

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE**

**ALLIANCE SAN DIEGO, ISIDRO D. ORTIZ, MICHAEL
McCONNELL, HOWARD JARVIS TAXPAYERS FOUNDATION,
DONNA FRYE, CALIFORNIA TAXPAYERS ACTION NETWORK
and PROJECT FOR OPEN GOVERNMENT,**
Plaintiffs and Respondents,

v.

YES! FOR A BETTER SAN DIEGO and CITY OF SAN DIEGO,
Defendants and Appellants,

APPEAL FROM SUPERIOR COURT, SAN DIEGO COUNTY
CASE NOS. 37-2021-00024590-CU-MC-CTL and
37-2021-00024607-CU-MC-CTL
HON. KENNETH J. MEDEL, JUDGE

CITY OF SAN DIEGO'S OPENING BRIEF

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**CERTIFICATE OF INTERESTED ENTITIES OR
PERSONS**

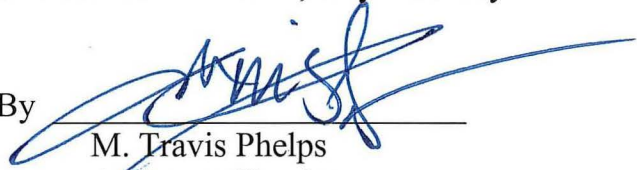
(Cal. Rules of Court, Rule 8.208(e)(3))

There are no interested entities or persons to list in this certificate.

Dated: July 27, 2022

MARA W. ELLIOTT, City Attorney

By



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I. INTRODUCTION

As four separate published appellate opinions have held in the past two years, Measure C required a simple majority vote to pass because it is a special tax proposed via citizens' initiative. The trial court erroneously granted a judgment on the pleadings due to the City of San Diego's (City) mistaken (in hindsight) statement that Measure C required a two-thirds majority vote in the ordinance placing the measure on the ballot. However, in the case the trial court relied on, *Hass v. City Council of Palm Springs*, 139 Cal. App. 2d 73 (1956), the citizens submitted their proposed initiative with a supermajority vote explicitly included in the text of the initiative itself and conditioned its passage upon the supermajority vote. Here, unlike the citizens' initiative in *Hass*, Measure C does not contain any text requiring a supermajority vote. Cities cannot change the vote requirement for a citizens' initiative by mistakenly believing it is something else, regardless of whether a city communicates its belief through ballot materials or the ministerial ordinance it uses to place the measure on the ballot.

Likewise, the City's decision to proceed cautiously before declaring the legal outcome of the voting results cannot invalidate the Measure C election. The mere passage of time does not change the legal effect of

Measure C achieving the required majority vote, and it cannot strip voters of their Constitutional power to initiate and pass legislation.

Additionally, Proposition 219 does not apply to Measure C because Measure C neither ties different results to different voting percentages, nor does it coerce voters by conditioning benefits upon how a geographic area votes. Proposition 219's purpose and scope have nothing to do with an initiative such as Measure C.

The citizens' initiative power is one of the most precious rights in our democratic process, and a right that courts have held must be jealously guarded and liberally construed. Measure C received affirmative votes of 65.24% of the City's voters who voted on the measure at the March 3, 2020 Municipal Special Election. Well above the required simple majority.

This Court should reverse the trial court's judgment and remand with instructions to enter judgment in favor of the City in accordance with the relief prayed for in the City's validation complaint.

II. STATEMENT OF FACTS

A. Measure C

On March 3, 2020, a Municipal Primary Election and a Municipal Special Election were held in the City of San Diego. One of the measures on the ballot at the Special Election, denominated Measure C, was entitled "Hotel Visitor Tax Increase and Bond Authorization for Convention Center

Expansion, Homelessness Programs and Street Repairs” (Measure C). (AA I:73-74.¹) Measure C’s proponents qualified Measure C for the ballot by circulating initiative petitions to the electorate of the City of San Diego. These initiative petitions received a sufficient number of valid signatures from registered City voters to qualify Measure C for the ballot under local law as a citizens’ initiative.

Measure C adds a new Division 2 entitled “Additional, Voter-Approved Transient Occupancy Tax and Related Bonds,” including Sections 35.0201 through 35.0212, to Chapter 3, Article 5 of the San Diego Municipal Code (SDMC). Measure C (SDMC § 35.0201(a)) increases the City’s 10.5 percent transient occupancy tax applied to overnight facilities by 1.25 to 3.25 percentage points. The transient occupancy tax will increase to 11.75%, 12.75%, and 13.75% depending on the geographic location, or “tax zone,” of the facility. The Additional Tax imposes the highest tax rate increase – 3.25 percentage points – on visitors staying at facilities in the general vicinity of downtown San Diego. Visitors staying at more centrally located facilities outside of downtown San Diego will have a 2.25 percentage point tax increase. And those staying at facilities located in the far northern and southern portions of the City will have their tax rate

¹ The Appellant’s Appendix is cited to in the following form AA [Vol.]:[Page(s)].

increase by 1.25 percentage points. (AA I:82.) Measure C (SDMC § 35.0202(a)) identifies the Additional Tax as a special tax that must be used for Special Purpose Activities: (1) Homelessness Programs; (2) Street Repairs; and (3) Convention Center Improvements, Operations, Support Activities, and Business Development Programs. (AA I:83.)

Measure C (SDMC §§ 35.0203(b) and 35.0204(a)) generally requires the Additional Tax Revenues to be allocated in specified percentages for Convention Center purposes (59%), Homelessness Programs (41% in Years 1 through 5, and 31 percent thereafter), and Street Repairs (10% starting in Year 6). (AA I:83.) Measure C also requires (SDMC § 35.0203(e)-(g)) the Additional Tax Revenues for each of the Special Purpose Activities to be deposited into a corresponding revenue account, a Convention Center Revenue Account, a Homelessness Revenue Account, and a Street Repair Revenue Account. (AA I:83-84.)

Measure C (SDMC § 35.0210(a)-(f)) authorizes the City to issue and sell Bonds, to be repaid using the applicable allocated component of the Additional Tax Revenues, up to specific caps of maximum bond indebtedness, including financing costs (i.e., necessary costs of issuance to conduct a bond offering). The specific bond-related caps include \$850 million for Convention Center Expansion and Modernization Costs (which cap may be lifted in the future by Council resolution after a noticed public

hearing), \$750 million for Homelessness Program Costs, and \$400 million for Street Repair Costs, provided in each instance that the allocated revenues from the applicable Additional Tax Component are projected over the life of the pertinent bonds to be sufficient to repay the amount of such bonds. And, Measure C (SDMC § 35.0210(g)) states that all bonds issued pursuant to Measure C shall be limited obligations of the City payable solely from the Additional Tax Revenues attributable to the pertinent Additional Tax Component. (AA I:87.)

Measure C did not state the required threshold for voter approval.

B. Ballot Materials and Ordinance 21143

On November 4, 2019, pursuant to SDMC sections 27.0107(a) and 27.1035(b), the City Council adopted Ordinance O-21143 placing Measure C on the ballot. (AA I:51-70.) Ordinance O-21143 mistakenly 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 of a two-thirds majority of the local electorate to be adopted by the voters.” (AA II:642, 644.)

