

California Legislature



STATE CAPITOL
SACRAMENTO, CALIFORNIA

Uproar over *Upland*:

Assessing the California Supreme Court's Decision

Joint Informational Hearing:

Senate Governance and Finance Committee, Assembly Local Government
Committee, and Assembly Revenue and Taxation Committee

March 7, 2018, 9:30 a.m., State Capitol, Room 4203

AGENDA

1) Welcome and Introduction

Senator Mike McGuire
Assembly Member Cecilia M. Aguiar-Curry
Assembly Member Autumn R. Burke

2) Review of *Upland* Case

Carolyn Chu, Deputy, State and Local Finance, Legislative Analyst's Office

3) Legal Analysis Panel

Michael G. Colantuono, Shareholder, Colantuono, Highsmith & Whatley, PC
Kelly J. Salt, Partner, Best Best & Krieger, LLP
Darien Shanske, Professor of Law, UC Davis School of Law
Wm. Gregory Turner, Founder, Turner Law

4) Public Comment

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Informational Hearing Objectives

This hearing seeks to provide both Members and the public a better understanding of the Supreme Court's decision in *Cal. Cannabis Coalition v. City of Upland*, 3 Cal.5th 924 (2017) and its potential implications. Through the testimony of the Legislative Analyst's Office and noted experts in the fields of local government and taxation, the hearing will focus on the following issues:

- (1) Whether *Upland* allows local special taxes proposed by initiative to be enacted by majority vote.
- (2) What impact, if any, the case will have on local agency determinations of the appropriate vote threshold for tax-related initiatives.
- (3) Whether the holding of *Upland* applies exclusively to the voters of cities and counties, or also to the voters within special districts and school districts.

Finally, the hearing will provide members of the public an opportunity to express their views on this case.

Introduction

In *Upland*, the Supreme Court of California was asked to decide whether Article XIII C of the California Constitution (Proposition 218) restricts the ability of voters to impose taxes by initiative. The Court was specifically asked to address the applicability of Article XIII C, section 2(b), which prohibits local governments from imposing a general

tax unless it is submitted to the electorate and approved by a majority vote at a regularly scheduled general election. The Court held that Article XIII C's general election provisions do not apply to local tax initiatives. Following the Court's decision, however, many commentators have speculated about the ruling's potential implications for local special tax initiatives and specifically, whether such initiatives are subject to Article XIII C's supermajority vote requirement. As such, this informational hearing has been organized to explore both the holding of the *Upland* decision along with some of its potential implications.

Factual Background

The California Cannabis Coalition drafted a medical marijuana initiative that proposed to: (1) repeal an existing City of Upland ordinance banning medical marijuana dispensaries; (2) adopt regulations permitting up to three dispensaries within the City; and, (3) require each dispensary to pay the City an "annual Licensing and Inspection fee" of \$75,000. (*Id.* at 931.) The initiative's proponents then successfully circulated a petition requesting that the initiative be considered at a special election. (*Id.*) In response, the City ordered an agency report that concluded the proposed \$75,000 "fee" exceeded the estimated \$15,000 cost needed to license and inspect the dispensaries. (*Id.* at 932.) The report concluded that the excess fee amount constituted a general tax and that, as a result, the initiative could not be voted on during a special election, but rather, under Proposition 218, had to be submitted to the voters at the next general election. (*Id.*) The City then directed that the initiative be submitted to the voters on November 8, 2016. (*Id.*)

Procedural Background

The Coalition filed a petition for a writ of mandate in superior court alleging that the City violated applicable law by not submitting the initiative to the voters at a special election. (*Id.*) The Coalition also argued that Proposition 218 did not apply because the proposed \$75,000 charge was not a tax, nor was it imposed by a "local government". *Id.* The court denied the writ petition, determining that the charge constituted a tax and had to be placed on the next general election ballot.¹ (*Id.*) The court, however, did not specifically address whether Proposition 218 applies to taxes imposed by voter initiative. (*Id.*)

The Coalition appealed and the Court of Appeal reversed.^o (*Id.*) The Court of Appeal held that Proposition 218 only governs levies imposed by a "local government" and, therefore, it did not apply to the voter initiative at issue. (*Id.*)

On June 29, 2016, the Supreme Court of California granted the City's petition for review. (*Id.* at 933.)

¹ Article XIII C, section 2, subdivision (b) provides, "No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote The election required by this subdivision shall be consolidated with a regularly scheduled *general election*" (Emphasis added.)

Legal Analysis

In this case, the Supreme Court was called upon to address whether Proposition 218 applies when voters seek to impose taxes via initiative.

The Supreme Court began its analysis by noting that when "[v]oters exercise the initiative power, they do so subject to precious few limits on that power." (*Id.* at 935.) As such, procedural requirements imposed on the Legislature and local governments do not similarly constrain the electorate's initiative power without evidence that such was their intended purpose. (*Id.*) For example, the Court noted prior case law holding that the constitutional requirement for the Legislature to obtain a two-thirds vote before raising taxes is a requirement that does not apply to voters' initiative power. (*Id.*)

The Court then turned to the language of Proposition 218, noting that it only applies to actions taken by a "local government". (*Id.* at 936.) Moreover, Proposition 218 specifically defines a "local government" as "any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity." (*Id.*) The Court also noted that the concern repeatedly referenced in Proposition 218's ballot materials was with local governments and politicians – not the electorate – imposing taxes. (*Id.* at 940.) The Court noted, "Nowhere in the materials is there any suggestion that Proposition 218 would rescue voters from measures they might, through a majority vote, impose on themselves." (*Id.*) Thus, the Court held the following:

Taking account of this legal context, along with the relevant provision's text and other indicia of purpose, we conclude that the requirement in [Proposition 218] mandating that general taxes be submitted to the voters at a regularly scheduled general election – applies only to local governments and not to the electorate's initiative power without evidence that such was the intended purpose of the requirement.

(*Id.* at 943.)

Potential Implications

Read in its narrowest sense, this case holds that when a local general tax is proposed by initiative, the tax is not governed by Proposition 218's procedural provisions applicable to general taxes imposed by a *local government*. Nevertheless, media outlets have broadly focused on this case's potential implications for local *special* taxes, where revenues are earmarked for a specific purpose. Many such reports have concluded that, following this decision, special taxes proposed by local initiative need only be approved by majority vote rather than the two-thirds supermajority that Proposition 218 mandates for special taxes imposed by a local government. This conclusion appears predicated on the Court's clear delineation between local governments, which are governed by Proposition 218's procedural requirements, and the electorate exercising its initiative powers, which arguably is not.