

Jon Wainwright: Alright, well, welcome to another edition of In Depth. We're going to be going In Depth on Policy Change here with Matt Reed. He is the Policy Director for Sacramento City Council Member Steve Hansen. Matt, thanks for joining us.

Matt Reed: Yeah, thanks for having me, Jon. I appreciate it.

JW: So, today we're going to be talking about a California Supreme Court case and some of the implications it has for local governments across the state. That case is California Cannabis Coalition vs. City of Upland. And I think before we dive into the case, it would be really helpful, back us up a little bit and start with where California's Constitution is on some of these taxation issues, and then some of the major ballot initiatives that really have affected how you can raise or not raise taxes in California.

MR: Absolutely, and I'll start by giving a typical caveat. I'm not a lawyer necessarily practicing in this area. It's an area of a lot of interest for both folks in and out of local government and advocates who've been watching this case and cases like it.

The California Constitution is pretty complicated; it's like, 75,000 words long. It's been amended a bunch of different times. A lot of them have been amendments with regard to the power of taxation, right? So, it's a big battleground. We don't have the longest constitution, that's still the State of Alabama. It's like, 6 times the length of ours.

But overall, the ability to tax and levy taxes is governed by three big propositions: Proposition 26, Proposition 13, Proposition 218 - which is kind of what we're talking about today and what the Supreme Court looked at in Upland.

JW: So, what is Prop 218? That seems to be the main issue here with this court case.

MR: So it's a constitutional initiative approved in 1996 and it applies to all local governments. It calls out local governments specifically and it's really a key part of the case that we're talking about. It was kind of marketed as a follow up to Prop 13. In the wake of Prop 13 some local governments were assessing fees and moving away from calling stuff taxes and getting into the realm of - okay, we'll assess fees to do this - and using new language.

Prop 218 came through and said, "Hey, we see through this, we're going to put further limitations." It was proposed by Howard Jarvis Taxpayers Association.

JW: Same people that ran Prop 13.

ME: Exactly. They have a vested interest in seeing lower taxes, and lower taxes basically is a function of, "Can we make it harder to pass taxes?" That's the thing.

So, it was kind of a follow up and a clarifying amendment to Prop 13. It basically established constitutional limitation on the ability of local governments to impose, increase, or extend taxes. And it did it three ways. It added a couple of different articles,

but the one that really got looked at in this case is Article 13, Section (c) - kind of put out some definitions as well as procedures on how taxes got passed.

JW: Okay. And the main thing I think we're getting to here, I think, is the procedures part of that. So what was the big change with that proposition that changed how local governments are able to pass tax measures?

MR: So that biggest change, the procedures that came through on 218, it's varied and still being figured out. This case is one of those.

JW: Okay.

MR: In general, it outlined different treatment if something is technically called a "general tax" vs. "special tax." A general tax is what we might consider, like, "Hey, we're going to put another five cents on a sales tax to fund general government services."

A special tax is something more like, "Hey, we're raising a levy because we want to build new schools."

Special taxes have specific outcomes. General taxes are for general government function - they don't necessarily include specific things.

JW: Okay, so kind of a, like California budget parallel would be like: these go to the General Fund, these fees would go to a Special Funds with a dedicated purpose?

MR: More or less. And some folks would even like, find minor tweaks, but again, it's just a really complicated area. As a general idea, it's general vs. specific uses of the tax revenue.

Prop 218 outlines what ballot different taxes would need to be on as well as the different thresholds that they would need to meet for the purposes of how many votes they need to get - 2/3 vs. 1/2. So, a general tax would be subject to a 50% + 1 voter threshold and a special tax would be subject to a higher 2/3 threshold. And that's what we more commonly see.

JW: Okay. So I think that leads us into the Supreme Court case we're talking about, and it looks like the main issue at play in the case was dispensaries were trying to get set up in the City of Upland and there were different tax measures, fees measures, on the ballot for this city and there was a question over whether or not they could've been on a special election ballot or a general election ballot. And that seemed to be the main question that went to the court, which definitely falls into this Prop 218 realm of influence here. Did that issue get resolved? Or how did the Court resolve that?