Likewise, the City Attorney's impartial analysis contained in the ballot materials also reflected a mistaken (in hindsight) understanding that two-thirds voter approval was required. (AA II:662.)

C. Voting Results

Measure C received the affirmative votes of 65.24% of the 366,373 City of San Diego voters who voted on the measure in the March 3, 2020 Municipal Special Election. (AA I:100.)

D. Post-Voting Resolutions

On April 7, 2020, the San Diego City Council adopted Resolution R-312901 (April 2020 Resolution), declaring the results of the March 3, 2020 election. (AA I:103-11.) The April 2020 Resolution declared that, out of the total number of 366,373 votes cast upon Measure C in the Municipal Special Election, 239,024 (65.24%) were in favor of Measure C and 127,349 (34.76%) were against Measure C. However, instead of declaring in the April 2020 Resolution whether Measure C had been approved or rejected on the basis of the voting results the City Council noted in Section III on page 7 of the April 2020 Resolution (collectively, Council's Note): (i) a split of authority existed in California as to whether a simple majority vote or a two-thirds supermajority vote is required for the passage of a special tax proposed by a citizens' initiative; (ii) the ballot and ballot pamphlet stated a two-thirds vote threshold for approval of Measure C

(based on the City Attorney's Office's determination of the legal precedent and usual practice in California at the time of submittal of Measure C to the voters); and (iii) it was anticipated that the California Supreme Court would issue a final decision in the future resolving the ambiguity as to the vote threshold applicable to a special tax proposed by a citizens' initiative, and such decision could impact Measure C. (AA I:109.)

When the April 2020 Resolution was adopted, the split of authority existed because the trial court in San Francisco (in two separate cases) had concluded that a simple majority vote was required for the passage of a special tax proposed by citizens' initiative and trial courts in Fresno and Oakland (in two separate cases) had concluded that a two-thirds supermajority vote was required for passage of a special tax proposed by citizens' initiative.

On April 6, 2021, in light of new precedents resolving the ambiguity noted in the April 2020 Resolution, the City Council passed Resolution R-313485, declaring Measure C to have been approved in the March 3, 2020 election based on the Council's declaration of the voting results in the April 2020 Resolution.² (AA I:160-65.) R-313485 superseded the Council's Note

² At the time Resolution R-313485 was passed, three appellate court decisions had been issued post adoption of the April 2020 Resolution, all concluding that only a simple majority vote is required for passage of a special tax proposed by citizens' initiative: (1) *City and County of San Francisco v. All Persons Interested in the Matter of Prop. C*, 51 Cal. App.

regarding Measure C in Section III on page 7 of the April 2020 Resolution.

(AA I:164.)

On April 6, 2021, the City Council also passed Resolution R-313486 (Date of Final Passage April 20, 2021). (AA I:167.) Consistent with the intent of the voters in approving Measure C, R-313486 authorized and approved the issuance and sale of Homelessness Program Bonds with maximum bonded indebtedness, including financing costs, in an amount not to exceed \$750 million. The City shall repay all principal and interest on the Homelessness Program Bonds solely from the portion of the Additional Tax that is generated by the levy and collection of the Additional Tax and deposited in the Homelessness Revenue Account, and via R-313486 the City Council pledged such portion of Additional Tax Revenues for the repayment of the Homelessness Program Bonds. (AA I:164-75.)

Additionally, the City Council passed Resolution R-313487 on April 6, 2021 (Date of Final Passage April 20, 2021). (AA I:178.) Consistent with the intent of the voters in approving Measure C, R-313487 authorized and

5th 703 (2020) (review denied by the California Supreme Court on September 9, 2020); (2) *City of Fresno v. Fresno Building Healthy Communities*, 59 Cal. App. 5th 220 (2020) (review denied by the California Supreme Court on March 30, 2021); and (3) *Howard Jarvis Taxpayers Association v. City and County of San Francisco*, 60 Cal. App. 5th 227 (2021) (review denied by the California Supreme Court on April 28, 2021).

approved the issuance and sale of Convention Center Modernization Bonds with maximum bonded indebtedness, including financing costs, in an amount not to exceed \$200 million. The City shall repay all principal and interest on the Convention Center Modernization Bonds solely from the portion of the Additional Tax that is generated by the levy and collection of the Additional Tax and deposited in the Convention Center Revenue Account, and via R-313487 the City Council pledged such portion of Additional Tax Revenues for the repayment of the Convention Center Modernization Bonds. (AA I:184.)

III. PROCEDURAL HISTORY

A. Validation Actions

Alliance San Diego et al. v. City of San Diego et al., San Diego Superior Court Case No. 37-2021-00024590-CU-MC-CTL (hereinafter referred to as the “*Alliance San Diego Reverse Validation Action*”) was filed on June 3, 2021, seeking a determination of the validity of San Diego City Council Resolution No. R-313485 which declared Measure C to have been approved in the March 3, 2020, Municipal Special Election, and all related actions, which would include the validity of Resolution R-313486 and Resolution R-313487 which authorized and approved the issuance and sale of Homelessness Program Bonds and Convention Center Modernization Bonds, respectively. (AA I:24-187.) The City was served

with the *Alliance San Diego Reverse Validation Action* on July 9, 2021, and filed a timely answer on August 9, 2021. (*Id.*; and AA I:280-294.)

The *City of San Diego v. All Persons Interested in the Matter of Measure C*, San Diego Superior Court Case No. 37-2021-00024607-CU-MC-CTL (hereinafter referred to as the “*City Validation Action*”) was filed on June 4, 2021, seeking to validate the authorization and approval of the issuance and sale of the Homelessness Program Bonds (Resolution R-313486) and Convention Center Modernization Bonds (Resolution R-313487) and any and all actions that could affect the validity thereof, including the determination that Measure C is an approved ballot measure (Resolution R-313485) and validity of the transient occupancy tax increase by which the bonds will be secured and repaid. (AA I:188-205.)

The *City Validation Action* was originally assigned to Judge Ronald F. Frazier who signed an Order for Publication of Summons on June 21, 2021, and the Summons and Complaint were posted and any and all “interested persons” were required to respond to the *City Validation Action* by July 30, 2021. (AA I:220-31, 279.) Four separate timely answers were filed in response to the *City Validation Action* by: (1) Howard Jarvis Taxpayers Association (HJTA) (AA I:232-45); (2) Donna Frye, California Taxpayers Action Network, and Project for Open Government (hereinafter collectively referred to as “CTAN”) (AA I:268-71); (3) Alliance San Diego,

Isidro D. Ortiz, and Michael W. McConnell (the Plaintiffs in the *Alliance San Diego Reverse Validation Action*) (AA I:246-67); and (4) Yes! For a Better San Diego, the proponents of Measure C (AA I:272-78). Yes! For a Better San Diego's answer supported the City's position that Measure C is valid, while the other parties that answered the *City Validation Action* denied the allegations and prayed that Measure C be deemed invalid. (*Id.*)

On September 15, 2021, following an *ex parte* hearing, the *Alliance San Diego Reverse Validation Action* and the *City Validation Action* were ordered related and consolidated for all purposes and to be tried together in a single trial in Department 66 before Judge Kenneth J. Medel. (AA II:388-89.) Following consolidation, the Parties agreed to a March 11, 2022 trial date. (AA II:440.)

