

No. D080199

In the Court of Appeal, State of California
FOURTH APPELLATE DISTRICT, DIVISION ONE

ALLIANCE SAN DIEGO ET AL.,
Plaintiffs and Respondents

vs.

YES! FOR A BETTER SAN DIEGO,
Defendants and Appellants.

Appeal From the Superior Court of the State of California
County of San Diego, Case Nos. 37-2021-00024590-CU-MC-CTL
and 37-2021-00024607-CU-MC-CTL
Honorable Kenneth J. Medel, Judge Presiding

**APPELLANT YES! FOR A BETTER SAN DIEGO'S
OPENING BRIEF**

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CERTIFICATE OF INTERESTED PARTIES

These entities or persons have either (1) an ownership interest of 10 percent or more in the party or parties filing this certificate or (2) a financial or other interest in the outcome of the proceeding that the Justices should consider in determining whether to disqualify themselves:

- Owners of transient lodging businesses in the City of San Diego.

DATED: July 26, 2022

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INTRODUCTION AND SUMMARY OF ARGUMENT

This case contradicts four recent published decisions of the Court of Appeal, which our Supreme Court has declined to review, to conclude a special tax¹ proposed by initiative cannot take effect on the votes of a simple majority of voters even though comparable taxes were sustained in San Francisco, Oakland and Fresno. Rather than follow these fresh and binding cases, the trial court granted judgment on the pleadings to invalidate San Diego's Measure C, concluding that two-thirds voter approval was required because the City of San Diego ("City") erroneously informed voters it was. The trial court sought to distinguish these cases because the City's error took the form of an ordinance, rather than a resolution or impartial analysis. But the form of the City's error is immaterial to voters' and initiative proponents' rights. The San Diego voters who initiated Measure C, represented by the campaign committee they formed, Yes! For a Better San Diego ("the Yes Committee"), appeal to defend their measure to impose a special tax to fund street repairs, homeless services, and a Convention Center expansion. No municipal error may strip the People of their reserved initiative power. Were the law otherwise, such errors might abound — initiatives necessarily propose legislation elected officials will not. To justify the result

¹ A special tax is one the proceeds of which may be expended only for specified purposes. (Cal. Const., art. XIII C, § 2, subd. (d).)

here, Respondent Howard Jarvis Taxpayers Association (“HJTA”) misreads a rarely applied initiative amendment to our Constitution, Proposition 219, designed to prevent tax measures which coerce voters. No such measure is involved here. Measure C applies citywide, without respect to how any area of the City voted on it.

Respondents, those who responded to the City’s validation complaint (other than the Yes Committee) or filed their own reverse validation complaint (“Challengers”), will urge this Court to disagree with the four recent decisions of the First and Fifth Districts to create a conflict requiring Supreme Court review even though that Court declined to review any of the four. They will also ask this Court to contort the language of Proposition 219 to affirm the judgment, imposing their minority view on the majority of San Diego voters who wish to fund these essential services. This Court should reverse and remand with instructions to grant judgment to the City and to the Yes Committee. Initiative special taxes require simple majority approval and Proposition 219 does not apply.

STATEMENT OF FACTS

The appeal is from judgment on the pleadings, so the facts may be drawn from the validation complaints. As few facts are disputed, however, this matters little.

This action arises from San Diego’s March 3, 2020 election. Measure C on that ballot was titled “Hotel Visitor Tax Increase and Bond Authorization for Convention Center Expansion,

Homelessness Programs, Street Repairs.” (II AA 661.²) Measure C was an initiative supported by a coalition of homeless rights advocates, civic and community activists, labor unions, and businesses, including the tourism and lodging industries. (I AA 273 [Yes Committee Answer, ¶ 2].) Measure C increases the transient occupancy (i.e., hotel bed) tax throughout San Diego to fund enhanced services for San Diego’s homeless, street repairs, and needed modernization and expansion of the San Diego Convention Center. (II AA 647–649.) Measure C authorized \$2 billion in bonds to achieve these goals, to be repaid from proceeds of the new tax. (II AA 663; 675.) After the Yes Committee circulated the initiative petition and received sufficient signatures of San Diego voters, the City Council fulfilled its mandatory, ministerial duty to place the proposal on the ballot. (II AA 639–658.)

Measure C adds Division 2 “Additional, Voter-Approved Transient Occupancy Tax and Related Bonds,” to Chapter 3, Article 5 of the San Diego Municipal Code. (II AA 670–681.) Division 2 increases the current 10.5 percent tax by 1.25 to 3.25 percent depending on a hotel’s proximity to the expanded convention center, a measure of both ability to pay and benefit from the programs the tax would fund. (II AA 655–656; 663; 670–671.) Depending on zone, the tax rises to 11.75, 12.75, or 13.75 percent.

² We cite the Appellant’s Appendix concurrently filed by the City of San Diego in the form “[Vol.] AA [Page(s)].”

(II AA 663; 670.) The highest increase (3.25 percent) applies to guests of downtown San Diego hotels nearest the convention center, the medium (2.25 percent) to guests of hotels just outside downtown, and the lowest (1.25 percent) to guests of lodgings furthest from the downtown which will benefit primarily by what the industry calls “compression” — when events at the convention center fill downtown hotels, those who visit for other reasons must look further afield for a room, generating business for peripheral hotels. (II AA 655–656; 663; 670–671.) The tax may fund only specified City services:

- 59 percent must be devoted to homelessness programs,
- 10 percent to street repairs beginning in Year 6, and
- 41 percent to Convention Center improvements, operations, support activities, and business development programs in the first five years of tax collection and 31 percent thereafter.

(II AA 662; 671–672.)

Measure C does not state the required threshold for voter approval, and San Diego’s voters approved no particular voter threshold when approving Measure C. Both deferred to our State Constitution; neither empowered the City Council or City Attorney to alter the Constitution’s demand. Indeed, the City’s Elections Code states that a measure need only receive a majority vote to pass unless the State Constitution or City Charter provides otherwise.

(San Diego Municipal Code, § 27.1043.)³ Fulfilling its ministerial role to place Measure C on the ballot, the City Council adopted Ordinance O-21143 on November 4, 2019 pursuant to San Diego Municipal Code sections 27.0107, subdivision (a) and 27.1035, subdivision (b).⁴ That ordinance (but not the initiative) erroneously stated “[p]assage of this measure requires the affirmative vote of two-thirds of those qualified electors voting on the matter at the Municipal Special Election” based on the City Council’s then understanding that Measure C was “a special tax, and thus the initiative measure requires approval by a two-thirds majority of the local electorate to be adopted by the voters.” (II AA 642; 644.) The City Attorney’s impartial analysis similarly reflected an

³ The City Charter cannot require a greater voter threshold for taxes than does the State Constitution. (*Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374 [invalidating 2002’s Measure E].)

