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San Francisco County Superior Court

JUL 05 2019

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

HOWARD JARVIS TAXPAYERS
ASSOCIATION, BUILDING OWNERS AND
MANAGERS OF CALIFORNIA, CALIFORNIA
BUSINESS PROPERTIES ASSOCIATION, and
CALIFORNIA BUSINESS ROUNDTABLE,

Plaintiffs,

v.

CITY AND COUNTY OF SAN FRANCISCO
and ALL PERSONS INTERESTED IN THE
MATTER OF Proposition C of the June 5, 2018
San Francisco ballot, a commercial rent tax for
childcare and early education in San Francisco
and other matters related thereto,

Defendants.

Case No. CGC-18-568657

**ORDER ON CROSS-MOTIONS FOR
SUMMARY JUDGMENT**

1 On July 3, 2019, this matter came on regularly for hearing before the Court pursuant to the
2 motion for summary judgment filed by Plaintiffs Howard Jarvis Taxpayers Association, Building
3 Owners and Managers Association of California, California Business Properties Association, and
4 California Business Roundtable (Plaintiffs) and the cross-motion for summary judgment filed by
5 Defendant City and County of San Francisco (the City). All parties appeared by their respective
6 counsel of record, as reflected in the minutes and reporter's transcript. Having fully considered the
7 papers filed in support of and in opposition to the cross-motions for summary judgment on the
8 pleadings, and the arguments of counsel presented at the hearing, this Court rules as follows:

9 **I. Introduction**

10 Plaintiffs brought this reverse validation action following the June 5, 2018 Consolidated
11 Statewide Direct Primary Election in the City and County of San Francisco to obtain a ruling
12 concerning the validity of Proposition C, a voter initiative that appeared on the ballot in that
13 election. Proposition C, which in the Voter Information Guide bears the short title, "Additional
14 Tax on Commercial Rents Mostly to Fund Child Care and Education," would add Article 21, the
15 "Early Care and Education Commercial Rents Ordinance," to the City's Business and Tax
16 Regulations Code. (Prop. C, Legal Text, in Voter Information Pamphlet, Arntz Decl., Ex. F at 141-
17 144.) Article 21 would impose additional gross receipts taxes on revenues that certain local
18 businesses receive from the lease of warehouse and other commercial spaces in the City; would use
19 15% of funds collected from these additional taxes for any general purpose; and would devote the
20 remaining 85% of the funds to fund quality early care and education for young children and other
21 related purposes. (*Id.* at 143.) Proposition C received the affirmative votes of 50.87% of the
22 236,284 City voters who voted on that measure. (Arntz Decl., Ex. G at 16; Compl., pg. 1.)¹

23 Plaintiffs' verified Complaint to Invalidate Special Tax, filed on August 3, 2018, contains a
24 single cause of action. Plaintiffs allege that Proposition C is invalid because it imposed a special
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26 ¹ The Court grants the City's unopposed request for judicial notice of various provisions of the San
27 Francisco and Municipal Elections Code.

1 tax that required the approval of two-thirds of the voters under two different provisions of the
2 California Constitution—Article XIII C, section 2(d) and Article XIII A, section 4. (Compl. ¶¶ 8,
3 9.) Thus, Plaintiffs contend that the tax enacted by Proposition C is “invalid for failing to receive
4 two-thirds voter approval under the California Constitution.” (*Id.* ¶ 14.)

5 Plaintiffs also allege that the proponents of Proposition C were individual members of the
6 City’s Board of Supervisors, and that after the proponents obtained the requisite number of
7 signatures for a citizens’ initiative, the City placed Proposition C on the June 2018 ballot as a
8 citizens’ initiative. (*Id.* ¶ 10.) Plaintiffs allege that the City proposed Proposition D, a tax on
9 commercial rent for the purpose of funding affordable housing and homeless programs, on the
10 same ballot, and that because the two propositions both contained provisions that only the one
11 receiving the most affirmative votes would take effect, “this is evidence of a degree of coordination
12 between the supervisors who served as proponents of Proposition C and the City.” (*Id.* ¶ 11.)
13 Plaintiffs assert that “[w]hether City leadership places a special tax measure on the ballot by
14 incubating an initiative or by going directly through its Board of Supervisors, the measure requires
15 a two-thirds vote under the California Constitution to pass.” (*Id.* ¶ 12.) Plaintiffs’ complaint
16 makes no reference to the San Francisco Charter.

