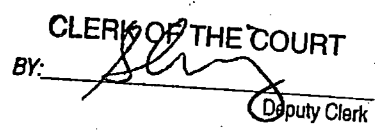

JUL 05 2019

CLERK OF THE COURT
BY: Deputy Clerk

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**

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

I. Introduction

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

Plaintiffs' verified Complaint to Invalidate Special Tax, filed on August 3, 2018, contains a single cause of action. Plaintiffs allege that Proposition C is invalid because it imposed a special

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[1] The Court grants the City's unopposed request for judicial notice of various provisions of the San Francisco and Municipal Elections Code.

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

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

In their motion for summary judgment, Plaintiffs abandon their contention in their complaint that Proposition C required a supermajority (two-thirds) vote under either Article XIII C, section 2(d) or Article XIII A, section 4 of the California Constitution. Apparently anticipating the City's reliance on the California Supreme Court's decision in *California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, they assert "it is unnecessary for the Court to reach that argument." Instead, Plaintiffs contend that the San Francisco Charter requires a two-thirds vote on all special taxes, whether they are proposed by the Mayor or Board of Supervisors or by citizens' initiative. Plaintiffs' motion for summary judgment on this ground is procedurally improper

because they did not raise the issue in their complaint.[2] Nevertheless, because the City does not object on this ground, and because the issue presents a pure question of law on undisputed facts, the Court will deem Plaintiffs' complaint amended to present the issue and will address it on its merits.

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

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

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

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

This argument is foreclosed by a long line of California Supreme Court authority, which draws a critical distinction between *substantive* limitations on the Board of Supervisors' legislative authority and *procedural* requirements that the Board must follow to enact certain kinds of laws. While the Charter restricts the voters from using their reserved power of initiative to enact any measure that, because of its nature or subject matter, is *substantively* beyond the power of the

[2] Plaintiffs appear "oblivious to the role of the pleadings as the outer measure of materiality in a summary judgment proceeding," treating them instead as "a ticket to the courtroom which may be 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 judgment cannot be granted on a ground not raised by the pleadings. [Citation.] Conversely, summary judgment cannot be *denied* on a ground not raised by the pleadings."].)

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

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

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

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

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

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

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

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

> A contrary conclusion would require an unreasonably broad construction of the term "local government" at the expense of the people's constitutional right to direct democracy, undermining our longstanding and consistent view that courts should protect and liberally construe it. . . . Without a direct reference in the text of a provision—or a similarly clear, 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.

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

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

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

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

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

III. Plaintiffs' Claim That Proposition C Is Not A "True" Citizens' Initiative Is Legally and Factually Meritless.

Plaintiffs' second argument, to which they devote the bulk of their briefing,[4] is that Proposition C was not imposed by a "true" citizens' initiative. Rather, Plaintiffs contend that in reality, "it was a proposal of the Board of Supervisors, the Tax's true creator." Plaintiffs cite as evidence for this proposition that the Board of Supervisors had previously considered a closely similar if not identical initiative, that Supervisor Norman Yee was the initiative's proponent, and that he assertedly used his position and resources as a supervisor to place the initiative on the ballot. Because the Board of Supervisors, as a local government entity, may not impose a special tax absent two-thirds approval by the voters, Plaintiffs contend, the Court should ignore Proposition C's designation as a voter initiative and invalidate it as a legislative initiative. Plaintiffs rely for this argument entirely on the California Supreme Court's decision in *Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898. However, neither that decision nor any other pertinent authority supports Plaintiffs' novel contention.

At the outset, Plaintiffs' argument is inconsistent with the plain language of the Charter and of the governing provisions of the California Elections Code, which draw a clear distinction between measures proposed by the voters by initiative petition and measures proposed by a legislative body such as the San Francisco Board of Supervisors or by the Mayor. Thus, as to voter initiatives, Article XIV of the Charter, entitled "Initiative, Referendum and Recall," declares that "the voters of the City and County shall have the power to enact initiatives . . . ." (Charter § 14.100.) The Charter provides that "[a]n initiative may be proposed by presenting to the Director of Elections a petition containing the initiative and signed by voters in a number equal to at least five percent of the votes cast for all candidates for mayor in the last preceding general municipal election for Mayor." (Charter § 14.101.) In contrast, Section 2.113 of the Charter provides that the

[4] Notably, Plaintiffs discuss this argument in only 4 pages of their moving papers, but devote nearly all of their 20-page opposition brief to it.

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

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

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

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

[5] Plaintiffs devote much of their papers to attacking the motives and good faith of Supervisor Yee and the entire Board of Supervisors. Thus, Plaintiffs insist that Proposition C was "a special tax devised by the Board of Supervisors masquerading as [a] citizens' initiative in the hopes of evading the two-thirds vote required by the San Francisco Charter and the California Constitution"; they charge "City politicians" with "trampl[ing] the established rule" of Propositions 13 and 218 and attempting to "circumvent[]" those provisions; they make factually unsupported charges against 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.

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

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

[6] At oral argument, Plaintiffs also cited *Rider v. County of San Diego* (1991) 1 Cal.4th 1, but that case does not advance their position. There, a county board of supervisors sought the voters' two-thirds approval of a new sales tax to fund the county's justice facilities and, when that effort failed, directed a local legislator to introduce legislation creating a special district with limited tax powers to impose a sales tax increase upon approval by the county's voters. The initial version of the bill named the county's entire board of supervisors as the agency's board of directors, although under the final version only two county supervisors were included among the agency's seven directors. The county retained substantial control over the agency's operations and expenditures; the act required compliance with the county's master plan; and the agency's boundaries were coterminous with the county's. After the tax scheme was approved by a bare majority of county voters, the agency began operations, hiring several county employees for its staff and incurring expenses paid 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."

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

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

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

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

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

[8] On remand, the Court of Appeal held that "the City's failure to comply with the [Meyers-Milias Brown] Act before placing the Initiative on the ballot does not necessarily invalidate the Initiative," 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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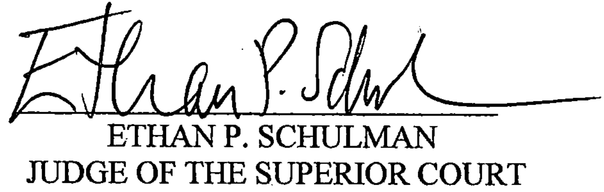
12 Dated: July 5, 2019



ETHAN P. SCHULMAN
13 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

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