

Local Tax Increases

Special Taxes Proposed by Initiative Now Require Only Simple Majority Voter Approval

Since passage of Proposition 13 in 1978, voters have had the final say on local tax increases. A subsequent initiative passed in 1996, Proposition 218, further required most local tax measures to gain approval by two-thirds of voters, whether proposed by a local government agency or by citizen initiative. The exception to this is “general” city or county taxes that do not earmark where proceeds must be used, which can be approved by a simple majority of local voters.

PROPOSITION 218 LOOPHOLE

A California Supreme Court decision opened a small loophole in Proposition 218. The court declared that statutes proposed by voter initiative need not be held to some of the same procedural standards as statutes proposed by local government agencies.

In *California Cannabis Coalition v. City of Upland*, the court found that Proposition 218’s requirement that all tax measures be decided at a general election, as opposed to a primary or special election, did not apply to measures placed on the ballot by initiative.

Having established a procedural distinction between tax measures based on their provenance, the court left open the reach of this distinction. While the rhetoric was broad, the remedy was limited. The court ruled that the tax proposal should have been considered at a special election. It left for another day whether its reasoning would extend to the vote threshold for approval of special taxes. That issue, however, was taken up in the City and County of San Francisco.

SAN FRANCISCO CASES

In *Howard Jarvis Taxpayers Association v. Bay Area Toll Authority* (HJTA v. BATA), the association challenged 2018’s Regional Measure 3, which authorized a \$3 hike in tolls on Bay Area bridges. The Howard Jarvis Taxpayers Association sued because they claimed toll increases were a special tax requiring two-thirds voter approval or two-thirds legislative approval. The measure received only 55% voter approval and failed to receive two-thirds of the Assembly’s approval.

A separate initiative, Measure C, was voted on and approved by San Francisco voters in 2018. Measure C raised a business license tax in order to fund homeless services. It passed by 61% of the vote and San Francisco filed a validation action to test whether it could be enforced because it lacked two-thirds voter approval.

These cases were appealed and the appellate court held it took only a simple majority to pass the measures.

SUPREME COURT DENIES REVIEW CONFIRMING SIMPLE MAJORITY THRESHOLD

In its most distilled form, *California Cannabis Coalition v. City of Upland* held that an initiative is not subject to some of Proposition 218’s procedural limits on taxes proposed by city councils and county boards of supervisors. This language lent credence to the possibility that a special tax proposed by initiative could be immune from the two-thirds voter approval requirement.

Subsequently, three Courts of Appeal decisions, two of which derived from the San Francisco measures, concluded that initiative special taxes can be approved by a simple majority of votes.

All three cases led to petitions for review in the California Supreme Court and the Supreme Court denied review of all three petitions. As such, the California Supreme Court settled the issue: special taxes proposed by initiative require only simple majority voter approval.

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TAXATION

CALCHAMBER POSITION

The California Chamber of Commerce will continue to oppose efforts that attempt to raise taxes on employers. Higher taxes, imposed locally or by the Legislature, will further harm California's economy and depress business growth. In any case, voters imposing special taxes that discriminate against classes of taxpayers, like businesses, should have a higher threshold of approval.



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