17 In their motion for summary judgment, Plaintiffs abandon their contention in their
18 complaint that Proposition C required a supermajority (two-thirds) vote under either Article XIII C,
19 section 2(d) or Article XIII A, section 4 of the California Constitution. Apparently anticipating the
20 City’s reliance on the California Supreme Court’s decision in *California Cannabis Coalition v. City*
21 *of Upland* (2017) 3 Cal.5th 924, they assert “it is unnecessary for the Court to reach that
22 argument.” Instead, Plaintiffs contend that the San Francisco Charter requires a two-thirds vote on
23 all special taxes, whether they are proposed by the Mayor or Board of Supervisors or by citizens’
24 initiative. Plaintiffs’ motion for summary judgment on this ground is procedurally improper
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1 because they did not raise the issue in their complaint.² Nevertheless, because the City does not
2 object on this ground, and because the issue presents a pure question of law on undisputed facts,
3 the Court will deem Plaintiffs' complaint amended to present the issue and will address it on its
4 merits.

5 Plaintiffs' second argument is that Proposition C was not a "real" citizens' initiative, but
6 instead must be treated as having been proposed by the Board of Supervisors and therefore subject
7 to the two-thirds vote requirement.

8 The material facts are undisputed. For the following reasons, Plaintiffs' motion for
9 summary judgment is denied, and the City's cross-motion is granted.

10 **II. Proposition C Is Not Invalid Under The San Francisco Charter.**

11 Plaintiffs contend first that the San Francisco Charter required a two-thirds vote on
12 Proposition C. That contention is based on the following reasoning: (1) Article XVII of the
13 Charter defines "initiative" to include "a proposal by the voters with respect to any ordinance, act
14 or other measure which is within the powers conferred upon the Board of Supervisors to enact"; (2)
15 by virtue of article XIII A, section 4 and article XIII C, section 2(d) of the California Constitution,
16 the Board of Supervisors is not empowered to enact a special tax without the concurrences of two-
17 thirds of the electors; (3) therefore, the voters' initiative power is similarly constrained.

18 This argument is foreclosed by a long line of California Supreme Court authority, which
19 draws a critical distinction between *substantive* limitations on the Board of Supervisors' legislative
20 authority and *procedural* requirements that the Board must follow to enact certain kinds of laws.
21 While the Charter restricts the voters from using their reserved power of initiative to enact any
22 measure that, because of its nature or subject matter, is *substantively* beyond the power of the
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24 ² Plaintiffs appear "oblivious to the role of the pleadings as the outer measure of materiality in a
25 summary judgment proceeding," treating them instead as "a ticket to the courtroom which may be
26 discarded upon admission." (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal. App. 3d 367,
381; see also *Bostrom v. County of San Bernardino* (1995) 35 Cal.App.4th 1654, 1663 ["Summary
27 judgment cannot be granted on a ground not raised by the pleadings. [Citation.] Conversely,
28 summary judgment cannot be *denied* on a ground not raised by the pleadings."].)

1 Board of Supervisors to enact, the Charter does not require the voters, when they legislate by
2 initiative, to follow the *procedures* the Board would have to follow in order to enact similar
3 legislation. In other words, “*procedural* requirements imposed on the Legislature or local
4 governments are presumed not to apply to the initiative power absent evidence that such was the
5 intended purpose of the requirements.” (*California Cannabis Coalition*, 3 Cal.5th at 942.)

6 *California Cannabis Coalition* addressed this very question. In that case, the California
7 Supreme Court held that article XIII C of the California Constitution, which limits the ability of
8 local governments to impose taxes, “does not limit voters’ ‘power to raise taxes by statutory
9 initiative.’” (3 Cal.5th at 931, quoting *Kennedy Wholesale, Inc. v. State Bd. of Equalization* (1991)
10 53 Cal.3d 245, 251.) In particular, the Court concluded that “local government” as that term is
11 used in article XIII C does not include the electorate, based on the common understanding of that
12 term; how it is used in the text, findings, and declarations of article XIII C; and the ballot materials
13 for Proposition 218, by which that article was enacted, as well as those for Propositions 13 and
14 Proposition 26. (*Id.* at 936-941.)

