

No. A158977

IN THE COURT OF APPEALS
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION ONE

JOBS & HOUSING COALITION, ET AL.,
Plaintiffs and Respondents,

v.

CITY OF OAKLAND,
Defendant and Appellant.

On Appeal from the Judgment of the Superior Court of
The County of Alameda,
The Honorable Ronni MacLaren, Presiding
Superior Court Case No. RG19005204

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF
AND BRIEF OF AMICUS CURIAE
COUNCIL ON STATE TAXATION
IN SUPPORT OF RESPONDENTS**

Timothy A. Gustafson (SBN 234674)
*Eric J. Coffill (SBN 84044)
EricCoffill@eversheds.sutherland.com
Alexandra Louderback (SBN 312692)
Eversheds Sutherland (US) LLP
500 Capitol Mall, Suite 1750
Sacramento, California 95814
Telephone: (916) 844-2821

Attorneys for Amicus Curiae
COUNCIL ON STATE TAXATION

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL	FIRST APPELLATE DISTRICT, DIVISION ONE	COURT OF APPEAL CASE NUMBER: A158977
ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: Eric J. Coffill FIRM NAME: Eversheds Sutherland (US) LLP STREET ADDRESS: 500 Capitol Mall, Suite 1750 CITY: Sacramento TELEPHONE NO.: (916) 844-2821 E-MAIL ADDRESS: EricCoffill@eversheds-sutherland.com ATTORNEY FOR (name): Amicus Curiae Council on State Taxation		SUPERIOR COURT CASE NUMBER: RG19005204
APPELLANT/ City of Oakland PETITIONER: RESPONDENT/ Jobs & Housing Coalition, et al. REAL PARTY IN INTEREST:		
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS		
(Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE		
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.		

1. This form is being submitted on behalf of the following party (name): Council on State Taxation
2. a. There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
--	----------------------------------

- (1)
- (2)
- (3)
- (4)
- (5)

Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: February 11, 2021

Eric J. Coffill

(TYPE OR PRINT NAME)

/s/ Eric J. Coffill

(SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS	2
TABLE OF AUTHORITIES	4
APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF	5
A. Statement of Interest of Amicus Curiae, and Statement of How the Proposed Amicus Curiae Brief Will Assist the Court in Deciding the Matter	5
B. Statement Regarding Preparation of the Brief.....	7
C. Conclusion	7
BRIEF OF AMICUS CURIAE COUNCIL ON STATE TAXATION IN SUPPORT OF APPELLANTS	8
INTRODUCTION	8
ARGUMENT.....	10
A. COST Supports Respondents' Argument That the Two-Thirds Vote Requirement for Local Taxes Has A Long Standing History Under Proposition 13 And Proposition 218	10
B. COST Supports Respondents' Argument That Measure AA Is Invalid Under Proposition 13 And Proposition 218	12
CONCLUSION.....	15
CERTIFICATE OF COMPLIANCE OF WORD COUNT	16

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Altadena Library Dist. v. Bloodgood</i> (1987) 192 Cal.App.3d 585 [237 Cal.Rptr. 649]	13
<i>California Cannabis Coalition v. City of Upland</i> (2017) 3 Cal.5th 924 [222 Cal.Rptr.3d 210]..... <i>passim</i>	
<i>City and County of San Francisco v. All Persons Interested in the Matter of Proposition C</i> (2020) 51 Cal.App.5th 703 [265 Cal.Rptr.3d 437]	6, 12, 13, 14
<i>City of Fresno. v. Fresno Building Healthy Communities</i> (2020) 59 Cal.App.5th 2020 [273 Cal.Rptr.3d 144]	6, 12, 13, 14
<i>Howard Jarvis Taxpayers Association v. City and County of San Francisco</i> (Jan. 27, 2021, A157983) ___Cal.App.5th___ [21 C.D.O.S 995].....	6, 12, 13, 14
<i>Jobs & Housing Coalition v. City of Oakland</i> (Oct. 15, 2019, RG19005204) [2019 WL 5405850].....	10, 14
<i>Kennedy Wholesale, Inc. v. State Board of Equalization</i> (1991) 53 Cal.3d 245 [279 Cal.Rptr. 325].....	13
<i>McGlothlen v. Department of Motor Vehicles</i> (1977) 71 Cal.App.3d 1005 [140 Cal.Rptr. 168]	13
<i>People v. Ault</i> (2004) 33 Cal.4th 1250 [17 Cal.Rptr.3d 302].....	11
Other Authorities	
California Rules of Court, rule 8.200(c)	5, 7

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule 8.200(c) of the California Rules of Court, the Council On State Taxation (“COST”) respectfully requests permission to file the accompanying amicus curiae brief in support of Plaintiffs and Respondents, Jobs & Housing Coalition, et al. (“Respondents”). This brief is timely filed within fourteen days of the filing of Appellant’s Reply brief, filed on February 1, 2021.