B. Motion for Judgment on the Pleadings

Despite agreeing to a March 2022 trial date, HJTA waited until January 12, 2022, to move for a Motion for Judgment on the Pleadings (Motion). (AA II:610-11.) In order to have the Motion heard before trial, HJTA went *ex parte* on January 20, 2022, to move the trial date. (AA II:883-86.) Following the *ex parte*, HJTA's Motion was set for March 4, 2022, and the trial date was rescheduled for April 25, 2022. (AA II:922-23.)

HJTA's Motion argued that Measure C did not pass for four reasons, contending: (1) it violates Prop. 219; (2) it violates Prop. 13; (3) it violates

Prop. 218; and (4) it violates due process and disenfranchises voters who were informed by the City that Measure C required two-thirds approval. (AA II:616.) In light of appellate precedent, HJTA only argued their Prop. 219 claim and conceded claims (2) through (4) were raised just to preserve their arguments for appeal. (*Id.*) Alliance San Diego filed a memorandum of points and authorities in support of HJTA's Motion, raising only the due process argument, contending it was distinguishable from the recently decided case of *Jobs & Housing Coalition v. City of Oakland*, 73 Cal. App. 5th 505 (2021), which held that statements made by local public entities cannot alter constitutional standards governing an election's voting threshold. (AA II:927-47.) CTAN offered no substantive argument yet joined HJTA's Motion despite it not including any of the affirmative defenses CTAN raised in its answer. (AA I:268-69 & II:950.) The City and the Measure C proponents, Yes! For a Better San Diego, opposed the Motion. (AA II:953-72.) Argument took place on March 4, 2022, and, after taking the matter under submission, Judge Medel issued his Order on March 8, 2022. (AA III:1125-29.)

C. Trial Court's Order and Judgment

The trial court granted the judgment on the pleadings, agreeing with Alliance San Diego that *Hass v. City Council of City of Palm Springs*, 139 Cal. App. 2d 73 (1956), controls. (AA III:1125-29.) Judge Medel placed

great weight on the fact that City Council Ordinance O-21143, which the City used to place Measure C on the ballot, 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” (AA III:1126-27.) The trial court Order found Ordinance O-21143 to be the official legislation establishing the rules of the election. Thus, Judge Medel concluded that “both in *Hass* and here, the applicable threshold was set forth in an official legislative action . . . not just in the ballot materials as in *Jobs & Housing Coalition*” and, therefore, the City “changed the rules” after the election occurred rendering it fundamentally unfair and a violation of due process. (AA III:1129.) Judge Medel also concluded the City Council had no authority to declare the results of the election without also declaring whether Measure C passed or failed. (AA III:1127-28.)

In light of the trial court’s decision to accept Alliance San Diego’s due process argument, it did not reach the substance of HJTA’s Proposition 219 claim. (AA III:1129.)

IV. STATEMENT OF APPEALABILITY

On March 8, 2022, the trial court granted judgment on the pleadings, which resolved the entire case. (AA III:1125-29.) On May 2, 2022, the trial

court entered judgment. (AA III:1210-13.) The City filed a timely notice of appeal.³ (AA III:1146.)

V. STANDARD OF REVIEW

The standard of review is de novo. *People ex rel. Harris v. Pac Anchor Transportation, Inc.*, 59 Cal. 4th 772, 777 (2014) (“A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review.”); *Silicon Valley Taxpayers’ Ass’n. v. Santa Clara County Open Space Authority*, 44 Cal. 4th 431, 449-50 (2008) (collecting cases reviewing tax assessments using independent judgment and de novo standards).

VI. THE TRIAL COURT’S JUDGMENT SHOULD BE REVERSED

This Court should reverse the trial court’s judgment and remand with instructions to enter judgment for the City validating Measure C. As four recent Court of Appeal decisions confirm, Measure C needed a majority vote to pass. Measure C received a majority vote, and therefore passed. Giving credit to the majority vote does not violate due process,

³ On May 26, 2022, the Court of Appeal sent Yes! For a Better San Diego and the City an order noting their notices of appeal indicated they were appealing from the order granting judgment on the pleadings and not a subsequent judgment. The Court requested appellants obtain an appropriate judgment and submit a copy to the Court within 20 days of the May 26th order. In compliance with the order, the Judgment entered on May 2, 2022 (AA III:1210-13) was lodged with the Court on June 13, 2022.

because the text of the measure did not require a two-thirds approval threshold and extrinsic materials cannot supplant constitutional standards.

A. Measure C Passed with a Majority Vote

As four separate published opinions have held in the past two years, Measure C required a majority vote to pass because it is a special tax by citizens' initiative. Measure C received a majority vote. Although Respondents claim extrinsic sources raised the voting threshold to a supermajority, ballot materials and acts by a City Council cannot alter the constitutional requirement for a majority vote. Therefore, Measure C passed with a majority vote.

1. Measure C Required and Received a Majority Vote

Measure C needed a simple majority vote to pass. In the past two years, four separate published opinions confirm that a special tax by citizens' initiative requires just a majority vote to pass. *City and County of San Francisco v. All Persons Interested in Matter of Proposition C*, 51 Cal. App. 5th 703, 714-21 (2020) ("Proposition C"); *City of Fresno v. Fresno Building Healthy Communities*, 59 Cal. App. 5th 220, 235 (2020); *Howard Jarvis Taxpayers Ass'n v. City and County of San Francisco*, 60 Cal. App. 5th 227, 237 (2021); *City and County of San Francisco v. All Persons Interested in the Matter of Proposition G*, 66 Cal. App. 5th 1058, 1070-71 (2021) ("Proposition G").

These cases are well-reasoned. The California Constitution reserves and protects the citizens' right to initiative. Art. II, §§ 8 & 11. The citizens' initiative power is "one of the most precious rights of our democratic process" that court must "jealously guard and liberally construe."

Proposition C, 51 Cal. App. 5th at 710. Although Propositions 13 and 218 have added supermajority vote requirements, as discussed in section II.D below, those do not apply here.

Requiring anything other than a simple majority vote to pass Measure C would deprive the voters of their constitutional right to a citizens' initiative. Here, Measure C received 65.24% of votes for the measure and 34.76% against. (AA I:100.) Therefore, Measure C required and received a majority vote.

2. *The Text of Measure C Does Not Require a Two-Thirds Approval Threshold*

Because the Constitution imposes the majority vote requirement, applying a supermajority vote requirement can only be constitutionally consistent if the vote requirement is applied by the proponents of the measure in the language of the citizens' initiative itself. *Hass v. City Council of Palm Springs*, 139 Cal. App. 2d 73, 76 (1956). In *Hass*, the Court of Appeal found a citizens' initiative required a supermajority vote because the citizens' initiative itself included language requiring a supermajority vote. *Id.* Critically, "the matter was submitted to the voters in

the form and subject to the condition requested by the signers of the initiative petition.” *Id.*

Unlike the citizens’ initiative in *Hass*, Measure C does not include any language requiring a supermajority vote. (AA I:80-96.) The signers of the petition for Measure C did not condition passage on a supermajority vote and did not incorporate any supermajority vote into the initiative’s form. (*Id.*)

3. *Extrinsic Materials Cannot Supplant Constitutional Standards*

Because the Constitution requires a majority vote, and nothing in the text of Measure C requires a supermajority vote, Respondents rely on extrinsic materials to infer a supermajority vote. But just as the Palm Springs City Council could not decrease the vote requirement in *Hass*, the San Diego City Council could not increase the vote requirement for Measure C. Ballot materials and City Council resolutions cannot alter the vote requirement for a citizens’ initiative. The vote requirement must come from the Constitution or the citizens’ initiative itself to be valid.

