

<b>SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited</b>	Entered by:
TITLE OF CASE: <b>City of Fresno vs. Fresno Building Healthy Communities</b>	
<b>LAW AND MOTION MINUTE ORDER</b>	Case Number: <b>19CECG00422</b>

Hearing Date: **September 5, 2019**                      Hearing Type: **From Chambers**  
Department: **503**    Judge: **Kimberly A. Gaab**  
Court Clerk: **M. Duarte**                                      Reporter: **Not Reported**

<b>Appearing Parties:</b>	
Plaintiff: <b>No Appearances</b>	Defendant: <b>No Appearances</b>
Counsel:	Counsel:

- Off Calendar
- Continued to     Set for \_\_\_ at \_\_\_ Dept. \_\_\_ for \_\_\_
- Submitted on points and authorities with/without argument.     Matter is argued and submitted.
- Upon filing of points and authorities.
- Motion is granted     in part and denied in part.     Motion is denied     with/without prejudice.
- Taken under advisement
- No party requested oral argument pursuant to Local Rule 2.2.6 and CRC 3.1308(a)(1).
- Tentative ruling becomes the order of the court. No further order is necessary.
- Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.

**[X] Service by the clerk will constitute notice of the order.**

- See attached copy of the Tentative Ruling.
- Judgment debtor \_\_\_ sworn and examined.
- Judgment debtor \_\_\_ failed to appear.  
Bench warrant issued in the amount of \$ \_\_\_

**JUDGMENT:**

- Money damages     Default     Other \_\_\_ entered in the amount of:  
Principal \$\_\_\_ Interest \$\_\_\_ Costs \$\_\_\_ Attorney fees \$\_\_\_ Total \$\_\_\_
- Claim of exemption     granted     denied. Court orders withholdings modified to \$\_\_\_ per \_\_\_

**FURTHER, COURT ORDERS:**

- Monies held by levying officer to be     released to judgment creditor.     returned to judgment debtor.
- \$\_\_\_ to be released to judgment creditor and balance returned to judgment debtor.
- Levying Officer, County of \_\_\_, notified.     Writ to issue
- [X] Other: The matter having been under advisement, the court now rules as follows: See attached Order After Hearing.**

**Order After Hearing**

Re: **City of Fresno v. Fresno Building Healthy Communities**  
Superior Court Case No. 19CECG00422

Hearing Date: August 14, 2019 (Dept. 503)

Motion: Intervener Howard Jarvis Taxpayers Association's Motion for Judgment on the Pleadings

**Ruling:**

The motion for judgment on the pleadings by Intervener Howard Jarvis Taxpayer Association ("Intervener") is granted, without leave to amend.

**Explanation:**

This action concerns Measure P, the "Fresno Clean and Safe Neighborhood Parks Tax," a ballot initiative on the November 6, 2018 Consolidated Statewide General Election ballot that proposed to authorize the City of Fresno to collect a 3/8 percent sales and use tax. The initiative received 52.17 percent affirmative votes and was declared failed on December 12, 2018 by the Fresno City Council for not having obtained two-thirds voter approval. Defendant Fresno Building Healthy Communities ("FBHC"), the proponent of Measure P, argues that only a simple majority was needed to approve the measure. Intervener now moves for judgment on the pleadings, contending that two-thirds vote was indeed required.

The California Supreme Court explained the principles that courts are to follow when construing constitutional provisions and statutes:

We start by ascribing to words their ordinary meaning, while taking account of related provisions and the structure of the relevant statutory and constitutional scheme. (*Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 39 Cal.5th 282, 293; *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205, 212 . . . .) If the provisions' intended purpose nonetheless remains opaque, we may consider extrinsic sources, such as an initiative's ballot materials. (*Larkin [v. Workers' Comp. Appeals Bd.]* (2015) 62 Cal.4th 152,] . . . 158 . . . .) Moreover, when construing initiatives, we generally presume electors are aware of existing law. (*In re Lance W.* (1985) 37 Cal.3d 873, 890, fn. 11 . . . .) Finally, we apply independent judgment when construing constitutional and statutory provisions. (*Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401, 416 . . . .)

(*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 933–934 (Upland).)

The court is to "resolve doubts about the scope of the initiative power in its favor whenever possible, and ... narrowly construe provisions that would burden or limit the exercise of that power." (*Id.* at p. 936, citations omitted.)

