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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.

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.

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

PLAINTIFFS' COMBINED REPLY TO CROSS-OPPOSITIONS TO PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS

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Hearing Date:	TBD
Time:	TBD
Department:	30
Judge:	Barbara M. Scheper Judge for All Purposes
Complaint Filed:	Dec. 21, 2022 (January 6, 2023)
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I. INTRODUCTION

Measure ULA is in irrevocable conflict with Los Angeles City Charter, section 450(a). Under California law, a duly enacted and voter-approved city charter has equal dignity with state law. No argument submitted voids section 450(a), which requires initiative legislation to match the substance permitted of the City Council, thus invalidating Measure ULA.

In fact, in highlighting the Supreme Court's coextensive rule for initiative legislation, City's Opposition makes HJTA/AAGLA's case. The initiative power as summarized in the Los Angeles City Charter – and by City – embraces this rule.

Supporters' Opposition relies on the false assumption that the electorate has an inherent right to legislate on any subject matter. It continues to ignore the plain language of section 450(a) of the Los Angeles City Charter and attempts to minimize it as merely restating the initiative power.

II. ARGUMENT

A. What Is Inherently Reserved Is Procedural Initiative Power, Not Subject Matter. City Acknowledges The Supreme Court's Coextensive Rule Matching The Substance Of Initiative Legislation To That Of The City Council, Proving HJTA/AAGLA's Case.

City and Supporters continue to conflate valid legislative substance with the procedural power of initiative. As broad as the procedural power of initiative may be, that does not alter subject matter rules. The procedural holding of *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 therefore does not apply to assist City or Supporters here in any way.

Neither Supporters nor City cite any authority that permits the initiative power to venture into an impermissible subject matter. Supporters in their opposition, like City in its opening brief, misrepresent *Rossi v. Brown* (1999) 9 Cal.4th 688 as a subject matter case when it was procedural. They do the same with every other case, including *California Cannabis Coalition v. City of Upland,* 3 Cal.5th 924, the case where the recent confusion over Proposition 13 has its genesis. As to *Rossi*, HJTA/AAGLA has fully briefed this. (HJTA/AAGLA Opp. at 13:22-16:19.) For a short summary of *Rossi*, HJTA/AAGLA explained:

> 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."].)

(*Ibid.*)

Very notably, page 693 of *Rossi* said that the San Francisco charter "grants to the electorate the power to adopt any legislation that the board of supervisors may enact." (9 Cal.4th at 693.) There are two points here. First, the charter "*grants* to the electorate" the specified power to adopt legislation. (Emphasis added.) Using the word "grants," *Rossi* did not interpret the local initiative power to be inherent as to subject matter as City and Supporters contend here. And indeed, this is correct per constitutional law governing the local initiative power, as will be discussed below. Second, *Rossi* acknowledged that the San Francisco charter made the same substantive limitation as section 450(a) does here. Like section 450(a), power in San Francisco was granted to the citizenry to adopt "legislation that the board of supervisors may enact." Above all, *Rossi* was a case over procedural rights because referendum is the companion procedural right to initiative. *Rossi* never once considered the *substance* of the tax measure, only whether the initiative *process* could be used to repeal it since referendum could not be used to repeal.

Supporters cite *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 948, 957 in an attempt to rebut the clear distinction between substance of legislation and procedure of initiative. (Supporters' Opp. at 4:3-4; 8:3-6; 12: 1-5.) It is the last reference to page 948 that makes Supporters' error plain. Supporters conclude that "*Upland* made clear that voters may legislate on matters a city council cannot." (*Id.* at 12:1-2.) *Upland* said no such thing. *Upland* focused its attention on the definition of "local government" for purposes of election *procedures*. On page 948, *Upland* determined that "cities should follow section 9214 and order a special election." It (in both majority and dissent) withheld judgment on the only substantive issue of the legislation, which was whether the charge was

a tax or fee, no one having disputed whether the initiative proponents could have validly proposed the substance of either. (*Ibid*.) This leaves only Supporters' quoted passage of page 948: "Unless a provision explicitly constrains the initiative power or otherwise provides a similarly clear indication that its purpose includes constraining the voters' initiative power, we will not construe provisions as imposing such limitations." When read in context, the very next sentence explains that the Court is talking about "article XIII C, section 2, subdivision (b)," which states, "The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government." In other words, it refers to a *procedural* provision. The passage says nothing about valid legislative substance. Supporters merely assume, incorrectly and without authority, that the subject matter of an initiative is inherently unlimited.

