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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 OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGEMENT ON THE PLEADINGS

Honorable Joseph Lipner
Reservation ID: 760338369080
Date: September 26, 2023
Time: 8:30 a.m.
Place: Stanley Mosk Courthouse, 111 N. Hill St., Dept. 72 Los Angeles, California 9001

Complaint Filed: December 21, 2022

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I. INTRODUCTION

On November 8, 2022, the voters of Los Angeles, exercising their constitutionally enshrined right to adopt legislation through initiative, passed Measure ULA. This measure seeks to address Los Angeles' pressing housing and homelessness crisis using revenue from an excise tax on the transfer of real property exceeding $5 million. Plaintiffs Howard Jarvis Taxpayers Association and the Apartment Association of Greater Los Angeles (collectively, "HJTA") now ask this Court to invalidate Measure ULA on the (baseless) grounds that it violates article XIII A, section 4 of the California Constitution ("section 4") and section 450 of the Los Angeles City Charter ("section 450"). Neither of these grounds invalidate Measure ULA.

Section 4, also referred to by the parties as Proposition 13, functions as a limitation on the authority of "***Cities, Counties and special districts***" to levy certain taxes. Courts have repeatedly held that section 4's limitations do not apply to initiatives. Confronting this clear authority, HJTA seeks to use section 450 of the City Charter as a backdoor to apply section 4's limitations to the voters' initiative power. However, our Supreme Court has squarely held that a city's charter cannot restrict the initiative power reserved in the California Constitution. Moreover, section 450 makes no attempt to limit the voters' power to legislate by initiative and any ambiguity on this point must be resolved "in favor of the exercise of this precious right." (*Kennedy Wholesale Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 249–250 (*Kennedy Wholesale*).) The drafters of section 450 did not intend to limit the initiative power, which is made evident by reading section 450 in the context of the charter, as it must be read. HJTA has provided no authority that supports its interpretation and fails to acknowledge the law that belies its position.

II. PROCEDURAL HISTORY/STATEMENT OF FACTS

The parties do not dispute the key facts of this case. Measure ULA is a citizen-sponsored initiative that aims to create revenue for the City to "establish and authorize programs to increase affordable housing and provide resources to tenants at risk of

homelessness" through an excise tax on the sale or transfer of real property. (HJTA Compl., Ex. A at p. 1.) The excise tax, entitled "Homelessness and Housing Solution Tax," works as follows: If a property transfer exceeds $5 million, but is less than $10 million, Measure ULA imposes an excise tax of "4% of the consideration or value" at the time of transfer. (*Id.* at p. 4 [Measure ULA, § 21.9.2 subd. (b)(1)].) If the transfer exceeds $10 million, the tax increases to 5.5% of the consideration or value of the transfer (*Ibid.* [subd. (b)(2)].). Measure ULA directs the revenue from this tax to programs addressing the issues of "[r]ising rent, widespread tenant evictions and a lack of affordable housing" which "have made Los Angeles the city with the worst housing and homelessness crisis in the country." (*Id.* at p. 1.)

On November 8, 2022, Los Angeles voters passed Measure ULA with a majority vote. On December 21, 2022, HJTA filed a challenge to Measure ULA pursuant to California's validation proceeding statutes (Gov. Code, § 50077.5 and Code Civ. Proc., §§ 860–870.5.) Thereafter, Newcastle Courtyards et al. also filed challenges to Measure ULA under the validation statutes in both this Court and in the Central District of California. Defendants timely filed answers in these actions as interested parties in order to defend Measure ULA's validity. This Court consolidated the HJTA action and Newcastle state action under Code of Civil Procedure section 865 on April 25, 2023. At issue in HJTA's present Motion for Judgment on the Pleadings ("HJTA MJOP") are the causes of action brought by HJTA under article XIII A, section 4 of the California Constitution and the Los Angeles City Charter.

III. LEGAL STANDARD

On a motion for judgment on the pleadings, the court treats as admitted all material facts properly pleaded but does not assume the truth of contentions, deductions, or conclusions of fact or law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966–967.) A plaintiff's motion for judgment on the pleadings should only be granted "when the complaint states facts sufficient to constitute a cause of action and the defendants' answer does not state facts sufficient to constitute a defense." (*City & Cty. Of San Francisco v. All*

Persons Interested in Matter of Proposition C (2020) 51 Cal.App.5th 703, 712 (*Proposition C*).) Per our Supreme Court, there is an increased burden placed on actions attempting to invalidate legislation: "[A]ll presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." (*Briggs v. Brown* (2017) 3 Cal.5th 808, 828.)