⁴ The City’s Code is available online at <<https://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division01.pdf>> (as of July 22, 2022). Elections are more commonly called by resolution, but either form of local legislation is sufficient. (E.g., *City of Fresno v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 220, 229 & fn. 4 [action by resolution]; Elec. Code, § 9222 [authorizing voluntary referendum called by ordinance or resolution].)

understanding that two-thirds voter approval was required.

(II AA 662.)

Following the March 3, 2020 election, the City Clerk certified the election results to the City Council. (I AA 100; II AA 691.) The City Clerk never declared Measure C had failed, as she merely prepared a resolution of the City Council, which did not adopt her proposal. The City Council declared the election result on April 7, 2020 by Resolution R-312901. (II AA 690–697; San Diego Municipal Code § 27.1026, subd. (d) [State Election Code fills gaps in City Election Code]; Elec. Code §§ 10262 [Clerk certifies election canvass to City Council]; 10263 [City Council declares election result by resolution].) The City Council declared that 65.24% of votes favored Measure C, and 34.76% opposed it. 366,373 voters voted on Measure C. (II AA 696.)

City staff drafted a resolution declaring Measure C had failed (II AA 736), but the City Council rejected that language, given developing case law, resolving instead:

While acknowledging that there exists in California a split of authority as to whether a majority vote or a supermajority is required for the passage of a special tax by citizens' initiative, the City Attorney determined that Measure C requires a two-thirds vote for approval. This determination was reiterated in the ballot and ballot pamphlet. It is anticipated that the California Supreme

Court will issue a final decision in the future resolving this ambiguity, and that their decision may impact this Measure.

(II AA 696.) The City Council had no power to settle this ambiguity in April 2020, and any suit for declaratory relief on Measure C would duplicate litigation then pending elsewhere. Four published decisions, all contradicting the judgment here, resulted from those cases:

- *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G* (2021) 66 Cal.App.5th 1058, review denied Nov. 17, 2021 (“*Proposition G*”);
- *City and County of San Francisco v. All Persons Interested in Matter of Proposition C* (2020) 51 Cal.App.5th 703, review denied Sep. 9, 2020 (“*Proposition C*”);
- *City of Fresno v. Fresno Building Healthy Communities* (2020) 58 Cal.App.5th 884, review denied Mar. 30, 2021 (“*Fresno*”);
- *Howard Jarvis Taxpayers Association v. City and County of San Francisco* (2021) 60 Cal.App.5th 227 (“*HJTA v. San Francisco*”).⁵

⁵ Perhaps recognizing the issue was settled law, HJTA did not seek review in this last case. Our Supreme Court might have granted review sua sponte but did not.

Rather, the Council anticipated the California Supreme Court would resolve the ambiguity (as indeed it has — by denying review of these decisions at each opportunity), and resolved to await its direction. And, even when the law was settled, the City Council directed the City Attorney to seek a judgment of validation before the City will collect the Measure C tax.

These City actions cannot change the City Election Code's command that initiatives which receive the requisite vote are deemed adopted on Election Day and take effect 30 days thereafter. (San Diego Municipal Code § 27.1045.) Notably, no party timely challenged Measure C or Resolution R-312901, even though Respondent Alliance San Diego (the "Alliance") campaigned against Measure C and had notice of the City's intent. (I AA 35 [¶¶ 4–6]; II AA 696, 736 ; e.g., *Community Cause v. Boatwright* (1999) 124 Cal.App.3d 888, 902 [all charged with notice of matters of public record].)

After multiple appellate cases held that a simple majority is sufficient to approve an initiative special tax, the City Council declared in April 2021 by Resolution R-313485 that Measure C had passed. (II AA 742–747.) The City Council also adopted Resolutions R-313486 and R-313487. (I AA 167–187.) Consistently with voters' intent in approving Measure C, these authorize \$750 million in Homelessness Program Bonds and \$200 million in Convention Center Modernization Bonds. (I AA 173; 184.) To eliminate

uncertainty, the City Council directed the City Attorney to file of the validation action on appeal here. (I AA 163, 194 [¶ 22].)

PROCEDURAL HISTORY

On June 3, 2021, the Alliance filed a writ petition and reverse validation action (Code Civ. Pro., § 863), challenging Resolution R-313485 authorizing debt backed by the Measure C tax. (I AA 33–48.) The complaint asserted that, by declaring Measure C had passed with a simple majority, the City violated the due process rights of voters mistakenly informed a two-thirds majority was needed. (I AA 34–35 [¶ 3]; 42–44 [¶¶ 34–39].) The Alliance also argued the City was estopped to enforce Measure C by the Elections Code, the California Constitution, and equity. (I AA 44–47 [¶¶ 40–55].) The City promptly answered the Alliance Complaint. (I AA 280–296.)

The next day, the City filed its own action (Code Civ. Pro., § 860) to validate Measure C, Resolutions R-313485, R-313486 and R-313487, to confirm the City may enforce Measure C. (I AA 188–205.) The City gave published notice of the pendency of the action and jurisdiction attached over all persons interested in the matter on conclusion of that notice period on July 30, 2021. (I AA 220–231, 279; Code Civ. Proc. §§ 861–862.) The Alliance, HJTA, and California Taxpayers Action Network each answered the validation complaint, denying the City’s allegations and asserting, inter alia, that the complaint was untimely, that the City was estopped to enforce

Measure C, and that Measure C was invalid under Propositions 13, 218 and 219. (I AA 232–243; 246–271.)

The Yes Committee also answered the City’s complaint, technically making it a “defendant.” (I AA 272–278.) However, the Yes Committee’s answer supported the City, “deny[ing] it disputes the City’s position that Measure C needed only a simple majority to be approved, and admit[ing] that Measure C was approved by voters in the Municipal Special Election held on March 3, 2020.” (I AA 275 [¶ 34].) The Yes Committee sought the same relief as the City. (I AA 275–277.)