When the inaccurate vote requirement is in extrinsic materials, it has no legal force and effect because it cannot replace the Constitutional requirement for a simple majority. *Jobs & Housing Coalition v. City of Oakland*, 73 Cal. App. 4th 505, 517 (2021) (“*Jobs & Housing Coalition*”). In *Jobs & Housing Coalition*, a group of citizens submitted a petition for an

initiative to create a special tax. *Id.* at 509. The citizens did not condition passage on a supermajority vote. *Id.* at 517. The citizens did not incorporate any supermajority vote into the initiative's text. *Id.* However, the City of Oakland inaccurately stated in ballot materials that a supermajority vote would be required for passage. *Id.* The initiative received a majority vote, and the City of Oakland ultimately concluded that it passed. *Id.* at 509. The Court of Appeal agreed, reasoning that "a voting threshold identified in ballot materials cannot supplant the law governing the applicable voting threshold." *Id.* at 517.

Jobs & Housing Coalition is squarely on point. Just like the citizens there, the citizens here did not condition passage on a supermajority vote and did not incorporate any supermajority vote into the initiative's text. (AA I:80-96.) As the law was not yet clear, the City also issued incorrect ballot materials misstating the vote requirement in the ministerial ordinance putting Measure C on the ballot. (AA I:56, 74.) But the City's actions do not amend either the initiative nor the Constitution. As the *Jobs & Housing Coalition* Court explained, these extrinsic actions cannot supplant the governing law, which is the California Constitution. *Jobs & Housing Coalition*, 73 Cal. App. 4th at 517.

Because *Jobs & Housing Coalition* was binding in the trial court, Respondents reach back nearly 70 years to seek a different result from

Hass, a different case with clearly distinguishable facts. But as explained above, *Hass* supports the City's position and requires the City's actions here. The citizens in *Hass* submitted the proposed initiative with a supermajority vote explicitly included *in the text of the initiative itself* and conditioned its passage upon the supermajority vote. *Hass v. City Council of Palm Springs*, 139 Cal. App. 2d at 76. Unlike the citizens' initiative in *Hass*, Measure C does not have any text requiring a supermajority vote. (AA I:80-96.) The signers of the petition did not condition its passage on a supermajority vote. (*Id.*)

Put differently, cities cannot change the vote requirement for a citizens' initiative by mistakenly believing it is something else, regardless of whether the city communicates the belief through ballot materials, ordinances, or press statements.⁴ Just as the citizens that put forward the petition in *Hass* were the only ones that could impose a different voting requirement on their petition, the citizens who put forward Measure C were the only ones that could impose a different requirement. The City's extrinsic statements identifying a different voting threshold have no legal

⁴ This is not to say that the inaccurate statements do not have any significance of any kind - extreme facts might give rise to a Due Process claim. But inaccurate statements by a city do not have any weight in calculating the voting threshold for a citizens' initiative.

weight because the Constitution's simple majority requirement preempts any modification by the City.

4. *The Trial Court's Distinction Based on Official Legislative Acts Was Unfounded and Error*

The trial court distinguished *Jobs & Housing Coalition* by noting that the City Council ordinance placing Measure C on the ballot here was "an official legislative act," whereas the City speech at issue in *Jobs & Housing Coalition* was not an official legislative act, it was only ballot materials. (AA III:1128.) But this new test only examines the form of the speech and ignores the speaker. This test has no legal support and should not be adopted by this Court.

First, neither *Hass* nor *Jobs & Housing Coalition* use the language "official legislative act" to determine whether a citizens' petition or a city's actions controls. The only two published cases citing *Hass* also do not use "official legislative act" as a test to determine the voting threshold that controls. See *Santa Barbara County Taxpayer Ass'n. v. Board of Supervisors*, 209 Cal. App. 3d 940, 948 (1989) (distinguishing *Hass* because the initiative in *Hass* contained "express language"); *Concerned Citizens v. City of Carlsbad*, 204 Cal. App. 3d 937, 943 (1988) (citing to *Hass* with no discussion of official legislative acts). The term has no legal precedent in these cases.

Second, the analysis is too narrow. Asking whether there were official legislative acts focuses only on the form of the speech and ignores the speaker. In *Hass*, the citizens required a supermajority vote threshold in the petition itself, which is permitted. In *Jobs & Housing Coalition*, the City required a supermajority vote threshold in ballot materials, which was inaccurate. But the reason the cases came out differently was not just the form of the speech (petition instead of ballot materials) but also the speaker (citizens instead of the city). Citizens can place voting thresholds on their own initiatives because they have the constitutional power to draft the initiative. In contrast, a city has no power to modify the voting threshold for a citizens' initiative, regardless of the form that the attempted modification takes, because the constitutional requirement for a majority vote preempts any city modification. Examining the record only for official legislative acts ignores those issues and applies an arbitrarily narrow lens with no precedent. This Court should reject any such test. Moreover, the Court in *Fresno Building Healthy Communities* reached the result the City seeks here even though the erroneous statement of the two-thirds standard appeared in the City Council resolution placing the measure on the ballot there – the equivalent of the ordinance the San Diego City Charter requires for placing measure on the ballot in this City. *City of Fresno v. Fresno Building Healthy Communities*, 59 Cal. App. 5th 220, 229 (2020)

In conclusion, Measure C required and received a simple majority vote. Neither the text of Measure C nor any extrinsic materials changed that requirement. Although the trial court distinguished *Jobs & Housing Coalition* based on a novel test asking whether there was an official legislative act, that newly created test has no legal support and uses a narrow analysis that misses the constitutional underpinnings for a citizens' initiative. Moreover, it mistakes the facts even of this case, as the statements of the two-thirds rule did occur by official acts of city officials. This Court should reverse and remand with instructions to enter judgment in favor of the City validating Measure C.

B. Concluding Measure C Passed Does Not Violate Due Process

Because Respondents cannot change the constitutional voting threshold, they then attack the City's process and inaccurate ballot materials as a due process violation. However, Respondents bear the heavy burden required to show a due process violation to justify overturning an election result after the fact, and they cannot meet that burden. The City proceeded in the manner that was most consistent with the Constitution and afforded the greatest amount of due process to the largest number of voters by crediting the voting threshold that the Constitution requires. This Court should reverse.