15 The City of Upland argued that even if “local government” does not directly encompass the
16 electorate, “article XIII C, section 2, subdivision (b) *indirectly* applies to voters for two reasons,”
17 both of which the Court rejected. (*Id.* at 941.) First, Upland contended that the provision applies to
18 the electorate because, in its view, “the voters are the ones who ultimately impose *every* local tax.”
19 (*Id.*) But, the Court observed, “that does not transform voters into the ‘local government’
20 referenced in article XIII C, section 2.” (*Id.* at 942.) Nor does the requirement of voter approval
21 necessarily mean it is the electorate that imposes the tax. (*Id.*)

22 Second, Upland argued, in terms nearly identical to Plaintiffs’ position here, that the
23 provision at issue “constrains voter initiatives because ‘statutory and constitutional limits on the
24 power of local government apply equally to local initiatives.’” (*Id.*) The Court rejected that
25 argument, underlining the distinction summarized above between limits on the substantive
26 authority of the legislative body and procedural requirements governing its exercise of such power:

1 When a local government lacks authority to legislate in an area, perhaps because the state
2 has occupied the field [citation], that limitation also applies to the people's local initiative
3 power. [Citation.] In contrast, where legislative bodies retain lawmaking authority subject
4 to procedural limitations, e.g., notice and hearing requirements [citation] or *two-thirds vote*
5 *requirements* [citation], we presume such limitations do not apply to the initiative power
6 absent evidence that such was the restrictions' intended purpose.

7 (*Id.* [emphasis added].) Numerous other cases reach the same conclusion. (See, e.g., *Kennedy*
8 *Wholesale, Inc.*, 53 Cal.3d at 249 [while "the voters' power is presumed to be coextensive with the
9 Legislature's," that does not mean that "legislative *procedures*, such as voting requirements, apply
10 to the electorate"]; *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 785 ["it is well established in
11 our case law that the existence of procedural requirements for the adoptions of local ordinances
12 generally does not imply a restriction of the power of initiative or referendum."]; *Associated Home*
13 *Builders of the Greater Eastbay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 594 ["Procedural
14 requirements which govern *council* action . . . generally do not apply to initiatives, any more than
15 the provisions of the initiative law govern the enactment of ordinances in council."].)

16 Plaintiffs attempt to distinguish these cases, arguing that the only procedural requirements
17 that do not apply to voter initiatives are those where "voters literally can't do those things," such as
18 introducing bills. Plaintiffs contend that the "common feature" of these cases is that "impossible
19 and unavailable duties or conditions precedent will not be imposed on the electorate so as to nullify
20 their ability to propose legislation in the first instance." However, in *California Cannabis*
21 *Coalition*, the Supreme Court rejected a nearly identical contention by the concurring and
22 dissenting Justices, who interpreted those cases "more narrowly, as applying *exclusively* when the
23 procedural requirements at issue are 'incompatible with initiative procedures.'" (3 Cal.5th at 943;
24 see *id.* at 957-958 [conc. and dis. opn. of Kruger, J.]) The majority disagreed with that reading,
25 observing that it "proves too cramped an understanding of these cases' holdings or their
26 significance. While our cases noted that the restrictions at issue made little sense in light of the
27 distinct initiative process [citation], nothing suggests that those observations formed the metes and
28 bounds of our holding. To the contrary, our reasoning was broader and grew out of our
presumption in favor of the initiative power." (*Id.*)

1 Plaintiffs' argument is also inconsistent with the overall reasoning and thrust of the
2 California Supreme Court's decision in *California Cannabis Coalition*. There, the Court addressed
3 a broadly similar issue to that presented here: whether these provisions, which limit the ability of
4 state and local *governments* to impose taxes, "also restrict[] the ability of *voters* to impose taxes via
5 initiative." (*Id.* at 930.) It answered the question in the negative, concluding that "article XIII C
6 does not limit voters' 'power to raise taxes by statutory initiative.'" (*Id.* at 931, quoting *Kennedy*
7 *Wholesale, Inc. v. State Bd. of Equalization* (1991) 53 Cal.3d 245, 251.) As it explained,

8 A contrary conclusion would require an unreasonably broad construction of the term "local
9 government" at the expense of the people's constitutional right to direct democracy,
10 undermining our longstanding and consistent view that courts should protect and liberally
11 construe it. . . . Without a direct reference in the text of a provision—or a similarly clear,
12 unambiguous indication that it was within the ambit of a provision's purpose to constrain
the people's initiative power—we will not construe a provision as imposing such a
limitation.