The cases were related in September 2021. (II AA 387–389.) In October 2021, the parties agreed to a March 2022 trial date. (II AA440.) Nevertheless, as the City was finalizing the administrative record, HJTA moved on January 12, 2022 for judgment on the pleadings. (II AA 610–629.) It applied ex parte for an order to advance the motion hearing, leaving mere weeks to both respond to the Motion and to prepare for trial. (II AA 883–913.) The result required the trial court to resolve a matter of great import for the San Diego region on minimal notice and without access to the record on which the City Council acted.

HJTA’s Motion raised four claims, acknowledging controlling authority dictated resolution of three for the City, preserving them for appeal. (II AA 616.) First, HJTA argued that the City was estopped to argue the validity of Measure C because the ballot

materials informed voters that a two-thirds threshold was required, acknowledging that *Jobs & Housing Coalition v. City of Oakland* (2021) 73 Cal.App.5th 505, (“*Jobs & Housing Coalition*”) required the trial court to hold otherwise. (II AA 619–623.) HJTA next asserted Measure C is a special tax requiring two-thirds voter approval under Propositions 13 and 218, again conceding binding contrary precedent. (II AA 623–626.) Finally, HJTA made the novel argument that any tax which makes geographic distinctions runs afoul of 1998’s Proposition 219, which forbids taxes which are deemed to have been approved , or not, in parts of a jurisdiction based on the vote in each part. (Cal. Const., art. II, § 11; II AA 618–619.)

The Alliance also sought judgment on the pleadings, arguing the City committed “fraud on the voters” and violated their due process rights by awaiting the outcome of the pending cases on the initiative special tax question before attempting to enforce Measure C. (II AA 936–941.) Alternatively, the Alliance maintains the City inexorably set the “rules” for the election when it declared a two-thirds voter threshold. (II AA 941–946.) The Alliance did not cite, in its motion or in briefing, section 27.1045 of the City Code or *Howard Jarvis Taxpayers Assn. v. City of San Diego* (2004) 120 Cal.App.4th 374 (“*HJTA v. San Diego*”), which together strip the Council of authority to alter our Constitution’s voter-approval threshold for initiatives.

The Yes Committee opposed the Motion, noting fresh, binding decisions of the Court of Appeal allowing no basis to argue that Proposition 13 or 218 applied to Measure C and that Proposition 219 did not apply by its terms. (II AA 961–967.) Its Opposition also refuted the Alliance’s argument that the City could infringe the reserved power of voters to propose and approve initiatives merely by declaring the wrong voter threshold. (II AA 968–972.) And, to the extent the Alliance could articulate a due process violation, it failed to meet the evidentiary burden to show the results of the election would have differed without the misstatements in the ballot materials. (II AA 967–968; *Owens v. County of Los Angeles* (2013) 220 Cal.App.4th 107, 123–124 (“*Owens*”) [“very high bar” for post-election challenges to ballot measures on due process grounds].)

Following oral argument (III AA 1123), Judge Medel ruled that judgment on the pleadings was appropriate for validation and reverse validation actions, and granted judgment to Challengers. (III AA 1125–1129.) He focused on Ordinance O-21143 placing the Yes Committee’s initiative on ballot and its statement Measure C required two-thirds majority approval, asserting “[t]his is the law of the City” because it took the form of an ordinance. (III AA 1127.) He also concluded the City Council had no authority to declare the results of the election without also declaring whether Measure C passed or failed, citing no authority empowering or requiring the City Council to resolve that disputed legal issue. (III AA 1127–1128;

cf. Elec. Code, §§ 10263–10264 [city council’s declaration of election results must tally votes, but no duty to make legal conclusions].)

The trial court was persuaded by the Alliance’s argument from *Hass v. City Council of City of Palm Springs* (1956) 139 Cal.App.2d 73 (“*Hass*”), a 66-year-old case concluding that when an initiative itself sets a super-majority approval requirement, a city is without authority to alter what the voters approved. The trial court overlooked that Ordinance O-21143 was a ministerial act of the City Council to place a qualified initiative on ballot and that Measure C — the initiative legislation disputed here — stated no such super-majority requirement. Based on this oversight, the trial court purported to distinguish the recent and controlling decision in *Jobs & Housing Coalition, supra*, 73 Cal.App.5th 505 which found *Hass* of little value here. In light of this conclusion, the trial court found HJTA’s Proposition 219 argument unripe. The Yes Committee timely appealed from the trial court’s order granting judgment on the pleadings, resolving all issues as to all parties, and from its May 2, 2022 judgment. The City timely appealed on April 7, 2022.

APPEALABILITY

The trial court granted the motion for judgment on the pleadings on March 8, 2022, disposing of the entire case. Judgment entered May 2, 2022, and is appealable under Code of Civil

Procedure section 904.1(a)(1). The Yes Committee timely filed its Notice of Appeal on March 23, 2022.

REVIEW IS DE NOVO

This case turns on the interpretation of Measure C, the City Council ordinance that placed it on the ballot, and the California and United States Constitutions. All questions raised here are of law and review is de novo. The Court applies independent judgment in reviewing trial court decisions whether a tax meets legal standards. (E.g., *Silicon Valley Taxpayers' Assn. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 449–450.) Similarly, this Court reviews de novo constitutional issues, such as due process. (*Brown v. Mortensen* (2019) 30 Cal.App.5th 931, 938.)

Were there any factual issues here, “ ‘ ”[t]he standard of review for a motion for judgment on the pleadings is the same as that for a general demurrer” ‘ ” (*Tarin v. Lind* (2020) 47 Cal.App.5th 395, 403.) Thus, the Court will “ ‘ ”review the complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any theory.” ‘ ” (*Id.* at p. 404.) Challengers, who negotiated a trial date and briefing schedule on the merits, but then moved for judgment on the pleadings with minimal notice, cannot argue in good faith for a less deferential standard of review. Nor can they complain if this Court grants the disposition the Yes Committee seeks – remand for entry of judgment on the pleadings for the City. (Cf. *Nede Mgmt., Inc. v. Aspen American Ins. Co.* (2021) 68

Cal.App.5th 1121 [declaratory relief should be granted even when adverse to petitioner].)

Furthermore, validation cases seek expeditious resolution of public finance disputes. Code of Civil Procedure section 860 allows a public agency to bring a validation action “to determine the validity” of its own action. Only if it does not, may “any interested person” bring a similar action (a “reverse validation” action) within 60 days of a challenged action. (Code Civ. Pro., § 863.)⁶ The validation statutes require prompt litigation and adjudication. (*Ibid.* [60 days to sue]; Code Civ. Pro., §§ 867 [calendar preference in trial and appellate courts], 869 [validation sole remedy], 870 [30 days to appeal].) “The validating statutes should be construed to uphold their purpose, i.e., ‘the acting agency’s need to settle promptly all questions about the validity of its action.’ ” (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842.) San Diegans are waiting for the services they voted to fund some two years ago.

