

SUPREME COURT
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IN THE
SUPREME COURT OF CALIFORNIA

Jorge Navarrete Clerk

Deputy

California Cannabis Coalition, et. al.

Plaintiff and Respondent

vs.

City of Upland, et. al

Defendant and Petitioner

From an Opinion by the Court of Appeal, Fourth
Appellate District, Division Two, Case No. E063664

From a Decision of the San Bernardino County Superior
Court, Case No. CIVDS1503985, the Honorable David
Cohn, Judge

**APPLICATION OF THE PUBLIC INTEREST ADVOCACY CLINIC FOR
LEAVE TO FILE PROPOSED *AMICUS CURIAE* BRIEF; *AMICUS CURIAE*
BRIEF IN SUPPORT OF PETITIONER CITY OF UPLAND**

PUBLIC INTEREST ADVOCACY CLINIC

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**REQUEST TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF
PETITIONER THE CITY OF UPLAND**

The Public Interest Advocacy Clinic respectfully files this application pursuant to Rule 8.520(f)(1) of the California Rules of Court, seeking permission to file the attached brief, amicus curiae, in support of Respondents, City of Upland, et. al.

The Public Interest Advocacy Clinic (“PIAC”) is a 501(c)(3) nonprofit Corporation that is composed of attorneys, legal practitioners, and law students who are committed to advocating on behalf of the public. Since its inception in 2014, PIAC has hosted two installments of its ongoing “Coffee Talk with an Activist” which educates law students and attorneys on public interest advocacy matters and how they might integrate it into their practice. PIAC also hosts roundtables every Friday that connects attorneys, law students, and other legal practitioners with local community activists. PIAC’s mission is to advocate on behalf of the public and to foster cooperation between communities and legal practitioners.

PIAC is an uninterested party therefore it is uniquely placed to alert the Court to public interest issues that are implicated, but not addressed, by the appellants and respondents. The Public Interest Advocacy Clinic respectfully submits that its role as a non-profit public interest, educational, and social justice advocacy organization enables it to provide the Court with an overlooked view of the issues, which is useful to form a balanced perspective of the laws at issue in the Court’s review. Therefore, PIAC respectfully requests that this Court accept the accompanying *amicus curiae* brief in support of Petitioners.

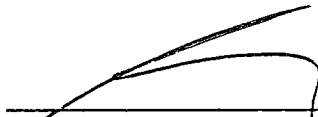
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No other party in this case, or counsel for any current party in this case, authored the proposed amicus curiae brief or any part of the brief. No person or entity other than Public Interest Advocacy Clinic paid any money to fund the preparation or submission of this brief.

DATE: November 1, 2016

Respectfully submitted:

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I. Introduction

This amicus brief is offered in support of defendant/petitioner City of Upland’s arguments regarding Issue No. 1 of its Issues Presented in its Opening Brief:

Can the proponents of a new tax evade constitutional prerequisites by introducing the tax as an initiative rather than as a resolution of the governing body? (Opening Brief, p.1.)

The Appellate Court’s distinction between government proposed and citizen proposed taxes, if upheld, would result in a perversion of the intent of Proposition 218 and Article 13 of the California Constitution. It would provide an unintended preference to ‘citizen’ ballot initiatives, in which well-funded private entities (i.e. “Citizen Kanes”) seek taxpayer subsidies of private projects and interests with little public benefit. Moreover, it would favor the one-sided drafting of such measures over the transparent public process of government proposed ballot measures. Conversely, it would put poorly funded non-profit measures, which address public needs, at an unprecedented disadvantage. Such concern is not conjecture.

Public Interest Advocacy Clinic (“PIAC”) hereby puts forth a policy argument supported by a current actual example that demonstrates why the Appellate Court decision should be reversed. PIAC presents its argument, not as a

taxpayer advocacy group, but as a non-profit 501(c)(3) corporation concerned with humanitarian and social justice issues.

II. The Court's decision will impact the application of Article 13C's extra voter protection for special taxes

The question before the Court is whether taxes imposed by initiative are subject to Article 13C of the California Constitution. Article 13C, Section 2 establishes multiple requirements for local general taxes, including the requirement that a two-thirds vote by the electorate is necessary for passage of local "special" taxes.

