

NIELSEN MERKSAMER
PARRINELLO GROSS & LEONI LLP
Attn: Skinnell, Christopher E
2350 Kerner Boulevard
Suite 250
San Rafael, CA 94901

CITY OF OAKLAND
Attn: PARKER, BARBARA J.
One Frank Ogawa Plaza, 6th Fl
Oakland, CA 94612

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Jobs & Housing Coalition Plaintiff/Petitioner(s) VS. City of Oakland Defendant/Respondent(s) (Abbreviated Title)	No. <u>RG19005204</u> Order Motion for Judgment on the Pleadings Granted
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The Motion for Judgment on the Pleadings filed for Proponents Measure AA and Gregory R. McConnell JR. and Robert Feinbaum and Bruce Thrupp and William T. Booker and Flynn Family Holding, LLC and 685 Scofield, LLC and Jobs & Housing Coalition was set for hearing on 10/11/2019 at 09:00 AM in Department 25 before the Honorable Ronni MacLaren. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion for Judgment on the Pleadings by Plaintiffs Jobs & Housing Coalition; 685 Scofield, LLC; Flynn Family Holding, LLC; William T. Booker; Bruce Thrupp; Robert Feinbaum; and Gregory R. McConnell, Jr. (collectively, "Plaintiffs") is GRANTED.

Plaintiffs' Complaint seeks (1) a declaration that Measure AA is unenforceable, (2) to prohibit Defendant City of Oakland ("the City") from enforcing Measure AA, and (3) a refund of any taxes collected pursuant to Measure AA.

Measure AA imposes a parcel tax for 30 years to fund educational programs. As a parcel tax, Measure AA potentially falls under California Constitution Article XIII A § 4, Article XIII C § 2(d), and Article XIII D § 3(2), each of which requires a two-thirds vote prior to imposing such a tax. Measure AA, however, was placed on the ballot as a result of citizen's initiative, "The Children's Initiative of 2018." In the publicly circulated ballot materials for Measure AA, the City Attorney indicated that passage of Measure AA required approval by two-thirds of voters. (See Complaint, Exhibit 1, pages 1-2.) Only 62.7% of the electorate voted for Measure AA. (See Complaint, paragraph 13.) However, the City Council subsequently passed a resolution stating that Measure AA had passed. (See Complaint, Exhibit 2, page 5.)

The City contends that Measure AA is not barred by Article XIII A § 4, Article XIII C § 2(d), or Article XIII D § 3(2) because it was not imposed by a local government, but rather was proposed by a voter-sponsored initiative. In support of this argument, the City relies on *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924. In *Upland*, the Court held that a voter-sponsored initiative was not a tax imposed by a local government for the purposes of Article XIII C § 2(b), which requires that voters must approve a general tax by a majority vote at a regularly scheduled general election (as opposed to a special election.)

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Jobs & Housing Coalition	Plaintiff/Petitioner(s)	No. <u>RG19005204</u>
VS.		Order
City of Oakland	Defendant/Respondent(s) (Abbreviated Title)	Motion for Judgment on the Pleadings Denied

The Motion for Judgment on the Pleadings filed for City of Oakland was set for hearing on 10/11/2019 at 09:00 AM in Department 25 before the Honorable Ronni MacLaren. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion for Judgment on the Pleadings by Defendant City of Oakland ("the City") is **DENIED**, for the reasons set forth in the court's order on the Motion for Judgment on the Pleadings by Plaintiffs Jobs & Housing Coalition, et al. (collectively, "Plaintiffs"), also heard on this date.

As to Plaintiffs' Fifth Cause of Action for Equitable Estoppel, Plaintiffs adequately allege that they detrimentally relied on the ballot materials prepared by the City Attorney. Specifically, Plaintiffs allege that if they had known the City would later contend (contrary to the information contained in the ballot materials prepared by the City Attorney) that Measure AA only needed a simple majority vote to pass, Plaintiffs would have had a pre-election remedy to challenge any such statements in the voting materials.

The City's Request for Judicial Notice is **GRANTED**.