Finally, the Court may declare Measure C passed as a matter of law, and instruct the trial court to enter judgment for the City upholding it even as to issues not reached below. (E.g., *Hale v. Morgan* (1978) 22 Cal.3d 388, 394 [courts often address legal question raised for the first time on appeal absent prejudice and in light of public need for resolution].) The Court should do so here, to

⁶ Accordingly, the Alliance’s premature reverse validation action is unauthorized in light of the City’s own, timely filing.

effectuate the purpose of the validation statutes and allow the City to provide those service which an overwhelming majority of its voters sought to fund without further delay.

ARGUMENT

I. PROPOSITIONS 13 AND 218 ALLOW MAJORITY APPROVAL OF INITIATIVE SPECIAL TAXES

HJTA preserved for this appeal whether Propositions 13 and 218 apply to initiative special taxes despite the four cases cited above concluding otherwise. (II AA 623–626.) Special taxes are those levied for a specific purpose, as opposed to general taxes which may be spent in the City Council’s discretion. (Cal. Const., art. XIII C, § 1, subd. (d) [defining “special tax”]; compare *id.*, § 1, subd. (a) [defining “general tax”].) Article XIII A, section 4,⁷ adopted by 1978’s Proposition 13, 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.” Proposition 218 reiterated: “[n]o 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.” (Cal. Const., art. XIII C, § 2, subd. (d).) HJTA argued this supermajority requirement applies to all special taxes whether placed on the ballot by initiative or by government officials.

⁷ References to articles are to the California Constitution.

(II AA 623–626.) HJTA argues in the teeth of four recent decisions of the Court of Appeal, three of which our Supreme Court declined to review (review was not sought in the fourth, likely as futile). (See *Proposition G*, *supra* 66 Cal.App.5th at p. 1070; *Proposition C*, *supra*, 51 Cal.App.5th at p. 714-715; *HJTA v. San Francisco*, *supra*, 60 Cal.App.5th at p. 237; *Fresno Building*, *supra*, 59 Cal.App.5th at p. 231.) Their reasoning is persuasive and this Court should adopt it.

Article IV, section 1 of our Constitution reserves to the People the initiative and referendum powers, and our Supreme Court has repeatedly warned against limiting the initiative power by implication. (*Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 249 (“*Kennedy Wholesale*”) [Prop. 13 challenge to Prop. 99 tobacco tax].) Any limitation on voters’ reserved power of initiative must be express. (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 946 (“*Upland*”).) Thus, when asked to find that Proposition 13 limited the electorate’s authority to adopt special taxes by a simple majority, the Court of Appeal refused:

[W]e will decline to construe [article XIII A,] section 4 in a manner that repeals by implication the initiative power to pass local laws by majority vote. Nowhere does Proposition 13 mention, let alone purport to repeal, the constitutionally-backed requirement in the Elections Code that a local initiative measure take effect when it garners a majority of votes cast.

(*Proposition C, supra*, 51 Cal.App.5th at 716.) For the same reason, *Proposition C* found Proposition 218 inapplicable to initiative special taxes, as it merely “reiterated and reaffirmed the supermajority vote restriction as it was first imposed by Proposition 13.” (*Id.* at p. 721.) Proposition 218’s reference to “local government” means government officials, not voters exercising initiative power. (*Id.* at p. 723, citing *Upland, supra*, 3 Cal.5th at p. 936.)

Every case to consider *Upland*’s application to initiative special taxes has agreed with *Proposition C*. (*Proposition G, supra*, 66 Cal.App.5th at p. 1064; *HJTA v. San Francisco, supra*, 60 Cal.App.5th at p. 237; *Fresno Building, supra*, 59 Cal.App.5th at p. 226.) As *Proposition G* noted, “the language of [article XIII A, section 4] must be strictly construed and ambiguities resolved in favor of permitting voters of cities, counties and ‘special districts’ to enact ‘special taxes’ by a majority rather than a two-thirds vote.” (*Proposition G, supra*, 66 Cal.App.5th at p. 1072, quoting *Los Angeles County Transportation Com. v. Richmond* (1982) 31 Cal.3d 197, 205.) This Court should similarly find that Propositions 218 and 13 do not limit voters’ ability to adopt initiative special taxes by simple majority.

Doing as Challengers invite will not only unsettle law established by these four recent cases, but require this Court to ignore the rule against implied restrictions on the initiative power articulated recently in *Upland* (2017) and three decades ago by *Kennedy Wholesale* (1991). Moreover, had the framers of

Proposition 218 intended to alter *Kennedy Wholesale's* reading of Proposition 13, they would have said so. Instead, they merely restated its rules, impliedly accepting *Kennedy Wholesale's* reading of the earlier measure. (*Upland, supra*, 3 Cal.5th at p. 934 [“Moreover, when construing initiatives, we generally presume electors are aware of existing law.”].)

Challengers’ reconstruction of Proposition 13 and Proposition 218 is untimely — our Supreme Court and the four progeny of *Upland* require reversal here.

II. NO CITY OFFICIAL COULD RAISE THE BAR FOR MEASURE C

The trial court erred to conclude that the City Council or City Attorney could increase the number of votes Measure C required by the misstating that threshold when performing ministerial duties as to the initiative. No “law of the City” could alter our Constitution to disadvantage the proponents of Measure C, exercising the People’s reserved power of initiative — which California courts are bound to zealously defend. (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 (“*Associated Home Builders*”)) [“Declaring it ‘the duty of the courts to jealously guard the right of the people’ [citation omitted], the courts have described the initiative

and referendum as articulating ‘one of the most precious rights of our democratic process.’ ”].)

The reasoning of *Jobs & Housing Coalition, supra*, 73 Cal.App.5th 505 was controlling below and should be adopted here. There, Oakland submitted to its voters an initiative with ballot materials that incorrectly stated a two-thirds majority was required, but the measure received slightly less. (*Id.* at pp. 509–510.) The city council nevertheless declared the initiative had passed. (*Ibid.*) Plaintiffs sued, arguing from *Hass, supra*, 139 Cal.App.2d 73, that Oakland had committed a “fraud on the voters.” (*Jobs & Housing Coalition, supra*, 73 Cal.App.5th at pp. 509–510.)