No constitutional provision nor case law declares a right to legislate without boundaries on any subject matter. *Kennedy Wholesale, Inc. v. State Board of Equalization* (1991) 53 Cal.3d 245 was about the statewide initiative procedural power. (See *id.* 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"].) The *All Persons* quartet of cases was about the local initiative procedural power, specifically the voter approval margin applicable to a special tax proposed by initiative. *(City and County of San Francisco v. All Persons Interested in the Matter of Proposition C* (2020) 51 Cal.App.5th 703; *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220; *Howard Jarvis Taxpayers Assn. v. City and County of San Francisco* (2021) 60 Cal.App.5th 227; *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058.) But whether 50.01% or 99% of voters had approved Measure ULA, *All Persons* still could not transform it into a legitimate subject matter for the voters to adopt. All other cases before *All Persons* were likewise about procedures found inapplicable to initiatives because the citizenry had no way of performing them. (See HJTA/AAGLA Opp. at 18:3-19:8, summarizing *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 594; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 776, 786; *Tuolumne Jobs & Small Business Alliance v. Superior Ct.* (2014) 59 Cal.4th 1029, 1036, 1039 [all cases of *procedures* applicable to local governing bodies not applying to citizens; no issues of legislative substance raised].)

1 Rather, the cases actually acknowledge substantive limits on initiative legislation. This court is
2 bound to follow these conclusions because it would "create chaos" otherwise. (*Auto Equity Sales, Inc.*
3 *v. Superior Court* (1962) 57 Cal.2d 450, 456.) As to section 450(a) itself and to a similar provision in the
4 San Francisco Charter, all courts asked to compare a procedural limit to a substantive limit have
5 concluded that these charters impose a substantive limit on initiative legislation. (*Safe Life Caregivers v.*
6 *City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1046 ["It is apparent that 'which the Council itself
7 might adopt,' <u>as used in both charter sections 450</u> and 460 <u>is simply a limit on substantive subject
8 matter</u> and not an incorporation of procedural requirements imposed on the council before the
9 council may enact an ordinance."] emphasis added; *Howard Jarvis Taxpayers Assn. v. City and County of*
10 *San Francisco*, 60 Cal.App.5th 227, 237; *City and County of San Francisco v. Patterson* (1988) 202
11 Cal.App.3d 95, 100-101; *Pettye v. City and County of San Francisco* (2004) 118 Cal.App.4th 233, 240; *Rossi*
12 *v. Brown* (1995) 9 Cal.4th 688, 697; *City and County of San Francisco v. All Persons Interested in the Matter of*
13 *Proposition G*, 66 Cal.App.5th 1058, 1078 ["the [San Francisco] Charter 'imposes a substantive limit on
14 the initiative power,'" citing *City and County of San Francisco v. All Persons Interested in the Matter of*
15 *Proposition C*, 51 Cal.App.5th 703, 718, 724].)
16 City cites *California Cannabis Coalition v. City of Upland,* 3 Cal.5th 924, 942-943 in an attempt to
17 rebut the clear distinction between substance of legislation and procedure of initiative. (City's Opp. at
18 16:6-13.) But the Supreme Court's only mention of the substance of valid legislation on these pages
19 makes HJTA/AAGLA's case. Pages 942-943 conclude, consistent with the above listed cases, that
20 procedural limitations on government legislators will not also apply to initiative legislators. There are,
21 of course, *no* procedures at issue in this case, such as a public notice, meeting, or hearing requirement,
22 or a report or analysis that would normally be required of the City Council before proposing a
23 measure.
24 What City must be referring to — the only discussion of substance on these pages — is the
25 coextensive rule, which is explained right before the Supreme Court says, "In contrast." (*Id.* at 942.)
26 The coextensive rule limits initiative legislation to the subject matter within the power of the
27 governing body:
28 We explained that 'the power of the people through the statutory initiative is

