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### **California Court of Appeal Holds Prop 218 Did Not Repeal Voters' Right to Challenge Local Resolutions and Ordinances by Referendum.**

The California Constitution contains express reservations of the voters' initiative and referendum powers. The initiative is the power of electors to propose statutes and amendments to the Constitution and to adopt or reject them. The referendum is the power to approve or reject statutes or parts of statutes, subject to certain exceptions including statutes providing for tax levies or appropriations for usual current expenses of the State. In 1996, California voters adopted Proposition 218, adding article XIII C to the California Constitution, through which they expressly reserved their right to challenge local taxes, assessments, fees, and charges by *initiative*. Prop 218 makes no express reference to the voters' referendum powers.

In 2016, the City of Dunsmuir passed a resolution to increase water rates over a six year period to fund replacement of aged water storage and delivery infrastructure. After adoption of the resolution, Leslie Wilde gathered signatures sufficient for a referendum to repeal the resolution. However, the City refused to place the referendum on the ballot because, it asserted, the resolution involved an administrative act not subject to referendum. Wilde challenged the City's decision by writ of mandate but the trial court agreed with the City and denied the writ petition.

Wilde subsequently appealed the trial court decision. On appeal, the Court addressed, among other things, whether: (i) Proposition 218 impliedly repealed voters' right to challenge local resolutions and ordinances by referendum; (ii) the resolution was exempt from referendum as an administrative act; and (iii) the resolution was exempt from referendum under the "essential government service" exception to referendum. The Court concluded Prop 218 did not prevent referendum on repeal of the resolution, and that the resolution was not otherwise exempt. The Court of Appeal reversed and remanded to the trial court with directions to issue a peremptory writ ordering the voter registrar to place the referendum on the ballot.

The Court of Appeal rejected the City's argument that the failure to reference referenda in Proposition 218, Cal. Const., art. XIII C, section 3 constituted a failure to preserve the referendum power as a tool for challenging local resolutions and ordinances. The Court reasoned that Proposition 218 was enacted in response to cases that had limited the reach of voters' *initiatives* to challenge local tax measures, and to prevent local governments from subjecting taxpayers to excessive tax, assessment, fee and charge increases that frustrate voter approval requirements for tax measures. Moreover, the text of Proposition 218 requires that it be liberally construed to limit local government revenue and enhance taxpayer consent. In addition, Proposition 218's focus on preserving initiative rights for tax levies did not require any reference

the referendum power because taxes have never been subject to referendum. Accordingly, the Court declined to construe Prop 218 to limit the voters' referendum powers in any way.

The Court of Appeal also concluded that the resolution was legislative, not administrative in nature, and thus subject to referendum. The new water rates adopted in the resolution were not an administrative adjustment of rates according to a previously established master plan. Instead, the new water rates were the product of a newly formulated set of policies that implemented new policy choices: to replace aging water storage and delivery infrastructure and to allocate infrastructure costs.

In addition, the Court of Appeal concluded that the resolution was not exempt from referendum as an impingement on essential government services. The City argued that the referendum would lead to uncertainty in the planning and fiscal administration of government budgets. The Court rejected the argument, finding that the resolution did not represent the ordinary working or budgeting for the City but merely policy choices regarding the City's water infrastructure and rates. Moreover, the referendum contained no prohibition on the City's future ability to study, plan, or implement a new water rate plan, it merely proposed repeal of the current referendum. The City did not argue, and the Court declined to consider, whether the resolution implicated an essential government service due to the importance of water supply to residents. The Court deemed the argument forfeited.

*Wilde v. City of Dunsmuir* (2018) 29 Cal.App.5th 158.

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