The parties have already addressed the issue of whether taxes proposed by initiative must be voted on during a "regularly scheduled general election," under Article 13C(b). PIAC agrees with defendant/petitioner City of Upland that the constitution's Article 13C election limitations apply to both governing bodies and voters equally "absent some clear indication to the contrary." (City of Upland Reply Brief on the Merits at 2, citing *DeVita v. County of Napa* (1995) 9 Cal. 4th 763, 786.) Because nothing in Article 13's text or the history of Proposition 218 (the initiative that enacted Article 13C) indicates that the Article's drafters or voters intended to exempt initiative-proposed taxes from Article 13C's requirements, Article 13C should certainly apply to such taxes. (City of Upland Reply Brief at 3, 5, 8.) Indeed, the Legislative Analyst's Office wrote one month after the passage of Proposition 218:

In general, the intent of Proposition 218 is to ensure that *all taxes* and most charges on property owners are subject to voter approval.
(emphasis added)

(Legislative Analyst's Office, *Understanding Proposition 218*, (Dec. 1996).)¹

PIAC seeks to reinforce the City of Upland's statutory interpretation and policy arguments for why Article 13C applies to initiative-proposed taxes with a practical and contemporary example of why that must be so.

III. San Diego stadium ballot initiative is instructive.

The owner of the San Diego Chargers, Dean Spanos, is attempting to have the city of San Diego build him a new stadium on prime downtown public land. His team is valued at over \$2 billion. (Mike Ozanian, *The NFL's Most Valuable Teams 2016*, FORBES (Sept. 14, 2016).²) Rather than negotiating with the city in an open, public two-sided negotiated process, Spanos chose to draft a ballot measure in a private one sided process. He then paid signature gatherers to acquire the approximately 110,000 signatures needed to qualify for the November ballot. (*110,786 Signatures Filed to Qualify Chargers Citizens' Initiative for*

¹ URL -

http://www.lao.ca.gov/1996/120196_prop_218/understanding_prop218_1296.html#chapter4

² Request for judicial notice of all news and periodical cited herein: URL - <http://www.forbes.com/sites/mikeozanian/2016/09/14/the-nfls-most-valuable-teams-2016/#49333768373b>

Ballot, CHARGERS.COM, (June 10, 2016).³) His initiative has since been designated “Measure C,” which San Diego voters will vote on during the November election. (Doug Porter, *Chargers Stadium Ballot Measure C — As in Chutzpa*, SAN DIEGO FREE PRESS (Sept. 21, 2016)⁴)

The land assembly and construction of the stadium would be funded through a special tax, largely comprised of a 6% increase in the hotel tax (aka “transient occupancy tax). (*Id.*) Spanos has spent somewhere in the neighborhood of \$12 million to promote passage of Measure C. (*See, e.g.*, Brent Schrottenboer, *Where do Chargers go if voters reject stadium bid?*, USA TODAY (Oct. 27, 2016).⁵). His primary messaging has been that:

A) The tax increase would not cost San Diego taxpayers “one cent” unless they stayed in local hotel rooms. (*See, e.g.*, Don Bauder, *Chargers advertising — lies, lies, lies*, SAN DIEGO READER (Oct. 15, 2016).⁶) The advertising even gloats that it would be the fans of many of the Chargers’ hated rivals who would pay for

³ URL - <http://www.chargers.com/news/2016/06/10/110786-signatures-filed-qualify-chargers-citizens-initiative-ballot>

⁴ URL - <http://sandiegofreepress.org/2016/09/chargers-stadium-ballot-measure-c-as-in-chutzpa>

⁵ URL - <http://www.usatoday.com/story/sports/nfl/chargers/2016/10/25/stadium-ballot-measure-vote-downtown-los-angeles-dean-spanos/92727440/>

⁶ URL - <http://www.sandiegoreader.com/news/2016/oct/15/ticker-chargers-advertising-lies-lies-lies/>

the stadium. (See Brent Schrottenboer, *Chargers to San Diego voters: Make rival fans pay for new stadium*, USA TODAY (Aug. 13, 2016).⁷)