> coextensive with the power of the Legislature.' (citing *Legislature v. Deukmejian* (1983) 34 Cal.3d 658, 675.) Yet, as we later indicated, *Legislature v. Deukmejian* simply stands for the proposition that 'neither the Legislature nor the voters may enact a law of a nature that exceeds a limitation on the state's lawmaking power.' (*Kennedy Wholesale*, *supra*, 53 Cal.3d at p. 252; see *DeVita*, *supra*, 9 Cal.4th at p. 776 [discussing local initiatives].)

(3 Cal.5th at 942.)

Applied here, Measure ULA is an ordinance "of a nature that exceeds a limitation on the [City Council's] lawmaking power." "Nature" means type or subject matter. And it is undisputed that the City Council may not enact any law having the nature of a special transfer tax. (Cal. Const., art. XIII A, § 4; *Cohn v. City of Oakland* (1990) 223 Cal.App.3d 261; *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 142, 146; *Fisher v. County of Alameda* (1993) 20 Cal.App.4th 120.) Accordingly, Measure ULA, a special transfer tax, is void under the coextensive rule alone. The court could stop there.

HJTA/AAGLA made its case under Section 450(a) of the Los Angeles City Charter, however, because it is the City Charter's own express embrace of the coextensive rule. (HJTA/AAGLA Opp. at 18: 3-12 citing *Upland*, 3 Cal.5th at 942 ["When a local government lacks authority to legislate in an area, … , that limitation also applies to the people's local initiative power."]; HJTA/AAGLA MPA at 15:3-25, citing *Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029 specifically affirming substantive limit of Los Angeles Charter section 450 and *Howard Jarvis Taxpayers Assn. v. City and County of San Francisco*, 60 Cal.App.5th 227, 237, affirming similar substantive limit in San Francisco Charter post-*Upland*.) As City acknowledges sections 451 and 452 of the Los Angeles City Charter, it has no business ignoring section 450(a). (HJTA/AAGLA MJOP at 16:4-8; RFJN, Exh. A, at 2, 6.) City's attempts to minimize it, and Supporters attempts to erase it, should be rejected.

Section 450(a) refers to an "ordinance which the Council itself might adopt," thus locally constitutionalizing the coextensive limitation "to the people's local initiative power." (*Upland*, 3 Cal.5th at 942.) This has been part of the Los Angeles Charter since 1911, a point which City notably

avoids discussing in its Opposition. But the intention of the Los Angeles voters in codifying and maintaining the coextensive rule since 1911 must be honored. (See HJTA/AAGLA MPA at 15:13 – 16:3; Opp. at 12:1-19.) Before 1911, the charter read that "any proposed ordinance may be submitted to the council by a petition." (See RFJN, Exh. J at 572.) The people's change to their charter in 1911 is the most significant change in this case. Voters intentionally amended their charter with the effect of limiting the subject of initiative. (See RFJN, Exh. L at 2073 [adding "which the council itself might adopt" to "Any proposed ordinance"].) And since the 1911 language was not the original language, it is impossible to conclude that section 450(a) as we know it "merely restates the initiative power." (Supporters' Opp. at 7:17.)

City likewise agrees in its Opposition that section 450(a) is the coextensive rule. It summarizes section 450(a) as: "In other words, the voters may propose legislation on subjects the Council may address (e.g., zoning, business regulations, building codes, rent control, taxes)." (City's Opp. at 12:17-18.) Taxes the Council may address include general transfer taxes, but not special transfer taxes like Measure ULA. (Cal. Const., art. XIII A, § 4; *Cohn v. City of Oakland*, 223 Cal.App.3d 261; *Fielder v. City of Los Angeles*, 14 Cal.App.4th 137, 142, 146; *Fisher v. County of Alameda*, 20 Cal.App.4th 120.) Thus, Los Angeles voters may propose general transfer taxes, but may not propose special transfer taxes like Measure ULA.

