Supreme Court Removes Taxpayer Protection Act from the November Ballot

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On June 20, the California Supreme Court took the rare step of removing a measure from the statewide ballot. The California Business Roundtable's "Taxpayer Protection and Government Accountability Act" — the "TPA," but named the "Taxpayer Deception Act" by its detractors in local government and elsewhere — would have imposed many new restrictions on State revenues and essentially all local revenues from taxes to library fines to water rates. It would have required two-thirds-voter approval for all special taxes, whether proposed by local legislators or initiative petition, reversing six recent court decisions allowing such taxes by majority vote.

The California Business Roundtable removed essentially the same measure from the 2018 ballot in exchange for a multi-year ban on local soda taxes and may have intended to trade this measure for a ban on vehicle-miles-travelled taxes — taxes on peripheral real estate development to fund transportation infrastructure briefly considered by the San Diego Association of Governments. Rather than bargain, the Legislature sued.

The Legislature, Governor Newsom, and former Senate President Pro Tem John Burton petitioned the California Supreme Court for a writ of mandate ordering Secretary of State Shirley Weber to withhold the measure from the ballot. Such petitions are very rarely granted, as it is the role of the California Supreme Court to decide important legal issues on appeal and not as the first court to hear them. However, the petitioners, with support from several local government associations as amici curiae ("friends of the court"), persuaded the Court to issue an order to show cause. The order invited briefing in December and January and the Court heard argument on May 8th. As expected, the Court acted by the Secretary of State's June 27th deadline to certify measures for the November ballot.

Legislature v. Weber raised two issues. First, petitioners argued the measure would revise the state Constitution — which an initiative cannot do — rather than amend it. Second, they argued the measure would impair essential governmental powers — to impose taxes, delegate fee-making procedures to the Executive branch, and for that branch to fully administer the finances of government programs.

Justice Goodwin Liu's decision for a unanimous Supreme Court ordered Secretary of State Weber not to place the initiative on the Fall ballot because it is an improper revision. A revision can only be proposed by the Legislature or a constitutional convention. The Court concluded the initiative is a revision because it makes fundamental changes to the distribution of authority under our Constitution:

- It would strip the Legislature of the power to tax, requiring voter approval of any tax increase, even if affecting only one taxpayer;

- It would strip the Legislature of the power to delegate fiscal functions to the Executive Branch, requiring every minor fee increase (like that to replace a driver's license) to come to the floor of the Legislature;
- It would strip local governments of the power to delegate fiscal functions to agency staff and greatly expand voter approval authority over local revenues.

The Court did not conclude that any one of these changes would be a revision beyond the reach of the initiative power, only that the combination certainly is.

The case is significant not only because it removes a very problematic proposal from the Fall ballot but also because it represents a very rare action by the California Supreme Court to review an initiative proposal before the election. It is also only the fourth decision to invalidate an initiative constitutional amendment as a revision and the first since a 1999 decision striking a proposal to delegate to the courts the task of redistricting the Legislature.

This is a huge win for the State's leaders, for local government, and for all who value government services. The Court cited the local government amicus brief we filed for the League of California Cities, the California State Association of Counties, the California Special Districts Association, and other local government associations, referencing its arguments repeatedly. The Court quoted our brief:

> Local government amici curiae argue that the TPA thus "revises the structure of local government, fundamentally changing the responsibilities of local legislators and administrators, and stripping charter counties of their power to establish administrative structures and charter cities of their 'plenary authority' (Cal. Const., art. XI, § 5) to determine the roles and responsibilities of their officials." Further, they argue that the TPA's restrictions on the ability of state and local governments to raise revenue without voter approval or to enact fees not subject to referendum "transform[s] the constitutional relationship of state and local governments, making the latter dependent on the State for fiscal survival but stripping the State of the ability to provide necessary funding."

In three other places it cites our brief to note the range of impacts the initiative would have had on local governments.

Now the fight turns to two other constitutional amendments the Legislature placed on the Fall ballot. ACA 13 (Ward, D-San Diego) would require any initiative constitutional amendment that imposes a super-majority voting requirement to be approved by that same super-majority. Although the TPA will no longer be part of this debate, the broader question of allowing a simple majority to impose super-majority approval requirements remains.

ACA 1 (Aguiar-Curry, D-Woodland) would allow voters to approve local government bonds for housing and infrastructure (broadly defined) with 55 percent approval, rather the two-thirds that has been required since 1978's Proposition 13. This is modeled on a 2000 measure which lowered the voting threshold for school bonds. As we go to press, ACA 10 and AB 2813 are pending the Senate Local Government Committee to make adjustments to that measure to win the neutrality of the California Realtors Association.

The business interests which spent millions qualifying the TPA for the ballot have stated they will campaign against these measures.

Policy debates about how to fund government services continue, of course. But June 20, 2024 was a good day for local government and its advocates.

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