A. Statement of Interest of Amicus Curiae, and Statement of How the Proposed Amicus Curiae Brief Will Assist the Court in Deciding the Matter

COST is a nonprofit trade association based in Washington, D.C. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce. COST’s objective is to preserve and promote the equitable and nondiscriminatory state and local taxation of multijurisdictional business entities, a mission COST has steadfastly pursued since its inception.

Today, COST has an independent membership of over 500 multistate corporations engaged in interstate and international commerce. COST’s members are directly impacted by state taxation of interstate and international business operations. Over the past 45 years, COST, as amicus, has participated in numerous cases before the Supreme Court of the United States and state courts, including California courts. Notably, COST filed an amicus brief in the *California Cannabis Coalition v. City of Upland* (2017)

3 Cal.5th 924 [222 Cal.Rptr.3d 210], raising concerns such as those now before this Court. Additionally, COST filed amicus briefs with the California’s First Appellate District, Division 4, in the *City and County of San Francisco v. All Persons Interested in the Matter of Proposition C* (2020) 51 Cal.App.5th 703 [265 Cal.Rptr.3d 437], the First Appellate District, Division 5, in the *Howard Jarvis Taxpayers Association v. City and County of San Francisco* (Jan. 27, 2021, A157983) ___Cal.App.5th___ [21 C.D.O.S 995], and the Fifth Appellate District in *City of Fresno. v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 2020 [273 Cal.Rptr.3d 144] for the reasons discussed herein.

COST provides a unique perspective given its history of engagement on issues of state and local taxing powers. In addition, COST represents multijurisdictional taxpayers most directly impacted by state and local efforts that unfairly tax business operations. COST members, virtually all of which conduct business in California, employ a substantial number of California residents and own extensive property in California.

COST supports the application of the two-thirds vote requirement to all special local taxes, regardless of whether proposed by voter initiative or local government. Appellant’s appeal of the trial court’s decision is a direct assault on the two-thirds vote requirement needed for the imposition of local taxes, which has been in place for over forty years. COST is concerned that its members—particularly large out-of-state businesses—

will be unfairly targeted and subjected to significant tax increases if the supermajority requirement applying to all special local taxes is not upheld. The ballot initiative at issue here, Measure AA, is just one example. Thus, COST seeks to file this amicus curiae brief to lend its support to Respondents' arguments.

B. Statement Regarding Preparation of the Brief

Pursuant to Rule 8.200(c) of the California Rules of Court, no party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part. Neither counsel for a party, nor a party, made any monetary contribution directly or indirectly to fund the preparation or submission of this brief. No monetary contributions were made to COST, or any member of COST, or the authors of this brief.

C. Conclusion

Because COST and its members have an important and significant interest in the outcome of this matter, and because the proposed amicus curiae brief will assist the Court, COST respectfully requests the Court grant leave to file the attached brief.

DATED: February 11, 2021

Eversheds Sutherland (US) LLP

By: /s/ Eric J. Coffill
Eric J. Coffill

Attorneys for Amicus Curiae
COUNCIL ON STATE TAXATION

**BRIEF OF AMICUS CURIAE COUNCIL ON STATE TAXATION
IN SUPPORT OF APPELLANTS**

INTRODUCTION

This case involves Measure AA, a taxpayer initiative on the City of Oakland’s ballot in November 2018, which received affirmative votes of 62.57% (*i.e.*, a simple majority) of those who voted on that measure. Measure AA asked voters to impose a 30-year parcel tax to fund education programs. Although Oakland’s City Attorney had specifically (and correctly) stated in the November 2018 ballot materials that a two-thirds vote was necessary, the Oakland City Council nonetheless validated the measure after the election. Enacting a special tax such as Measure AA without obtaining a two-thirds vote of the electorate, especially after ballot materials specified the supermajority voting requirements, raises significant concerns relating to California constitutional protections that have long been afforded in connection with the enactment of special taxes at the local level. COST supports Respondents’ position that the two-thirds vote requirement provisions enacted pursuant to Proposition 13 and Proposition 218 apply to *all* special taxes at the local level, regardless of whether initially proposed by voter-circulated initiative or by an ordinance adopted by a local governing body.

Further, the trial court’s conclusion does not conflict with *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 [222

Cal.Rptr.3d 210]. Recognizing the different facts and legal issues present in this case and the specific constitutional provisions addressed in *Upland*, the trial court concluded that special taxes require a two-thirds vote regardless of whether they are proposed directly by local governments or by voter initiatives. The trial court’s conclusion is separate and apart from the holding in *Upland*, and if not affirmed, will drastically subvert the California constitutional protections that have long provided procedural safeguards relating to the imposition of special taxes at the local level.