Jobs & Housing Coalition rejected this argument. *Hass* was readily distinguishable because, there, “[b]oth the ballot **and the proposed ordinance itself** stated that the redistricting would proceed if three-fourths of voters voted in favor of the ordinance.” (*Jobs & Housing Coalition, supra*, 73 Cal.App.5th at p. 516 [original emphasis].) That the initiative law to be adopted itself incorporated a super-majority threshold was determinative: “A voting threshold identified in ballot materials cannot supplant the law governing the applicable voting threshold, while a voting threshold expressed in a measure itself **establishes** the applicable law for that measure.” (*Id.* at p. 517 [original emphasis].) The voters in *Hass* were not merely informed of the wrong threshold, they imposed it. (*Ibid.*) Having submitted an initiative which called for a super-majority, the

appellant initiative proponents in *Hass* could not seek to excise a portion of their own initiative already voted upon. (*Ibid.*) That would have been a bait-and-switch.

In *Jobs & Housing Coalition* by contrast, the supermajority threshold was **not** part of the initiative, but stated in ballot materials by those without authority to alter the Constitution's requirements. (*Jobs & Housing Coalition, supra*, 73 Cal.App.5th at pp. 516–517.) Since the ballot materials were not so egregiously misleading as to make it impossible to discern the will of voters, Oakland appropriately declared the measure had passed. (*Ibid.*)

So, too, here. As in *Jobs & Housing Coalition*, the City stated the incorrect voter threshold in ballot materials through no fault of the Yes Committee — the initiative's proponents. As in *Jobs & Housing Coalition*, Measure C received not quite two-thirds voter approval, and the City Council ultimately declared the measure had passed without two-thirds approval.

Moreover, the San Diego City Council is without authority to alter the voter threshold. The City's Elections Code states:

§ 27.1043 Voter Adoption of Initiated Legislative Act

Except as provided in the California Constitution or

the San Diego City Charter, any legislative act

proposed by an initiative petition or directly by the City

Council shall be adopted by majority vote.

(San Diego Municipal Code, § 27.1043, emphasis added.) The requirement of our Constitution is a simple majority under the four decisions which are the heart of this brief. And nothing in San Diego's Charter can change that standard. (*HJTA v. San Diego*, *supra*, 120 Cal.App.4th at pp. 389–395 [Prop. 218's voter approval standards preempt contrary charter amendment].)

This Court should follow *Jobs & Housing Coalition* to conclude the City's errors do not defeat the rights of San Diego's voters and the Yes Committee. Although review was not sought there, our Supreme Court denied it in *Proposition C*, *Proposition G*, and in *HJTA v. San Francisco*. This Court should be reluctant to reopen a question our highest Court apparently views as settled.

Nor was the Yes Committee required to immediately sue for a declaration Measure C had passed when trial courts were split on the issue and multiple appeals were pending. Requiring either the City or the Yes Committee to sue to enforce Measure C sooner than they did, as the Challengers allege was somehow required, would elevate form over substance, needlessly multiplying litigation to be overtaken by developing appellate authority. Oakland's confidence as contrasted with San Diego's deference to the courts does not bear on whether their similar ballot materials were so profoundly misleading as to make the election outcomes a poor measure of the popular will in either city. If Oakland voters were not misled on election day, neither were San Diego's, and what happened after

election day cannot change the legal consequence of what happened on that day. San Diego's Elections Code declares:

Effective Date of Initiated Legislative Act Following
Special Election

A legislative act proposed by an initiative petition or directly by the City Council which has received the requisite number of affirmative votes for adoption **shall be deemed adopted** on the date of the special election. It **shall be effective** thirty calendar days after the date of the special election, or at the time indicated in the legislative act, whichever is later.

(San Diego Municipal Code, § 27.1045, emphasis added.) Thus, majority voter approval of Measure C made it law 30 days after the election — whether the City Council declared that fact or not.

As in *Jobs & Housing Coalition*, *Hass* differs from the case at bar. Before the trial court, the Alliance erroneously claimed that, unlike the initiative in *Jobs & Housing Coalition*, but like the initiative in *Hass*, “the ordinance adopted by the San Diego City Council submitting Measure C to the voters twice declared that the initiative required a two-thirds majority for passage, thereby establishing the rules under which the election would be conducted.” (II AA 944 [Alliance MJOP]; 639–645 [Ordinance No. O-21143].) The Alliance had it backwards, leading the trial court into error. Ordinance No. O-21143 was the City Council's ministerial action placing

Measure C on the ballot. Measure C itself, unlike the initiative in *Hass*, contained no language regarding a voter threshold. (II AA 668–682.) The trial court uncritically accepted this characterization, error this Court should correct.

Nor could a City Council ordinance amend Measure C to make it like the measure in *Hass* which expressly required a supermajority. For the San Diego Municipal Code, like the California Election Code, reserves that power to voters:

Amendment and Repeal of Initiated Legislative Acts

Unless the legislative act provides otherwise, any legislative act proposed by an initiative petition or directly by the City Council and adopted by the voters may be amended or repealed only by a vote of the requisite number of voters or by Charter amendment.

(San Diego Municipal Code § 27.1049; Elec. Code, § 9217 [same as to general law cities].)

Nor is *Jobs & Housing Coalition* the only authority on point. *Fresno, supra*, also considered an initiative measure submitted to voters by a city council resolution stating two-thirds voter approval was required, an error repeated in ballot materials. (*Fresno, supra*, 59 Cal.App.5th at 229 & fn. 4, 239.) Nevertheless, *Fresno* found Proposition 13's two-thirds voter approval requirement for special taxes did not apply. (*Id.* at p. 231.) Thus, *Fresno* is indistinguishable from the case at bar, where a misstated voter threshold appears both

in ballot materials and in a city council's legislative act placing an initiative on the ballot. Resolutions and ordinances are both written legislative acts of local governments, indistinguishable for these purposes. (See *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 787 fn. 9 [no distinction between resolutions and ordinances in initiative context].) The trial court was bound by *Fresno* and this Court ought to be persuaded by it. Again, if the law were otherwise, no initiative would be safe from the "errors" of elected officials.

