

**SUPREME COURT OF CALIFORNIA**

S252915

SUPREME COURT  
**FILED**

APR 25 2019

Jorge Navarrete Clerk

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Deputy

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**LESLIE T. WILDE,**  
*Plaintiff and Appellant,*

v.

**CITY OF DUNSMUIR et al.,**  
*Defendants and Respondents.*

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Court of Appeal, Third Appellate District, Case No. C082664  
Superior Court, County of Siskiyou, Hon. Anne Bouliane  
Civil Case No. SC CV PT 16-549

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**OPPOSITION TO MOTIONS FOR JUDICIAL NOTICE**

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## OBJECTION

Defendant City of Dunsmuir has asked the Court to take judicial notice of “the Howard Jarvis Taxpayers Association’s annotation of Proposition 218” (Motion for Judicial Notice, filed 03/01/2019) and “the Howard Jarvis Taxpayers Association’s Proposition 218 Statement of Drafters’ Intent” (Further Motion for Judicial Notice, filed 04/22/2019). Plaintiff Wilde objects to the City’s motions because they lack sufficient foundation, are irrelevant, and are inconsistent with existing published precedent.

### POINTS AND AUTHORITIES

The City asks the Court to take notice of two documents that are two versions of the same thing. They each contain the text of Proposition 218 with interspersed commentary attributed to the Howard Jarvis Taxpayers Association (HJTA). According to the Declarations of John Sullivan Kenny accompanying the motions, he printed them from the League of California Cities’ website. Nothing in either document is adverse to plaintiff’s case. Plaintiff objects to the evidence simply because it is improper.

#### ***A. The Documents Lack Sufficient Foundation***

When a writing is offered in evidence, the proponent of the offered evidence has the burden of proving its authenticity. (Evid. Code § 403(a)(3).) The proponent must “introduc[e] evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is.” (Evid. Code § 1400.)

Here, although the documents are attributed to HJTA, Mr. Kenny declares that he did not obtain them from HJTA or from HJTA’s website. He printed them from the League of Cities’ website. Aside from the fact that the League and HJTA are often adversaries, the League’s website does not say how it obtained the documents. One of them has what appears to be a transmittal letter attached, but it was signed by someone other than the sender. The

other document has no accompanying letter. Mr. Kenny has introduced no evidence that the documents are what he claims them to be.

***B. The Documents Are Irrelevant***

According to the transmittal letter accompanying the earlier document, it was sent to the League of Cities on December 6, 1996. The later document is dated January 2, 1997. Both dates fell after November 5, 1996, which was the date of the election at which Proposition 218 was adopted. Anything produced after the election cannot have influenced the voters' intent.

“This article was published some three months after Proposition 218 was enacted, and the author’s comments regarding the ostensible purpose of the proposition ... were not included in any of the information materials provided to voters. ... Because it cannot be argued that the article in question demonstrates voter intent, it is irrelevant to the issue before us. We therefore deny the request for judicial notice.” (*Johnson v. County of Mendocino* (2018) 25 Cal.App.5th 1017, 1031.)

The City wants the Court to infer something from a difference in the commentary between the two documents. If the commentary changed, however, even though the text of Proposition 218 did not change, then it is impossible to know which of the two inconsistent versions is a reliable indicator of the drafters' intent.

In any event, drafters' intent is irrelevant. “In construing a constitutional provision adopted by the voters, our primary task is to determine the voters' intent.” (*Howard Jarvis Taxpayers Assn. v. City of San Diego* (1999) 72 Cal.App.4th 230, 235.) “[T]he drafter’s secret intentions, not communicated to the voters, are not legally relevant in determining the intention of the voters.” (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1398, n.10.)

C. **Precedent Rules These Documents Inadmissible**

The Fourth District Court of Appeal, in *Mission Springs Water District v. Verjil* (2013) 218 Cal.App.4th 892, has already ruled that HJTA's annotations are not reliable indicia of voter intent:

"We are aware of a 'Statement of Drafters' Intent' regarding Proposition 218. (Howard Jarvis Taxpayers Assn., Right to Vote on Taxes Act: Statement of Drafters' Intent.) However, because this statement was not included in the ballot pamphlet or otherwise presented directly to the voters, it is irrelevant to the construction of Proposition 218." (*Mission Springs*, 218 Cal.App. 4th at 921, n.6 (citations omitted).)

**CONCLUSION**

For these reasons, the City's motions for judicial notice should be denied.

DATED: April 23, 2019.

Respectfully submitted,

JONATHAN M. COUPAL  
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**PROOF OF SERVICE  
SUPREME COURT CALIFORNIA**

I, Kiaya Heise, declare:

I am employed in the County of Sacramento, California. I am over the age of 18 years, and not a party to the within action. My business address is: 921 11<sup>th</sup> Street, Suite 1201, Sacramento, California 95814. On April 23, 2019, I served **OPPOSITION TO MOTIONS FOR JUDICIAL NOTICE** on the interested parties below, using the following means:

**SEE ATTACHED SERVICE LIST**

  X  

**BY UNITED STATES MAIL** I enclosed the document in sealed envelopes or packages addressed to the respective addresses of the parties stated above and placed the envelopes for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 23, 2019, at Sacramento, California.

  
Kiaya R. Heise

## SERVICE LIST

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