reference to the California Supreme Court.

[3] Despite filing its own two-volume Opposition to Defendants' Motions for Judgment on the Pleadings, Plaintiff Newcastle also belatedly filed a 29-page Joinder to HJTA's Cross-Motion for Judgment On the Pleadings that exceeds the page limits set by Judge Treu at the June 6, 2023 Case Management Conference, and must be stricken on that basis alone. (*See* Cal Rules of Court, Rule 3.1113(g) (Effect of filing an oversized memorandum)). Newcastle's Joinder, however, is additionally improper because it attempts to interject, into HJTA's Cross-Motion, issues that were not even raised in HJTA's Complaint, which alleges only two causes of action based on Proposition 13 and Section 450.

Defendants thus submit this reply brief in response to HJTA's Opposition and with respect to the two causes of action alleged in HJTA's Complaint. Defendants note, however, that because Newcastle's improper Joinder simply rehashes the arguments in Newcastle's Opposition, its Joinder is substantively duplicative of its Opposition, and Defendants will address Newcastle's Opposition in its separate Reply to Newcastle.

initiative power. (*Rossi v. Brown* (1995) 9 Cal.4th 688.) Each of HJTA's attempts to avoid these binding authorities fail.

None of HJTA's various efforts to distinguish Defendants' cited cases, nor its unsubstantiated claims of chaos and mayhem, change the relevant statutory and constitutional framework. The initiative power is a closely-guarded inherent right that may not be limited or abridged beyond the Constitutional reservation and absent clear statements to the contrary.

A. HJTA's Exaggerated Distinction between Substantive and Procedural Limitations on the Initiative Power Cannot Support Invalidating Measure ULA

HJTA attempts to argue that Defendants' cited cases are inapposite because they addressed "procedural" rather than "substantive" limitations on the initiative power. *E.g.*, HJTA Opp. at 14-15. These arguments miss the mark, for at least two reasons. First, this imagined "procedural" versus "substantive" distinction has no basis in the relevant Supreme Court precedent regarding city charters; both *Rossi* and *Hunt* plainly held that a city charter cannot place substantive limitations on the initiative power to legislate. Second, HJTA's only basis for this imagined distinction consists of a handful of cherry-picked references to the phrase "substantive limitations" in dicta. When properly read, they do not support HJTA's position.

1. Our Supreme Court in Rossi held a city charter cannot substantively limit the initiative power to legislate, through procedure or otherwise

HJTA argues that *Rossi* does not apply to the instant case because *Rossi* supposedly involved a "procedural" question of "whether repealing a tax is the same as a referendum on the very same tax," and thus never reached the question of whether that referendum was valid as a matter of "substance." HJTA Opp. at 16:1-8. HJTA claims that "it is actually impossible to interpret *Rossi* as a decision over an initiative's permitted legislative substance." *Id.* But our Supreme Court in the very first line of the *Rossi* decision debunks HJTA's characterization:

> We are asked to decide whether, under a city charter which prohibits referenda on tax ordinances, but which grants to the electorate the power to adopt any legislation that the board of supervisors may enact, the initiative power may be used to prospectively repeal a tax ordinance and to prevent adoption by the board of supervisors of any future ordinance imposing a similar tax.

(*Rossi, supra,* 9 Cal.4th at 693.) The question in *Rossi* was thus whether the San Francisco City Charter's prohibition on tax referenda could, as a substantive matter, preclude the voters from exercising their legislative authority with respect to tax measures. The *Rossi* court focused its analysis on this substantive question. It looked to the constitutional and charter provisions at issue to hold that "no such limitation is imposed on the people's exercise of their reserved initiative power" and that "history confirms that the power of the people to control taxation was among the principal benefits of the initiative anticipated by its supporters." (*Id*. at 693.)

Thus, the *Rossi* holding—that "a city charter may not restrict the broad power of initiative and referendum granted by the Constitution"—was made squarely within the context of a dispute over whether a city charter "which prohibits referenda on tax ordinances, but which grants to the electorate the power to adopt any legislation that the board of supervisors may enact" could in fact preclude initiatives on tax ordinances. (*Id.* at 704, 693.) The *Rossi* court concluded that it could not. *Rossi* is thus directly applicable here, and is fatal to HJTA's contention that the Los Angeles City Charter substantively limits the voters' initiative power to legislate over taxes.

HJTA likewise incorrectly claims that *Hunt v. Riverside* (1948) 31 Cal.2d 619 involved a procedural limitation on the initiative power. HJTA claims that the *Hunt* court considered "only whether the referendum power applied as a valid procedural response" to sales tax legislation.[4] HJTA Opp. at 14:17-23. *Hunt*, however, plainly addressed substance.

Hunt presented the issue of whether a sales tax ordinance was the proper subject of referendum. (*Hunt, supra,* 31 Cal.2d. at 621 ["Whether respondents are correct in refusing to submit the ordinance to a vote of the electors depends primarily upon whether the referendum power reserved to the people in either the California Constitution or the Charter of the City of Riverside, extends to such an ordinance."].) This question clearly goes to the permitted *substance* of a referendum—*i.e.*, whether the referendum power "extends to such an ordinance." (*Id.*) The *Hunt* court concluded that "as between the provisions of the constitution and the provisions of a

[4] Under HJTA's categorization of substantive and procedural issues, the present case must also be regarded as involving a procedural rather than substantive issue, i.e. whether the initiative power applies as a valid procedural mechanism to enact a transfer tax.

city charter, those which reserve the greater or more extensive referendum power in the people will govern." (*Id.* at 623). Because the Constitution does not reserve the power of referendum over sales tax (as it does for the initiative power), the Riverside charter in *Hunt* was permitted to exclude sales tax from the local referendum power. (*Id.* at 623-24.) Indeed, the Supreme Court later confirmed, in the *Rossi* decision, that *Hunt* stands for the broad proposition that a city charter cannot limit the initiative power to legislate. (*Rossi*, *supra*, 9 Cal.4th at 704 ["as we held in [*Hunt*], a city charter may not restrict the broad power of initiative and referendum granted by the Constitution."])

Thus, Section 450 cannot, under settled law, impose a substantive limitation on the initiative power reserved by the Constitution.

2. HJTA misinterprets three courts' passing references, in dicta, to "substantive limitations"

The support for HJTA's substantive vs. procedural theory stems largely from three passing references—each in dicta—to a San Francisco City Charter provision acting as a "substantive limitation" on the initiative power in *Proposition C*, *Matter of Proposition G*, and *HJTA v. CCSF*. HJTA Opp. at 9:4-25. HJTA elevates these dicta into an imagined rule that a city charter may impose substantive restrictions on the people's reserved initiative power over legislative acts without limitation. This interpretation, however, flies in the face of the holding in *Rossi* and the cases discussed in Defendants' briefing, which, time and again, champion courts' duty to protect the initiative power. (*See* Defendants' MJOP at Section IV.A.1 and IV.B.)

HJTA ignores the context in which these dicta were made, and in doing so overlooks the logical interpretation of this "substantive limitation" language: that while a city charter may not restrict the constitutionally-reserved initiative power over *legislative* acts, it can dictate whether to substantively expand or restrict the initiative power over *other* municipal acts, such as administrative acts.

For example, HJTA notes that the San Francisco City Charter provision at issue in *Rossi* closely resembles Section 450 of the Los Angeles City Charter. HJTA Opp. at 9:16-19. Indeed, the

San Francisco charter section cited in *Rossi* provides: "The registered voters shall have the power to propose by petition, and to adopt or to reject at the polls, *any ordinance, act or other measure which is within the power conferred upon the board of supervisors to enact*." (*Rossi,* 9 Cal.4th. at 697 [emphasis in original]). While this language is similar to that of Section 450, the *Rossi* court does not describe it as a limitation, but as an "extremely broad" reservation of the initiative power. (*Id.* at 696) As the *Rossi* court explains, "[t]he local initiative power may be even broader than the initiative power reserved in the Constitution." (*Id*.) While the initiative power reserved by the Constitution extends only to legislative acts (e.g., ordinances[5]), the *Rossi* court explains that the local initiative power can go beyond that, and further encompass administrative or other municipal acts. The charter language at issue in *Rossi* does just that: it expands the initiative power reservation beyond just ordinances to also include any "act or other measure which is within the power conferred upon the board of supervisors to enact." The Court notes: "[a]fter all, the people through their charter have a right to vest in the voters of the city the right and power to deal through initiative action with any matter within the realm of local affairs or municipal business, whether strictly legislative or not, as that term is generally used." (*Id.* at 696 [quoting *Spencer v. City of Alhambra* (1941) 44 Cal.App.2d 75, 78].)

The analysis in *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233 ("*Pettye*") further undergirds this interpretation of the substantive limitations language used by some courts in the context of city charters and the initiative power. *Pettye* makes clear that the referred-to "substance" is whether the initiative is directed to legislative, administrative, or other municipal matters. As the court in *Pettye* notes, "[h]istorically, courts have restricted the exercise of local initiative powers by drawing a distinction between legislative and administrative acts." (*Id*. at 240) However, "the people through their charter have the right to vest in themselves the 'power to deal through initiative action with any matter within the realm of local affairs or municipal business, whether strictly legislative or not, as that term is generally used....' " (*Id.* at

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[5] The Constitutional reservation of initiative power extends to "legislative acts but not administrative or adjudicatory ones." (*The Park at Cross Creek, LLC v. City of Malibu* (2017) 12 Cal.App.5th 1196, 1203.)

241) So, as the Supreme Court held in *Rossi*, a charter cannot restrict the initiative power over legislative acts beyond what is reserved by the Constitution, but it can dictate whether the initiative power reservation can go beyond that to encompass non-legislative municipal matters. (*Rossi*, *supra*, 9 Cal. 4th at 704.)

Thus, while HJTA latches on to passing references to charter sections as "substantive limitations," HJTA accomplishes little more than showing that a charter may control whether it reserves power beyond the constitutional reservation of the power to legislate by initiative. As HJTA correctly acknowledges, Measure ULA is a legislative act. (HJTA Opp. at 17 ["It is a legislative action that is in question."]) HJTA provides no support for the contention that a city charter can restrict the constitutionally-reserved legislative initiative power.

B. HJTA's New Distinction between Statewide and Local Initiative Power is Immaterial

HJTA also newly attempts to manufacture an additional distinction between how the courts treat statewide and local initiatives, in yet another attempt to avoid binding authority. This distinction is likewise inconsistent with the law. Article II, sections 8 and 11 reserve both statewide and local initiative powers to the voters. Section 11 authorizes the Legislature to provide ***procedures*** by which the electors of each city or county can exercise their initiative power, while allowing charter cities to set their own initiative procedures. (Cal. Const., art. II, § 11; *see e.g. Barnes v. Wong* (1995) 33 Cal.App.4th 390, 392 ["Under our state constitution, chartered cities such as San Francisco look to their charters, rather than the general law, as the source of authority for ***procedures governing submission of ballot arguments***."] [italics added])

Contrary to HJTA's assertion, this provision does not permit charter cities to limit the initiative power to legislate, but to prescribe methods by which voters can exercise it.[6] Indeed, while the local initiative power can go beyond what is reserved by the Constitution, it "may not be

[6] The Court of Appeal has elucidated in the analogous context of setting procedures for exercising the referendum power that "[c]harter cities may provide for the exercise of the power of referendum in any manner that does not impinge on the basic right of referendum expressed in the Constitution." (*Rubalcava v.Martinez* (2007) 158 Cal.App.4th 563, 571.)

restricted to less than that constitutionally authorized." (*Rossi*, *supra*, 9 Cal.4th at 702. [holding San Francisco charter does not restrict the voters' right to legislate on tax measures by local initiative.]) Moreover, the Supreme Court has made clear that "courts preserve and liberally construe the public's ***statewide and local initiative power***." (*California Cannabis Coalition v. City of Upland*, (2017) 3 Cal.5th 924, 936 [italics added]); See also (*id.* ["the people's power to propose and adopt initiatives is at least as broad as the legislative power wielded by the Legislature and local governments."])

HJTA baselessly accuses Defendants' of claiming section 450 is unconstitutional and rendering it meaningless by refusing to read limitations on the initiative power to legislate into it. But, as explained in Defendants' Motion, section 450 is a reservation of the initiative power that provides mechanisms by which the local electorate may exercise this reserved power. (Defendants' MJOP at Section IV.B.2.) "In reserving the right of initiative to electors of counties and cities, the Constitution expressly authorized the Legislature to establish procedures to implement the exercise of that right." (*Brookside Investments, Ltd. v. City of El Monte* (2016) 5 Cal.App.5th 540, 550.) This is exactly what section 450 and the subsequent charter sections addressing the initiative power do: restate the reserved power of the voters to legislate by initiative and prescribe the method to exercise that right.[7]

C. HJTA's Immaterial Distinctions Cannot Evade Application of Settled Principles of Statutory Interpretation in Favor of the Initiative Power

In addition to drawing irrelevant and unsupported distinctions in the law, HJTA also attempts to evade settled authority by arguing that those cases are inapposite because they allegedly do not reach the same question as the question at bar, or because they merely represent a "recent shock wave in special tax case law." HJTA Opp. at 8–9.

[7] For example, section 450 specifies that initiative petitions should be filed with the City Clerk. Section 451 requires that, prior to circulating an initiative petition, proponents submit a draft of the petition for the City Attorney to prepare an official title and summary of the proposed ordinance that must be incorporated into all copies of the initiative petition circulated for signatures and filed with the City Clerk – among many other procedural requirements.

In fact, there is nothing "shocking" about those cases. They are simply straightforward and consistent applications of settled law. As discussed below, these cases confirm that Section 4 and Section 450—when interpreted correctly—do not and cannot have the effect of invalidating Measure ULA. Section 4, enacted by Proposition 13, was never intended to bind the electorate and has never been held to apply to the electorate. (*See* Defendants' MJOP at Section IV.A.) And Section 450 cannot be interpreted to limit the initiative power, as explained *supra*, because its plain text does not include any such limitation. (See also *id*. at Section IV.B.)].

First, HJTA correctly acknowledges that *City of San Francisco v. All Persons Interested in the Matter of Proposition C* (2020) 51 Cal.App.5th 703 held that the supermajority requirement in Section 4 does not apply to citizens' initiatives, but incorrectly claims that the relevance of the *Proposition C* holding ends there, and that Section 4's prohibition on special taxes ***does*** apply to citizens' initiatives. HJTA Opp. at 9. But the court's analysis in *Proposition C* was not cabined to the supermajority requirement. It in fact affirmed, without reservation, that Section 4's prohibitions were limited to "Cities, Counties, and special districts," because "the law shuns repeals by implication," especially when the initiative power is at stake. (*Id.* at 714-15.) As did the Supreme Court in *Kennedy Wholesale*, the *Proposition C* court looked to extrinsic evidence for guidance and found "no evidence there to 'support[ ] the inference that the voters intended to limit their own power to raise taxes in the future by statutory initiative.'" (*Id.* at 716.) Indeed, "Proposition 13 was directed against 'spendthrift politicians' and in favor of restoring 'government of, for and by the people.' " (*Id.*)

HJTA effectively urges this Court to interpret the "Cities, Counties, and special districts" language in Section 4 to mean "Cities, Counties, and special districts for the procedural limitations of this Section," but "Cities, Counties, special districts, *and* voters' initiatives for the substantive limitations of this Section." HJTA's requested result is logically unsound and directly contradicts longstanding principles of statutory interpretation. These settled principles do not simply evaporate into the ether because a proposed limitation on the initiative power is allegedly "substantive" rather than "procedural."

Second, HJTA also alleges that the "clear statement" rule in *California Cannabis Coalition v. City of Upland* applies only "to rules of procedure, not substance," and that claims that finding otherwise could invite "chaos" in the law. HJTA Opp. at 19-20. But that "chaos" is wholly imagined on the part of HJTA. Our Supreme Court never limits the rule in this way and, in fact, explains the purpose of this rule is to protect and preserve the initiative power:

> Without an unambiguous indication that a provision's purpose was to constrain the initiative power, we will not construe it to impose such limitations. Such evidence might include an explicit reference to the initiative power in a provision's text, or sufficiently unambiguous statements regarding such a purpose in ballot materials. The concurring and dissenting opinion queries " 'by what authority' " we require clear evidence of an intended purpose to constrain exercise of the initiative power. (cite) Our answer is rooted firmly in the long-standing and consistent line of cases emphasizing courts' obligation to protect and liberally construe the initiative power (cite) and to narrowly construe provisions that would burden or limit its exercise (cite). Those cases underscore the centrality of direct democracy in the California Constitution, and the status of our presumption liberally construing the initiative power as a paramount structural element of our Constitution. (cite) A clear statement rule is consistent with, and indeed, appropriately advances our duty to safeguard the exercise of the initiative power.