1. Respondents Cannot Meet Their Burden to Show a Due Process Violation

Respondents have an extraordinarily narrow path to invalidate election results based on a post-election challenge to inaccurate ballot materials. There is no statutory claim to challenge ballot materials after the election ends. *Owens v. County of Los Angeles*, 220 Cal. App. 4th 107, 123 (2013). Instead, Appellants can only challenge the results by showing the inaccurate ballot materials and ordinance were “so misleading and inaccurate that constitutional due process requires invalidation of the election.” *Id.* (citing *People ex rel. Kerr v. County of Orange*, 106 Cal. App. 4th 914, 919 (2003)). But, although that claim is a “possibility,” it has never been successful: “no California appellate court, to our knowledge, has invalidated an election on this basis.” *Owens v. County of Los Angeles*, 220 Cal. App. 4th at 123.

Based on these facts, this Court should not be the first. The core tenant of democracy is that “[v]oters, 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.” *Jobs & Housing Coalition*, 73 Cal. App. 5th at 512-13. Overturning the valid results of an election based on mistakenly inaccurate extrinsic materials, such as ballot materials or ministerial resolutions, would thrust elections into doubt through endless litigation.

On these facts, once again, *Jobs & Housing Coalition* is on point. The challengers in *Jobs & Housing Coalition* argued that the inaccurate ballot materials constituted a due process violation. *Id.* at 512-15. The Court of Appeal squarely rejected that argument, reasoning those extrinsic materials stating the voter threshold concern “an important, but ‘more ancillary matter’” that does not “strike ‘at the very nature and purpose of the legislation.’” *Id.* at 514 (citing *Horwath v. East Palo Alto*, 212 Cal. App. 3d 766, 777-78 (1989)). Moreover, the ballot materials were drafted “when there was legal uncertainty about the applicable voting threshold for citizen’s initiatives for special parcel taxes.” *Id.* Under those circumstances, the Court of Appeal reasoned that it “cannot conclude that it was fundamentally unfair for Oakland officials to express in the 2018 ballot materials that Measure AA would require two-third of the vote to pass, then later take a different position.” *Id.* at 515.

The same facts are at issue here. The extrinsic materials prepared by the City were mistaken (in hindsight), but that is an ancillary issue that is not intertwined with the nature and purpose of the citizens’ initiative because it is not within the text of Measure C. The City of San Diego also faced the same legal uncertainty as the Cities of Fresno and Oakland, before multiple appellate courts settled the issue. Those factors all weigh against a due process violation.

Further, because the voter threshold was only in extrinsic materials in *Jobs & Housing Coalition*, voters could assess the measure itself and vote without committing to a specific voter threshold. In contrast, the voter threshold was in the actual text of the measure itself in *Hass*, which strikes at the very nature and purpose of the legislation. *Jobs & Housing Coalition*, 73 Cal. App. 5th at 514 (citing *Horwath v. East Palo Alto*, 212 Cal. App. 3d at 777-78). A vote for the measure was inseparable from a vote for the voter threshold explicitly contained in the measure. Here, similar to the voters in *Jobs & Housing Coalition*, and unlike the voters in *Hass*, voters could assess Measure C and vote yes or no, without inherently voting in favor or against a voter threshold in a separate document that is not on the ballot. Therefore, crediting their vote and applying the proper voting threshold raises fewer due process concerns.

Appellants do not meet the extraordinarily high bar to be the first case to invalidate the results of an election through a post-election challenge to inaccurate ballot materials. This Court should reverse.

2. *Proceeding Cautiously Before Declaring a Winner is Not a Due Process Violation*

The trial court found that City Council's April 2021 Resolution declaring Measure C passed is "null and void as a matter of law" because City Council waited for pending litigation to resolve. (AA III:1127-28.) However, the mere passage of time does not change the legal effect of

Measure C achieving the required majority vote. It cannot strip voters of their Constitutional power to initiate or to pass legislation.

Elections Code section 10263(b) states that for a consolidate election like the March 3, 2020, election on Measure C, the governing body “shall meet at its usual place of meeting no later than the next regularly scheduled city council meeting following presentation of the 28-day canvass of the returns, or at a special meeting called for this purpose, to declare the results and to install the newly elected officers.” Here, contrary to Alliance San Diego’s argument or the trial court’s Order, the City Council did not wait a year to declare the results of the Measure C election. They met accordingly and declared that Measure C received 65.24% of the votes for the measure and 34.76% against. What was then unclear was the legal consequence of that vote. The City Council, proceeding cautiously in an attempt to ensure it did not mistakenly trample upon the citizens’ right of initiative, waited a year for the appellate courts to resolve the disputed legal issue before declaring the legal effect of the voting results it previously declared.

Fundamentally, even if the Court determined a technical process violation by the City occurred, that could not deprive the citizens of their Constitutional right of initiative.

**3. *Acknowledging that Measure C Passed Does Not
Render the Election Unfair***

In granting the motion for judgment on the pleadings, the trial court noted that changing the rules of the election after the election has occurred would render the election unfair. But that is not what happened. Because the City could not set the rules of the election (only describe them), it could not change them. What the trial court seems to fail to acknowledge is that our legal system is dynamic and rules once thought settled change or are clarified upon closer examination and interpretation in our appellate courts. The City did not change the text of the measure that voters approved, it did not change who could vote on the measure, and it did not change the vote count. No votes were altered, and no process to submit a vote was changed. The City also did not declare Measure C had failed, then reverse that decision post-hoc. Instead, City Council adopted a resolution that explicitly acknowledged “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.” (AA I:109.) Then, in April 2021, City Council adopted Resolution R-313485, which found that Measure C had passed in light of the clarification handed down by the appellate courts. (AA I:160-65.) Because City Council waited to get the result right the first time, this case does not create any precedent where cities would need to reexamine past elections to determine what measures won or lost under new rules.

By proceeding cautiously, the City acknowledged the will of the voters with the benefit of overwhelming precedent from the Courts of Appeal. By concluding that Measure C passed, the City gives voters the constitutionally required result and puts value behind the 65.24% of voters that approved the measure.

Consider the alternative. If the City had determined that Measure C did not pass, the determination would run counter to four Court of Appeals decisions. The determination would elevate the form of ballot materials and procedural ordinances over the substance of a constitutionally permitted voter initiative. And most importantly, such an approach would erase a lawfully passed citizens' initiative. It would also have compelled the proponents to sue – as they did in *Fresno Building Healthy Communities* – adding yet another case to the pile, but doing little to speed clarification of the law.

In sum, Respondents cannot meet the high burden to show a due process violation. Any purported due process violation must be balanced against the harm that the trial court's remedy would inflict by invalidating a citizens' initiative, which is a constitutionally guaranteed right. This Court should reverse and remand with instructions to enter judgment in favor of the City validating Measure C.

C. Proposition 219 Does Not Apply to Measure C

Proposition 219 was adopted to prevent two specific issues in how two ballot measures were structured. Proposition 219's relatively narrow scope does not apply to Measure C because Measure C neither ties different results to different voting percentages nor coerces voters by conditioning benefits on how a geographic area votes. Both the text of Proposition 219 and its legislative history show its purpose and scope have nothing to do with Measure C. This Court should hold Measure C does not violate Proposition 219 and remand with instructions to enter judgment in favor of the City validating Measure C.

