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Fifth Appellate District Agrees that Special Taxes Enacted by Initiative Do Not Require Two-Thirds Supermajority Vote.



Another court of appeal has held that local special taxes adopted by a citizen-sponsored initiative do not require two-thirds voter approval. [City of Fresno v. Fresno Building Healthy Communities](#), No. F080264. (5th Dist., Dec. 17, 2020). In 2018, Fresno voters approved Measure P, a citizen-sponsored initiative that imposed a tax to fund improvements and programs related to parks. Relying on California Propositions 13 (1978) and 218 (1996), the Howard Jarvis Taxpayer Association contended that Measure P was invalid because it had not been enacted by two-thirds of the voters.



Agreeing

with the First District's opinion in [*City and County of San Francisco v. All Persons Interested in the Matter of Proposition C*](#), the Fifth District Court of Appeal upheld Measure P. It rejected the Association's arguments, which the trial court had found persuasive, that some statements in a prior California Supreme Court case supported requiring two-thirds voter approval. The Fifth District agreed with the First District that the referenced statements only recognized the two-thirds voter requirement in Proposition 13, and did not address the question whether that requirement applies to citizen-sponsored initiatives. Like the First District, the Fifth District ruled that California Supreme Court precedent mandated a conclusion that the provisions of Propositions 13 and 218 imposing requirements on cities, counties, special districts and other local governmental entities were to be interpreted as applying only to councils, boards and other representative bodies, not the electorate. As determined in those prior cases, there is nothing in either Proposition 13 or Proposition 218 that implicitly overruled the power of initiative to enact laws by simple majority vote. Moreover, while voters are bound by the substantive limitations applicable to legislative actions taken by boards and councils, they are not bound by procedural requirements such as a two-thirds vote requirement. Finally, the Fifth District also rejected the Association's argument that because the Elections Code allows councils and boards to adopt citizen-sponsored initiatives outright rather than putting them to a vote, failing to require a supermajority vote would "create a playground for mischief." The court refused to address this hypothetical scenario, observing that the Associations' concern should be addressed to the Legislature, not the courts. The court reversed judgments on the pleadings that had been granted by the trial court in related cases concerning Measure P, and ordered the trial court to enter judgments upholding the measure.

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