

No. A158645

IN THE COURT OF APPEALS
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 4

CITY & COUNTY OF SAN FRANCISCO,
Plaintiffs and Respondents,

v.

ALL PERSONS INTERESTED IN THE MATTER OF PROPOSITION C,
Defendants and Appellants

On Appeal from the Judgment of the Superior Court of
San Francisco County,
The Honorable Ethan P. Schulman, Presiding
Superior Court Case No. CGC-19-573230

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

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

Attorneys for Amicus Curiae
COUNCIL ON STATE TAXATION

TABLE OF CONTENTS

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF 1

 A. Statement of Interest of Amicus Curiae, and Statement
 of How the Proposed Amicus Curiae Brief Will Assist
 the Court in Deciding the Matter 1

 B. Statement Regarding Preparation of the Brief 3

 C. Conclusion..... 3

BRIEF OF AMICUS CURIAE 4

 INTRODUCTION 4

 ARGUMENT 6

 Cost Supports Appellants’ Arguments That The Two-
 Thirds Vote Requirement For Local Taxes Has A
 Long Standing History Under Proposition 13 And
 Proposition 218 6

 CONCLUSION 10

CERTIFICATE OF COMPLIANCE OF WORD COUNT 12

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Altadena Library Dist. v. Bloodgood</i> (1987) 192 Cal.App.3d 585 [237 Cal.Rptr. 649].....	9
<i>California Cannabis Coalition v. City of Upland</i> (2017) 3 Cal.5th 924 [222 Cal.Rptr.3d 210].....	<i>passim</i>
<i>Kennedy Wholesale, Inc. v. State Board of Equalization</i> (1991) 53 Cal.3d 245 [279 Cal.Rptr. 325].....	8
<i>People v. Ault</i> (2004) 33 Cal.4th 1250 [17 Cal.Rptr.3d 302].....	7
Constitutional Authorities	
Cal. Const., art. XIII A, § 4	7
Cal. Const., art. XIII C, § 2(b).....	6, 8, 10
Cal. Const., art. XIII C, § 2(d).....	6, 7, 8
Other Authorities	
California Rules of Court, rule 8.200(c).....	1, 3
San Francisco Ord. No. 69-19	4

Document received by the CA 1st District Court of Appeal.

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 Defendants/Appellants, the California Business Properties Association, Howard Jarvis Taxpayers Association, and the California Business Roundtable. Pursuant to this Court’s (Covid) Emergency Order, filed March 18, 2020, this brief is being timely filed within the thirty-day additional extension of time for filing authorized therein.

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 approximately 550 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 like those now before this Court in the case.

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.

Shortly after the trial court decided the matter now before the Court, COST received many comments from its members expressing concern over that decision. Those comments urged COST to act. After carefully reviewing the trial court decision, COST's Board of Directors voted to submit this amicus curiae brief to express the concerns of its members and to assist the Court in deciding the matter.

Because this case is a direct assault on the two-thirds vote requirement required 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. The ballot initiative at issue here,

Proposition C, is such an example. Thus, COST seeks to file this amicus curiae brief to lend its support to Appellants' 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: April 2, 2020

Eversheds Sutherland (US) LLP

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

Attorneys for Amicus Curiae
COUNCIL ON STATE TAXATION

Document received by the CA 1st District Court of Appeal.

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

INTRODUCTION

This case involves Proposition C, a voter-circulated initiative on the ballot in San Francisco in November 2018, which received affirmative votes of 61.34% of the City voters who voted on that measure. Proposition C asked voters to impose an additional gross receipts tax on certain businesses with receipts in excess of \$50 million to fund homelessness reduction efforts. (San Francisco Ord. No. 69-19.) Proposition C directly impacts most COST members because it is targeted at corporate taxpayers with significant gross receipts. The enactment of a special tax such as Proposition C, without obtaining a two-thirds vote of the electorate, raises significant concerns relating to the constitutional protections that have long been afforded pursuant to the California Constitution in connection with the enactment of special taxes at the local level. COST supports Appellants' 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.