City then further agrees with the coextensive rule under the similar San Francisco charter provision, citing *CCSF v. Patterson* (1988) 202 Cal.App.3d 95, 104. In that case, City points out that a board of supervisors had no power to regulate actions within the exclusive jurisdiction of the school district board and so, logically, neither did the people through the power of initiative. (*Id.* at 18:12-16.) That's exactly right. And here, the voters may propose tax legislation that the Council may address, but may not enact tax legislation that the Council may not, including Measure ULA.

City further makes the point that an ordinance may not violate a city charter. (City's Opp. at 18:20-22, n. 9.) That's also exactly right. Measure ULA is an ordinance and it may not violate the Los Angeles City Charter. The charter, affirming the coextensive rule summarized in *Upland*, requires subject matter of initiative legislation to match what the City Council may enact. The City Council may not enact a special transfer tax, so Measure ULA's substance is void.

City later returns to Supporters' argument that "Charter section 450(a) is devoid of any language evidencing an intent to constrain the voters' authority to approve voter-sponsored local taxes." (City's Opp. at 13:11-12.) This has been thoroughly addressed in HJTA/AAGLA's Opposition. (HJTA/AAGLA Opp. at 12:1-19.) Section 450(a)'s limitation is explicit. Section 450 is titled "Subject of Initiative." Thus, its provision defines the "Subject" matter, and it defines the permissible "Subject" matter "of Initiative" as an "ordinance which the council itself might adopt." There is no other viable interpretation but that it means what it says.

If City's real argument, like Supporters' (Supporters' Opp. at 7:10-17), is that the word "may" in section 450(a) is merely authorizing something that the voters already have a right to do, not only does that run contrary to the established rule of statutory construction against pointless surplusage, but it is also incorrect legal interpretation of such language. "May" written in this manner is designed to impose a limit. (See *Huntington Park Redevelopment Agency v. Martin* (1985) 38 Cal.3d 100, 105 [as to the word "may" in similarly structured language, "Although this section appears to be a grant of power allowing local entities to enact special taxes, it actually has the effect of limiting their enactment"], citing *City and County of San Francisco* v. *Farrell* (1982) 32 Cal.3d 47, 53.)

Even if "Section 4 of Article XIII A is entirely inapplicable" to voter-initiated tax initiatives (City's Opp. at 15:22), a point to which City does not hold fast (see *id*. at 12, n. 5), that does not draw a line to the false conclusion that Measure ULA is valid legislation in Los Angeles. Section 450(a) remains state law requiring initiative subject matter to match that of the City Council. Section 450(a) makes article XIII A, section 4, relevant to defining the subject matter of valid initiatives in Los Angeles. Following the *All Persons* line of cases, special transfer taxes are still not allowed in Los Angeles under its charter, which is state law.

Without explaining how it could be acceptable, Supporters assert that "Section 450(a) merely restates the initiative power." (Supporters' Opp. at 7:17.) The relevant phrasing of section 450(a), matching the substance of initiative legislation to what the City Council can propose, has been in existence since 1911. Initiative language pre-dating it did *not* restrict subject matter to that "which the Council itself might adopt." (Cf. RFJN, Exhs. J, L.) Thus, there is no possibility that the added phrase can be deemed an exercise in futility by Los Angeles voters. It is part of the constitution of

the city of Los Angeles. As such, it is state law. (Cal. Const., art. II, § 3(a).) Such state law plainly governs Los Angeles and voids the content of Measure ULA.