COST, as an advocate for large multistate businesses—most of which have a significant California presence—is concerned that its members will become targets of significant new special taxes at the local level throughout the State. Taxpayers are under constant siege of tax increases, with California’s November 2020 ballot having had 236 local tax and bond measures. Proposition 13 and Proposition 218 were enacted to help prevent arbitrary and ill-conceived revenue-raising measures. This potential circumvention of the constitutional requirement that new special taxes at the local level must obtain approval of two-thirds of the electorate is not difficult to imagine. This is especially true when current budget deficits pressuring many local communities to raise revenues are considered. Thus, COST respectfully urges this Court to affirm the trial court’s decision and uphold the protections that the California Constitution provides against the imposition of special taxes at the local level.

ARGUMENT

A. COST Supports Respondents’ Argument That the Two-Thirds Vote Requirement for Local Taxes Has A Long Standing History Under Proposition 13 And Proposition 218

The issue before this Court is one that COST and many others warned the California Supreme Court about in *Upland* when the Court considered whether Article XIIIIC, section 2(b) of the State Constitution (adopted as part of Proposition 218) applied to voter-circulated initiatives. The issue before the Court and decided in *Upland* was extremely narrow and related merely to the timing of an election for a citizen’s initiative in the context of a general or special election. Although the *Upland* Court determined that Article XIIIIC, section 2(b) did not apply to the initiative process because the electorate was not “a local government” pursuant to that provision, the Court did not address the two-thirds vote requirement under consideration here.

The trial court’s decision in this matter upholds the two-thirds vote requirement for voter-circulated initiatives under Article XIIIIC, section 2(d), which was also adopted as part of Proposition 218. Specifically, the trial court determined “that *Upland’s* holding is limited to the specific constitutional provision at issue, i.e., whether a general tax (not a special tax) is proposed as a voter initiative must be approved at a regularly scheduled general election.” (Order Granting Motion for Judgment on the Pleadings (Oct. 15, 2019, RG19005204) [2019 WL 5405850, *1].)

Appellant proposes an evisceration of the constitutional protection by arguing that Article XIIIIA, section 4, which was adopted as part of Proposition 13, used language that was similar to the language found in the provision considered (and rejected) in *Upland*, so it too no longer applied to voter-circulated initiatives. (Appellant’s Opening Br. at p. 34-35.)

First, *Upland* did not address whether the two-thirds vote requirement applied to voter-circulated initiatives. “It is axiomatic that cases are not authority for propositions not considered.” *People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10 [17 Cal.Rptr.3d 302]. The *Upland* Court did not analyze Proposition 13 (Article XIIIIA, section 4), and it is in Proposition 13 that the long-standing two-thirds voter approval requirement for special taxes at the local level was first enacted. (Respondents’ Br. at pp. 16, 33, 42-44, 58.) COST strongly supports Respondents’ argument that Proposition 13 *alone* was meant to protect against the imposition of local-level special taxes by requiring a two-thirds vote, regardless of whether that tax was being put forth by the local governmental body or through a voter-circulated initiative.

Further, *Upland* did not address the specific provision in Proposition 218 at issue here. Rather, *Upland* addressed only the timing of an election in Article XIIIIC, section 2(b). Appellant seeks to have this Court erroneously find the meaning of the term “local government” as defined in *Upland* for purposes of subsection 2(b) should also apply to

subsection 2(d), which would result in an erroneous conclusion that the two-thirds vote requirement was not applicable to special taxes put forth by a voter-circulated initiative.

B. COST Supports Respondents' Argument That Measure AA Is Invalid Under Proposition 13 And Proposition 218

COST echoes and supports each of the arguments put forth by Respondents against any reliance upon the opinion of Division 4 of this Court in *City and County of San Francisco v. All Persons Interested in the Matter of Proposition C* (2020) 51 Cal.App.5th 703 [265 Cal.Rptr.3d 437] (petition for review by California Supreme Court denied) (“All Persons”). *All Persons*, and the recent cases that rely on it, including *Howard Jarvis Taxpayers Association v. City and County of San Francisco* (Jan. 27, 2021, A157983) ___Cal.App.5th___ [21 C.D.O.S 995] (“June Proposition C”), and *City of Fresno. v. Fresno Building Healthy Communities* (2020) 59 Cal.App.5th 2020 [273 Cal.Rptr.3d 144] (“Measure P”), seek to erase forty years of history and case law that required a two-thirds vote requirement for all special taxes at the local level. As Respondents aptly point out, the City of Oakland’s unsurprising reliance on *All Persons* is misplaced because not only is it non-binding but the decision is wrong.

As a threshold issue, the decision of one Court of Appeal is not binding on another Court of Appeal. Further, different divisions or districts “may decline to follow a prior decision of a different district or division.”