B) Passage of the Measure is needed for the City to keep its team. (See Fred Maas, *Don't Let the Small-Town Undertakers Send the Chargers Packing*, VOICE OF SAN DIEGO (Oct. 13, 2016).) In fact, the team already tried to move to Los Angeles earlier in the year but its bid was contingently rejected. Instead, the NFL Owners Association approved the bid of Stan Kroenke to move his NFL Rams team from St. Louis to Los Angeles Rams in a largely self-funded stadium. However, Spanos was given a one year option to move the Chargers team to Los Angeles as a tenant of Kroenke in his new stadium. (See e.g., Sam Farmer and Nathan Fenno, *A behind-the-scenes look at a Rams' proposal the NFL couldn't refuse*, LOS ANGELES TIMES (Jan. 16, 2016)⁸)

San Diego closely avoided bankruptcy only a decade earlier and earned the nickname “Enron by the Sea.” (See, e.g., John Ritter, *San Diego now 'Enron by the Sea'*, USA TODAY (Oct. 24, 2004).⁹) Its financial distress was due in large part to a pension funding deficit, which still looms at approximately \$2.67 billion. The City’s former City Attorney, Michael Aguirre, has recently stated that the City

⁷ URL - <http://www.usatoday.com/story/sports/nfl/chargers/2016/08/12/san-diego-new-stadium-hotel-taxes-los-angeles/88629534/>

⁸ URL - <http://www.latimes.com/sports/nfl/la-sp-nfl-la-tick-tock-20160117-story.html>

⁹ URL- http://usatoday30.usatoday.com/news/nation/2004-10-24-sandiego-_x.htm

remains insolvent and that passage of Measure C combined with a setback in the economy could force the city into bankruptcy. (See, e.g., Don Bauder, *San Diego's \$2.27 billion pension hole*, SAN DIEGO READER (Sept. 17, 2016).¹⁰) The City's financial problems were also aggravated by "ticket guarantee" the City agreed to with the Chargers team, whereby the City guaranteed that it would purchase all unsold tickets at each home game. (See, e.g., Liam Dillon, *The City's 3 Biggest Chargers Follies*, VOICE OF SAN DIEGO (April 17, 2015).¹¹) The deal was so favorable for the Chargers they had no incentive to sell tickets. This cost the City approximately \$36 million. (*Id.*)

Several analyses of Spanos's Measure C have determined that it leaves the City's general fund at great risk and that it displaces many revenue and land uses which would provide much greater public benefit. (See, e.g., SAN DIEGO COUNTY TAXPAYERS ASSOCIATION, CITY OF SAN DIEGO PROPOSITION C: THE CHARGERS' 'SAN DIEGO INTEGRATED CONVENTION CENTER EXPANSION/STADIUM AND TOURISM INITIATIVE' (Aug. 2016).¹²) Indeed, as the eminent urban economist, Professor Richard Florida has stated:

¹⁰ URL - <http://m.sandiegoreader.com/news/2016/sep/17/ticker-san-diegos-227-billion-pension-hole/>

¹¹ URL - <http://www.voiceofsandiego.org/topics/government/the-citys-3-biggest-chargers-follies/>

¹² URL - <http://www.sdcta.org/assets/files/Proposition%20C%20-%20Chargers%20Ballot%20Initiative.pdf>

The overwhelming conclusion of decades of economic research on the subject is that using public funds to subsidize wealthy sports franchises makes zero economic sense and is a giant waste of taxpayer money. A wide array of studies have shown that *professional teams add virtually no income to local economies*. In fact, some of them find that *large subsidies actually have a negative effect*, taking money out of the local economy. Aside from the jobs generated by actually building the stadium, most jobs inside the stadium—selling food and beer or working at team concessions—are low-paying temp jobs. It’s even worse for football stadiums, which are used for games at most a dozen times a year, and maybe a few more times for concerts or large events. Public economic development dollars can be put to much better use on things besides subsidizing sports teams and their wealthy owners.”