13 (*Id.*) The Court based its analysis in part on the text of article XIII C, section 2, which applies only
14 to actions taken by a "local government." (*Id.* at 936.) Article XIII C defines that term to mean
15 "any county, city, city and county, including a charter city or county, any special district, or any
16 other local or regional governmental entity." (Cal. Const., art. XIII C, § 1(b).) The Court rejected
17 Upland's argument that this definition is broad enough to include the electorate. (3 Cal.5th at 937.)
18 It adopted a "clear statement" rule in order to protect the initiative power, which is liberally
19 construed. "Without an unambiguous indication that a provision's purpose was to constrain the
20 initiative power, we will not construe it to impose such limitations. Such evidence might include
21 an explicit reference to the initiative power in a provision's text, or sufficiently unambiguous
22 statements regarding such a purpose in ballot materials." (*Id.* at 945-946.) The Court found no
23 such indication in either the text of Proposition 218 (by which article XIII C was enacted) or the
24 ballot materials of that initiative or of Proposition 13 (by which article XIII C was enacted). "To
25 the contrary: The crux of the concern repeatedly reflected in the ballot materials is with local
26 governments and politicians—not the electorate—imposing taxes. Nowhere in the materials is

1 there any suggestion that Proposition 218 would rescue voters from measures they might, through a
2 majority vote, impose on themselves.” (*Id.* at 940.)

3 Plaintiffs insist that Proposition 218 must be construed to apply to voter initiatives because
4 the voters who enacted that proposition in 1996 must have been aware of *Altadena Library Dist. v.*
5 *Bloodgood* (1987) 192 Cal.App.3d 585, which Plaintiffs contend applied Proposition 13’s two-
6 thirds vote requirement to a local special tax brought as a citizens’ initiative. However, that case
7 held only that a library district was a “special district” within the meaning of Proposition 13 (in
8 addition to rejecting a novel claim that the supermajority requirement triggered close scrutiny as a
9 matter of equal protection). (*Id.* at 588.) It did not address the issue presented here (which was not
10 raised): whether the two-thirds vote requirement of Proposition 13 applies to special taxes enacted
11 by voter initiative. The case is not authority for that proposition. (See *People v. Brown* (2012) 54
12 Cal.4th 314, 330 [it is axiomatic that “cases are not authority for propositions not considered.”].)³
13 In any event, of course, *Altadena* long predated the Supreme Court’s 2017 decision in *California*
14 *Cannabis Coalition*, which is binding on this court. (*Auto Equity Sales, Inc. v. Superior Court*
15 (1962) 57 Cal.2d 450, 455; see *Newport Harbor Offices & Marina, LLC v. Morris Cerullo World*
16 *Evangelism* (2018) 23 Cal.App.5th 28, 41 [regardless of whether a recent California Supreme Court
17 decision may be characterized as an intervening change in law, lower courts are bound to follow
18 it].)

19 In short, the procedural two-thirds vote requirement in articles XIII A, section 4 and XIII C,
20 section 2(d) of the California Constitution that limit the Board of Supervisors’ authority to impose
21 new taxes does not apply to the voters’ initiative power, either directly under those provisions or
22 indirectly under the San Francisco Charter.

23
24 ³ *City of Dublin v. County of Alameda* (1993) 14 Cal.App.4th 264, which Plaintiffs also cite, is
25 even less helpful to them. The court there held that a surcharge on waste disposal imposed by a
26 voter initiative was not a special tax within the meaning of Proposition 13, but rather was a valid
27 regulatory fee. (*Id.* at 280-285.) As a result, the court did not reach the question whether the
28 initiative required a two-thirds vote. Plaintiffs’ reliance on the dissenting opinion is misplaced.

1 Board of Supervisors, or four or more members of the Board, may submit to the voters declarations
2 of policy, and any matter (such as a proposed ordinance) which the Board is empowered to pass.
3 (Charter § 2.113(a).) That provision, entitled “Legislative Initiative,” is contained in Article II of
4 the Charter, which governs the City’s legislative branch. Likewise, the Mayor herself may also
5 submit a proposed initiative to the Board of Supervisors. (Charter § 3.100(16).) The Board must
6 assign a legislative or mayoral initiative to a committee for a public hearing. (*Id.* § 2.113(b).)
7 Measures proposed by initiative petition are also subject to a different timeline than those
8 submitted by the Mayor, Board of Supervisors, or four or more supervisors. (S.F. Muni. Elec.
9 Code § 300(b), (c).) Nothing in the Charter prevents a single member of the Board of Supervisors
10 from proposing an initiative and, by definition, so long as the initiative is proposed by less than
11 than four members of the Board, it is a citizens’ initiative subject to the rules governing such
12 initiatives, not a legislative initiative.