The trial court's conclusion that *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924 [222 Cal.Rptr.3d 210] is controlling is improper and short sighted. The trial court's decision significantly

expanded the scope of the *Upland* decision well beyond the facts and legal issues discussed therein, and unless reversed by this Court, 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. For example, what is to preclude a locality from imposing new taxes on specific industries or specific taxpayers and then arguing those tax increases do not require approval by two-thirds of the electorate because they were proposed by an initiative? Proposition 13 and Proposition 218 were enacted to help prevent arbitrary and ill-conceived revenue-raising measures. This potential circumvention of the constitutional requirement for a two-thirds of the electorate approval of new special taxes at the local level is not difficult to imagine, especially with current budget deficits pressuring many local communities to raise revenues. Thus, COST respectfully urges this Court to reverse the trial court’s decision and reinstate the protections that the California Constitution provides against the imposition of special taxes at the local level.

ARGUMENT

Cost Supports Appellants' Arguments 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 of in *Upland* when the Court considered whether Article XIII C, 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 XIII C, 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 holding in this matter abolishes the two-thirds vote requirement for voter-circulated initiatives only because Article XIII C, section 2(d), which was also adopted as part of Proposition 218, included language similar to the provision analyzed by the Court in *Upland*. Specifically, subsections 2(b) and 2(d) both included the phrase "local government," and the trial court noted that because the *Upland* Court determined that phrase did not apply to voter-circulated initiatives in Article XIII C, section 2(b), it would similarly not apply to voter-circulated

initiatives under the wording of subsection 2(d). The trial court then doubled down on its evisceration of the constitutional protection by finding Article XIII A, section 4, which was adopted as part of Proposition 13, used language that was similar to the language found in the provision considered in *Upland*, it too was no longer applicable to voter-circulated initiatives.

As laid out in Appellants' opening brief, the two-thirds vote requirement found in Proposition 13 (Article XIII A, section 4) and Proposition 218 (Article XIII C, section 2(d)) applies to *all* special taxes adopted at the local level. (Appellants Br. at pp. 20-21, 32-33.) The trial court's assertion that the *Upland* decision nullifies that two-thirds vote requirement upends a forty-year history of that protection being in place, and its interpretation of *Upland* remains at odds with other recent decisions.

First, the *Upland* decision did not address the issue of 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 XIII A, 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. (Appellants Br. at pp. 21-25.) COST strongly supports Appellants' 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, the *Upland* court did not address the specific provision in Proposition 218 at issue here. As Appellants explain, Article XIII C, section 2(d), was not at issue in *Upland*, and the Court’s majority decision in that case did not change the two-thirds vote requirement even for voter-circulated initiatives. (Appellants Br. at pp. 32-33.) Rather, the Court in *Upland* addressed only the timing of an election in Article XIII C, section 2(b). Erroneously finding the meaning of the term “local government” as defined in *Upland* for purposes of subsection 2(b) should also apply to subsection 2(d), the trial court erred in concluding a two-thirds vote requirement was not applicable to special taxes put forth by a voter-circulated initiative.

The trial court’s attempt to expand the scope of the *Upland* decision from a procedural issue to a long-standing constitutional principle ignores the historical rationale for the adoption of these propositions. Specifically, Appellants point to the 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. (Appellants Br. at pp. 36-38.) COST urges this Court not to ignore that history and context.

Finally, this Court should reject the City of San Francisco's and the trial court's broad interpretation of the *Upland* decision, and instead, affirm the approach taken by other trial courts. (See Appellants Br. at pp 14-16.) In particular, two other superior courts—in Fresno County and in Alameda County—reached precisely the *opposite* conclusion from that reached by the superior court in this matter on this precise issue. (See Appellants Br. at p. 16.) The trial court's decision is 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, § 4).