1. *The Text of Proposition 219 Does Not Apply to Measure C*

Proposition 219 amended Art. II, §§ 8 & 11, Art. IV, § 8.5, and Art. XI, § 7.5. The applicable section to citizens' initiatives, such as Measure C, is Art. II, § 11. The section prohibits two ways that measures to be voted on could be structured, neither of which apply here.

i. Subdivision (b) does not apply

Subdivision (b) bars measures from having a different geographic application based on the specific percentage of votes in favor of the measure in different places. Cal. Const. Art. II, § 11(b). For example, the section bars a measure that distributes tax revenues to a part of the city only if that part of the city voted for the tax. This measure is problematic

because it coerces people who may have otherwise voted no to instead vote yes, because they want to ensure their geographic part of the city would receive a portion of the tax revenues if the measure passes.

Measure C does not violate subdivision (b). Measure C imposes taxes in the City without any regard to the specified percentage of votes for or against the measure in any individual geographic area of the City. Measure C's tax revenues will benefit the City regardless of how any geographic part of the City voted. (AA II:663-65.)

Respondents argued in the trial court that subdivision (b) of Proposition 219 conflicts with Measure C because Measure C would increase the hotel visitor tax different amounts, depending on the hotel's location. But Measure C does not tie those amounts to the outcome of any vote in any specific area. Measure C applies a particular rate to a particular location, regardless of how that location votes on Measure C. And Measure C distributes the tax revenues without regard to how any particular area voted on Measure C. That is what Proposition 219 requires.

Respondents imply that subdivision (b) requires a uniform tax that does not vary upon location. Not so. To state the obvious, taxes often affect different locations and people differently, without running afoul of Proposition 219. As the City's opposition in the trial court noted, there are at least six common examples where taxes have different effects based on

location and personal income: (1) the Mello-Roos Community Facilities Act imposes different amounts based on land use designations; (2) the Transactions and Use Tax Law has different applications based on taxing district; (3) business taxes only apply to geographic areas containing businesses, not in residential zoning; (4) income tax rates are progressive; (5) utility taxes have reductions for the elderly, poor, and sick; and (6) Proposition 63 only applies to those with incomes over \$1 million. All these methods are legal and do not trigger any concerns under Proposition 219. Taking Respondents' arguments regarding the scope of Proposition 219 to their logical conclusion would dramatically enlarge its effect and cast legal doubt on a much larger portion of California's tax structure.⁵

More broadly, taxing different geographic areas under Measure C is both lawful and reasonable. "[N]either 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 Ass'n of Retail Tobacconists v. State of California*, 109 Cal. App. 4th 792, 844 (2003). "Differing tax rates may be imposed upon different classes provided the classification created is reasonable." *Id.* Here, Measure C would (in part)

⁵ Of course, that is likely why HJTA raises the argument. But Proposition 219 cannot bear the weight.

raise funds for a convention center expansion and/or modernization. The hotels closest to the expanded convention center would benefit more than hotels further away. Therefore, the hotels in the geographic area closest to the convention center will pay a higher tax rate than the hotels further away from the convention center. This classification is reasonable; with a higher payment comes a higher benefit. Measure C's tax structure is valid under Proposition 219 and imposes a reasonable set of classifications that do not infringe any constitutional limitation.

ii. Subdivision (c) does not apply

Subdivision (c) prohibits measures that have different outcomes depending on the number of votes cast for or against the measure. Cal. Const. Art. II, § 11(c). For example, the section bars a measure that has one result if it reaches a simple majority and another result if it reaches a supermajority. This sort of measure is problematic because a yes vote could create two different results – one result that the person voting yes wanted, and one result that the person voting yes would have voted no for. Therefore, someone voting yes would not know exactly what their vote means and what result it would have.

Measure C does not violate subdivision (c). Measure C has the same effects if it passed by a simple majority or if it passed unanimously.

Nothing in Measure C creates different outcomes depending on the degree that the measure passes.

2. *The Extrinsic Sources for Proposition 219 Confirm it Does Not Apply to Measure C*

Because the plain language of Proposition 219 is not ambiguous, this Court should “presume the lawmakers meant what they said, and the plain meaning of the language governs.” *Day v. City of Fontana*, 25 Cal. 4th 268, 272 (2001); see also *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 245 (1978) (“[a] constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words.”). The Court only resorts to extrinsic sources if there is an ambiguous term. *Day v. City of Fontana*, 25 Cal. 4th at 272. Here, nothing in Proposition 219 is ambiguous as to whether it applies to Measure C, so the Court does not need to resort to extrinsic sources.

Nonetheless, the extrinsic sources also support the conclusion that Proposition 219 does not apply to Measure C. The Legislative Analyst explained that Proposition 219 was designed to bar two recent voting structures that coerced voters and led to uncertain results. (Ballot Measures, Application, California Proposition 219 (1998), available for download at https://repository.uchastings.edu/ca_ballot_props/1143.) The first structure was created by Proposition 172 on the November 1993 ballot. *Id.* The

measure sought to enact a statewide sales tax increase. *Id.* But it “provided that the revenues from the tax increase would go only to those counties that voted in favor of the measure.” *Id.* Therefore, some voters would be coerced into voting yes, because they want to ensure their county would receive a portion of the tax revenues if the measure passes. *Id.* To avoid this in the future, Proposition 219 bars ballot measures that “apply only in those areas that voted in favor of the measure.” *Id.*

The second structure Proposition 219 sought to prevent was a “recent local measure . . . [that] contained an unusual provision.” *Id.* The measure would create a tax for general purposes if it received a majority but would create a tax for special purposes if it received two-thirds of votes in favor. *Id.* “Thus, a ‘yes’ vote could mean two different things.” *Id.* To avoid this in the future, Proposition 219 bars ballot measures that “have one outcome if approved by a majority of voters and a different outcome if approved by a two-thirds vote.” *Id.*

Similarly, the argument in favor of Proposition 219 echoes the same concerns. *Id.* at 2. The argument referred to the same 1993 ballot measure, noting that “unless your county voted the way the professional politicians wanted, you would pay the higher tax while getting no benefits back!” *Id.* The argument portrayed Proposition 219 as ending “political blackmail” and making sure that the benefits of a ballot measure would not be

distributed based on whether a particular political subdivision “voted for or against a particular ballot measure.” *Id.*

The legislative analysis and arguments in favor of Proposition 219 show that its intended purpose has nothing to do with an initiative such as Measure C. Measure C does not create different results based upon the amount it passes by. Measure C also does not coerce any voter into voting for the tax to make sure they get the benefits. Measure C distributes tax revenue without requiring any particular area to vote for the measure. Measure C does not violate any part of Proposition 219.

3. The Court Should Not Remand for Further Consideration

The trial court did not rule on HJTA’s Proposition 219 argument. Nonetheless, this Court should not remand for further consideration. Proposition 219 presents purely legal constitutional issues based on undisputed facts that this Court has discretion to consider for the first time on appeal. *See Hale v. Morgan*, 22 Cal. 3d 388, 394 (1978). Remanding for further consideration would delay the validation action further, contradicting the statutory intent for quick resolution and finality. *See* Code Civ. Proc. § 867 (requiring that validation actions “be given preference over all other civil actions before the court . . . to the end that such actions shall be speedily heard and determined.”). This issue will also have been fully briefed in both the trial court and this Court, which means

“[c]onsiderations of judicial economy favor addressing the . . . issue on the merits.” *Wheeler v. Superior Court*, 72 Cal. App. 5th 824, 831 (2021).