13 These provisions parallel those contained in the state Elections Code. Under the California
14 Constitution, either the Legislature or the voters may place a measure, including a proposed
15 constitutional amendment, on the ballot. (See Cal. Const., art. II, § 8; art. IV, § 8.5; art. XVIII,
16 §§1, 3, 4.) Thus, the Legislature itself may propose an initiative constitutional amendment to be
17 submitted to the voters, in which case it is the official “proponent.” (See, e.g., *Californians for an*
18 *Open Primary v. McPherson* (2006) 38 Cal.4th 735 [Legislature proposed constitutional
19 amendment for submission to the voters on the November 2004 ballot as Proposition 60].) If, on
20 the other hand, the measure is proposed by a private organization or an individual, as here, that
21 organization or individual is the measure’s proponent. (See generally *Perry v. Brown* (2011) 52
22 Cal.4th 1116, 1139-1143 [discussing the initiative power and the constitutional and statutory basis
23 for official initiative proponents’ standing under California law].) The California Elections Code
24 defines the proponent of a local initiative measure as “the person or persons who publish a notice
25 or intention to circulate petitions, or, where publication is not required, who file petitions with the
26 elections official or legislative body.” (Elec. Code § 342.)

1 Here, the record establishes beyond dispute that Proposition C had a single proponent, who
2 submitted a notice of intention to circulate petitions for the proposed initiative, caused the notice
3 and ballot title and summary to be published in a local newspaper, and turned in initiative petitions
4 containing the requisite number of voter signatures. (Arntz Decl. ¶¶ 5-8 & Exs. A-E.) Thus,
5 Proposition C was a citizens' initiative as defined in the San Francisco Charter. In contrast,
6 Proposition D on the same ballot was placed on the ballot by five members of the Board of
7 Supervisors, and therefore was a legislative initiative. (Arntz Decl., Ex. F at 98-104, 144-147
8 [text].) That the proponent of Proposition C happened to be a member of the San Francisco Board
9 of Supervisors, Supervisor Norman Yee, or that he allegedly used his title or City resources to
10 advance the initiative, does not somehow transform a citizens' initiative into a legislative petition.
11 Nor does the fact that other members of the Board of Supervisors had previously considered a
12 similar proposed legislative initiative, or that they expressed their support for Proposition C by
13 signing the proponent's argument in the Voter Information Pamphlet (Arntz Decl. Ex. F at 92).⁵

14 Indeed, to articulate the latter argument is to reject it. It is common knowledge, and the
15 Court may take judicial notice, that municipal and statewide legislators routinely serve as
16 proponents of ballot measures or express their support for such measures, including in proponents'
17 arguments included in voter information pamphlets. For example, in May 2002, then-member of
18 the Board of Supervisors (now Governor) Gavin Newsom was one of two proponents of an
19 initiative entitled Care Not Cash that was enacted on the November 2002 ballot as Proposition N.
20 (See *McMahan v. City and County of San Francisco* (2005) 127 Cal.App.4th 1368, 1371.) Two

21 _____
22 ⁵ Plaintiffs devote much of their papers to attacking the motives and good faith of Supervisor Yee
23 and the entire Board of Supervisors. Thus, Plaintiffs insist that Proposition C was "a special tax
24 devised by the Board of Supervisors masquerading as [a] citizens' initiative in the hopes of evading
25 the two-thirds vote required by the San Francisco Charter and the California Constitution"; they
26 charge "City politicians" with "tramp[ing] the established rule" of Propositions 13 and 218 and
27 attempting to "circumvent[]" those provisions; they make factually unsupported charges against
28 Supervisor Yee; and they even accuse him of committing a criminal offense by illegally misusing
the seal of the City and County of San Francisco. The Court disapproves of Plaintiffs' intemperate
political rhetoric, which has no place in contested litigation involving important issues. A lawsuit
is not an election campaign.