IV. ARGUMENT

A. Measure ULA Is Constitutional Under Article XIII A, Section 4 of the California Constitution (Proposition 13)

HJTA misleadingly argues that Measure ULA is a prohibited special transfer tax under article XIII A, section 4 ("section 4") of the California Constitution. While the parties do not dispute that Measure ULA enacts a special transfer tax, section 4 does not prohibit such taxes when enacted by initiative. Section 4 does not vitiate Measure ULA—or even contemplate special taxes passed by initiative.

Proposition 13 adopted section 4, which provides:

> Cities, Counties and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district, except ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property within such City, County or special district.

It imposes two limits on the authority of "***Cities, Counties and special districts***" to levy certain taxes: requiring a "two-third vote of the qualified electors" and preventing local governments (but not voters) from imposing "ad valorem taxes on real property or a transaction tax or sales tax on the sale of real property." Section 4 is silent as to initiatives.

Indeed, section 4 cannot be read to limit the initiative power because, absent clear indicia of contrary intent, a statute or constitutional provision must be read to preserve the initiative power. California courts recognized this principle immediately following Proposition 13's 1978 adoption. (*Kennedy Wholesale, supra,* 53 Cal.3d at pp. 249–250, citing *Amador Valley Joint Union High School Dist. v. State Bd. of Equalization* (1978) 22

Cal.3d 208, 248, italics omitted ["[T]he initiative power is 'one of the most precious rights of our democratic process'"].)

Kennedy Wholesale and the more recent cases under *California Cannabis Coal. v. City of Upland* (2017) 3 Cal.5th 924, 948 (*Upland*) establish the principle that governs here. In *Kennedy Wholesale*, *supra*, 53 Cal.3d 245, our Supreme Court considered article XIII A, section 3 of the California Constitution (also added by Proposition 13),[1] requiring: "any changes in State taxes . . . be imposed by an Act passed by not less than two-thirds of. . . the Legislature." (*Id.* at p. 248.) There, challengers to Proposition 99 (the Tobacco Tax and Health Protection Act), argued that section 3 meant that *only* the Legislature could raise taxes or, alternatively, that its two-thirds-majority requirement also applied to initiatives that impose state taxes. (*Id.* at pp. 249, 251.) Rejecting that claim, the high Court reaffirmed that "the law shuns repeals by implication" especially as to the initiative power, "one of the most precious rights of our democratic process." (*Id.* at pp. 249–50.) *Kennedy Wholesale* concluded:

> [P]aintiff has not demonstrated that the voters who adopted Proposition 13 intended to limit the reserved power of initiative. Because section 3 can reasonably be interpreted not to limit that power, and because "*we are required to resolve any reasonable doubts in favor of the exercise of this precious right*" [citation], we hold that Proposition 99 does not violate section 3.
> (*Id.* at p. 253.)

Section 4 is likewise silent as to the initiative power and cannot narrow that right by implication. Following *Kennedy Wholesale* and *Upland*, courts have repeatedly so held. In *Proposition C*, *supra*, 51 Cal.App.5th 703, plaintiffs argued that section 4's supermajority requirement applied to a local tax initiative. (*Id.* at p. 714.) The Court of Appeal flatly rejected this argument, concluding section 4 "***does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative***." (*Id.* at p. 721, italics added; see also *City & Cnty. of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, 1071 ["section 4's two-thirds vote requirement does not apply to local initiative statutes."] (*Proposition G*); *City of Fresno v. Fresno*

[1] References to "articles" are to the California Constitution.

Building Healthy Communities (2020) 59 Cal.App.5th 220, 235 ["we conclude the trial court here erred in concluding Proposition 13 imposes a supermajority voting requirement on the electorate for passage of voter initiatives."]; *Howard Jarvis Taxpayers Assn. v. City & Cnty. of San Francisco* (2021) 60 Cal.App.5th 227, 242 ["Absent such a clear indication, we will not construe the two-thirds requirement to apply to such initiatives"] (*HJTA v. S.F.*).)

Plaintiffs misconstrue a line of cases including *Cohn*, *Fielder*, and *Fisher* to claim that section 4 only allows for general transfer taxes, not special transfer taxes. (HJTA MJOP at pp. 11-12, citing *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). All three of these cases predate *Upland* and involve tax measures enacted by local governments, not by initiative. The cases do not consider the voters' power to legislate by initiative and are inapposite here.

