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BY FACSIMILE AND U.S. MAIL

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Yorba Linda Water District
1717 E. Miraloma Ave
Placentia, CA 92870

Re: **Demand Regarding Yorba Linda Taxpayers Association Petition**

Dear District Board Members:

This law firm represents the Yorba Linda Taxpayers Association (“YLTA”). This letter is an attempt to administratively resolve the issue of the Yorba Linda Water District Board’s refusal to repeal the District’s recent water rate increase or, alternatively, present the question to voters by placing the issue on the next special or general election ballot.

I. Introduction.

As you are well aware, the YLTA circulated a petition asking voters whether the Yorba Linda Water District’s (“YLWD”) newly enacted water rate increases should be repealed. YLTA’s petition requested the following:

We, the undersigned, demand that RESOLUTION NO. 15-22 be reconsidered by the Governing Board of Yorba Linda Water District and repealed, or if not entirely repealed, that RESOLUTION NO. 15-22 be submitted to a public vote of the VOTERS OF THE YORBA LINDA WATER DISTRICT at the next regular election.

Each petition section included a complete copy of YLWD Resolution No. 15-22 (the challenged water rate increase). YLTA circulated the petition for a mere 19 days, but amassed almost *double* the number of required valid signatures necessary to qualify the mater for the ballot.

Upon submission of the petition to the YLWD (and a report from the Registrar of Voters certifying the petition had collected more than the required number of valid signatures to proceed), the District Board refused to take action to repeal the rates or

present the matter to voters. The primary basis for the YLWD's refusal to put the rate repeal question to voters is apparently that the petition was circulated as a "referendum" petition and not as an "initiative" petition. In response to the certification of the signatures on the referendum petition, the District Board's legal counsel opined that the "referendum process is not applicable to water rates adopted in compliance with Prop 218."

As of the writing of this letter, the YLWD has taken no further action with respect to our client's petition other than only to receive them into its possession. The YLWD's failure to take appropriate action violates the California Constitution, including the provisions amended by Proposition 218.

II. Referendum May Be Used To Challenge The YLWD's Rate Increase.

The "referendum" is the power of the electors to approve or reject legislative enactments. (Cal. Const., art. II, § 9.) Article II, section 11 of the California Constitution specifically grants the electors of each city or county (and the special districts therein) the right to exercise referendum powers. The ability to refer legislative acts to voters is a right that the people have retained for decades, and is one which cannot be limited by the whim or proclamation of an elected body. (*Dwyer v. City Council of Berkeley* (1927) 200 Cal. 505, 516 ["It is clear that the constitutional right reserved by the people to submit legislative questions to a direct vote cannot be abridged by any procedural requirement"]; and see *Citizens Against a New Jail v. Board of Supervisors* (1976) 63 Cal.App.3d 559, 563 ["Neither an elected board nor a court has the power to limit that reserved right (of referendum and initiative) Whatever our view as to factors of cost and practicality, the decision must be left to the voter-taxpayers, to whom we must and do commit it"].) Simply put, the people reserved the power of referendum as a check on elected bodies making the rules under which the people must live -- whichever legislative power exercises that power inherently accedes to the ultimate authority of the people through the referendum right. This includes, of course, the Yorba Linda Water District.

The YLWD is a county water district, formed pursuant to Water Code sections 30000, *et seq.*, and is a "local public entity" within the meaning of the Section 900.4 of the Government Code.¹ Under those provisions of law, the YLWD is granted the authority to make legislative enactments. In response to those legislative enactments, the voters in the YLWD are guaranteed specifically the right of referendum. Division 12 (entitled "County Water Districts"), section 30831 of the California Water Code provides unambiguously that ordinances enacted by county water districts, like YLWD, are subject to referendum:

¹ Government Code section 900.4 provides: "'Local public entity' includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State, but does not include the State."

Ordinances may be subject to referendum in accordance with Article 2 (commencing with Section 9140) of Chapter 2 of Division 9 of the Elections Code.

(Emphasis added.)