1 other examples appear on the very same June 2018 ballot on which Proposition C appeared. There,
2 the voters were presented with Proposition E, a proposed ordinance that would have prohibited the
3 sale of flavored tobacco products in San Francisco, and Proposition G, a proposed parcel tax to
4 provide funding to support the San Francisco Unified School District. (Arntz Decl., Ex. F at 105-
5 109, 147-149 [text]; 118-124, 149-152 [text].) The proponents' argument in favor of the former
6 proposition was signed by then-Supervisor Malia Cohen; in favor of the latter, by then-Mayor
7 Mark Farrell and then-President of the Board of Supervisors (now Mayor) London Breed. Neither
8 then-Supervisor's Newsom's role as a proponent of Care Not Cash nor the other Supervisors'
9 support for Propositions E and G transformed those propositions from citizens' initiatives into
10 legislative initiatives, as Plaintiffs' argument would have it, nor do Plaintiffs cite any authority that
11 would compel that unprecedented conclusion.

12 The single case upon which Plaintiffs rely, *Boling v. Public Employment Relations Board*
13 (2018) 5 Cal.5th 898, does not support their position.⁶ In *Boling*, San Diego's mayor sponsored a
14 citizens' initiative to eliminate pensions for new municipal employees and rebuffed union demands
15 to meet and confer over the measure. The Public Employment Relations Board (PERB) held that
16 the city's failure to meet and confer constituted an unfair labor practice in violation of the Meyers-

17 ⁶ At oral argument, Plaintiffs also cited *Rider v. County of San Diego* (1991) 1 Cal.4th 1, but that
18 case does not advance their position. There, a county board of supervisors sought the voters' two-
19 thirds approval of a new sales tax to fund the county's justice facilities and, when that effort failed,
20 directed a local legislator to introduce legislation creating a special district with limited tax powers
21 to impose a sales tax increase upon approval by the county's voters. The initial version of the bill
22 named the county's entire board of supervisors as the agency's board of directors, although under
23 the final version only two county supervisors were included among the agency's seven directors.
24 The county retained substantial control over the agency's operations and expenditures; the act
25 required compliance with the county's master plan; and the agency's boundaries were coterminous
26 with the county's. After the tax scheme was approved by a bare majority of county voters, the
27 agency began operations, hiring several county employees for its staff and incurring expenses paid
28 from funds advanced by the county. (*Id.* at 9.) The Court concluded that the agency was a "special
district" within the meaning of Proposition 13 because it was "created to raise funds for city or
county purposes to replace revenues lost by reason of the restrictions of Proposition 13." (*Id.* at
11.) It held that in the future, courts could infer an intent to circumvent Proposition 13 "whenever
the plaintiff has proved the new tax agency is *essentially controlled* by one or more cities or
counties that otherwise would have had to comply with the supermajority provision of [article XIII
A] section 4." (*Id.*) Thus, *Rider* did not involve a voter initiative, but instead an action by a taxing
agency controlled by "local government."

1 Milias-Brown Act, Gov. Code § 3500 *et seq.* (the MMBA), and the Supreme Court granted review
2 to settle two questions: (1) the standards of review that apply on appeal to PERB’s decisions; and
3 (2) “When a public agency itself does not propose a policy change affecting the terms and
4 conditions of employment, but its designated bargaining agent lends official support to a citizens’
5 initiative to create such a change, is the agency obligated to meet and confer with employee
6 representatives?” (*Id.* at 903-904; see also *id.* at 914 [“The question is whether the mayor’s pursuit
7 of pension reform by drafting and promoting a citizens’ initiative required him to meet and confer
8 with the unions.”].)

9 As to the second question, the Court held that under the circumstances presented in the
10 case, “the MMBA applies to the mayor’s official pursuit of pension reform as a matter of policy,”
11 and the city therefore was required to meet and confer with the union. (*Id.* at 904.) The Court’s
12 analysis focused on the Government Code provision requiring governing bodies “or other
13 representatives as may be properly designated” to engage with unions on matters within the scope
14 of representation “prior to arriving at a determination of policy or course of action.” (Gov. Code §
15 3505; see *id.* at 904, 913-919.) The Court concluded that these key statutory terms extended to the
16 mayor’s sponsorship of the initiative because he was “using the powers and resources of his office
17 to alter the terms and conditions of employment,” emphasizing his invocation of his position as
18 mayor and use of city resources and employees to draft, promote, and support the initiative, which
19 concerned a determination of policy on pension reform. (*Id.* at 918-919.) Thus, the Court held,
20 “when a local official with responsibility over labor relations uses the powers and resources of his
21 office to play a major role in the promotion of a ballot initiative affecting terms and conditions of
22 employment, the duty to meet and confer arises.” (*Id.* at 919.)

