

Joint Informational Hearing  
of  
Senate Governance & Finance Committee,  
Assembly Local Government Committee  
and  
Assembly Revenue & Taxation Committee

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I. *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924

**Facts:** Marijuana proponents filed an initiative to overturn the City's ban on dispensaries with a proposal to allow four. It required an annual payment of \$75k per dispensary to cover the City's regulatory costs. The City calculated its costs at just \$10k and concluded the measure imposed a \$60k per year general tax on dispensaries.

Proposition 218 requires general taxes to be placed on ballots on which city council seats may be contested. (Cal Const., art. XIII C, § 2(b).) City therefore placed the measure on a general election ballot more than two years in the future notwithstanding the proponents had obtained the signatures of 15% of city voters and requested a special election as the Elections Code then permitted.

**Litigation:** The initiative proponents sued, the trial court ruled for the City, the Court of Appeal reversed, and our Supreme Court agreed with the Court of Appeal.

**Decision:** The Court reasoned that the initiative power is fundamental to our democracy and limits on it must be express. It therefore concluded that "local agency" as used in Proposition 218's general election rule means the institution of city government and not city voters acting by initiative. It is similar to a decision involving Proposition 13. (*Kennedy Wholesale, Inc. v. State Board of Equalization* (1991) 53 Cal.3d 245, 251.) The Court did say that the requirement for two-thirds voter approval of special taxes was enforceable because Proposition 218 expressly states that rule in article XIII C, § 2(d). Justices Kruger and Liu filed

a partial dissent stating that the majority opinion called into doubt the enforceability of the rule requiring two-thirds voter approval of special taxes. In addition, the majority opinion often refers to section 2 of article XIII C generally, rather than specifically to the provision of its subdivision (b) in issue. That unhelpful generality also raises concerns by some that the two-thirds rule for special taxes is in jeopardy. Further, the Court declined to decide whether a city could adopt a special tax proposed by initiative petition without an election at all, which is the rule for most initiatives and has become a somewhat common practice in the land use context. The Howard Jarvis Taxpayers Association sought rehearing in *Upland*, urging the Court to use more specific language, but the Court declined to significantly clarify its language.

As an interpretation of our Constitution, the decision impacts all local governments with the power to tax by ordinance, be they counties, cities, school districts, or other special districts. (Cal. Const., art. XIII C, § 1(b) [defining “local agency”].)

## 2. *City of San Buenaventura v. United Water Conservation District* (2017) 3 Cal.5th 1191

This case challenged groundwater augmentation charges imposed on a city water utility under Propositions 218 and 26, arguing a 3:1 ratio of fees on non-agricultural groundwater use to those on farmers violated the cost-of-serve rule of each measure. The Court’s initial decision stated in a footnote that the special taxes made subject to a two-thirds voter approval requirement by Proposition 13 were not the same special taxes governed by Proposition 218 because Proposition 13 speaks only to property taxes. Some read this footnote, together with *Upland*, as an invitation to challenge the two-thirds voter approval requirement for special taxes other than property taxes. The Howard Jarvis Taxpayers Association filed a request for rehearing in the case (even though it is not a party) asking that this footnote be revised. The Court granted that request, eliminating this concern.

## 3. Competing Readings of *Upland*

*Upland* has engendered a range of readings. I published a bulletin shortly after *Upland* was decided arguing that it does not change the two-thirds voter approval requirement. Other law firms issued newsletters and bulletins taking the opposite view. The City Attorney’s office of San Francisco has publicly

advised the elections officials of that city and county that the two-thirds rule does not apply to initiative tax proposals. Litigation seems likely if an agency takes that position.

It is clear that the ability to attain special elections on tax proposals by proposing them via initiative has been widely publicized and occasionally used in the months since *Upland* was decided.

#### 4. What next?

The law of government revenues is developing rapidly. The Supreme Court has heard argument in several public finance cases in the past year and others will come on for argument in coming months. Constitutional amendments have been proposed in this body and by initiative, though none is yet assured of a place on the ballot. One way or another, our legal and political systems will resolve these questions, although it may take some time for them to do so.