Due to its focus on what it viewed as the City Council's wrongful acts, the trial court failed to acknowledge the rights of the proponents of Measure C and City voters which can be defeated by no official's failure to predict changing interpretations of our Constitution. Election materials should be accurate, but more danger to democracy lies in allowing government officials statements to invalidate the will of the voters or inviting opponents of initiative legislation to hold their concerns about ballot materials for strategic, post-election use:

The statements cannot supplant the constitutional standards governing an election's voting threshold. If they could, government officials who prepare ballot materials would yield too much power to control the outcome of elections. A measure needing a majority vote cannot be invalidated after receiving such a vote simply because its ballot materials incorrectly identify a

higher voting threshold, just as a measure needing a supermajority vote cannot be enacted by a majority vote simply because its ballot materials incorrectly identify the lower voting threshold.

(*Jobs & Housing Coalition, supra*, 73 Cal.App.5th at p. 511.) Were it otherwise, government officials could impose a supermajority voter threshold on any initiative, and invalidate a measure receiving fewer votes, despite the majority approval both the San Diego Elections Code and our Constitution require. San Diego voters approved Measure C, and this Court should direct judgment accordingly.

III. THE ALLIANCE FAILED TO PROVE A DUE PROCESS VIOLATION

The Alliance, proceeding by judgment on the pleadings rather than awaiting preparation of the administrative record, failed to meet the very high standard for a due process violation that justifies undoing voters' work. In granting judgment on the pleadings, the trial court relied almost exclusively on *Hass*, a 66-year-old case *Jobs & Housing Coalition* found inapplicable, and failed to follow — or even acknowledge — the correct standard for a post-election due process challenge to a ballot measure due to allegedly defective ballot materials. This error also requires reversal.

“Generally, a challenge to ballot materials must be made before an election. Indeed, a postelection challenge to ballot

materials is not permitted by the Elections Code.” (*Owens, supra*, 220 Cal.App.4th at p. 123.) No statute allows post-election attack on ballot materials. (*Denny v. Arntz* (2020) 55 Cal.App.5th 914, 921.) One must raise them before the election so voters may be fully informed, not after the fact under a rule allowing tactical withholding of concerns about ballot information, to be ignored if litigants get what they want at the polls, and used in court otherwise. Nevertheless “California appellate courts have recognized the ‘possibility’ that an impartial analysis of a county measure or other ballot materials can be so misleading and inaccurate ‘that constitutional due process requires invalidation of the election.’ ” (*Owens, supra*, 220 Cal.App.4th at p. 123.)

But Challengers must meet a “ ‘very high’ bar ... to successfully mount a postelection due process challenge to a ballot measure” (*Owens, supra*, 220 Cal.App.4th at p. 123.) No California appellate court has ever invalidated an election on this basis — and with good reason. (*Ibid.*) “ ‘California law makes it hard to overturn elections Voters, not judges, mainly run our democracy. It would threaten that core tenet if one person who did not like the election result could hire lawyers and with ease could invalidate an expression of popular will.’ ” (*Id.* at p. 124.) The “idea that by ‘constitutionalizing’ deficiencies in voter summaries you can undo an election is really quite antithetical to the democratic

process.” (*People ex rel. Kerr v. County of Orange* (2003) 106 Cal.App.4th 914, 933 (“*Kerr*”).)

Thus, on post-election review, ballot materials must have been “so inaccurate or misleading as to prevent the voters from making informed choices.” (*Jobs & Housing Coalition, supra*, 73 Cal.App.5th at p. 513.) They must have “profoundly misled the electorate” (*Kerr, supra*, 106 Cal.App.4th at p. 934.) The Alliance was obliged to show the result would have been different but for ballot misstatements (*Horwath v. East Palo Alto* (1989) 212 Cal.App.3d 766, 774–775) — that fewer than half of voters would have approved Measure C had they known it could pass on a simple majority. Such an allegation requires proof (*id.* at p. 775), but the Alliance presented none. (II AA 927–947, 967–968.) It is also hard to imagine, as a matter of logic, that many voters who support a tax to fund homeless services, streets and a better convention center do so only on condition that the measure achieve supermajority voter approval. Most voters support a measure or not, they do not support it on such abstract conditions.

Even if the Alliance and other Respondents had a plausible due process claim (they did not), the trial court should have resolved it at trial on the legislative record, not on the pleadings. “Strictly speaking, a general demurrer is not an appropriate means of testing the merits of the controversy in a declaratory relief action because plaintiff is entitled to a declaration of his rights even if it be

adverse.” (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 24; see also *Campaign for Quality Education v. State of California* (2016) 246 Cal.App.4th 896, 916 fn. 11 [Court of Appeal declaration of law obviated need for remand in declaratory relief].) So, too, for validation, which is a close cousin of declaratory relief, both equitable remedies to declare legal rights and duties.

Although the City and Yes Committee raised these standards below, the ruling does not address them. (II AA 960–962; 967–968; 1125–1129.) The ruling says only: “[n]othing in the statutory scheme precludes a motion for judgment on the pleadings.” (II AA 1126.) Even if judgment on the pleadings is generally available in validation proceedings, absent the stipulation that justifies it in the cases Challengers cited below the trial court ought not to have disregard the stringent factual showing required for a post-election due process claim.

Invalidating the will of the voters without evidence is particularly egregious as to an initiative, which are “highly protected.” (*Perry v. Schwarzenegger* (9th Cir. 2011) 628 F.3d 1191, 1197.) Courts “jealously guard” the initiative and “apply a liberal construction of this power wherever it is challenged in order that the right be not improperly annulled.” (*Associated Home Builders, supra*, 18 Cal.3d at p. 591.) This failure, too, requires reversal.

IV. PROPOSITION 219 DOES NOT APPLY

Given established law precluding its other claims, HJTA's primary focus below was a novel argument that Proposition 219 applies to any tax which varies based on geography. (II AA 618–619.) Not so. Rather than embrace the text of Proposition 219, HJTA attempted to reinterpret it based on short passages from the Proposition's ballot materials taken out of context. (II AA 619.) Proposition 219's application to Measure C raises a pure question of law this Court can resolve without a remand, which would further delay implementation of Measure C and the provision of homelessness services, street repair and convention center improvements for which San Diegans voted by a substantial majority two years ago. Eliminating such delay, of course, is the very purpose of the validation statutes. (Code Civ. Proc., § 867 [calendar preference for validation claims in trial and appellate courts].)

Article II, section 11 of our Constitution states, in full:

(a) Initiative and referendum powers may be exercised by the electors of each city or county under procedures that the Legislature shall provide. Except as provided in subdivisions (b) and (c), this section does not affect a city having a charter.

(b) A city or county initiative measure may not include or exclude any part of the city or county from the application or effect of its provisions based upon approval or disapproval

of the initiative measure, or based upon the casting of a specified percentage of votes for the measure, by the electors of the city or county or any part thereof.