MR: Yeah, you're absolutely right. The narrow question was when the initiative would get scheduled. It's actually, I think, a pretty boring case, overall. It's all about cannabis folks wanted to get a little bit more clarity and kind of get ahead of some potential state

regulations. So the narrow question was when the initiative would get scheduled. The broader question that the Court could choose to rule on, if it wanted to, was whether 218 applied at to initiatives. So that was kind of an open question.

JW: Alright, and that seems to be where a lot the fun has come out that case. Because it seems like they did go a little broader than that narrow question.

MR: Everyone agrees that the initiative measure should have been scheduled for the special election. That is a rejection of 218's application. So that was saying for this initiative process, that 218 did not dictate the procedure and did not dictate the scheduling of the ballot initiative.

Now, there's language in there that everyone's now fighting about, kind of. And there's a ton of open interpretation as to whether or not the 2/3 requirement that 218 also puts on the special/general distinction that I just talked about, whether or not the 2/3 requirement would also be up in the air based on this interpretation.

So if 218 doesn't apply to initiatives for purposes of procedure, would it also not apply for purposes of requiring a 2/3 vote?

JW: And that's potentially a game changer for local government?

MR: Mhm.

JW: I know, just recently in Sacramento, there was a special tax in the last cycle for transportation and it cleared that 50% + 1 hurdle just fine, but it couldn't get to the 2/3. Now, I know there's also language in there where it depends on who or what puts the initiative on the ballot that has implications for what threshold it has.

MR: Exactly, so you just said it could potentially be a game changer for local government. To read the court opinion - and I suggest that everyone should - it doesn't change anything for local government because the opinion specifically says that local governments remain bound - they're specifically called out in Proposition 218 as needing to abide by its provisions. Prop 218 and the whole court case was based on saying that Prop 218 was designed to limit the ability of local governments - whatever form they take - as they sought to impose, extend, or increase taxes.

What this case is kind of saying, and, treating a little bit differently, is the citizen-led initiative piece. So where this gets really important, and where I think it's really potentially really valuable and interesting, is for advocacy groups and for the advocacy community to say, "Hey, listen, we might actually have a tool here, and if we go ahead and propose a tax initiative, and go collect signatures for it and get it on the ballot through an initiative process, maybe we don't have to meet as high a bar."

So for the local government, it shouldn't really change that much. But for groups that are going out there and collecting signatures and doing an initiative process, it really could be a game changer.

JW: So, I feel like one of the other interesting questions at play here is, it certainly introduces new wrinkles where you could, hypothetically, see a local government try to get a special tax in some way under that 50% + 1 threshold. So if there was something where a local public employee union had a ballot initiative and whatever the goals of that were lined up with the general goals of that City Council that they had stated previously, or something along those lines, is that one of those situations? Or if members of the City Council were to say they supported it, does that start to get a place where there's a potential loophole here?

MR: Well the, the Court punts pretty hard on that precise question. And they in the opinion, put forward a hypothetical somewhat similar to that, to that question about trying to skirt the 2/3 requirement by working with an outside group or something like that. And it says these facts are not presented here - it's like a classic punt - we decline to take up what would happen if they arise.

So, there's the great likelihood that that would be resolved by a test case or an initial and additional ballot measure coming across statewide, funded by someone like Howard Jarvis taxpayers association, or the other end, seeking to clarify and enshrine whatever the interpretation is. I think that's the most likely scenario is that'll get resolved by a test case or an addition ballot.

JW: And by test case, you mean, some local group is going to try something and there's potential for a local government organization to back that, and then that becomes our potential next lawsuit?

MR: Or even less nefarious than that. It would be if an advocacy group came through and did a local ballot initiative raising a tax and it came back with 55% support, and then there would be a fight as to whether - like a special tax and it got 55% support- and when the clerk goes to certify it, they would need to know, "Hey, is this a 50 + 1, or is this subject to the 2/3 requirement?" And so that would probably go back to the courts.

JW: Interesting.

MR: That's, at least how I think that, it works. But again, I'm not an expert in this area; I'm just trying to figure out [how] the many that this case brings up will get resolved.

JW: It seems like the only real clear answer is here that there's no clear answer.

MR: Precisely.

JW: Alright, well, thank you so much for taking the time to come in and talk to us about this.

MR: Absolutely. Thank you very much for having me.

JW: Yeah. Happy to.