In sum, Proposition 219 does not apply to Measure C. Neither the text nor extrinsic sources support applying Proposition 219 to Measure C. The Court should conclude Proposition 219 does not invalidate Measure C and remand with instructions to enter judgment in favor of the City.

D. Propositions 13 and 218 Do Not Apply to Measure C

Measure C is a voter-initiated measure. No court has applied Propositions 13 or 218 to a voter-initiated measure. Instead, as HJTA acknowledged in the trial court, “[t]wo district Courts of Appeal have found that Propositions 13 and 218 do not apply to voter-initiated measures” (AA II:623.) This is for good reason: Propositions 13 and 218 do not apply to voter-initiated measures, and therefore do not apply to Measure C.

1. Every Court to Consider the Issue Agrees that Propositions 13 and 218 do not Apply to Voter-Initiated Measures

Despite uncertainty while the City prepared the ballot materials for Measure C, every case considering the issue has come down on the same side: Propositions 13 and 218 do not apply to voter-initiated measures. In the past two years, four separate published opinions confirm that a special tax by citizen’s initiative requires a majority vote to pass. *Proposition C*, 51 Cal. App. 5th at 714-21; *City of Fresno v. Fresno Building Healthy*

Communities, 59 Cal. App. 5th at 235; *Howard Jarvis Taxpayers Ass’n v. City and County of San Francisco*, 60 Cal. App. 5th at 237; *Proposition G*, 66 Cal. App. 5th at 1070-71.) These four cases are well-reasoned and should be followed here.

2. Respondents Again Face a Heavy Burden

Similar to their due process claim, Respondents argue in the face of a heightened burden. Because Respondents seek to constrain a constitutionally guaranteed right, the citizens’ initiative, this Court must begin “with the presumption that the initiative power is not constrained.” *California Cannabis Coalition v. City of Upland*, 3 Cal. 5th 924, 947 (2017). Then, Respondents must put forward “clear evidence” that voters intended to impose restrictions on their constitutional power by adopting Propositions 13 and 218. *Id.* Courts cannot “imply an intent left unexpressed.” *Kennedy Wholesale, Inc. v. State Bd. of Equalization*, 53 Cal. 3d 245, 252 (1991) (quoting *Mutual Life Ins. Co. v. City of Los Angeles*, 50 Cal. 3d 402, 412 (1990)). And, critically, courts “must resolve any reasonable doubts in favor of the exercise of this precious right.” *Kennedy Wholesale, Inc. v. State Bd. of Equalization*, 53 Cal. 3d at 252. Respondents’ failure to identify clear evidence is fatal to their claims. *Id.*

3. *The Text of Propositions 13 and 218 do not Apply to Voter-Initiated Measures*

Respondents cannot identify clear evidence here because none exists. Proposition 13 says nothing about initiative power. Instead, it adds the text of Article XIII A, section four, which requires “Cities, Counties and special districts” to reach a two-thirds vote of the qualified electors before imposing certain special taxes. But citizens are neither cities, counties, nor special districts. Instead, those are governmental entities. Although it is theoretically possible to interpret these terms broadly, nothing in the text of Article XIII A supports such an implication. A broad interpretation constraining initiative power is also “not favored by the law, which imposes a duty on courts to jealously guard, liberally construe and resolve all doubts in favor of the exercise of the initiative power.” *Proposition C*, 51 Cal. App. 5th at 721 (citing *Associated Home Builders, etc., Inc. v. City of Livermore*, 18 Cal. 3d 582, 591 (1976)).

Respondents’ attempt to apply Proposition 218 does not fare any better, which is understandable because it is Proposition 13’s progeny and “must be construed in that context.” *Id.* (quoting *Apartment Ass’n of Los Angeles County, Inc. v. City of Los Angeles*, 24 Cal. 4th 830, 838 (2001)). Proposition 218 added Article XIII C, section 2(d), which states that “[n]o local government” can add a special tax without a two-thirds vote of the electorate. But citizens are not local government, and the language is utterly

silent about citizens' initiatives. Silence cannot imply a restriction on initiative power. *Proposition C*, 51 Cal. App. 5th at 721. Had the voters who approved Proposition 218 intended to limit initiative tax proposals in this way, they knew how to say so. *Cf.* Art. XIII C, § 3 (reducing signature requirement for initiatives to "affect" taxes).

Despite the silence in Propositions 13 and 218, tax opponents have sought to construe their terms by reference to other parts of the Constitution. Courts have rejected each of those attempts, including attempts by HJTA, a party to this case. *See Proposition C*, 51 Cal. App. 5th at 714-21; *City of Fresno v. Fresno Building Healthy Communities*, 59 Cal. App. 5th at 235; *Howard Jarvis Taxpayers Ass'n v. City and County of San Francisco*, 60 Cal. App. 5th at 237; *Proposition G*, 66 Cal. App. 5th at 1070-71. The attempts are also fundamentally flawed. The plain meaning of the text does not restrict citizens' initiatives.

4. *The Extrinsic Sources Show Propositions 13 and 218 do not Apply to Voter-Initiated Measures*

Because the plain language of Propositions 13 and 218 are not ambiguous, this Court should "presume the lawmakers meant what they said, and the plain meaning of the language governs." *Day v. City of Fontana*, 25 Cal. 4th at 272. As previously discussed, the Court only resorts to extrinsic sources if there is an ambiguous term. *Id.* Here, neither proposition says anything about citizens' initiatives and nothing in their

context suggests they should apply to citizens' initiatives, so the Court need not examine extrinsic sources.

However, to the extent the Court determines that something is ambiguous, the extrinsic sources for both propositions support the conclusion that Propositions 13 and 218 do not apply to Measure C. For Proposition 13, as the Supreme Court already held, "[n]othing in the official ballot pamphlet [for Proposition 13] supports the inference that the voters intended to limit their own power to raise taxes in the future by statutory initiative." *Kennedy Wholesale, Inc. v. State Bd. of Equalization*, 53 Cal. 3d at 250.

Proposition 218's ballot materials and statutory findings are similar. Proposition 218 declares that its purpose is to protect taxpayers from "the methods by which local governments exact revenue from taxpayers without their consent." *California Cannabis Coalition v. City of Upland*, 3 Cal. 5th at 940. But clearly, a citizens' initiative that citizens vote for is not a method to exact revenue without citizens' consent. The very purpose of a citizens' initiative is to ask for consent from citizens in an election. The ballot materials also focus on "politicians" wanting to raise taxes using "end-runs" around voters. *Id.* Again, a citizens' initiative is driven by voters and submitted to voters, not an end-run around voters. Nothing in these

extrinsic sources indicate that the term “local government” should include citizens’ initiatives. *Id.*

5. *The Court Should Not Remand for Further Consideration*

HJTA raised Proposition 13 and 218 to “preserve them for appeal.” (AA II:616.) The trial court did not rule on them because it found Measure C did not pass. (AA III:1129.) Nonetheless, this Court should reject both arguments on appeal because remanding for further consideration would be unnecessary and pointless. As HJTA admits by raising the arguments only to preserve them for appeal, the trial court is bound by the four appellate opinions deciding Propositions 13 and 218 do not apply to citizens’ initiatives. (AA II:616.) There would be no purpose to remanding for further consideration on the issue because it would be an “idle act.” *See, e.g., People v. Gamble*, 164 Cal. App. 4th 891, 901 (2008) (holding remand for further consideration not required when it would be an idle act). Similar to the analysis in section II.C.3 above discussing remand for Proposition 219, deciding the issue on appeal also furthers the purpose behind Code of Civil Procedure section 867 and promotes judicial economy.