Dated: 10/15/2019

 Digital

Judge Ronni MacLaren

SHORT TITLE: Jobs & Housing Coalition VS City of Oakland	CASE NUMBER: RG19005204
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ADDITIONAL ADDRESSEES

Olson Hagel & Fishburn LLP
Attn: Olson, Lance H
555 Capitol Mall
Suite 400
Sacramento, CA 95814

-- Third Party --
Olson Hagel & Fishburn LLP
Attn: Caplan, Deborah B.
555 Capitol Mall, Suite 1425
Sacramento, CA 95814-4602

The court determines that Upland's holding is limited to the specific constitutional provision at issue, i.e., whether a general tax (not a special tax) that is proposed as a voter initiative must be approved at a regularly scheduled general election. (See Upland, supra, 3 Cal.5th at 943.) Upland does not directly address the proportion of voters who must approve a special tax, or whether that proportion differs depending on whether the tax was proposed by a voter initiative or a local government. However, to the extent that Upland discusses that issue, it appears to support Plaintiffs' contention that special taxes require a two-thirds vote, regardless of whether they are proposed directly by local governments or by voter initiatives. Upland specifically distinguishes Article XIII C § 2(b) from § 2(d), recognizing that the voters "explicitly imposed a procedural two-thirds voting requirement on themselves" in § 2(d), in contrast to § 2(b), in which voters did not impose a procedural timing requirement on themselves. (Id. at 943.) In addition, Upland discusses the two-thirds voting requirement in § 2(d) as an exception to Elections Code § 9217, which would otherwise apply to voter initiatives. Contrary to the City's argument at the hearing of this motion, Elections Code § 9217 applies to voter ballot initiatives only; the analogous statute dealing with propositions placed on the ballot by city legislative bodies is Elections Code § 9222.

Other cases, while also not addressing this precise issue, also support Plaintiffs' contention that special taxes placed on the ballot by citizen initiatives are governed by the two-thirds voting requirement. See, e.g., Kennedy Wholesale, Inc. v. State Board of Equalization (1991) 53 Cal.3d 245, 252, in which the Court held that Article XIII A § 3(a) (requiring that an increase in state taxes be approved by a two-thirds vote of the California Legislature) did not preclude a voter initiative to raise state taxes based on a simple majority vote. The Court contrasted the language in § 3(a) with the language in § 4 (providing that special taxes can only be imposed by local governments by a two-thirds vote), which the Court stated "demonstrates, unambiguously, that the voters knew how to impose a supermajority requirement upon themselves when that is what they wanted to do." (Id.) See also Altadena Library Dist. v. Bloodgood (1987) 192 Cal.App.3d 585, in which the court denied petitioner's request that a special tax placed on the ballot by a voter initiative be exempted from the two-thirds voting requirement of Article XIII A § 4.

The City argues that because Upland determined that the phrase "no local government may impose" as used in Article XIII C § 2(b) excludes voter initiatives, similarly "no local government may impose" as used in Article XIII C § 2(d) excludes voter initiatives from the requirement of two-thirds voter approval for special taxes. As indicated above, the court declines to extend the holding in Upland to a constitutional provision it did not directly address. But in any event, even assuming arguendo that the enforcement of Measure AA would not violate Article XIII C § 2(d), it would violate Article XIII D § 3(a), which provides that no parcel tax may be "assessed" unless it receives a two-thirds vote. Measure AA would result in the assessment of parcel taxes by the City, i.e., the City would list the property to be taxed and determine the amount of tax to collect. (See, e.g., State Board of Equalization v. Cenicerros (1998) 63 Cal.App.4th 122, 125.) Although the assessment required by Measure AA is not based on the value of the property, it is based on the type of property (i.e., single family residential parcels, multiple residential unit parcels, and non-residential parcels.) (See Measure AA, Section 5.2.)

Finally, the court determines that the City is barred from enforcing Measure AA because the ballot measures prepared by the City unambiguously advised voters that Measure AA would require two-thirds of the votes to pass. Allowing Measure AA to be enacted with less than two-thirds of the votes would constitute "a fraud on the voters." (See Hass v. City Council (1956) 139 Cal.App.2d 73, 76.) The court determines that the cases cited by the City on pages 18-20 of its opening brief in support of its own motion for judgment on the pleadings are distinguishable. Unlike in those cases, Plaintiffs here are not seeking to "undo an election" or invalidate the will of the voters. Rather, Plaintiffs seek to apply the California Constitution's two-thirds voting requirement for imposition of special taxes - which the City ballot measures expressly represented would apply to Measure AA - to the election.

Plaintiffs' Request for Judicial Notice is GRANTED. The Court observes, however, that opinions by state trial courts are not binding on this court and thus are not relevant to this court's order. (See Plaintiffs' Request for Judicial Notice, exhibits 1 and 3.)

Plaintiffs are directed to submit a proposed judgment, approved as to form, for the court's signature forthwith.

Dated: 10/15/2019

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Judge Ronni MacLaren

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Attn: Caplan, Deborah B.
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VS.	Motion for Judgment on the Pleadings
City of Oakland	Granted
Defendant/Respondent(s)	
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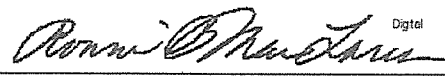
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No. RG19005204

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