(See Respondents' Br. at p. 44, citing 9 Witkin, Cal. Proc. (5th ed. 2008), *Appeal* § 498; see also *McGlothlen v. Department of Motor Vehicles* (1977) 71 Cal.App.3d 1005, 1017 [140 Cal.Rptr. 168], citing 6 Witkin, Cal. Proc. (2d ed. 1971) Appeal § 667.)

In addition, the *All Persons*, June Proposition C and Measure P opinions erroneously concluded that Proposition 13 and Proposition 218 do not require voter initiatives that increase local special taxes to pass by a two-thirds vote. Appellant's reliance almost explicitly on the *All Persons* opinion in an attempt to expand the scope of *Upland* from a procedural issue to a long-standing constitutional principle ignores the historical rationale for the adoption of these propositions. Specifically, Respondents point to the sound history and context of Proposition 218's two-thirds vote requirement, citing *Kennedy Wholesale, Inc. v. State Board of Equalization* (1991) 53 Cal.3d 245 [279 Cal.Rptr. 325] as well as language from the *Upland* decision itself. (Respondents' Br. at pp. 45-52.) In the same vein, the Appellate Courts' decisions in *All Persons*, June Proposition C and Measure P are also inconsistent with existing appellate case law and settled expectations. (See *Altadena Library Dist. v. Bloodgood* (1987) 192 Cal.App.3d 585 [237 Cal.Rptr. 649] (denying 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).)

Further, the trial court held that Measure AA violated Article XIII, section 3(a), “which provides that no parcel tax may be ‘assessed’ unless it receives a two-thirds vote.” (Order Granting Motion for Judgment on the Pleadings (Oct. 15, 2019, RG19005204) [2019 WL 5405850, *2].) None of the prior decisions – *All Persons*, June Proposition C, or Measure P – addresses this constitutional provision. When read in harmony with the other constitutional provisions at issue, this provisions supports Respondents’ contention that the two-thirds voting requirement applies to voter-initiated special local taxes.

If this Court were to repeat the error in the *All Persons* opinion, and the opinions relying on it, ignore the provisions adopted by Proposition 218 specific to property taxes, and apply *Upland* too broadly to determine that the two-thirds vote requirements of Proposition 13 and Proposition 218 do not apply to local-level special taxes brought about through a voter-circulated initiative, the result will have severe and unintended consequences. Specifically, COST fears the floodgates of new local-level special taxes will be opened. As COST and others warned the Court in *Upland*, a broad interpretation of Article XIIIIC, section 2(b), could have a ripple effect on the constitutional requirements regarding special taxes at the local level. And, while those arguments were merely hypothetical in *Upland*, a reliance on the opinion in *All Persons*, as Appellant’s propose,

and a reversal of the trial court’s decision in this case are likely to make those fears a reality.

Given the importance of this issue, a national spotlight has been focused on this case among multistate businesses. COST respectfully urges this Court to uphold the trial court’s limited interpretation of *Upland* and to maintain the two-thirds vote requirement for special taxes at the local level that has long been provided by Proposition 13 and Proposition 218.

CONCLUSION

For the foregoing reasons, COST respectfully requests that this Court affirm the decision of the trial court.

Dated: February 11, 2021 Respectfully submitted,

Eversheds Sutherland (US) LLP

By: /s/ Eric J. Coffill
Eric J. Coffill

Attorneys for Amicus Curiae
COUNCIL ON STATE TAXATION

CERTIFICATE OF COMPLIANCE OF WORD COUNT

I, Eric J. Coffill, declare:

Pursuant to California Rules of Court, 8.204(c), I hereby certify that using the word count function within the Microsoft Word software by which this amicus curiae brief was prepared, this brief contains 2,345 words.

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

Executed on February 11, 2021 at Sacramento, California.

/s/ Eric J. Coffill

Eric J. Coffill

PROOF OF SERVICE

I, Jaime L. Lane, am a resident of the State of Missouri, over the age of eighteen years, and not a party to the within action. My business address is Eversheds Sutherland (US) LLP, 700 Sixth Street, NW, Suite 700, Washington, DC 20001-3980. On February 11, 2021, I caused the foregoing and within documents to be served:

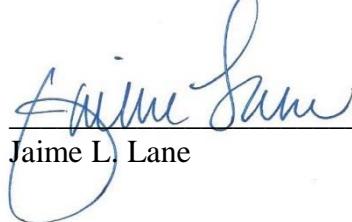
APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE COUNCIL ON STATE TAXATION IN SUPPORT OF RESPONDENTS

- by causing the documents listed above to be placed in a sealed envelope, with postage fully prepaid, for delivery by the United States Postal Service addressed as set forth below.

Alameda County Superior Court
Rene C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

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

Executed this 11th day of February, 2021 in St. Charles, Missouri.



Jaime L. Lane