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SF Asks Calif. Justices To Uphold Voter-Approved Parcel Tax

By **James Nani**

Law360 (September 28, 2021, 7:00 PM EDT) -- San Francisco urged California's Supreme Court not to review a challenge aiming to invalidate a city parcel tax placed on the ballot in 2018 because of "improper collusion," arguing citizens, not government, properly placed the measure on the ballot.

San Francisco attorneys asked the justices Monday to deny a request by city resident Wayne Nowak to take up the case, arguing review is unwarranted and unnecessary. Nowak's attorneys have argued the parcel tax measure should be nullified because the citizens' initiative power was co-opted by a government entity and therefore the tax should have needed at least a two-thirds majority to pass and not the simple majority it received.

City attorneys told the court that Nowak's arguments would require the court to ignore its duty to liberally construe the voters' initiative power and that there's no support for his arguments in state case law.

Nowak asked the California Supreme Court this month to **review lower court decisions** that dismissed his challenges to Proposition G. The measure, brought to the ballot by citizens, allowed for an annual parcel tax starting at \$298 per parcel of taxable real property in the city for 20 years.

The justices should consider the case because of "undisputed evidence" there was improper collusion between the San Francisco Unified School District and United Educators of San Francisco to place the measure on the ballot, Nowak has said. Nowak's attorneys have argued the school district entered into a labor agreement with the union that gave union members raises in exchange for the union putting the tax on the ballot, which would require a lower vote threshold.

Because the citizens' initiative power was directed by a government entity, the tax should have needed at least a two-thirds majority to pass like other government-sponsored special taxes, Nowak has said. The initiative received 60.76% of the vote.

But San Francisco told the court Monday that Nowak "fundamentally misconstrues the nature of a voter initiative."


"He ignores the fact that the measure was proposed to the electorate by qualified proponents, and that thousands of San Francisco voters signed petitions to place the measure on the ballot — as an exercise of their constitutional right of initiative, not because of any agreements or compulsion from the district," the city said.


The city noted **court precedent** has said the people's initiative rights are "one of the most precious rights of our democratic process" and courts have a "duty to jealously guard and liberally construe the right so that it be not improperly annulled."

The city cited a 2017 decision by the California Supreme Court, **California Cannabis Coalition v. City of Upland**, which found a constitutional supermajority rule didn't apply to special taxes proposed by voter initiative.

Nowak's reading of the law improperly attempts to take the voters out of the initiative process, the city said, arguing that Proposition G's proponents became proponents by their own choice.

In a July published decision, a state appeals court panel affirmed a May 2020 trial court decision **that dismissed** Nowak's challenge to the tax measure, which is meant to fund various costs for the local school district, including salary increases for teachers, staffing and funding in certain schools. In August, the **panel declined a request to rehear its decision.**

Among its conclusions, the appeals panel said alleged collusion between the school district and those who put the measure on the ballot didn't mean a two-thirds majority vote was required. The court rejected Nowak's arguments that the circumstances placing Proposition G on the ballot were similar to those from a **2018 state Supreme Court decision** , finding that case dealt with a **different statute** that wasn't relevant in the Proposition G case.

The appeals panel also **adopted the reasoning** from a similar case, **San Francisco v. All Persons Interested in Matter of Proposition C** , which upheld the simple-majority threshold for citizen ballot initiatives. The panel affirmed that state constitutional provisions added in 1978 by Proposition 13 and in 1996 by Proposition 218 weren't designed to limit the people's power to impose special taxes on themselves by a majority vote. The appeals court also reaffirmed the state Supreme Court's Upland decision.

San Francisco told the Supreme Court on Monday that the lower court decisions are consistent with the people's initiative power. And while the Upland court expressed concern over a local government working with an outside group to "make an end run around the electorate" without submitting the tax to voters, Proposition G was submitted to voters, San Francisco said. Therefore, the Upland court's hypothetical scenario doesn't exist, the city said.

San Francisco also noted that **three other courts** have held that city voters can adopt a special tax by initiative by majority vote.

A spokesperson for the San Francisco city attorney's office declined to comment.

Bradley R. Marsh, an attorney for Nowak, said he "remains surprised" that San Francisco "continues to take the position that it can contract with employees to provide them additional compensation in exchange for them exercising initiative power to raise taxes."

Wayne Nowak is represented by Bradley R. Marsh and Colin W. Fraser of Greenberg Traurig LLP.

The city and county of San Francisco is represented by Dennis J. Herrera and Wayne Snodgrass of the City and County Attorney's Office.

The case is Wayne Nowak v. City and County of San Francisco, case number A160659, in the California Court of Appeal, First Appellate District, Division Four.

--Additional reporting by Amy Lee Rosen, Braden Campbell, Daniel Tay and Asha Glover. Editing by Vincent Sherry.