Propositions 13 and 218 do not apply to Measure C. Ample judicial authority stands for the opposite conclusion, and nothing in the text of either proposition or extrinsic evidence indicates that every court to consider the issue has been wrong. Therefore, the Court should conclude

Propositions 13 and 218 do not invalidate Measure C and remand with instructions to enter judgment in favor of the City validating Measure C.

E. CTAN's Affirmative Defense That Measure C Was Not a Bona Fide Citizens' Initiative Can Be Dispensed On Appeal

CTAN's answer makes the conclusory claim that the subject matter of the *City's Validation Action* is improper for validation and/or declaratory relief. The only substantive affirmative defense CTAN raises is its claim that Measure C "was not a bona fide citizens' initiative but was rather negotiated, sponsored, supported, and promoted by at least one City official using the resources and prestige of such office." Therefore, CTAN alleges, Measure C "should have been (but was not) subjected to environmental review under the California Environmental Quality Act; and the *faux* initiative should have been (but was not) approved by a two-thirds vote of the electorate. Consequently, [Measure C] cannot be validated." (AA I:268-69.)

CTAN's allegation that Measure C was "negotiated, sponsored, supported, and promoted" by at least one City official is irrelevant to the issues in the case – whether Measure C was approved by the voters at the March 3, 2020 Municipal Special Election, and whether the City Council's Resolutions authorizing and approving the issuance and sale of Homelessness Program Bonds and Convention Center Modernization

Bonds are legal, valid, and binding. The Court of Appeal just recently rejected the argument that the involvement of government officials in the conception and/or promotion of a special tax measure made it a non bona fide citizens' initiative. *Proposition G*, 66 Cal. App. 5th 1058 (2021).

In *Proposition G*, the City and County of San Francisco filed a validation action to establish Proposition G was validly enacted when it received approval of approximately 60 percent of the votes cast. An answering defendant contended Proposition G was invalid because it failed to garner two-thirds of the vote as allegedly required by Propositions 13 and 218. To distinguish the *Proposition G* case from *Proposition C*, 51 Cal. App. 5th 703, 708 (2020), which held a measure placed on the ballot as a local citizens' initiative requires only a majority vote to pass, the defendant argued Proposition G was not a valid citizens' initiative because it was conceived and promoted by local government officials. Specifically, the defendant argued that the San Francisco Unified School District “‘undermined and improperly appropriated’ the initiative process, ‘improper[ly] collu[ding]’ with the Union and others to get Proposition G passed.” *Proposition G*, 66 Cal. App. 5th at 1080. Therefore, the defendant contended the two-thirds vote requirement applied. The Court of Appeal concluded the fact the Proposition G Proponents did not draft the ballot materials or use their own personal funds to pay filing fees were irrelevant,

and no law precludes a governmental entity from publicly expressing an opinion with regard to the merits of a proposed ballot measure. *Id.* at 1081. The Court further found that principle to “jealously guard the people’s right of initiative” is inconsistent with the defendant’s attempt to overturn a citizens’ initiative approved by majority vote, “on the nebulous and legally unsupported ground that the measure’s official proponents did not play a sufficiently active role in securing its passage.” *Id.* at 1082.

Accordingly, CTAN’s sole affirmative defense can be dispensed of in the City’s favor on appeal. As noted for other issues above, deciding this issue on appeal without the delay of remand for the trial court’s consideration will further the purpose behind Code of Civil Procedure section 867 and promote judicial economy.

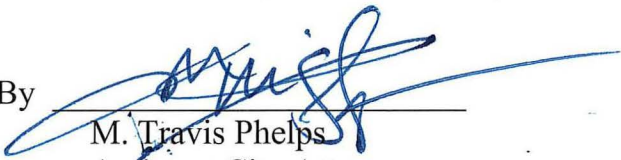
VII. CONCLUSION

For the foregoing reasons, the City respectfully asks that this Court reverse the judgment and remand with instructions to enter judgment determining and declaring that the City is entitled to all the relief prayed for in the *City Validation Action*, including, but not limited to, a declaration that Measure C was duly enacted by the voters of the City of San Diego and is legal, valid, and binding, and that Resolutions R-313485, 313486, and

343487, were duly enacted by the City Council, and are legal, valid, and binding.

Dated: July 27, 2022

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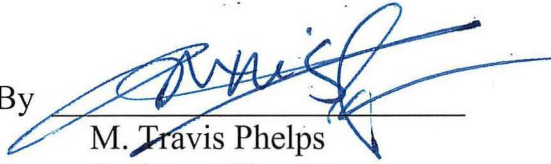
CERTIFICATE OF COMPLIANCE
[CRC 8.204(c)]

Pursuant to Rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 10,056 words, including footnotes, and is printed in a 13-point typeface. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: July 27, 2022

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By



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**COURT OF APPEAL, STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT, DIVISION ONE
PROOF OF SERVICE**

=====

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

4th Civil No. D080199
Superior Court Case Nos. 37-2021-00024590-CU-MC-CTL and
37-2021-00024607-CU-MC-CTL

I, the undersigned, declare that:

I was at least 18 years of age and not a party to the case; I am employed in the County of San Diego, California. My business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

On July 27, 2022, I served true copies of the following document(s) described as:

- **CITY OF SAN DIEGO'S OPENING BRIEF**
- **CITY OF SAN DIEGO APPELLANT'S APPENDIX (Volume I of III);**
- **CITY OF SAN DIEGO APPELLANT'S APPENDIX (Volume II of III); and**
- **CITY OF SAN DIEGO APPELLANT'S APPENDIX (Volume III of III)**

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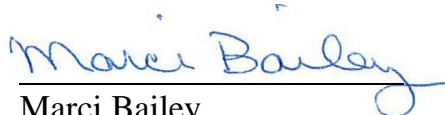
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(via Email – Brief Only)

- [XX] **(BY ELECTRONIC SERVICE)** By transmitting via TrueFiling to the above parties at the email addresses listed above.
- [XX] **(BY E-MAIL)** I caused to be served by electronically mailing a true and correct copy through electronic mail system to the e-mail addressee(s) set forth above.

- [] **(BY PERSONAL SERVICE)** I provided copies to Nationwide Legal for personal service on this date to be delivered to the office of the addressee(s) listed above.
- [] **(BY OVERNIGHT DELIVERY)** I enclosed said document(s) in a sealed envelope or package provided by Golden State Overnight (GSO) and addressed to the person(s) at the address(es) listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of GSO.
- [] **(BY UNITED STATES MAIL)** I enclosed the document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing with the United States Postal Service and that the correspondence shall be deposited with the United States Postal Service with postage fully prepaid this same day in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 27th day of July 2022, at San Diego, California.


Marci Bailey