(c) A city or county initiative measure may not contain alternative or cumulative provisions wherein one or more of those provisions would become law depending upon the casting of a specified percentage of votes for or against the measure.

Proposition 219 added subdivisions (b) and (c).

Subdivision (c) does not apply, as there is no allegation here that Measure C contained “alternative or cumulative provisions” made effective “depending upon the casting of a specified percentage of votes for or against the measure.” The elements of subdivision (b), on which HJTA relied below (II AA 618–619), are:

1. A city or county initiative measure
2. may not include or exclude any part of the city or county from the application or effect of its provisions
3. based upon approval or disapproval of the initiative measure, or
4. based upon the casting of a specified percentage of votes in favor of the measure,
5. by the electors of the city or county
6. or any part thereof.

(Cal. Const., art. II, § 11(b).)⁸ The first element is not disputed — Measure C is admittedly a city initiative. As to the fifth and sixth elements, the parties dispute whether two-thirds voter approval was required, but not that voters did act on Measure C and that their votes were tallied citywide. (II AA 686.) Attention must turn then to the second element, including its two adverbial phrases (elements 3 and 4) modifying the forbidden action of including or excluding a part of a city from the application or effect of a measure.

That element forbids initiatives which coerce voters by granting or denying the measure’s benefit to, or by imposing the measure’s burden on, “any part of the city or county” based on how voters there vote. Indeed, subdivision (b) repeats the phrase “based upon” to make clear an initiative might violate it in only two ways. (*Ibid.*) As the “Yes” argument for Proposition 219 noted, the proposition applies when the benefits or burdens of an initiative fall unequally on parts of a city or county depending on whether voters there supported it. (II AA 789.) Proposition 219 does not generally prohibit initiatives which affect different areas differently. Nearly all legislation does, as higher income taxes affect wealthier areas,

⁸ This list is the text of article II, section 11, subdivision (b) to which we have interposed numbers to analyze its elements but made no other change.

business taxes affect commercial areas, and residential development standards affect residential areas.

Here, Measure C applies citywide, and its proceeds will benefit the City as a whole, too. (II AA 668–670; 683.) *City of San Diego v. Shapiro* (2014) 228 Cal.App.4th 756, 773 demonstrates facts that might require a different outcome. The proposed special tax disputed there applied only to parcels improved with hotels when the tax was approved, not citywide — not even to sites later developed as hotels. The Court of Appeal found a citywide special tax requiring two-thirds approval, not a district tax which current hoteliers alone might approve. It is equally clear that any application of Measure C to less than all of the City is not made dependent on its “approval or disapproval” either citywide or in “any part of the City.” Measure C does not tax city-center hotels, but not peripheral hotels, based on how voters in various precincts of the City cast their votes; it taxes both, but at different rates. Nor is there differential application of Measure C “based on the casting of a specified percentage of votes in favor” of it in any of the three tax zones. Measure C rose or fell as whole, coercing no one.

Similarly, a measure that proposes a general tax if approved by majority vote, but a special tax if two-thirds is

achieved, would also violate Proposition 219. (Cal. Const., art. XI, § 7.5, subd. (a)(1.)

HJTA's argument below, that Measure C is unlawful because some voters might have supported the measure, or at least failed to vote against it, because of the lower tax rate applicable to them (II AA 619), finds no support in the text of Measure C or Proposition 219 or in logic. Voters are necessarily City residents, and few can be expected to stay in City hotels so as to pay the tax; if they do, they are more likely to stay downtown (as for an event there) than near their homes. Initiatives are interpreted using " ' "the same principles that govern construction of legislative enactments." ' " (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 321, citation omitted.) Courts view "the text as the first and best indicator of intent," and only if the text is "ambiguous and supports multiple interpretations" will the courts "turn to extrinsic sources such as ballot summaries and arguments for insight into the voters' intent." (*Ibid.*)

Article II, section 11, subdivision (b) is unambiguous. It bans measures that "include or exclude any part of the city or county from the application or effect of its provisions" only where the differential treatment is "based on" either:

- "approval or disapproval of the initiative measure" in that area or

- “the casting of a specified percentage of votes in favor of the measure....” there.

HJTA’s reading that any tax distinction based on geography is unlawful would render these clauses surplusage. (*Hudec v. Superior Court* (2015) 60 Cal.4th 815, 828 [construing statutory language as surplusage to be avoided].) HJTA asserted Proposition 219 is triggered simply because San Diego voters approved Measure C. (II AA 618–619.) HJTA’s interpretation reads out the final four elements of subdivision (b), so that it merely says a “city or county initiative measure may not include or exclude any part of the city or county from the application or effect of its provisions.” Proposition 219 uses plain language, and a “constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words.” (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 245.) Had voters intended Proposition 219 to reach taxes which apply citywide at different rates, they would have said so, as they did in banning measures with differential outcomes based on voter approval. (Cal. Const., art. XI, § 7.5(a)(1); *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391 fn. 13 [“ ‘the expression of certain things in a statute necessarily involves exclusion of other things not expressed’ ”].)

Although the Court need not look past the text of Proposition 219, extrinsic evidence contradicts HJTA's position, too. If this 1998 addition to our Constitution directs that voters can approve only taxes with uniform rates, that consequence would be noted in the ballot materials, or in case law developed in disputes that would surely have flowed from such an unexpected reading. But neither the Legislative Analyst's review of Proposition 219, nor the "Yes" argument, mentions mandatory flat taxes. (II AA 788–789.) And in the 24 years since Proposition 219's passage, not a single case has applied it. The only support HJTA offered for its interpretation is a single clause of a ballot summary: "State and local ballot measures would apply in the same way in all parts of the jurisdiction" (II AA 788.) However, the entire sentence reads: "State and local ballot measures would apply in the same way in all parts of the jurisdiction (that is, the state or a local government) affected by the measure, **regardless of how any individual part of that jurisdiction voted.**" (*Ibid.* [emphasis added].) This second clause affirms the text of Proposition 219, which was concerned, not with disparate treatment generally, but disparate treatment premised on how voters in particular areas vote.

HJTA's real complaint is that Measure C frames a hotel bed tax with multiple rates that vary based on the benefit hotels are expected to gain from an expanded Convention Center. Those close to it will gain the most guests from meetings in the new facility and

their guests are therefore asked to pay more. (II AA 670.) Guest of those further away pay less, but still pay for the benefit these hotels receive when those not attending convention center events are forced to use hotels further from the city center due to compression. (*Ibid.*) Guests of hotels at the periphery of the City benefit least and pay the least. (*Ibid.*) Nothing about this structure offends Proposition 219. Indeed, taxes commonly vary based on such things as land use, zoning, parcel size, and improvements, and thereby affect different parts of a city differently. For example:

- Taxes imposed by community facilities districts under the Mello-Roos Community Facilities Act (Gov. Code, § 53311 et seq.) depend on land use designation, so commercial zones may pay more than residential zones.
- “Transactions” or “sales” taxes vary by taxing district under the Transactions and Use Tax Law. (Rev. & Tax. Code, § 7251 et seq.)
- Business taxes apply to businesses, not in residential zones, yet voters may still approve them. (See, e.g., *Host Intern., Inc. v. City of Oakland* (2021) 70 Cal.App.5th 695, 698 [describing Oakland’s business tax license].)
- Income taxes, both corporate and personal, vary widely (Rev. & Tax. Code, § 23501 et seq. [corporate income tax]; Rev. & Tax. Code, § 17001 et seq. [personal income tax]), and some of these variations are tied to land use in ways that

divide a city geographically. For example, there are few businesses in residential districts and few residents in commercial areas.

- Many taxes have exemptions, such as the income tax for low-income people and utility tax reductions for the elderly, poor, and sick. (See, e.g., Sacramento Muni. Code, § 3.32.170 [utility user tax refunds and credits based on income]; Long Beach Muni. Code, § 3.68.080 [utility use tax exemption for age and disability].) These will vary geographically as wealth does.
- Proposition 63 funds mental health services for all Californians by placing a tax only on those with incomes above \$1 million, which excludes many neighborhoods of San Diego in which few such taxpayers reside. (Rev. & Tax. Code, § 17043; *Jensen v. Franchise Tax Bd.* (2009) 178 Cal.App.4th 426, 431 (“*Jensen*”).)

These are but a few examples. Such tax distinctions are many, serve important public policy goals (like tying the duty to pay to benefits received from the convention center here), and reviewed only for rational basis. (*Jensen, supra*, 178 Cal.App.4th at pp. 435–436; *Johnson v. County of Mendocino* (2018) 25 Cal.App.5th 1017, 1032 fn. 7.)

Historically, “ ‘neither due process nor equal protection imposes a rigid rule of equality in tax legislation’ ” and “[i]nequalities, which arise from the singling out of one particular

class for taxation or exemption, infringe no constitutional limitation.” (*California Assn. of Retail Tobacconists v. State of California* (2003) 109 Cal.App.4th 792, 844.) “Differing tax rates may be imposed upon different classes provided the classification created is reasonable.” (*Ibid.*)

Given that voters had power to approve taxes which include rational distinctions among taxpayers before Proposition 219, that measure is not read to reduce that power by implication. Any limitation on voters’ power to propose and approve initiatives must be express. (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 946.) Because Proposition 219 **can** be read to forbid only distinctions based on how different neighborhoods of the City vote, it **must** be so read. The broader application HJTA advocates respects neither the language of Proposition 219 nor the rule that voters do not impliedly surrender their authority.

CONCLUSION AND DISPOSITION

Neither the City Attorney’s impartial analysis, the City Council’s ordinance placing Measure C on the ballot, nor City staff’s draft of a resolution declaring the election outcome can change the legal effect of what voters did. It is for courts, not municipal officials, to declare the law. The meaning of Propositions 13 and 218 may have been unclear when City officials here opined that Measure C needed two-thirds voter approval, but it is no longer. Four published appellate decisions — none of which our Supreme Court

found it necessary to review — build on *Kennedy Wholesale* and *Upland* and have now settled that the two-thirds voter approval rule of articles XIII A and XIII C apply to special taxes proposed by government officials, but not by initiatives. This Court should not be the first to disagree, unsettling law now established.

Proposition 219's language must be taken seriously, of course, but should be interpreted in light of the protection our courts afford the initiative power to tax. The language of Proposition 219 has no application here, where every City voter had the same incentives to vote for or against Measure C and none were coerced by a risk that majority opposition to Measure C in their neighborhood would deny them the benefits of tax proceeds to be spent elsewhere. Proposition 219 is irrelevant here, and HJTA's efforts to persuade otherwise defy both the text of that proposition and the public policy which animates it.

This case was resolved in the trial court on motion for judgment on the pleadings and raised only legal issues. Accordingly, this Court should reverse and remand with instructions to enter judgment for the City validating Measure C so it may be enforced and fund the vital services desired by the large majority of voters who approved it some two years ago.

DATED: July 26, 2022

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**CERTIFICATION OF COMPLIANCE WITH CAL.
RULES OF COURT, RULE 8.204(C)(I)**

Under California Rules of Court, rule 8.204(c)(1), the foregoing Appellant's Opening Brief is produced using 13-point Roman type and contains 9,164 words (excluding the tables, cover information, and Certifications) and is thus within the limit of 14,000 words. In preparing this Certificate, I relied on the word count generated by Microsoft Word for Office 365 MSO.

DATED: July 26, 2022

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PROOF OF SERVICE

Alliance San Diego v. Yes! for a Better San Diego

Fourth District Court of Appeal Case No. D080199

San Diego County Superior Court

Case No. 37-2021-00024607-CU-MC-CTL

Consolidated with Case No. 37-2021-00024590-CU-MC-CTL (lead)

I, McCall L. Williams, declare:

I 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 790 E. Colorado Blvd, #850, Pasadena, California 91101. My email address is: MWilliams@chwlaw.us. On July 26, 2022, I served the document(s) described as **APPELLANT YES! FOR A BETTER SAN DIEGO'S OPENING BRIEF** on the interested parties in this action addressed as follows:

SEE ATTACHED LIST FOR METHOD OF SERVICE

- ☒ **BY MAIL:** The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.
- ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, by causing the documents to be sent to the persons at the e-mail addresses listed on the service list on July 26, 2022, from the court authorized e-filing service at TrueFiling.com. No electronic

message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 26, 2022, at Pasadena, California.

A handwritten signature in blue ink, appearing to read "McCall Williams", is written over a horizontal line.

McCall L. Williams

SERVICE LIST

Alliance San Diego v. Yes! for a Better San Diego
Fourth District Court of Appeal Case No. D080199

San Diego County Superior Court
Case No. 37-2021-00024607-CU-MC-CTL
Consolidated with Case No. 37-2021-00024590-CU-MC-CTL (lead)

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