#### Proposition 13 / Article XIII A, Section 4

Article XIII A was added to the state Constitution in 1978 by Proposition 13. To prevent subversion of its property tax limitations by ensuring that lost property tax revenue could not simply be backfilled with other new taxes, article XIII A, section 4 prohibited counties, cities, and special districts from enacting any special tax without a two-thirds vote of the electorate. (*Apartment Ass'n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 836.)

The California Supreme Court noted, in *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, that article XIII A, section 4's two-thirds vote requirement "demonstrates, unambiguously, that the voters knew how to impose a supermajority voting requirement upon themselves when that is what they wanted to do." (*Id.* at p. 252.) Article XIII A, section 4 was referenced in contrast to article XIII A, section 3: "That the voters expressly adopted such a requirement in section 4 strongly suggests that they did not do so implicitly in section 3." (*Ibid.*, emphasis in original.)

In *Altadena Library Dist. v. Bloodgood* (1987) 192 Cal.App.3d 585, a property tax to raise money for the library district was approved by a majority of voters, but the Los Angeles County Controller declined to implement the tax based on the supermajority requirement of article XIII A, section 4. The Court of Appeal held that the two-thirds vote requirement applied to the initiative, noting that the voters' ability to approve a parcel tax was dependent on the district's authority under state law to levy a parcel tax. (*Id.* at p. 589.) *Altadena Library* was cited with approval by the California Supreme Court in *Santa Clara County Local Transportation Authority v. Guardino* (1995) 11 Cal.4th 220, where it described the *Altadena* initiative as "a proposal to impose a special tax for library purposes [which] obtained a majority but not the two-thirds voter approval required by Proposition 13." (*Id.* at p. 258.)

Under Proposition 13 and *Altadena Library*, in order to impose a special tax through initiative, local voters must vote in favor by a supermajority.

#### Proposition 218 / Article XIII C, Section 2, Subdivision (d)

Article XIII C, section 2, subdivision (d) of the California Constitution (adopted in 1996 as part of Proposition 218) provides: "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." "Proposition 218 . . . should be 'liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent.' [Citation.]" (*Bay Area Cellular Telephone Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 698-699, emphasis in original; see also *City of San Buenaventura v. United Water Conservation Dist.* (2017) 3 Cal.5th 1191, 1204.)

Liberalizing Proposition 218 to effectuate its purposes of "limiting local government revenue and enhancing taxpayer consent" necessitates applying the

construction requiring enhanced taxpayer consent, i.e., a two-thirds vote for all special taxes. Relying on the 2017 California Supreme Court decision in *Upland*, FBHC argues that only a simple majority is needed to approve a special tax enacted by voter initiative. *Upland* involved a voter initiative to permit medical marijuana dispensaries and to require each dispensary to pay an annual \$75,000 licensing and inspection fee. (*Upland, supra*, 3 Cal.5th at pp. 931-932.) The California Cannabis Coalition collected signatures from 15 percent of the city's voters and requested a special election to consider the initiative pursuant to Elections Code section 9214. (*Ibid.*) Because Proposition 218 requires local governments to present general tax proposals at general election for location candidates (art. XIII C, § 2(b)), and concluding that the \$75,000 fee constituted a general tax, the city council determined that the initiative could not be voted on in a special election. (*Id.* at p. 932.) The California Cannabis Coalition filed a writ of mandate alleging that the city violated Elections Code section 9214 by failing to hold a special election on the initiative. (*Ibid.*)

The California Supreme Court made clear that "[b]y its terms, article XIII C, section 2 only applies to actions taken by a 'local government.'" (*Id.* at p. 936.) "[T]he common understanding of local government does not readily lend itself to include the electorate, instead generally referring to a locality's governing body, public officials, and bureaucracy." (*Id.* at p. 937.) Referring to the ballot pamphlet, the Court noted that "construing local government as an entity distinct from the public is consistent not only with how the term is used in the provision's text, but also with how it is used in its findings and declarations." (*Id.* at p. 938.) The Court found support for its interpretation in Proposition 218's findings and declarations, noting that "these materials indicate both that article XIII C employs the term 'local government' as it is commonly understood and that the provision's intended purpose did not include limiting voters' "power to raise taxes . . . by statutory initiative." (*Id.* at pp. 940-941.)