City's and Supporters' confusion results from one critically-overlooked reality: The California Constitution grants *no one*, including initiative proponents, unlimited subject matter authority. (See HJTA/AAGLA's MJOP at 17:20-18:8; HJTA/AAGLA's Opp. at 13:26-14:8; see also Cal. Const., art. II, § 8(d) [subject matter restriction against multiple subjects in one measure]; *id.* at § 8(e)-(f) and § 11(b)-(c) [subject matter restrictions against certain geographic definitions and alternative or cumulative provisions].) Cities and other local government entities do not have unlimited subject matter authority. General law cities may only legislate in matters permitted under state law and not inconsistent with state law. (Cal. Const., art. XI, § 7.) Charter cities have greater power than general law cities, but they must still adhere to constitutional law and preemptive law of statewide concern. (Cal. Const., art. XI, § 5.) Accordingly, per statute (i.e., Gov. Code, §§ 65656; 65666) and the "fully occupied" theory, the Newcastle Plaintiffs here additionally assert that preemption (of both homelessness reduction and administration of documentary transfer taxes as statewide matters) renders Measure ULA invalid substance. (See Newcastle Joinder to HJTA/AAGLA MJOP.) In short, there is a substantive hierarchy to lawmaking in California to which initiative proponents are not immune.

B. Section 450(a) And Article XIII A, Section 4 Are Not Pointless To Measure ULA.

As explained, section 450(a) cannot be mere surplusage. It's part of the Los Angeles City Charter. The language at issue here was a revision of an earlier version of the same provision. The Court must presume that the voters did not engage in an idle act, such as merely parroting established law as City and Supporters suggest. (*City of Irvine v. So. Cal. Assn. of Gov'ts* (2009) 175 Cal.App.4th 506, 22; *Loew's, Inc. v. Byram* (1938) 11 Cal.2d 746, 750].) The revised provision is titled "Subject of Initiative," not "Power of Initiative" as one would expect if it did nothing more than reaffirm that local voters have the power of initiative. It declares that "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." (Emphasis added.) City's argument that this sentence means only that the voters

are limited to legislating must be rejected because, as City acknowledges, the word "ordinance" is sufficient in itself to limit the voters to legislating. (City's Opp. at 12:7-11 ["All legislative power of the City … shall be exercised by ordinance"].) The Court must give effect to every word. It cannot assume an intent that retreats from the plain meaning of the words used. (*City of Emeryville v. Cohen* (2015) 233 Cal.App.4th 293, 304; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230; see also Civ. Code § 3541.) The plain meaning of the words "Subject of Initiative" and "which the Council itself might adopt" limit the voters to subjects that the Council itself might adopt.

One need not look beyond section 450(a) to see the obvious purpose of this limitation. Section 450(a) explains that "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." If the voters' power were not coextensive with the City Council's, then every substantive limit on the City Council's ability to legislate, whether imposed by state or federal law or the Los Angeles Charter itself, could be circumvented by friendly voters submitting to the Council an initiative proposing the prohibited legislation, followed by the Council adopting the initiative without an election. Thus, Supporters' argument that section 450(a) is a mere restatement of initiative power must be rejected. City's position that it can be conveniently ignored, while sections 451 and 452 remain honored, is equally unacceptable.

Article XIII A, section 4 is not pointless here either, as City's briefing itself reveals through contradictory treatment. City *applies* article XIII A, section 4 to require voter approval of Measure ULA. (City's Opp. at 12, n. 5.) City thus uses Proposition 13 to justify voter approval, while exiling its actual provisions and ignoring its relationship to charter section 450(a). It cannot reasonably adopt one application of article XIII A, section 4, while rejecting another.

Article XIII A, section 4 is short. It reads:

> 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.

(Cal. Const., art. XIII A, § 4.)

This brief section of Proposition 13 requires a two-thirds vote (not simple majority) to approve special taxes and prohibits transfer taxes. It is part of the "interlocking package" of article XIII A designed to ensure effective real property tax relief. (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 836.) The easily deducible policy reason for this protection is what homeowners "save" via Proposition 13 should not still be considered "owed" to the government later. That would defeat the property tax protection entirely. The government is not entitled to a delayed tax payment from seller or buyer. In that way, no Californian is meant to be penalized for moving as needed, and the government naturally reaps increased tax revenues when the purchase price of a new home or building re-sets that property's tax base.