COST echoes and supports each of the arguments put forth by Appellants. As Appellants aptly point out, the trial court's analysis in this case is significantly lacking and erases forty years of history and case law that required a two-thirds vote requirement for all special taxes at the local level. As discussed, the trial court's broad interpretation of *Upland* remains at odds with other recent trial court decisions. The trial court's interpretation of this issue is clearly erroneous and needs to be corrected by this Court.

The trial court's determination 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 will have severe

and unintended consequences. Specifically, if the trial court's decision is left to stand, 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 XIII C, 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*, the trial court's decision, if upheld, is likely to make those fears a reality. COST members dread the proliferation of new local-level special taxes in California that circumvent the two-thirds vote requirement, the purpose of which was to ensure that such new taxes were supported by the vast majority of voters. Given the importance of this issue, a national spotlight has been focused on this case among multistate businesses. COST respectfully urges this Court to reject the trial court's broad interpretation of the *Upland* decision and to restore 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 reverse the decision of the trial court.

Dated: April 2, 2020

Respectfully submitted,

Eversheds Sutherland (US) LLP

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

Attorneys for Amicus Curiae
COUNCIL ON STATE TAXATION

Document received by the CA 1st District Court of Appeal.

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 2,182 words.

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

Executed on April 2, 2020 at Sacramento, California.

/s/ Eric J. Coffill
Eric J. Coffill

Document received by the CA 1st District Court of Appeal.

CA 1st District Court of Appeal Court Name	PROOF OF SERVICE	A158645 Case Number
---	-------------------------	------------------------

1. At the time of service, I was at least 18 years of age.
2. My email address used to e-serve: **ericcoffill@eversheds-sutherland.com**
3. I served a copy of the following document(s) indicated below:

Title(s) of documents served:

APPLICATION - APPLICATION TO FILE AMICUS CURIAE BRIEF: 2020-04-02 Motion for Leave and Amicus Brief of COST re Prop C

Person Served	Service Address	Type	Service Date
Christopher Skinnell	cskinell@nmgovlaw.com	e-Serve	04-02-2020 4:26:11 PM
Nielsen Merksamer Parrinello Gross & Leoni		c60034ea-cb26-4393-9823-3a56e265dddb	
Dennis Herrera	cityattorney@sfcityatty.org	e-Serve	04-02-2020 4:26:11 PM
Office of the City Attorney		b54c141e-4532-4a79-8627-552fc6a17ced	
Holly Chin	holly.chin@sfcityatty.org	e-Serve	04-02-2020 4:26:11 PM
San Francisco City Attorney's Office		ea3a829d-f3bb-461b-b032-33df3f8884d2	
Wayne Snodgrass	wayne.snodgrass@sfcityatty.org	e-Serve	04-02-2020 4:26:11 PM
Office of the City Attorney		52687678-4f89-4c2b-bb29-b59636132071	
Jaime Lane	jaime.lane@sutherland.com	e-Serve	04-02-2020 4:26:11 PM
Eversheds Sutherland (US) LLP		44c5a8f3-dff1-4357-a5a0-4c38dff77965	
Eric Coffill	ericcoffill@eversheds-sutherland.com	e-Serve	04-02-2020 4:26:11 PM
Eversheds Sutherland (US) LLP		de7a0da9-8531-4f50-980f-45505311978d	
Timothy Gustafson	TimGustafson@eversheds-sutherland.com	e-Serve	04-02-2020 4:26:11 PM
Eversheds Sutherland (US) LLP		a96dd9c8-d5e3-462f-b3f6-8069c483aaba	

TrueFiling created, submitted and signed this proof of service on my behalf through my agreements with TrueFiling.

The contents of this proof of service are true to the best of my information, knowledge, and belief.

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

04-02-2020

Date

/s/Jaime Lane

Signature

Coffill, Eric (84044)

Last Name, First Name (Attorney Number)

Eversheds Sutherland (US) LLP