23 *Boling* thus was decided entirely on statutory grounds under the MMBA. Nothing in the
24 decision addressed any issue under the California Constitution, nor did the Court even mention its
25 own recent decision in *California Cannabis Coalition*. The Court decidedly did *not* hold that the
26 mayor’s active involvement in the development and promotion of the ballot initiative transformed

1 it from a voter initiative into a legislative initiative. To the contrary, it repeatedly referred to the
2 citizens' initiative as such, including referring to the individual proponents of the initiative (who
3 did not include the mayor), the signature-gathering campaign, and the certification of voter
4 signatures that led to its being placed on the ballot. (See *id.* at 907-908.) Indeed, the Court
5 specifically recognized that it was required to decide the case because it was unlike a prior
6 decision, *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d
7 591, which "involved a city council's own decision to place a proposal on the ballot, rather than a
8 citizen-sponsored initiative." (*Id.* at 915; see also *id.* at 914 [*Seal Beach* "involved a related but
9 distinct issue: whether the meet-and-confer provisions of section 3505 applied when a city
10 exercised its *own* constitutional power to propose charter amendments to its voters." [emphasis
11 original]].)⁷ Nor, finally, did the Court suggest that the mayor's involvement in the genesis and
12 development of the citizens' initiative invalidated the results of the election, in which the voters
13 approved the initiative. To the contrary, PERB modified the ALJ's proposed remedy to vacate the
14 results of the election, and instead directed the city to pay its employees compensation for the net
15 value of their lost pension benefits, which payments were "to continue for as long as the Initiative
16 was in effect." (*Id.* at 910.) The Court did not decide that issue, but directed the Court of Appeal
17 on remand to address the appropriate judicial remedy for the statutory violation identified in its
18 opinion. (*Id.* at 920.)⁸

19 ⁷ Plaintiffs refer in passing to the *California Cannabis Coalition* Court's brief discussion of a
20 hypothetical situation in which a city council "could conceivably collude with a public employee
21 union to place a levy on the ballot as a means of raising revenue for a goal supported by both," but
22 with the council adopting the ordinance without submitting it to the voters. (3 Cal.5th at 947.)
23 However, that hypothetical does not advance Plaintiffs' argument, both because it is not what
24 occurred here and because the Court declined to address how it would decide the issue. (*Id.*) In
25 any event, as the City pointed out at argument, its Charter would make such a situation impossible.

26 ⁸ On remand, the Court of Appeal held that "the City's failure to comply with the [Meyers-Milias
27 Brown] Act before placing the Initiative on the ballot does not necessarily invalidate the Initiative,"
28 and held further that PERB lacked power to invalidate the initiative, explaining that "any action by
PERB effectively invalidating the Initiative or assuming the Initiative is or will be invalidated
impermissibly encroaches on constitutional law, statutory law, and policy matters involving
initiatives, elections, and the doctrine of preemption." (*Boling v. Public Employment Relations Bd.*
(2019) 33 Cal.App.5th 376, 385, 388.)

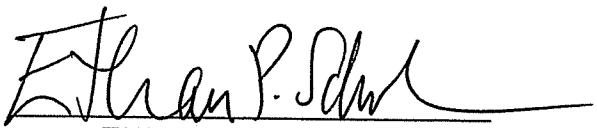
1 In short, Plaintiffs' contention that "the City's admitted use of public offices and resources
2 violates *Boling* and invalidates its efforts" is unsupported by *Boling* or any other cited authority,
3 and must be rejected. Proposition C was a valid citizens' initiative under the express terms of the
4 San Francisco Charter and state law, and neither the Charter nor the California Constitution
5 required a two-thirds vote for its passage.

6
7 **IV. Conclusion**

8 For the foregoing reasons, Plaintiffs' motion for summary judgment is denied, and the
9 City's cross-motion for summary judgment is granted.

10 **IT IS SO ORDERED.**

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12 Dated: July 5, 2019


ETHAN P. SCHULMAN
JUDGE OF THE SUPERIOR COURT

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CGC-18-568657

**HOWARD JARVIS TAXPAYERS ASSN. ET AL VS. CITY
AND COUNTY OF SAN FRANCISCO ET AL**

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on July 05, 2019 I served the foregoing **Order on Cross-motions for summary judgment** on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: July 05, 2019


By: SHIRLEY LE

JONATHAN M. COUPAL / LAURA DOUGHERTY
HOWARD JARVIS TAXPAYRS ASSN
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SACRAMENTO, CA 95814

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