B. <u>Nor Can the City Charter Limit the Initiative Power Reserved in the Constitution</u>

The People reserved the initiative power to themselves when amending the California Constitution in 1911. No agency under that Constitution, even a charter city, can dilute the initiative power. (*Rossi v. Brown* (1999) 9 Cal.4th 688 (*Rossi*).) Yet Plaintiffs look to section 450 of the City Charter in an attempt to apply section 4's limitations on the City Council to Los Angeles voters' initiative power. This argument necessarily fails. ***First,*** as our Supreme Court confirmed in *Rossi*, a city charter cannot restrict the voters' constitutional initiative power. ***Second***, any ambiguity in section 450 must be resolved in favor of preserving the initiative power. ***Third***, the voters who approved section 450 did not intend to limit the initiative power any more than the framers of Proposition 13 and 218 did—the post-*Upland* cases cited above rejected just such claims. ***Fourth***, read in context—as it must be—section 450 cannot be interpreted to limit the initiative power. ***Fifth***, HJTA can cite no authority for its interpretation of section 450 nor does it acknowledge that it and its allies repeatedly lost this point in the post-*Upland* cases.

1. *Charter Cities Cannot Limit the Constitutional Initiative Power*

Our Supreme Court has squarely held that a charter city cannot restrict the initiative power voters reserved to themselves in the 1911 amendment to the California Constitution. *Rossi* addressed the scope of the initiative power under San Francisco's Charter. Plaintiffs there contended a charter provision prohibiting referenda on tax ordinances also forbade initiative repeal of a tax. (*Rossi*, *supra*, 9 Cal.4th at p. 693.) Those plaintiffs claimed that such an initiative is effectively a referendum and similarly barred by the charter. (*Ibid*.) The Court rejected the claim, because while "[t]he local initiative power may be even ***broader*** than the initiative power reserved in the Constitution," "a city charter may not restrict the broad power of initiative and referendum granted by the Constitution."[2] (*Id.* at pp. 696, 704, italics added.) "[A]s between the provisions of the Constitution and the provisions of a city charter, those which reserve the greater or more extensive [initiative or] referendum power in the people will govern." (*Pettye v. City & Cty. of San Francisco* (2004) 118 Cal.App.4th 233, 240, quoting *Hunt v. Mayor & Council of Riverside* (1948) 31 Cal.2d 619, 623.) "The constitutional reservation goes to the full extent expressed by its language. If the charter differs from the constitution in any respect it does not thereby diminish the powers reserved by the constitution. On the other hand, if the powers reserved by the charter exceed those reserved in the constitution the effect of the charter would be to give to the people the additional powers there described." (*Rubalcava v. Martinez* (2007) 158 Cal.App.4th 563, 571). Article II, sections 8 and 11 reserve the initiative power broadly; nothing in the charter city authority conferred by article XI, section 5 can be read to dilute it.

This dispatches HJTA's argument. Even if section 450 purported to limit the initiative power, it could not. Yet HJTA's motion fails for further, independent reasons.

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[2] The Court further noted that when the statewide initiative power was originally added to our Constitution in 1911, "taxation was not only a permitted subject for the initiative, but was an intended object of that power." (*Id.* at 699.) The Court found evidence of this purpose in the history of the measure, the contemporary understanding of the measure, and statements made by the measure's drafter. (*Id.* at 699-701.)

2. *Absent Express Intent to Limit the Initiative Power, Section 450 Must Be Read to Preserve It*

As discussed above, the initiative power is foundational and the longstanding rule holds that if a law "can reasonably be interpreted ***not to limit that power***," courts must "'resolve any reasonable doubts in favor of the exercise of this precious right.'" (*Kennedy Wholesale*, *supra*, 53 Cal.3d at pp. 253, citing *Brosnahan v. Brown* (1982) 32 Cal.3d 236, 241, italics omitted ["[T]he initiative power is 'one of the most precious rights of our democratic process'"].) Indeed, "the law shuns repeal by implication." (*Bd. of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 868.)

Section 450's language is a permissive restatement of the initiative power:

> ***Any*** proposed ordinance which the Council itself might adopt ***may*** be submitted to the Council by a petition filed with the City Clerk, requesting that the ordinance be adopted by the Council or be submitted to a vote of the electors of the City. Any proposed ordinance amending or repealing an ordinance previously adopted by a vote of the electors ***may*** be submitted to the Council by a petition filed with the City Clerk requesting that the ordinance be submitted to a vote of the electors of the City.