In contradiction to its case, City's footnote 5 says that article XIII A, section 4 applies to Measure ULA. (City's Opp. at 12.) It says: "Here, of course, the Council was obligated by Section 4 of article XIII A to put the proposed ordinance on the ballot rather than adopt it without voter approval." (*Ibid.*) But if section 4 has no application to Measure ULA, as City and Supporters so ardently assert (e.g., City's Opp. at 9: 1-3), why would the City Council have *any* obligation under it? If section 4 applies, it must apply in full logic, invalidating Measure ULA directly or indirectly. HJTA/AAGLA of course agrees that section 4 applies. It applies most clearly indirectly because it prohibits the City Council from adopting special transfer taxes, thus invoking Los Angeles Charter Section 450(a), Los Angeles' embrace of the coextensive rule.

City misunderstands one of the reasons section 4 indirectly applies. Its misunderstanding is rooted in erroneously assuming that a simple majority voter approval requirement is guaranteed on a local voter initiative. It is not. The City Council can directly adopt any voter-initiated measure. Therefore, since 1911 and with each reaffirmation of what is now section 450(a), Los Angeles voters have been consciously protecting themselves against adoption of any type of legislation the City Council should not be considering in the first place. Specific to taxes, it becomes highly relevant that Los Angeles voters re-affirmed section 450(a) with its key phrase "which the Council itself might adopt" in the year 1999. (RFJN, Exh. N) This post-dates Propositions 13 and 218, the *sole* guarantees of rights to vote on local taxes, meaning that voters were aware of their provisions and their impacts

on their City Council. Thus, at all times, from when there was no guaranteed right to vote on local taxes, all the way to today, Los Angeles voters have continuously matched the substance of initiative legislation to what the City Council is permitted to adopt. The intent of Los Angeles voters is clear: Section 450(a) keeps the City Council in check and keeps the legislation of the City consistent with mainstream legal standards.

City's (and Supporters') misunderstanding over voter approval is two-fold. One, they misunderstand the history and current state of the local initiative power. Like many who are legitimately confused in the wake of *Upland* and the appellate cases of 2020-2021 cancelling the two-thirds voter approval requirement on voter-initiated local special taxes, City incorrectly *assumes* that simple majority voter approval is guaranteed to a voter initiative. It is not. Two, it misunderstands HJTA/AAGLA's point in explaining this reality, which was to assert that the Los Angeles voters had good reason(s) to enact and maintain section 450(a). The reality of local voter initiatives, especially as to the power to tax, was one of them. The voters were protecting themselves in their charter from potential games of alter egos.

One of the dangers HJTA has been greatly concerned about regarding the *All Persons* cases is that initiative measures — tax proposals included — *may* be directly adopted by local governing bodies. (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029 [direct adoption of initiative measures permitted]; see also Elec. Code, § 9215(a) [city council may adopt initiative petition at regular meeting or within 10 days after presentation, bypassing election].) This means that the two-thirds voter approval requirement for local special taxes — protecting household and local government budgets without question for over forty years until 2020 — has, if the new loophole is used, been reduced not to simple majority, but to no vote at all, because local government officials have no obligation to put tax initiatives on the ballot in the first place. This absurd result and gross misinterpretation of voter intent in the face of Propositions 13 and 218 is beyond unfortunate.

Much to HJTA's discomfort, and contrary to popular assumption, the reality is that there is no constitutional requirement that a local tax initiative — if severed from Propositions 13 and 218 — be placed on the ballot at all. Except for any *voter-initiated* tax proposal made before 1966 (if such occurred), there has been *no right* in California to vote on taxes until Proposition 13 passed in 1978.

The right to vote on taxes is 100% owed to and dependent upon Propositions 13 and 218 (the 1996 measure entitled "The Right to Vote on Taxes Act.").

A quick look at constitutional provisions and the Elections Code further explains. The local initiative power has not been guaranteed a simple majority voter approval requirement since 1966. Former article IV, section 1, enacted in 1911, required approval of local initiatives "by a majority of the votes cast thereon." (See also *Hass v. City Council of Palm Springs* (1956) 139 Cal.App.2d 73, 75 [despite debate over ¾ vote margin, appellant asserted under former article IV, section 1, that "ordinance was legally adopted by a majority vote"].)

