

**Joint Information Hearing of the California
Senate Governance & Finance Committee
and
Assembly Revenue & Taxation Committee**

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Questions Still to be Addressed Regarding the Supreme Court's Decision in *California Cannabis Coalition v. City of Upland*:

- 1. Does the holding in *California Cannabis Coalition v. City of Upland* allow citizens' groups proposing local initiatives imposing special taxes to enact them by a majority vote?**

The California Supreme Court declined to answer this question. *Calif. Cannabis Coalition v. City of Upland*, 3 Cal. 5th 924, 947 (2017) ("*Upland*"). Rather, it chose to narrow its decision to the sole question of whether "the requirement in article XIII C, section 2, subdivision (b) — mandating that general taxes be submitted to the voters at a regularly scheduled general election — applies only to local governments and not to the electorate's initiative power without evidence that such was the intended purpose of the requirement." *Id.* at 947. The partial dissenting opinion of Justice Kruger, however, suggests that the decision would inevitably extend to the voter approval requirements of special taxes proposed by a citizens' initiative. *Id.* at 956 ["If a local tax enacted by voter initiative is not a tax 'impose[d]' by 'local government,' as the majority insists, then from here on out, special taxes can be enacted by a simple majority of the electorate, as long as proponents can muster the necessary quantum of support to require consideration of the measure."]

Until there is further direction from the courts or voters, this remains an open question subject to interpretation and debate.

- 2. Has the role of local agencies in determining the appropriate voter threshold for citizen initiatives proposing to impose special taxes changed as a result of the *Upland* decision?**

The Supreme Court's refusal to explicitly answer this question requires local agencies to determine the appropriate voter threshold for citizen initiatives proposing to impose special taxes. As a consequence, it is highly likely that any determination of a local agency on such a matter will result in litigation challenging the decision of the legislative body or the validity of the tax if approved by a majority of the qualified voters voting in the election.

3. Does the *Upland* holding apply only to cities and counties, or does it also apply to special districts and school districts?

Further clarification by the courts or a constitutional amendment is required to answer this question. As previously noted, the Supreme Court limited its decision to the question of whether California Constitution article XIII C, section 2, subdivision (b) governs the timing of elections for general taxes proposed by a citizens' initiative. The provisions of section 2, subdivision (b) do not apply to special districts or school districts because they are not authorized to impose general taxes. Cal. Const. art. XIII C, § 2(a) ["All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. *Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.*"] (emphasis added); Consequently, under this narrow reading the decision does not affect special districts and school districts.

If a court determines, however, that the *Upland* decision does extend to the voter approval requirements of taxes by citizens' initiatives, then the decision will apply to special districts and school districts. Meaning, that a citizens' initiative to approve a tax to be collected by a special district or school district would only require approval by a majority of the qualified voters voting in the election because the tax is not "imposed" by the special district or school district. *See id.* at § 2(d) ["No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved."]

4. What are the impacts of the *Upland* decision on taxpayers?

The decision requires cities and counties to order a special election on any citizens' initiated tax measure that receives the requisite number of valid voter signatures to put the measure on the ballot. As the Supreme Court noted, "[a]t that point, either the city or other interested parties may pursue any appropriate legal challenge to the measure either in the pre-, or more likely, postelection context." *Upland*, 3 Cal. 5th at 948. Thus, if a general tax measure is proposed via a citizens' initiative, taxpayers will have an opportunity to vote on the tax sooner than would otherwise be permitted if the initiative was proposed by a city or county. However, the Legislature has repealed the statutory authority for initiatives to compel special elections effective January 1, 2018, so this aspect of the case will be of limited future relevance. (Stats. 2017, ch. 748 (AB 765).)

If a court later determines that the *Upland* decision extends to the voter approval requirements of California Constitution article XIII C, section 2, subdivisions (a) and (d), then any citizens' initiative proposing a tax would only require the approval of a majority of the qualified voters voting on the initiative.

5. Are there any other potential consequences?

City attorneys, county counsels, district attorneys, and general counsels of certain districts are required to prepare impartial analyses of ballot initiatives. Cal. Elec. Code §§ 9160, 9313, 9314

9280. As part of their analysis, they will be required to indicate whether a majority voter approval or a super majority voter approval will be required to approve the citizens' initiative for a special tax measure. Providing such a determination will, in either conclusion, likely lead to litigation. If the proponents of the initiative assert that the measure only requires a majority vote or a taxpayer opponent asserts a supermajority vote is required, counsel may request a court to declare that the proposed initiative is unconstitutional and relieve counsel from the duty to prepare a title and summary. See *Widders v. Furchtenicht*, 167 Cal. App. 4th 769 (2008); *Jahr v. Casebeer*, 70 Cal. App. 4th 1250 (1999). Regardless, any citizen initiative for a special tax measure is likely to be the subject of litigation if it is approved by a majority vote of the qualified electors voting in the election on the measure.

The uncertainty of the voter-approval requirements for special tax measures initiated by citizens may have other funding consequences for local agencies. For example, if a citizens' initiative proposes a special tax to fund a particular public improvement or improvements, and the local agency proposes to issue bonds to fund the construction of the project, the debt service for which will be paid for from the proceeds of the special tax, then the counsel for the agency will be asked to render certain opinions respecting the bonds. Among those opinions would be, for example, that the counsel is of the opinion that: (1) the bond documents have been duly authorized, executed and delivered by the local agency and constitute the legal, valid and binding obligations of the local agency enforceable against the local agency in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles where equitable remedies are sought and to the exercise of judicial discretion in appropriate cases; and (2) all approvals, consents, authorization, elections and orders of or filings or registrations with any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the ability of the local agency, to perform its obligations under the bonds or the bond documents, have been obtained or made, as the case may be, and are in full force and effect. Providing such opinions may be difficult in light of the ambiguity created by the *Upland* decision.

6. Should the Legislature do anything about this?

A Supreme Court decision on the specific issue of whether a citizens' initiative that proposes a special tax may be approved by a majority vote of the qualified electors voting in the election is not likely to be provided in the near future. The only legislative means of providing clarification on this question would be an amendment to the Constitution. The Supreme Court has indicated that legislative clarifications of the Constitution are worthy of some judicial respect, although the final determination remains with the Courts. *Greene v. Marin county Flood Control & Water Cons. Dist.*, 49 Cal.4th 277, 290–291 (2010). Thus, the Legislature could potentially address these issues by amendment to the Proposition 218 Omnibus Implementation Act of 1997, California Government Code section 53750 *et seq.* It is not clear, however, what guidance the Legislature should provide, as these issues are controversial and consensus is lacking.

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