Restrictive words like "only" or "not" do not appear. One would have to imply any limitations but, of course, restrictions may not be implied as to the initiative power. Section 450 merely restates the initiative power.

HJTA relies on six words, "which the Council itself might adopt," to argue that section 450 substantively limits the voters' power to legislate by initiative and therefore invalidates Measure ULA. But, the evidence and case law HJTA cites for this assertion show only that other charter cities have adopted similar language, and the Court of Appeal recently concluded that analogous language in San Francisco's charter does not do what HJTA hopes section 450 might do here. (See *Proposition G*, *supra*, 66 Cal.App.5th at p. 1079 (rejecting argument that charter "effect[s] a silent repeal of the people's right to adopt a special tax by citizen's initiative").)

Section 450 is easily read to describe the jealously guarded initiative power, rather than to limit it. Under *Kennedy Wholesale*, *supra*, 53 Cal.3d 245 and *Upland*, *supra*, 3 Cal.5th 924, because it can be so read, it must be so read. Even were section 450

ambiguous as to limits on the initiative power, which it is not, the Court is "*required to resolve any reasonable doubts in favor of the exercise of this precious right*." (*Kennedy Wholesale*, *supra*, 53 Cal.3d at p. 250.) "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." (*Upland*, *supra*, 3 Cal.5th at p. 957.) Again, HJTA's attempt to find section 4's limits on the Legislature in section 450's restatement of the initiative power simply cannot survive this rule.

3. *Section 450 Is Not Intended to Limit Voters' Initiative Power to Legislate*

Faced with clear, binding precedent controverting its arguments about the plain language of section 450, HJTA next makes a series of guesses as to section 450's purpose. This speculation is baseless and irrelevant.

First, HJTA divines that section 450 is intended to "keep[] the city council in check." (HJTA MJOP at pp. 13–14.) HJTA proposes an unfounded hypothetical in which "a city council itself round[s] up enough signatures on a petition" to enact an ordinance "that was supposed to be beyond the city council's power." (*Id.* at p. 14.) HJTA cannot cite a single example of City Council legislation dressed in initiative form, and Measure ULA was not thus enacted. Moreover, courts have rejected similar arguments in the post-*Upland* cases involving San Francisco's Propositions C and G. (See *HJTA v. S.F.*, 60 Cal.App.5th at pp. 241–242; *Proposition G*, *supra*, 66 Cal.App.5th at pp. 1079–1081 (rejecting challenges to initiatives supported by government officials); *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, 239 (declining to address hypothetical).) And, crucially, HJTA does not explain how its conclusion follows from a charter provision which HJTA concedes has been considered by only a single case. (HJTA MJOP at p. 16.) This hypothetical fear need not detain us here, especially considering the Court of Appeal has rejected it.

Second, HJTA hypothesizes that section 450 exists to "protect the charter itself as the City's governing document" from conflicting ordinances or improper amendments. (HJTA MJOP at p. 14.) This pure conjecture is irrelevant to Measure ULA, which neither conflicts with nor seeks to amend the charter. Moreover, there is no need for the charter to protect itself. Our Constitution and preemptive statutes governing charter adoptions and amendments are more than sufficient for the task. (Cal. Const., art. XI, §§ 3, 5; Gov. Code, § 34450 et seq.; Elections Code, § 1415.)

Finally, HJTA argues that section 450's is "simply common language" adopted by other cities in the early 20th century. (HJTA MJOP at p. 15.) Indeed. But that fact offers nothing to show that voters in those cities intended to curtail their own initiative power. There is nothing here of Ulysses tying himself to the mast to resist the sirens' song. (See *Upland*, *supra*, 3 Cal.5th at p. 931.) Similarly, HJTA's observation that "[t]he 1911 change [to the Charter] must be presumed intentional" does not demonstrate any specific intent in section 450. (HJTA MJOP at p. 15, citing *City of Irvine v. So. Cal. Assn. of Gov'ts* (2009) 175 Cal.App.4th 506, 522.)

4. *Context Makes Clear Section 450 Does Not Cabin the Initiative Power to Legislate*

Section 450 must, of course, be read in context. "It is axiomatic that every provision of the charter should be construed in the light of the whole instrument and of each and every other provision thereof, keeping in view at all times the intent underlying the same." (*City of San Jose v. Lynch* (1935) 4 Cal.2d 760, 766.) "[E]ach sentence [of the charter] must be read . . . in the light of the [charter's overall] scheme . . . ." (*San Diegans for Open Gov't v. Pub. Facilities Fin. Auth. of City of San Diego* (2021) 63 Cal.App.5th 168, 174.) When read in light of the full Charter, HJTA's reading of section 450 is untenable.