But the 1911 language was repealed and replaced by California voters in 1966 with power given to the Legislature to establish the "procedures" applicable to the local initiative power. (Cal. Const., art. II, § 11(a) ["majority" voter approval requirement removed[1]].) The recent cases creating a vote threshold exception for special tax initiatives clarified that the vote threshold is a "procedure." (E.g., *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G*, (2021) 66 Cal.App.5th 1058, 1077 ["procedures" inapplicable to the voters "include the requirement for a two-thirds vote"]; *All Persons (Prop. C)*, 51 Cal.App.5th at 724-725 [same].) Thus, voter approval margins, unless specified by other constitutional amendments such as Propositions 13 and 218, are entirely at the Legislature's discretion. Here, a simple majority is only required by Elections Code section 9217 *if the City Council exercises its discretion* to put an initiative on the ballot under section 9215. This is a scary reality for taxpayers, but a reality nonetheless.

City discusses this as a "hypothetical" and misses the point. (City's Opp. at 14:11-15:17.) The fact that initiatives may be directly adopted is simply one good reason the Los Angeles voters enacted Section 450(a) and have kept it in their charter since 1911. One positive function it happens to serve, HJTA/AAGLA was pointing out, is that a small group of voters and the City Council could

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[1] Supporters incorrectly equate sections 8 and 11 of article II of the California Constitution. (Supporters' Opp. at 6:20-21.) Section 8, for statewide initiatives, guarantees a "majority" approval threshold. Section 11, for local initiatives, guarantees nothing. Instead, it gives power to the Legislature to establish procedures for the local initiative power. (*Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1036; *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.) What *is* common to both sections 8 and 11, however, like section 1, is that there is no expression of unlimited substance.

therefore not work together to pass invalid legislation that the City Council was never allowed to consider on its own. Illegal laws by alter ego are avoided through the wisdom of section 450(a).

If City nonetheless believes that Proposition 13 applies to the City Council when presented with a voter-initiated tax proposal (City's Opp. at 12, n. 5), it can only be operating on the premise that the City Council would be imposing the tax. If that is the case, Proposition 13 then *directly* prohibits Measure ULA as a special transfer tax. (Cal. Const., art. XIII A, § 4; *Cohn v. City of Oakland* 223 Cal.App.3d 261; *Fielder v. City of Los Angeles* (1993) 14 Cal.App.4th 137, 142, 146; *Fisher v. County of Alameda* 20 Cal.App.4th 120.) Whatever City's interpretation is here, it is contradicting itself that Measure ULA is somehow "unaffected by Section 4 of Article XIII A." (City's Opp. at 13:23-24.) Either it is affected or not. City's footnote 5 can only be an admission that Measure ULA is affected. If affected directly, HJTA/AAGLA agrees. But HJTA/AAGLA has argued section 4 here indirectly limits the substance of initiative legislation in Los Angeles, because that is the clear will of the Los Angeles voters in section 450(a) of their charter.

C. <u>There Is No "Doubt" To Resolve.</u>

City seems to be attempting to limit the nature of Charter section 450(a)'s application to ordinances versus non-ordinances, claiming that all that section does is "makes clear that such power is not *extended* to non-legislative matters." (City's Opp. at 17:21-18:22.) This is, at most, a distraction. Section 450(a) says nothing about non-legislative matters. City tries to tie section 450(a) to a 1985 charter amendment precluding voters from legislating on administrative matters. But at its best potential level of relevance, City's strange focus on the 1985 charter amendment supports HJTA/AAGLA.

Thus, City's argument that any doubt must be resolved in favor of the initiative power, City's Opp. at 13:20, will be resolved by the fact that there is no doubt to begin with. The power is as strong as ever, and there is no doubt as to what section 450(a) means.