(Richard Florida, *The Never-Ending Stadium Boondoggle*, THE ATLANTIC CITY LAB (Sep. 10, 2015)¹³ (emphasis added).)

The hotel tax increase is an important reserve for the City of San Diego to serve real public needs. Among other things, the City has the nation’s fourth largest homeless population and lags other cities in assisting these people in dire need who could greatly benefit from a mere fraction of the increase being proposed by Spanos’s Measure C. (See, e.g., Dan McSwain, *In failing the homeless, San Diego stands apart*, UNION TRIBUNE SAN DIEGO (Oct. 29, 2016);¹⁴ James R. Riffel,

¹³ URL - <http://www.citylab.com/politics/2015/09/the-never-ending-stadium-boondoggle/403666/>

¹⁴ URL - <http://www.latimes.com/local/california/la-me-1125-san-diego-homeless-20151125-story.html> and <http://www.sandiegouniontribune.com/news/homelessness/sd-me-homeless-crisis-20161029-htmstory.html>

Reforms would streamline San Diego's \$3.9B infrastructure backlog, 10 NEWS (April 21, 2015).¹⁵)

Such a tax increase could also be used for many general fund purposes, from infrastructure maintenance and improvements, to life-safety services. It could also be available in case of future tax revenue shortfalls, such as the aforementioned shortfall due to an economic setback. Allowing such ‘citizen initiatives’ to circumvent representative government with a lower voter approval threshold will put the public—particularly the most vulnerable—in severe risk of losing important public funding sources to the private coffers of well-funded ‘Citizen Kanes.’ For example, if Measure C passes, San Diego’s hotel tax— at 16.5%— will be one of the highest in the nation. (*See, e.g.,* Tod Marks, *Cities with the highest hotel taxes*, CONSUMER REPORTS (June 4, 2014).¹⁶) There will be little room to further increase the tax for more important purposes.

While it is not the purpose of the Court to save a City’s electorate from its own poor decision making or priorities, the aforementioned situation does serve to highlight the fact that many “citizens” initiatives neither originate from nor benefit the citizens they impact. As such, exempting such tax initiatives from the

¹⁵ URL - <http://www.10news.com/news/reforms-address-san-diegos-39b-infrastructure-backlog>

¹⁶ URL - <http://www.consumerreports.org/cro/news/2014/06/booking-a-hotel-these-cities-have-the-highest-hotel-taxes/index.htm>

constitutional requirements of Article 13C is dangerous. Such an exemption could render the protections of Proposition 218 obsolete by offering a clear work around to self-serving private interests with enough money to pay for signature collectors and advertising.


III. Conclusion

Upholding the Appellate Court's distinction would result in a perversion of Proposition 218, which was never intended by the drafters nor the electorate. The City of Upland has put forth a compelling argument as to why neither the intent nor the interpretation of Article XIII support the Appellate Court's opinion. San Diego's stadium ballot Measure C will hopefully bring to the Court's attention the hazards and distortions of upholding the Court of Appeals. Public Interest Advocacy Clinic respectfully requests this Court to uphold the superior court's ruling and reverse the Court of Appeal.

DATED: October 31, 2016

Respectfully submitted:

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WORD COUNT CERTIFICATION

I certify, pursuant to Rule 8.204(c) of the California Rules of Court, that this brief, including footnotes, but excluding the caption page, tables, signatures, and this certification, as measured by the word count of the computer program used to prepare this pleading, contains 1,806 words.

DATED: October 31, 2016



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PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of 18 years and am not a party to the within action. My business address is: 525 B St., Suite 1500, San Diego, California, 92101. On November 1, 2016, I served the foregoing document(s) described as: **APPLICATION OF THE PUBLIC INTEREST ADVOCACY CLINIC FOR LEAVE TO FILE PROPOSED AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER CITY OF UPLAND** on the following parties:

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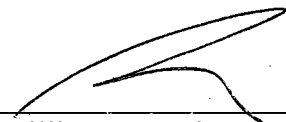
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(By U.S. Mail) I deposited such envelope in the mail at San Diego, California with postage thereon fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

DATED: November 1, 2016



William A. Adams