# BRIGGS LAW CORPORATION

*San Diego Office:*
*4891 Pacific Highway, Suite 104*
*San Diego, CA 92110*

*Telephone: 619-497-0021*
*Facsimile: 909-949-7121*

*Inland Empire Office:*
*99 East "C" Street, Suite 111*
*Upland, CA 91786*

*Telephone: 909-949-7115*
*Facsimile: 909-949-7121*

*Please respond to: Inland Empire Office*

*BLC File(s): 1434.13c*

22 July 2016

Chief Justice and Associate Justices of
the Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *California Cannabis Coalition v. City of Upland*, California Supreme Court docket no. S234148

To the Honorable Chief Justice and Associate Justices:

On behalf of my client, Donna Frye, I am writing in opposition to the relief requested by San Diego City Attorney Jan Goldsmith in a letter to you in the above-referenced matter on July 20, 2016. My client is the proponent of the Citizens' Plan for the Responsible Management of Major Tourism and Entertainment Resources, known simply as the "Citizens' Plan," which is one of the two citizen initiatives mentioned in the City Attorney's letter.

Though my client has no objection to your accelerated review of the Court of Appeal's decision before you, my client does oppose the City Attorney's request that you entertain an original mandamus action covering the Citizens' Plan. The basic premise behind the City Attorney's request is that the two initiatives "would create a new tax for a specific purpose," thereby arguably requiring a two-thirds voter approval for a special tax if you reverse the Court of Appeal. With regard to the Citizens' Plan, however, that premise is false. It contains no earmarks; and unlike the other initiative mentioned by the City Attorney, it does ***not*** "create a new tax for a specific purpose" and therefore is not a special tax that under any scenario would require a two-thirds vote.[1]

The Citizens' Plan proposes the addition of Section 35.0109 to the San Diego Municipal Code. Section 35.0109(b)-(c) would set the City's transient occupancy tax rate at levels competitive with other major tourist destinations (*viz.*, 15.5% on tourists who stay in hotels with 30 or more rooms, and 14% on tourists who stay in hotels with less than 30 rooms). Section 35.0109(a) specifies (with my emphasis) the purpose of the additional revenues that will be generated: "[t]o enable the City to keep its competitive advantage over other major tourism destinations while at the same time generating additional ***general revenues*** to, ***by way of example and not limitation***, support general government services, facilities and infrastructure, and the protection of the environment that make the City one of the nation's top tourism destinations."

[1] The City Attorney's belief that the Citizens' Plan could require a two-thirds vote has already created significant voter confusion because he has expressed it repeatedly in the media and other public forums.

Section 35.0109(d) goes even further and, using language similar to that in existing general-tax provisions of the Municipal Code, precludes the use of the new revenues for any specific purpose. "All revenues collected pursuant to the taxes imposed by the City under this section shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Charter of the City of San Diego and the City Council's appropriation ordinance. To this end, the tax imposed under this section is intended to be and shall be a general tax and not a special tax."

Another portion of the Citizens' Plan authorizes hotel businesses to deduct from the transient occupancy tax they collect from tourists and remit to the City a small amount to reimburse the businesses for self-assessments they may ***voluntarily*** impose upon themselves in exchange for marketing the City as a tourism destination (deduction not exceeding 2% of room rents), for privately building and operating a new convention-center facility (again not exceeding 2% of room rents), or both. In each case, the deductions are ***entirely voluntary and require no appropriation from the City***. By giving hotel businesses an opportunity to reduce their tax-remittance obligations, the Citizens' Plan does nothing more than create an economic incentive for those businesses to conduct their industry's affairs in a way that the City's voters believe to be socially beneficial. Such opportunities are expressly contemplated by the California Constitution. *See* CAL. CONST., art. 13C, § 3 (reserving voters' initiative power "in matters of reducing or repealing any local tax . . ." and making such reservation "applicable to all local governments. . . .")

With these provisions in mind, your entertaining an original mandamus action that covers the Citizens' Plan would be improper for two reasons. On the one hand, the new tax revenues that the City will receive under this initiative are not earmarked for any purpose and represent nothing more than a general tax that may be imposed under a simple-majority vote; your decision on the Court of Appeal's ruling will have no impact one way or the other on this particular initiative. On the other hand, the Citizens' Plan's reliance on language similar to that used in other parts of the San Diego Municipal Code to impose a general tax could trigger the need for contested evidentiary hearings – that is, if someone were to challenge the initiative's reliance on that language to create a general tax – so that the City's history of applying that language in a manner consistent with general taxation (rather than as a special tax) can be established. Each of these reasons independently weighs against your acceptance of an original mandamus action encompassing the Citizens' Plan.

This letter is being written on an expedited basis to provide you with a brief summary of the reasons why you should not grant the requested relief as it relates to the Citizens' Plan. If you would like an extended brief on these issues, my client would be happy to provide one. In that event, and in light of other scheduling matters my firm faces, it would be most appreciated if you could allow at least 20 days from your issuance of such an order for the filing and service of the brief.

Thank you very much for your consideration of these issues.

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs