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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HOWARD JARVIS TAXPAYERS ASSOCIATION and APARTMENT ASSOCIATION OF GREATER LOS ANGELES,

Plaintiffs,

v.

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

Defendants.

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 and Petitioners,

v.

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

PLAINTIFFS' COMBINED CROSS-OPPOSITION TO DEFENDANTS' MOTIONS FOR JUDGMENT ON THE PLEADINGS

Reservation ID:	664308177955
Hearing Date:	September 26, 2023
Time:	8:30 AM
Department:	72
Judge:	Hon. Joseph Lipner Judge for All Purposes
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Trial Date:	Not Set

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 the ULA and all proceedings related thereto,

Defendants and Respondents.

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I. INTRODUCTION

In this case, there is no dispute that Measure ULA is a special tax, that it is a transfer tax, and that the City Council could not have proposed it legally. In their attempt to defend the validity of Measure ULA, then, the City of Los Angeles (City) and supporters SCANPH, KIWA, and SEIU (Supporters) are reduced to arguing that Proposition 13 is irrelevant and that Section 450 of the Los Angeles City Charter is meaningless or unconstitutional.

Proposition 13 applies to this case because it is Part One of a two-part analysis. Proposition 13 prohibits the Los Angeles City Council from proposing or enacting a special transfer tax such as Measure ULA. (Cal. Const., art. XIII A, § 4; see also *Cohn v. City of Oakland* (1990) 223 Cal.App.3d 261; *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137; *Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120.) It is undisputed that the City Council could not have enacted Measure ULA.

Proposition 13 is materially linked to section 450 of the Los Angeles Charter because Measure ULA is clearly not, as that section requires, "[a]ny proposed ordinance which the Council itself might adopt." Section 450 is Part Two of the analysis. If the Council could not have adopted Measure ULA, nor could it be adopted by initiative. City and Supporters argue that section 450 of the Los Angeles Charter may be stricken under recent case law over voter approval margins. But, the case at bar is not about voter approval margins. It is about the substance of the ordinance and whether it falls within the substantive limitation that the City's voters placed upon their initiative power.

Section 450 of the Los Angeles City Charter cannot be stricken. It has served as a substantive limit on the local initiative power in Los Angeles for 110 years. There is no authority to invalidate it. Rather, all cases discussing such a provision, including the recent set that City and Supporters rely upon, acknowledge its validity. (*Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1046; *Howard Jarvis Taxpayers Assn. v. City and County of San Francisco* (2021) 60 Cal.App.5th 227, 237; *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 100-101; *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 240; *Rossi v. Brown* (1995) 9 Cal.4th 688, 697; *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1078 ["the [San Francisco] Charter 'imposes a substantive limit on the initiative power,'" citing *City and*

County of San Francisco v. All Persons Interested in the Matter of Proposition C (2020) 51 Cal.App.5th 703, 724].)

Alternatively, City argues that HJTA/AAGLA is misreading section 450; that it does not limit the scope of the local initiative power. But if it doesn't do that, then what does it do? Under City's theory, section 450 serves no purpose. That theory must be rejected because it violates one of the basic canons of statutory interpretation that prohibits construing a statute as useless surplusage. (*City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 54.)

II. ARGUMENT

A. THE RECENT SHOCK WAVE IN SPECIAL TAX CASE LAW DOES NOT VALIDATE MEASURE ULA.

A recent shock wave in case law has determined that local special taxes proposed by initiative need only simple majority approval rather than two-thirds. For example, Supporters and City here rely heavily on one of the four cases in that set: *City and County of San Francisco v. All Persons Interested in the Matter of Proposition C* (2020) 51 Cal.App.5th 703 (*All Persons*). Supporters correctly state *All Persons'* holding that the two-thirds supermajority requirement of Proposition 13's section 4 does not apply to a local special tax proposed by initiative. (Supporters' MPA at 9:7-9.) But contrary to City's representation, these cases are not identical to the present case. Their findings actually require the invalidation of Measure ULA.

The present case is not about the correct voter approval margin, which has been classified as a procedural matter. (*City and County of San Francisco v. All Persons Interested in the Matter of Proposition G*, 66 Cal.App.5th 1058, 1078; *All Persons*, 51 Cal.App.5th at 724.) This case is about substance. It is about the *type* of tax Measure ULA is and whether that type of tax is authorized in Los Angeles. Measure ULA is a special transfer tax, which is unlawful for any governing body to impose and, under the charter of Los Angeles and the charters of many other California cities, is equally unlawful for the voters to impose.

In contrast, the *All Persons* special tax was a business gross receipts tax, a typical tax that the San Francisco Board of Supervisors could also have proposed. *All Persons*, a case about the voter approval margin for a tax that the board could have proposed, is therefore not authority here because

it was for a proposition not considered. Neither are any of the other three cases on which City and Supporters rely. As City acknowledges, "cases are not authority for propositions not considered." (*People v. Avila* (2006) 38 Cal.4th 491, 566.)

None of the four cases relied upon by City and Supporters support the proposition that a tax initiative is valid "no matter what type of tax." (City's MPA at 21:12-13.) Unlike here, each of those cases 1) involved a type of tax the governing body could have proposed itself, and 2) decided only the hotly debated voter approval margin question, which is irrelevant here. In *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, the Fifth District validated a sales tax against a voter approval margin challenge. In *HJTA v. CCSF*, 60 Cal.App.5th 227, the First District validated a commercial rents tax against a voter approval margin challenge. And in *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, the First District validated a parcel tax against a voter approval margin challenge. Not one of these cases involved a type of tax that the governing body, as here, was expressly prohibited from adopting.

As none of the four cases considered a type of tax the governing body itself could not have adopted, none of those cases supports the City's theory that the voters of Los Angeles can impose a tax that is unlawful for the city council to impose. To the contrary, three of the four cases declare that a San Francisco charter provision similar to section 450 here, limiting an initiative to matters "within the powers conferred upon the Board of Supervisors to enact," substantively limited initiative legislation. In *All Persons*, the First District said: "But the charter imposes a substantive limit on the initiative power." (51 Cal.App.5th at 724.) *Matter of Proposition G* cited this same provision in agreement: "the Charter 'imposes a substantive limit on the initiative power,'…" (66 Cal.App.5th at 1078.) *HJTA v. CCSF* said: "But the charter imposes a substantive limit on the initiative power." (60 Cal.App.5th at 237.) On this point, the First District has been clear. Thus, if the court considers these cases, the takeaway is that language similar to section 450 in San Francisco's charter placed an identical substantive limit on initiative legislation.

The Los Angeles City Charter, like the San Francisco charter, is clear that legislation by initiative may not be of a type that the city council cannot enact. That is the law as it relates to this case, and that is why this court should rule that Measure ULA is invalid.

B. THE LOS ANGELES CHARTER'S SUBSTANTIVE LIMIT IS VALID. THUS, MEASURE ULA IS NOT.

Without directly saying so, Supporters and City incorrectly argue that the Los Angeles City Charter's section 450 must be declared invalid. They argue that the local initiative power is so strong that the city's own voters are incapable of protecting themselves against its potential misuse. (See Supporters' MPA at 11: 8 ["charter cities cannot limit the initiative power"].) There is no justification, nor need, to go to such extremes.

City portrays the invalidation of Measure ULA as a repeal by implication of the local initiative power itself, which is to be shunned. (City's MPA at 21:3.) But City confuses the local initiative power with pure majority rule democracy. It's not that simple.

There are critical differences between the statewide and local initiative power. The shunning of a repeal by implication, for example, was a concern for the *statewide* initiative power in article IV, section 1, not the local initiative power. (*City of Fresno*, 59 Cal.App.5th at 233, citing *All Persons*, 51 Cal.App.5th at 715-716, citing *Kennedy Wholesale, Inc. v. State Bd. of Equalization*[1] (1991) 53 Cal.3d 245, 249; see also Elections Code, § 9000.) But, expressly in our constitution, the local initiative power is either controlled by the Legislature or a city's charter. (Cal. Const., art. II, § 11; see also *Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1036 ["The Legislature was authorized to establish procedures for city and county voters to exercise their right of initiative. (Cal. Const., art. II, § 11; *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.) It has done so. In contrast to statewide initiatives, which may be placed directly on the ballot, the Legislature created an indirect process for city and county initiatives. These can only be submitted to voters if they have been presented to, but not enacted by, the local legislative body."].) Being controlled by any current Legislature or a city charter rather than the California Constitution alone,

[1] *Kennedy Wholesale* interpreted the statewide initiative power under article II, section 8 and 10, not the local initiative power defined in article II, section 11. City and Supporters do not address any of these articles and thus fail to define the initiative power they defend. Supporters cite to article II, section 1 for the broad statement that "all political power is inherent in the people" and "they have the right to alter or reform it when the public good may require." They do not, however, link this section to a conclusion that local governments, particularly charter cities which have additional powers, are purely majority rule systems. And they do not provide any cases interpreting article II, section 1 to support their position.

the local power is inherently not the same as the statewide initiative power, and it cannot be absolute. (See *id.*; Elections Code, §§ 9100; 9200; 9300.)

Because Los Angeles has a charter, that charter constitutionally controls its initiative power, subject *only* to preemptive state law and the state constitution. (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 170-171 ["the charter represents the supreme law of the City, subject only to conflicting provisions in the federal and state Constitutions and to preemptive state law"]; [otherwise, "a charter city may not act in conflict with its charter."].) The charter itself *is* state law, and only the Legislature or constitution can supersede it through something preemptive. (See Cal. Const., art. XI, §§ 3(a) ["The provisions of a charter are the law of the State and have the force and effect of legislative enactments."]; 5(a).) This is further underscored in section 11 of article II, which confers the local initiative power subject to procedures provided by the Legislature. It states: "[T]his section does not affect a city having a charter." Charter cities rule themselves. Los Angeles has made state law in its charter matching the substance of initiative legislation to what the City Council could adopt. That is the state law that cannot be broken.

There are no statutory or constitutional provisions that support City's and Supporters' arguments for preemption of the Los Angeles City Charter. Per article XI, sections 3 and 5, and per article II, section 11 — the section specifically *defining* the local initiative power in our constitution — the Los Angeles City Charter is supreme. Given these provisions, there can be no basis to strike, invalidate, or ignore Los Angeles Charter Section 450. The only provision asserted by Supporters here is the broad policy statement of article II, section 1: "All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require." But the city charter is an example of the people exercising that right by altering the initiative power "for their protection, security, and benefit." Moreover, article II, section 1, as a general statement of constitutional philosophy, has never been held to supersede more specific provisions of the constitution such as the provisions establishing the supremacy of a city charter.[2]

[2] *Upland*, 3 Cal.5th 924 likewise did not anywhere interpret whether article II, section 1 applied in any such way as suggested by City and Supporters here. *Upland* only concerned whether Proposition 218

Alternatively, Supporters argue that "Section 450 does not include any explicit limitation on the initiative power." (Supporters' MPA at 11: 8-9.) But Section 450 is explicitly titled "Subject of Initiative" and clearly defines that subject as "[a]ny proposed ordinance which the Council itself might adopt." The condition "which the Council itself might adopt" is an explicit limitation. And as recounted in HJTA/AAGLA's opening brief (HJTA's MPA at 15: 13-28), the voters intentionally added this language in 1911. Before 1911, the charter read that "any proposed ordinance may be submitted to the council by a petition." (*Ibid.*, citing RFJN, Exh. J, at 572.) The pre-1911 charter placed no limits on the subject matter of an initiative. The 1911 amendment cannot be interpreted as having made no change, for that would mean the voters engaged in an idle act. Settled principles of statutory construction require the Court to presume that the voters accomplished something through the amendment, and to give meaning to the words thereof. "We cannot presume the [voters] engaged in an idle act or enacted a superfluous statutory provision." (*Tesco Controls, Inc. v. Monterey Mechanical Co.* (2004) 124 Cal.App.4th 780, 792; *People v. Hinkel* (2005) 125 Cal.App.4th 845, 852.) "[A]n interpretation which would render terms surplusage should be avoided, and every word should be given some significance, leaving no part useless or devoid of meaning." (*City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 54; *Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 330.) Accordingly, the Los Angeles City Charter has since 1911 expressly limited the initiative power to the type of legislation the City Council may adopt. The City Council may not adopt special transfer taxes. Thus, neither can Measure ULA validly do so.

Moreover, these charter-imposed substantive limits on the type of legislation that may be proposed by initiative are common and well-recognized. (See HJTA's MPA at 15:3-12.) Los Angeles Charter section 450 itself was affirmed as "a limit on substantive subject matter" in 2016. (*Safe Life Caregivers v. City of Los Angeles,* 243 Cal.App.4th 1029, 1046.) A virtually identical limit was also recognized again post-*Upland*. In *HJTA v. CCSF,* 60 Cal.App.5th 227, the Court of Appeal recognized that the San Francisco Charter "imposes a substantive limit on the initiative power." (*Id.* at 237; see also *City and County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, 100-101 [same

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specifically applied to the timing of a general tax election where the general tax was proposed by initiative.

recognition in 1988, limiting substance of an initiative to substance the board of supervisors could enact].) HJTA lost on its charter argument in *HJTA v. CCSF* because it was arguing that, since the Board of Supervisors could not impose a tax without a two-thirds vote, neither could the electorate. The Court held that the vote threshold is a procedural requirement that does not apply to initiatives. That case did not involve an attempt by voters to enact a law that was outside the Board's substantive authority. The Court emphasized that San Francisco's charter would have prohibited that. "The Charter recognizes voters' initiative power as long as an initiative measure is 'within the powers conferred upon the Board of Supervisors to enact.' This means 'the electorate has no greater power to legislate than the board itself possesses.'" (*HJTA v. CCSF*, 60 Cal.App.5th at 236 [citations omitted].) Here, Measure ULA's substance is the issue. The Los Angeles Charter's limit is valid.

Supporters and City confuse procedural cases with the substantive issue here. For example, as Supporters explain, *Newport Beach Fire and Police Protective League v. City Council of City of Newport Beach* (1960) 189 Cal.App.2d 17 concerned a vote margin, not the substance of legislation. And Supporters do not assert that it concerned the substance of legislation. (See Supporters' MPA at 11:20 – 12:7.) Therefore, the *Newport Beach* case can do nothing to defeat section 450's substantive limit.

Supporters cite *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, which affirmed the substantive limit in the San Francisco charter. Regarding San Francisco's "Care Not Cash" Initiative, the court defined the initiative power just as did *Safe Life Caregivers*, *HJTA v. CCSF*, and *CCSF v. Patterson* above: "The city charter vests in the voters the power to enact 'any ordinance, act or other measure which is within the powers conferred upon the Board of Supervisors to enact … .' (S.F. Charter, art. XVII [defining 'initiative'] and art. XIV, § 14.100 [providing that 'voters of the City and County shall have the power to enact initiatives']." (118 Cal.App.4th at 240.) This was written immediately after citation to *Rossi v. Brown* (1995) 9 Cal.4th 688 to illustrate that the "reserved initiative power of the San Francisco electorate is extremely broad" (*Ibid.*) meaning that it is *as* broad as the legislative power of the Board of Supervisors.

In fact, the full story of the "Care Not Cash" Initiative demonstrates that initiatives may not legislate in areas that are off limits under the charter. In *McMahan v. City and County of San Francisco* (2005) 127 Cal.App.4th 1368, a portion of the "Care Not Cash" Initiative was severed for substantive

invalidity. "Care Not Cash" passed with 60% voter approval and generally required San Francisco to provide in-kind benefits to indigent persons instead of direct cash assistance. Within the initiative was a funding mandate that required San Francisco "to allocate a fixed portion of its budget each year to services for the homeless." (*Id.* at 1371.) The City Attorney's Office informed the board that the funding mandate was unenforceable because budgetary appropriations were the board's job under the city charter and the initiative was only an ordinance that did not amend the charter. (*Id.* at 1371-1372.) The fact that "Care Not Cash" was a voter initiative — like Measure ULA here — did not grant it any special privilege to overcome boundaries set by the charter.

Within *Pettye* is one quote from *Hunt v. Riverside* (1948) 31 Cal.2d 619 that Supporters cite in isolation, but that ultimately fails to support City and Supporters as well. Supporters quote the following passage without citing *Hunt* or explaining the context: "In other words, as between the provisions of the Constitution and the provisions of a city charter, those which reserve the greater or more extensive referendum power in the people will govern." (31 Cal.2d at 623; see Supporters' MPA at 11:16-19.) At first blush, this could sound like any city charter provision limiting the substance of an initiative must be invalid, including section 450 here. But that is not so, because again, City and Supporters confuse procedural limitations with substantive limitations.

In *Hunt*, the Supreme Court decided that a sales tax could not be subject to referendum under either the state constitution or the city's charter. But the substance of the sales tax itself was never in question, as Measure ULA's substance is here. The case, as all of them to date have been, was about procedural power. In assessing the scope of the referendum power as between the state constitution and the charter, the court was never asked to consider, nor did it consider, the substance of the sales tax legislation itself, only whether the referendum power applied as a valid procedural response to it. Thus, when the court examined the Constitution and the Riverside City Charter to see "which reserve the greater or more extensive referendum power," 31 Cal.2d at 623, it was looking to see which afforded the greater power of the *procedure* of referendum. The *type* of tax was unquestioned and, as a sales tax, already a valid type.

Here, there is no doubt that Los Angeles voters have a strong *procedural* power to draft a proposed initiative, circulate a petition, and qualify the measure for the ballot. But the Los Angeles

City Charter's substantive limitation on the *type* of legislation permitted by initiative is not invalidated by *Hunt*. The "greater … power" referred simply to the procedural power. (See *Rossi v. Brown*, 9 Cal. 4th 688, 715 ["[*Hunt*] considered only the scope of the referendum power."].)

City relies heavily on *Rossi v. Brown*. City describes *Rossi* as holding that "the voters retained initiative power to propose an ordinance that had the effect of repealing tax legislation, thereby protecting the voters' initiative power irrespective of a charter provision that arguably precluded their authority to set aside tax legislation." (City's MPA at 23: 4-7.) That is a dishonest butchering of *Rossi*. The issue was not whether San Francisco's charter could restrict a power that the people had under the California Constitution. The issue was whether the procedural prohibition against *referending* a tax prevented the people from exercising one of their other procedural powers – the initiative power – to repeal a tax. (*Rossi,* 9 Cal.4th at 693 ["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."].)

Like every other relevant case here, *Rossi* was about the breadth of the *procedure* of the initiative power, not legislative substance. In its opening sentence, *Rossi* acknowledged that the charter there "grants to the electorate the power to adopt any legislation that the board of supervisors may enact." (*Ibid.*) In that unquestioned context, the Supreme Court described its task as construing only "a city charter['s prohibition of] referenda on tax ordinances" and whether that equated to prohibiting an initiative "to prospectively repeal a tax." (9 Cal.4th at 693) The description of the charter is consistent throughout the opinion. And the purpose of the opinion was simply to explain that, given differing language and terms in an initiative, an initiative prospectively repealing a tax is not the functional equivalent of a referendum. (*Id.* at 699 ["The Court of Appeal [erroneously] reasoned that use of the initiative power to repeal a tax measure was the equivalent of subjecting the ordinance imposing the tax to referendum, an impermissible use of the referendum."].)

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It is actually impossible to interpret *Rossi* as a decision over an initiative's permitted legislative substance because *Rossi* asked only whether repealing a tax is the same as a referendum on that very same tax. In affirming the initiative power to repeal an existing tax, *Rossi* never altered the rule that the substance of legislation must be a valid option in the first place. In the oft-quoted context of guarding and not restricting the local initiative power as much as possible, the Court simply referred to the "use" of the power to repeal: "Since the local power may not be restricted to less than that constitutionally authorized, the Legislature[3] presumably intended that the San Francisco Charter also authorize use of the initiative to repeal a tax ordinance." (9 Cal.4th at 702.)

Lest there be any doubt about *Hunt* or *Rossi,* it must be noticed that *Rossi* approved the same substantive limit in the San Francisco charter as here is comparable to section 450. Directly after calling the initiative power "extremely broad," *Rossi* cited the San Francisco Charter including its substantive limit: "Section 9.108, subdivision (a) of the charter 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*, or any legislative act which is within the power conferred upon any other board, commission or officer to adopt, or any amendment to the charter.'." (9 Cal.4th at 697, emphasis in original.) Following *Rossi* means that the substantive limitation contained in section 450 of the Los Angeles City Charter must be recognized and enforced. The people do not have the power to legislate a special transfer tax because the same power has not been conferred upon the City Council.

City points out that a charter may expand the initiative power to apply to non-legislative matters, citing *Farley v. Healey* (1967) 67 Cal.2d 325 and a 1985 Los Angeles charter amendment that removed such a previous power and thus "does not broaden the initiative power to administrative or executive matters." (City's MPA at 22:10-16; 23: 16-27.) These references help HJTA/AAGLA, not City.

The issue in this case is not, as in *Farley*, whether the voters can take non-legislative action by

[3] 'Note that *Rossi* refers to what the Legislature intended for the local initiative power by adding the relevant provision to its charter in 1911. Similarly, here, the Senate approved the relevant amendment to the Los Angeles Charter in 1911. (RFJN, Exh. L.)

initiative. It is legislative action that is in question.

Further, *Farley* applied the exact same language from the San Francisco charter to reach its result as applies here through section 450. In determining whether the voters could propose a statement of policy about the Vietnam War, the court looked to the board of supervisors' power, expressly finding that "boards of supervisors and city councils have traditionally made declarations of policy on matters of concern to the community." (67 Cal. 2d at 328.) Thus, it was "any ordinance, act or other measure *which [was] within the power conferred upon the board of supervisors to enact*." (*Ibid.*, emphasis added) Again, the same question here is simply answered in the negative: It was not within the power conferred upon the City Council to enact Measure ULA. Therefore, per *Farley*, it is not valid subject matter for an initiative.

City's use of the 1985 charter amendment hurts its position as well because the 1985 amendment is even more limiting than the 1911 charter amendment at issue here in section 450. City describes the 1985 charter amendment as "str[iking] references to administrative or executive matters" and "not broaden[ing] the initiative power to administrative or executive matters." (City's MPA at 23: 21-25.) In other words, the initiative power is limited by the 1985 charter amendment. No administrative or executive matters may be the subject of an initiative.

City seems to accept that the initiative power may be substantively limited by the 1985 charter amendment, but fails to explain how it cannot be likewise limited by section 450. This naturally conflicts with its representation of the "inherent, reserved power of initiative," *ibid.*, being virtually unlimited. If anything, the 1985 amendment is a more severe substantive limitation on the initiative power than section 450 because it prohibits voters from taking actions the council may take, whereas section 450 only prohibits voters taking actions that the council may not take.

In what seems to be the only definition of the substantive scope of the initiative power by City or Supporters, City roughly represents its belief two pages later that any local initiative legislation is valid so long as it is not "substantively illegal" under state law. (City's MPA at 25, n.11[4].) First, as

[4] In its footnote 11, City misrepresents the context of a statement in *All Persons* — which is actually about the *statewide* initiative power — to reach its conclusion that a local initiative is bounded only by what is "substantively illegal" under state law: "The court affirmed that although the voters may not 'enact a law of a nature that exceeds a limitation on the state's lawmaking power, such as the right of

discussed earlier, a special transfer tax *is* substantively illegal under state law. Further, the charter itself *is* state law, including section 450. (Cal. Const., art. XI, § 3.)

No case has ever challenged the substantive limit of a city's charter. In fact, *Upland* summarizes this point in HJTA/AAGLA's favor: "When a local government lacks authority to legislate in an area, perhaps because the state has occupied the field (e.g., *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252 [predatory lending practices]), *that limitation also applies to the people's local initiative power* (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 776). In contrast, where legislative bodies retain lawmaking authority subject to procedural limitations, e.g., notice and hearing requirements (*Associated Home Builders, supra,* 18 Cal.3d at p. 594) or two-thirds vote requirements (*Kennedy Wholesale,* at p. 251), we presume such limitations do not apply to the initiative power absent evidence that such was the restrictions' intended purpose (*DeVita,* at p. 785; *Kennedy Wholesale,* at p. 252)." (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 942, emphasis added.) Indeed, it is only "procedural limitations" that have been knocked out of the way to jealously guard the initiative power. (*Associated Home Builders*, 18 Cal.3d at p. 594 ["Procedural requirements which govern *council* action, however, generally do not apply to initiatives, any more than the provisions of the initiative law govern the enactment of ordinances in council. No one would contend, for example, that an initiative of the people failed because a quorum of councilmen had not voted upon it, any more than one would contend that an ordinary ordinance of a council failed because a majority of voters had not voted upon it."] emphasis in original; *Kennedy Wholesale*, 53

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free speech,' this rule does not extend to 'legislative *procedures*, such as voting requirements.'" (*All Persons*, 51 Cal.App.5th 703, 717, emphasis in original, citing *Kennedy Wholesale*, 53 Cal.3d at 251-252.) First, because *Kennedy Wholesale* concerned a statewide voter initiative, it was natural to note that the voters could not exceed the bounds of "the *state*'s lawmaking power." Matching that principle here, the Los Angeles voters could not exceed the bounds of the "city's lawmaking power," which does not allow Measure ULA. But more importantly, this statement created no rule over the substance of initiative legislation. It merely acknowledged the limit in that particular case, which was easy to define as it applied only to state law. Again, as *All Persons* went directly on to clarify, the *purpose* of this statement was to distinguish between substance and procedure and to find that the two-thirds vote was not applicable because it was considered a matter of procedure: "Because the Constitution establishes different procedures for the initiative and legislative processes, supermajority requirements and other procedural rules 'cannot reasonably be assumed to apply to the electorate without evidence that such was intended.'" (*Ibid.*, citing *Kennedy Wholesale,* 53 Cal.3d at 252.) Once again, this case is not about the right *procedure* for a local initiative. It is about the substance of the legislation, which has been prohibited by the Los Angeles Charter's own section 450.

Cal.3d at 252 ["procedural requirements addressed to the Legislature's deliberations cannot reasonably be assumed to apply to the electorate without evidence that such was intended"]; *Tuolumne Jobs & Small Business Alliance v. Superior Ct.,* 59 Cal.4th at 1039 ["Adding CEQA review to the procedures in section 9214(a) would render that provision inoperative for a great many voter initiatives."]; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 786 [Regarding conforming a general plan amendment by initiative, "[t]hese cases exemplify the rule that statutory procedural requirements imposed on the local legislative body generally neither apply to the electorate nor are taken as evidence that the initiative or referendum is barred."].)

In sum, the cases City and Supporters rely upon concerned "a procedural, rather than a substantive, limitation on lawmaking power." (*All Persons*, 51 Cal.App.5th at 718.) Here, there is a substantive limitation of lawmaking power which bars the city council from imposing a special transfer tax. Under section 450, that substantive limitation cabins the voters' lawmaking power as well.

C. THE CLEAR STATEMENT RULE OF *UPLAND*, IF TAKEN TO UNNECESSARY EXTREMES HERE, WILL PROMOTE CHAOS BETWEEN STATE AND LOCAL LAW.

Supporters urge too literal an application of the Supreme Court's freshly minted "clear statement" rule for language relating to the initiative power. (Supporters' MPA at 5:13-17; see also 3 Cal.5th at 931.) Though less than clear, they seem to argue that a direct statement is necessary in the Los Angeles charter or state constitution prohibiting special transfer taxes by initiative. (See *id.* at 5:15 [asking for a "direct reference in the text"].) This is asking too much.

First, the "clear statement" rule applies to rules of procedure, not substance. *Upland* considered the procedure for placing a general tax initiative on the ballot. (3 Cal.5th 924.) And the cases it cited regarding its "clear statement" rule, as should be expected, were cases clearing procedural hurdles to the initiative power, not authorizing initiatives to legislate in prohibited subject areas. (*Id.* at 946, citing *Associated Home Builders*, 18 Cal.3d at 591, and *Rossi*, 9 Cal.4th at 696.) The *Upland* statement quoted earlier makes this clear: "When a local government lacks authority to legislate in an area, perhaps because the state has occupied the field, *that limitation also applies to the people's local initiative power.* In contrast, where legislative bodies retain lawmaking authority subject to

procedural limitations, e.g., notice and hearing requirements or two-thirds vote requirements, we presume such limitations do not apply to the initiative power *absent evidence that such was the restrictions' intended purpose*." (*Upland*, 3 Cal.5th at 942, emphasis added, citations omitted.)

Improperly applying the "clear statement" rule to initiative substance, Supporters essentially demand that those who drafted Proposition 13 and Section 450 should have specifically stated: "This means no special transfer taxes by initiative." But if the drafters had to proactively list every specific ordinance falling within the ambit of "[a]ny proposed ordinance which the Council itself might adopt," that would be an impossible task. They would also have to declare, "This means no interference with state predatory lending law, state environmental law, state income tax law, state vehicle registration law, state retirement law" and so forth. The list would go on indefinitely. Drafters would also have to predict the future's preemptive state laws to list as categories of non-interference, or else return to the voters annually to update the charter's list.

Thus, it must be enough that statewide voters declared there will be no special transfer taxes (Proposition 13) and that Los Angeles voters established in their charter (Section 450) that no type of legislation may be enacted by initiative that the city council may not enact.

If this Court were to accept Supporters' and City's passionate argument for an absolute local initiative power, then a local initiative could overrule any number of state laws in any locality of California, upsetting the hierarchy of the law and making the state ungovernable. City and Supporters might counterargue that statutes of statewide concern would still make such an initiative "substantively illegal," but a court would have to hear and determine perhaps endless cases to sort out which are matters of statewide concern versus municipal affairs. Los Angeles' voters smartly decided in 1911 that this would be too burdensome. They did not want such chaos in the courts.

An ordinance, such as Measure ULA, cannot amend a city charter. (See *City and County of San Francisco v. Patterson,* 202 Cal.App.3d at 104-105.) There are proper tools for doing so. (See Cal. Const., art. XI, § 3.) To avoid chaos, the local initiative power should not be, and has never been, a tool to sidestep the charter or the state constitution. In fact, when taxpayer advocates in San Diego attempted — by the same power of initiative — to locally increase the voter approval requirement for general taxes from simple majority to two-thirds ("Proposition E"), their effort was held "invalid

and not reformable because its provisions requiring a supermajority two-thirds vote for approval of any new general tax or any increase in an existing general tax *conflict with articles XIII C, section 2(b) and XI, section 3(a).*" (*Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374, 379, italics added.) If the provisions of Proposition E in San Diego could not conflict with superior law (there, Proposition 218 and the constitutional law of city charters), Measure ULA may not do so either (here, also the constitutional law of city charters, and the supreme law of Los Angeles' charter itself). *HJTA v. City of San Diego* would have to be overruled.

While the initiative power is much loved and respected, its subject matter may be limited. Every landmark case presented by City and Supporters concerns only the ability to use the initiative power, not to use it for illegal subject matter. The significant limit here is on the type of legislation. Section 450 of the Los Angeles City Charter is valid and prohibits Measure ULA.

III. CONCLUSION

For the foregoing reasons, Measure ULA must be declared invalid. Judgment on the pleadings should be entered accordingly.

DATED: August 11, 2023

Respectfully submitted,

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PROOF OF SERVICE

I, Kiaya Algea, declare:

I am employed in the County of Sacramento, California. I am over the age of 18 years, and not a party to the within action. My business address is: 1201 K Street, Suite 1030, Sacramento, California 95814. My electronic service address is: kiaya@hjta.org. On August 11, 2023, I served **PLAINTIFFS' COMBINED CROSS-OPPOSITION TO DEFENDANTS' MOTIONS FOR JUDGMENT ON THE PLEADINGS** on the interested parties below, using the following means:

SEE ATTACHED SERVICE LIST

X **BY ELECTRONIC MAIL** On the date listed above, I electronically transmitted the following document(s) in a PDF format to the persons listed below to their respective electronic mailbox addresses.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 11, 2023, at Sacramento, California.

Kiaya R. Algea

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