Section 450 is within Article IV, concerning elections, and its subsection concerning initiatives, entitled "subject of initiatives." Section 450 authorizes initiatives to adopt "[a]ny proposed ordinance which the Council itself might adopt." The City Council's legislative power appears in section 240, within Article II, concerning "Officers

of the City," and its subsection concerning the "Legislative Branch." Section 240, entitled "Legislative Power," provides: "[e]xcept as otherwise specifically provided in the Charter, ***the Council shall have full power to pass ordinances upon any subject of municipal concern***." [Italics added.] Section 240 confers the City Council broad power to legislate on any matter of municipal concern. It confers all the legislative power our Constitution allows: "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws." (Cal. Const., art. XI, § 5, subd. (a).)

Section 450's recitation of the initiative power our State Constitution reserves to the People of Los Angeles must be read together with section 240. Thus, "any proposed ordinance which the Council itself might adopt," includes ordinances touching "any subject of municipal concern." The only limitation section 240 provides on the Council's legislative authority is that it extends only to municipal concerns and "except as otherwise specifically provided in the charter." The Charter is read as a whole and its provisions harmonized to give each its intended sway. (See *Creighton v. City of Santa Monica* (1984) 160 Cal.App.3d 1011, 1017 ("Under settled rules of statutory interpretation, the various sections of a charter must be construed together, giving effect and meaning so far as possible to all parts thereof, with the primary purpose of harmonizing them and effectuating the legislative intent as therein expressed.").))

Section 450, in essence, indicates that the citizenry, through its initiative power, functions as a second legislature (as opposed to, mayor, commission, or administrative adjudicator) which, like the Council, has the "full power to pass ordinances upon any subject of municipal concern." (Los Angeles City Charter, § 240.) The power to tax is a well-established subject of municipal of concern. "The power to levy local taxes in support of local expenditures, of course, is a 'municipal affair.'" (*McWilliams v. City of Long*

Beach (2013) 56 Cal.4th 613, 626.) Thus, read together with the whole charter, section 450 takes no issue with Measure ULA.

5. *HJTA Offers No Authority for Its Interpretation*

HJTA's cases on this issue are inapposite for two reasons. ***First***, none supports the result HJTA advocates. HJTA can cite no case striking down a legislative initiative as exceeding a substantive limit on the initiative power arising from a city's charter. HJTA argues that "*Howard Jarvis Taxpayers Assn. v. City and County of San Francisco* affirms" its argument. (HJTA MJOP at p. 17) But that Court **upheld** the initiative HJTA challenged, emphasizing the "duty on courts to jealously guard, liberally construe and resolve all doubts in favor of the exercise of the initiative power." (*HJTA v. S.F.*, *supra*, 60 Cal.App.5th at p. 235.) The holding of *HJTA v. S.F.* is that "the absence of a constitutional provision expressly authorizing majority approval of local voter initiatives is immaterial," because article II, sections 8 and 11 are read broadly to achieve their purpose. (*HJTA v. S.F.*, *supra*, at p. 239.) Accordingly, the Court applied the *Upland* principle that "silence with respect to the initiative power" is read as "indicative of voter intent not to restrict such power." (*Id.* at pp. 237–39.) Nor does *Safe Life Caregivers*, HJTA's second cited case (HJTA MJOP at p. 15) even consider an initiative, finding instead that Los Angeles Charter section 460 governing referenda was not intended to require referendum ordinances to satisfy another charter section applying to resolutions by the City Council. (*Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1046.)

Likewise, the cases HJTA cites in section IV.D of its Motion for Judgment on the Pleadings (pp. 17–18) do not support its arguments, beyond demonstrating the unremarkable proposition that "initiatives are sometimes invalid." (*Id.* at p. 18.) But Measure ULA is not invalid for any of the reasons HJTA proposes.

Second, most of HJTA's authorities predate *Upland*. Before *Upland* the initiative power was often described as being coextensive with the city council's legislative power. (E.g., *Citizens for Responsible Behavior v. City of Riverside* (1991) 1 Cal.App.4th 1013,

1034–1035.) HJTA's cases reflect that understanding.[3] However, *Upland* made clear that voters may legislate on matters a city council cannot: "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." (*Upland*, *supra*, 3 Cal.5th at p. 948.) *Upland* and its progeny control here, not dated case law HJTA finds more helpful to its policy aims.

C. HJTA's Attempt to Distinguish Procedural and Substantive Limitations Is a Red Herring

Plaintiffs attempt to distinguish the binding authority that establishes neither section 4 of our Constitution nor section 450 of the Los Angeles City Charter limit the initiative power by characterizing these cases as only pertaining to "procedural requirements." This contrived distinction attempts to distract from the actual holdings of the cases and is not applicable here.

For example, HJTA asserts that the cases regarding section 4 only address "certain matters deemed procedural under Proposition 13 and its progeny." (HJTA MJOP at p. 13 and fn 2.) These cases make no such distinction in their holdings. In *Upland*, the Court interpreted the term "local government" in article XIII C, section 2 to mean the local government entity and not the electorate, relying on the "common understanding" of the term and finding further support in statutory context and interpretation principles, including the Court's unqualified duty to "jealously guard" and "liberally construe" the initiative power. (*Upland*, *supra*, 3 Cal.5th. at p. 934.) The court in *Proposition C* similarly interpreted the phrase "Cities, Counties, and special districts" in article XIII A, section 4, again without such qualification.

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[3] HJTA cites to *City & County of San Francisco v. Patterson* (1988) 202 Cal.App.3d 95, again a pre-*Upland* case reflecting an outdated understanding of the voters' power to legislate by initiative. Moreover, the object of the initiative in that case was to bind the San Francisco Unified School District, an independent agency created by the state, making the proposed ordinance "unmistakably beyond the power of the people to enact." (*Id.* at p. 102.)

HJTA's procedural / substantive distinction does not hold water when interpreting section 450 either. To start, *Rossi* held in the context of a purported ***substantive*** limitation on the San Francisco voters' power of initiative over taxation that a city charter cannot limit the initiative power reserved by the Constitution. (*Rossi*, *supra*, 9 Cal. 4th at p. 694.) Thus, whether section 450 intends to substantively limit the initiative power or not (it does not), it could not do so. Further, HJTA misconstrues the meaning of the Second District Court of Appeal's dicta from *Safe Life Caregivers* that states "'which the Council itself might adopt,' as used in both charter sections 450 and 460 is simply a limit on substantive subject matter and not an incorporation of procedural requirements imposed on the council." (243 Cal.App.4th at p. 1046.) As our Supreme Court has repeatedly held, the initiative power reserved by the Constitution is "at least as broad as the legislative power wielded by the Legislature and local governments." (*Upland*, *supra*, 3 Cal.5th at p. 935; *DeVita v. Cnty. of Napa* (1995) 9 Cal.4th 763, 775 ["the local electorate's right to initiative . . . is generally co-extensive with the legislative power of the local governing body."].) However, the initiative power can go *beyond* what is reserved by the Constitution. (*Rossi*, *supra*, 9 Cal.4th 688, 696 ["The local initiative power may be even broader than the initiative power reserved in the Constitution"].) Thus, *Safe Life Caregivers* does not imply a limit on the electorate's power of initiative over ***legislation***, which is constitutionally protected in California. If anything, the brief phrase in *Safe Life Caregivers* acknowledges that the initiative process does not extend beyond that to, for example, administrative matters. To read this language otherwise would be just as "at odds with the populist spirit of the initiative process" as reading in procedural limitations. (*Id.* at p. 1046.)

V. CONCLUSION

The Court should dismiss Plaintiffs' claims and deny leave to amend. Plaintiffs cannot cure any of the defects identified above because these are legal questions as to the authority of local voters in our constitutional scheme of government. The Court should deny HJTA's Motion for Judgment on the Pleadings and grant the motions brought by Defendants and The City. Upon resolving the parallel cross-motions for judgment on the

pleadings, the Court should enter a final judgment here. (Code of Civ. Proc., § 870(a); *Committee for Responsible Planning v City of Indian Wells* (1990) 225 Cal.App.3d 191, 197–198.).

Dated: August 11, 2023

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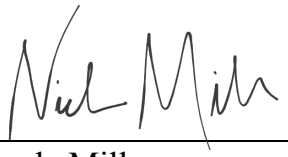
By: 

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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 August 11, 2023, I served an original version of the foregoing document described as **DEFENDANTS SCANPH, KIWA, AND SEIU LOCAL 2015's OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGEMENT ON THE PLEADINGS** on each interested party, as stated in the attached service list, by electronic service, via upload to OneLegal.

Executed on August 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)

SERVICE LIST

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