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California Cannabis Coalition v. City of Upland

Supreme Court of California, California - August 28, 2017 - P.3d - 3 Cal.5th 924 - 2017 WL 3706533 - 17 Cal. Daily Op. Serv. 8392

Initiative sponsor petitioned for writ of mandate to compel city to hold a special election on an initiative imposing a charge on medical marijuana dispensaries.

The Superior Court denied petition, determining that the charge constituted a tax and had to be placed on the next general election ballot. Sponsor appealed. The Court of Appeal reversed and directed the trial court to issue writ of mandate compelling city to place initiative on special ballot. City petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Term "local government" in constitutional provision limiting power of local government to impose general tax did not encompass the electorate;
- Distinction between local government and its governing body in provision did not indicate that "local government" included electorate;
- Reference to voters' initiative power in Proposition 218, which added constitutional provision, did not indicate intention to subsume tax-related initiatives within ambit of Proposition;
- Provision did not indirectly encompass imposition of taxes by electorate via initiative;
- Term "impose" in provision meant to establish, not to collect;
- Clear evidence of intended purpose to constrain exercise of voters' initiative power was necessary to construe provision as imposing such limitations; and
- Determination that sponsor's proposed initiative was governed by provision did not relieve city of its statutory duties with respect to initiatives whose proponents requested special election.

Supreme Court would exercise its discretion to address issue of whether constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election restricted voters' constitutional power to propose and adopt initiatives and whether initiative imposing a charge on medical marijuana dispensaries should be submitted to voters at special election, rather than general election, even though initiative had been submitted to and defeated by voters and issue was technically moot; issue presented important questions of continuing public interest that had potential to evade review.

Term "local government" in constitutional provision added by voter initiative that prohibited local government from imposing a general tax unless that tax was first submitted to and approved by voters during general election did not encompass the electorate, and thus provision did not require that voter initiatives pertaining to imposition of taxes be first submitted to electorate at general election, rather than special election. Construing "local government" as excluding electorate was consistent with common understanding of term, related provisions, and ballot materials for initiative that added provision, and interpreting term "local government" to include the electorate would give

that term a broader meaning than adjoining specific term, “local or regional governmental entity.”

Existence of a distinction between a local government and its governing body in state constitutional provision limiting ability of local governments to impose, extend, or increase any general tax did not indicate that term “local government,” as used in provision, included the electorate and that provision would therefore apply to voter initiatives; separate references to government and its governing body did not imply the absence of a meaningful distinction between the government and the public it served, distinction between electorate and governmental entities was identified elsewhere in provision, and term “local government” plausibly referred to the entire organization constituting local or regional governmental entity, and not simply a locality’s elected officials.

Reference to voters’ initiative power in Proposition 218, which prohibited local government from imposing a general tax unless that tax was first submitted to and approved by voters during general election, did not demonstrate that voters knew initiative power could affect local taxes and that voters intended to subsume tax-related initiatives within ambit of Proposition, and thus reference to initiative power did not support restricting power by requiring that tax-related initiatives be first submitted to electorate at a general election, rather than special election; Proposition did not place any limitations on initiative power, and inferring a calculated decision to squelch voters’ initiative rights would improperly embrace presumption against initiative power.

Constitutional provision added by voter initiative that limited ability of local governments to impose, extend, or increase any general tax did not indirectly encompass imposition of taxes by the electorate via initiative; fact that voters’ approval acted as precondition to a tax measure becoming operative did not transform voters into “local government” referenced in constitutional provision, and there was no indication that requirement under provision that general taxes be submitted to voters at a regularly scheduled general election was intended to apply to electorate’s initiative power.

Term “impose” in constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election meant to establish, not to collect, and thus city was not precluded from collecting a general tax imposed via voter initiative unless and until tax was approved by voters at regularly scheduled election, rather than special election; ordinary meaning of “impose” was “to establish,” and construing “impose” as meaning “to establish” was consistent with usage in relevant ballot materials.

Requirements of constitutional provision prohibiting local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election apply only when a local government seeks to impose, extend, or increase a general tax.

Requirement under constitutional provision limiting ability of local governments to impose, extend, or increase any general tax that a general tax be submitted to the voters at a general election does not apply to taxes that are imposed by initiative after securing the electorate’s approval in a manner consistent with statute setting forth local government’s duty with respect to voter initiatives whose proponents request a special election; a contrary conclusion would work an implied repeal of statute, something against which courts have a strong presumption.

Clear evidence that constraining exercise of voters’ initiative power was intended purpose of constitutional provision limiting ability of local governments to impose general tax, rather than evidence that voters intended to exempt initiative power from provision as precondition for preserving that power in unencumbered form, was necessary to construe provision as applying to tax-related voter initiatives; court had obligation to protect and liberally construe initiative power

and to narrowly construe provisions that would burden or limit its exercise, and clear statement rule was consistent with and appropriately advanced duty to safeguard exercise of initiative power.

City’s unilateral determination that proposed voter initiative imposing a charge on medical marijuana dispensaries constituted a general tax and was therefore governed by constitutional provision that prohibited local governments from imposing a general tax unless that tax was first submitted to and approved by voters during regularly scheduled general election did not relieve city of its obligation to adhere to statute setting forth local government’s duty with respect to voter initiatives whose proponents requested a special election; deadlines under statute were mandatory, and proposed initiative was not a tax measure on its face, given that it purported to propose a fee.

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