Because the *Upland* Court concluded that voters were not the "local government" for purposes of the election timing requirement applicable to general taxes under Proposition 8 (article XIII C, section 2, subdivision (b)), FBHC contends that voters also are not the "local government" for purposes of the two-thirds vote requirement applicable to special taxes in article XIII C, section 2, subdivision (d). However, *Upland* is confined to its limited holding concerning the election date for an initiative. The Court specifically addressed the third sentence of article XIII C, section 2, subdivision (b), which reads, in relevant part: "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, except in cases of emergency declared by a unanimous vote of the governing body." This provision does not concern the vote required for a tax. Rather, it applies when the governing body of a local government is scheduling the election. The Court stated: "[W]e conclude that 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 . . . ." (*Upland, supra*, 3 Cal.5th at p. 943.)

It is well-settled that "[a]n appellate decision is not authority for everything said in the court's opinion but only 'for the points actually involved and actually decided.' [Citation.]" (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620.) Language in an opinion is to be understood only "in the light of the facts and the issue then before the court . . . ."

(*Ginns v. Savage* (1964) 61 Cal.2d 520, 524 fn. 2.) And “[c]ases are not authority for propositions not decided.” (*Sino Century Development Limited v. Farley* (2012) 211 Cal.App.4th 688, 696; *Machado v. Superior Court* (2007) 148 Cal.App.4th 875, 881.) The issue presented in the instant case was never reached by the *Upland* Court.

The two-thirds vote requirement is not placed on the “local government.” Rather, proposed special taxes must be “submitted to the electorate,” which must approve the proposals by a two-thirds vote. Since local government does not approve special tax proposals, it is erroneous to conclude that the two-thirds vote requirement in article XIII C, section 2, subdivision (d) applies only to a “local government.” Once the initiative is submitted to the voters, it is incumbent upon to the voters to approve it by a two-thirds vote, or otherwise reject it. (See Elec. Code, § 9215.)

The *Upland* Court, in fact, distinguished the election date requirement (which only applies to local governments in scheduling elections) from the two-thirds vote requirement that applies to voters:

[A]s we observed in *Kennedy Wholesale*, 53 Cal.3d at page 252, 279 . . . , when an initiative's intended purpose includes imposing requirements on voters, evidence of such a purpose is clear. In article XIII C, section 2, subdivision (d), for example, the enactors adopted a requirement providing that, before a local government can impose, extend, or increase any special tax, voters must approve the tax by a two-thirds vote. That constitutes a higher vote requirement than would otherwise apply. ([Elec. Code,] § 9217 [providing for a majority vote].) That the voters explicitly imposed a procedural two-thirds vote requirement on themselves in article XIII C, section 2, subdivision (d) is evidence that they did not implicitly impose a procedural timing requirement in subdivision (b).

(*Upland, supra*, 3 Cal.5th at p. 943, emphasis added.)

In the above-referenced provision, the Court refers to Elections Code section 9217, a statute specific to local voter *initiatives*, and which provides that such initiatives pass with a simple majority vote. Thus, it appears that the Court was referring to initiatives, then, when it stated that, under article XIII C, section 2, subdivision (d), voters must approve special taxes “by a two-thirds vote” and such “constitutes a higher vote requirement than would otherwise apply” pursuant to Elections Code section 9217. (*Ibid.*) The two-thirds vote requirement applies to all special tax proposals, regardless of the proponent of the proposal.

Following the *Upland* decision, the Legislative Analyst's Office likewise concluded that “[c]itizen initiatives that increase taxes must secure the same vote of the electorate—majority vote for general taxes and two-thirds vote for special taxes—as those placed on the ballot by local governing bodies.” (Intervener's Request for Judicial Notice, Ex. 1, p. 1.)

Accordingly, Intervener's motion for judgment on the pleadings is granted, without leave to amend. All requests for judicial notice are granted, with the exception of Intervener's Exhibit 2.

**Ruling Issued By:** Kimberly C. Mad on 9/5/19.  
(Judge) (Date)

<p align="center"><b>SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO</b>  Civil Department, Central Division  1130 "O" Street  Fresno, California 93724-0002  (559) 457-2000</p>	<p align="center"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE:  <b>City of Fresno vs. Fresno Building Healthy Communities</b></p>	
<p align="center"><b>CLERK'S CERTIFICATE OF MAILING</b></p>	<p>CASE NUMBER:  <b>19CECG00422</b></p>

I certify that I am not a party to this cause and that a true copy of the:  

**Minute Order from Chamber with Order After Hearing**

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: Fresno, California 93724-0002

On Date: 09/05/2019

Clerk, by           *M. Duarte*          , Deputy  

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