Id. at 945-46. Defendants have cited multiple precedents where courts found in favor of the local initiative power consistent with the analysis here and HJTA has not pointed to any ensuing "chaos." If the risks were so dire, surely there would be pressing examples of such chaos.

The Supreme Court's reverence for the initiative power is only rational, given the relevant "constitutional and statutory backdrop" and history. (*Id.* at 935.) Indeed, the *Upland* court explained that "the enactment of the initiative power was sparked by 'dissatisfaction with the then governing public officials and a widespread belief that the people had lost control of the political process.'" (*Id.* at 934). Reservation of the people's initiative power was thus directly meant to "empower[] voters to propose and adopt provisions 'that their elected public officials had refused or declined to adopt.'" (*Id.*) Accordingly, "the people's power to propose and adopt initiatives is at least as broad as the legislative power wielded by the Legislature and local governments." (*Id.* at 935.) Thus, "[w]hen voters exercise the initiative power, they do so subject to precious few limits

on that power," (*Id*.) as, for example, voters in the City of Los Angeles did last November in passing Measure ULA.[8]

HJTA's substantive and procedural distinction is further undermined by *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233. In *Pettye*, the court examined Welfare and Institutions Code section 17001, which provides "The board of supervisors of each county, or the agency authorized by county charter, shall adopt standards of aid and care for the indigent and dependent poor of the county or city and county." (*Id*. at 237 fn. 2.) The court held that section 17001 was not a limitation on the initiative power and that San Francisco's "Care Not Cash" initiative, amending the city's general assistance standards of aid and care for homeless indigents, was valid. (*Id.* at 237) In so holding, the court relied on principles of statutory interpretation, including that courts "liberally construe constitutional and charter provisions in favor of the people's right to exercise their reserved power of initiative." (*Id*. at 240) Again, this principle was not limited to statutory interpretation in the context of procedural limitations on the initiative power.

Third, HJTA contends throughout its brief that Defendants' interpretation of *Rossi*, *Hunt*, *Upland*, and other binding authorities is "extreme," and that Defendants "argue that Los Angeles City Charter's section 450 must be declared invalid." E.g., HJTA Opp. at 10:3-7. Not so.

Defendants do not challenge Section 450, but rather HJTA's incorrect *interpretation* of Section 450 in conjunction with Section 4. As Defendants have explained, Section 450 provides a reservation of the initiative power, as well as procedural mechanisms by which a voter initiative may be submitted to the City Council to be placed on the ballot. But HJTA would read Section 450 to impose Section 4's special-tax prohibition on "Cities, Counties and special districts" onto the initiative power. HJTA's interpretation is inconsistent with case law unequivocally holding

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[8] HJTA's claim that *Upland v. California Cannabis* limits a local initiative power to no more than the local government's authority, (HJTA Opp. at 19-20,) is refuted by the *Upland* court's own deliberate assertion that "the people's power to propose and adopt initiatives is ***at least as broad*** as the legislative power wielded by the Legislature and local governments," (*id.* at 935, emphasis added). In doing so, the *Upland* court implicitly acknowledged that there are situations in which the initiative power in fact has broader authority than the legislature and local government, as discussed *supra* Section ii.

that Section 4 does not apply to the initiative power, that city charters should not be interpreted to abridge the initiative power absent a clear statement to that effect, and that ultimately, the people's power to legislate by initiative is reserved in the Constitution.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court dismiss all of Plaintiffs HJTA's claims and deny leave to amend as Plaintiffs cannot cure any of the defects identified above because they cannot plead any set of facts that would rescue their unviable legal theories.

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