The power is as strong as ever because, as thoroughly briefed, the cases have concerned the procedural power of initiative, which is unquestioned here. Neither the Constitution nor the cases have ever expanded valid initiative (or non-initiative) *substance*. No part of our constitution provides that initiatives may legislate on matters otherwise invalid. Meanwhile, the cases *recognize* the

1 substantive limit in section 450(a) here, and the identical limit in the San Francisco Charter. (*Safe Life*
2 *Caregivers v. City of Los Angeles*, 243 Cal.App.4th at 1046; *Howard Jarvis Taxpayers Assn. v. City and County*
3 *of San* Francisco, 60 Cal.App.5th at 237; *City and County of San Francisco v. Patterson*, 202 Cal.App.3d at
4 100-101; *Pettye v. City and County of San Francisco*, 118 Cal.App.4th at 240; *Rossi v. Brown*, 9 Cal.4th at
5 697; *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G*, 66 Cal.App.5th
6 at 1078 ["the [San Francisco] Charter 'imposes a substantive limit on the initiative power'," citing *City*
7 *and County of San Francisco v. All Persons Interested in the Matter of Proposition* C, 51 Cal.App.5th at 718,
8 724].)

9 To the extent City relies on the 1985 charter amendment, that only further proves that
10 initiative substance may be limited through a charter, as here. Ironically, the 1985 charter amendment
11 limits the initiative power more than the 1911 amendment at issue here in section 450(a). (See
12 HJTA/AAGLA Opp. at 17:11-20.) The 1985 amendment stops the people from taking actions the
13 council *may* take. Section 450(a) only stops the people from taking actions the council *may not* take.
14 Section 450(a) is the less harsh of the two. By comparison, if the 1985 charter amendment is valid, as
15 City presents it, the 1911 charter amendment now numbered 450(a) certainly cannot be invalid.

16 There is no doubt that Los Angeles voters, through section 450(a) of their charter, matched
17 the substance of initiative legislation to that of the City Council. City seeks to avoid this, not by
18 meaningfully responding to the relevant text of the 1903 and 1911 Los Angeles Charters, but by
19 objecting to this court taking judicial notice.

20 Strangely, while asserting the 1985 charter amendment and requesting judicial notice thereof,
21 City objects to HJTA/AAGLA's presentation of the 1903 and 1911 charter amendments. As these
22 are the years showing the very origination of section 450(a), this can be taken as nothing but self-
23 serving. The 1903 and 1911 charter amendments are the most relevant charter materials in this case.
24 They show the original language and the language as modified. Comparing the two clearly
25 demonstrates voter intent to match the substance of initiative legislation to that of the City Council.
26 City should have argued responsively that this voter intent was not apparent in 1911. Instead, it made
27 baseless objections to the most relevant constitutional law of the City of Los Angeles.
28 / / /

In its briefing, City nowhere addresses the intent of the Los Angeles voters in 1911. Yet, more strangely, City did not object to HJTA/AAGLA's Exhibits M or N, the reaffirmations of the substantive limitation by Los Angeles voters in 1925 and 1999 respectively. As reaffirmations of the 1911 amendment, or perhaps as "irrelevant" prior versions of section 450(a), if City were being consistent, it should have objected to those too, but did not. Taken altogether, City's objections are nonsensical, and City fails to oppose HJTA/AAGLA's argument of voter intent via its charter. Supporters made no objection to the charter materials, but likewise never addressed the change made by voters in 1911 to the 1903 version.

This case is simple and the logic of it is unavoidable. The City Council could not have enacted Measure ULA. Section 450(a) of the Los Angeles City Charter plainly matches the substance of initiative legislation to that of the City Council. Therefore, Measure ULA is substantively invalid legislation in Los Angeles. It must be declared as such.

III. CONCLUSION

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

DATED: September 8, 2023

Respectfully submitted,

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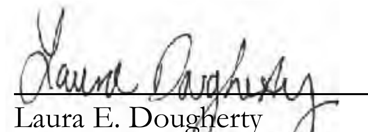

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PROOF OF SERVICE

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 September 8, 2023, I served **PLAINTIFFS' COMBINED REPLY TO CROSS-OPPOSITIONS TO PLAINTIFFS' MOTION 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 with their prior approval 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 September 8, 2023, at Sacramento, California.

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