“[R]eferendum provisions are to be construed liberally in favor of the right of referendum.” (*Kuhs v. Superior Court* (1988) 201 Cal.App.3d 966, 972-73.) Section 30831 of the California Water Code is declarative of established case law authority in California holding that “any legislative act may be ... subject to referendum.” (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 787, fn. 9 [The right of referendum applies to any legislative act “regardless of whether that act is denominated an ‘ordinance’ or ‘resolution’”]²; see also *Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765 [Holding that the Elections Code provisions relating to referenda must be read to include all legislative acts in order to protect the people’s constitutional right of referendum].) There is no indication in the legislative history of California Water Code section 30831 that the statute was intended to abrogate the referendum power with respect to enactments of rate/fee increases.

Moreover, Article II, section 11 of the California Constitution contains no restrictions on the use of the local referendum power to repeal rate increases. In fact, California law establishes only two mechanisms by which the Legislature could have even theoretically foreclosed the power of local referendum of the YLWD’s enactment. The first would require a clear showing of legislative intent to revoke the power of local referendum through an exclusive delegation of legislative authority to the YLWD. (See, e.g., *DeVita, supra*, 9 Cal.4th at 780.) The second would require a showing that setting of rates in the YLWD somehow was an administrative action where the state’s system of regulation over a matter of statewide concern is so pervasive as to convert the local legislative body into an administrative agent of the state. (See, e.g., *Yost v. Thomas* (1984) 36 Cal.3d 561, 571.) Of course, neither of these situations are present in this case.³

² We note that where the legislature wants to distinguish between “resolutions” and “ordinances” subject to challenge by referendum, it has done so freely. Thus, for example, Water Code section 31609 specially authorizes a referendum with respect to a resolution forming an improvement district. No such distinction is made in Water Code 30831 -- which means the general application of the law holding that ordinances and resolutions that are legislative character are one-in-the same, and subject to referendum.

³ The law disfavors inferences that a statutory scheme restricts the power of initiative or referendum merely because some elements of statewide concern are present. Rather, courts will inquire concretely into the nature of the State’s regulatory interests to determine if they are fundamentally incompatible with the exercise of the right of initiative or referendum, or otherwise reveal a legislative intent to exclusively delegate authority to the local governing body. (*Totten v. Board of Supervisors of County of Ventura* (2006) 139 Cal. App. 4th 826.)

Based upon the foregoing, YLTA's referendum effort is a valid exercise of constitutional rights afforded to voters in California to refer legislative actions to a vote of the people. YLTA's referendum in no way impermissibly interferes with the powers of the YLWD. By this letter, and on behalf of our client, we demand that the challenged legislative action (Resolution No. 15-22) be immediately suspended and that the Water Board forthwith consider its repeal or set it for an election. Delaying any of these actions is a denial of our client's constitutional rights in the worst form.

III. Referendum May Be Used Even Under A Strict Prop. 218 Analysis.

By its own terms, Proposition 218, did not create or redefine the referendum or initiative power. Indeed, Prop. 218 contains no bar to utilizing referenda to challenge a legislatively enacted fee or rate increase. In fact, the specific purpose of the law is to limit local government revenue and enhance taxpayer involvement in revenue-related decisions. Article XIIC, section 5 of Prop. 218 is entitled titled "Liberal Construction" and provides:

The provisions of this act shall be **liberally construed** to effectuate its purposes of limiting local government revenue and **enhancing taxpayer consent**.

(Emphasis added.)

Moreover, the law was drafted to specifically apply to actions by local government in California:

Notwithstanding any other provision of this Constitution ... the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges **shall be applicable to all local governments**.⁴

(Cal. Const., art. XIIC, § 3 (emphasis added).)

In addition to the plain language of the law, a review of the opinion of the state Legislative Analyst's Office concerning Prop. 218 reveals that even the LAO agrees that Prop. 218 challenges may be brought by referenda. In Appendix I, titled "Areas in which legislative or judicial clarification may be needed – Elections," the LAO queries: "Who

⁴ The Yorba Linda Water District is a "local government" within the meaning of this provision. (See Cal. Const., art. XIIC, 1(b), (c) (defining "Local government" and "Special district" to include entities like the Water District).)

may vote on **referendums** to repeal assessments, fees, or taxes?" (Emphasis added.) It is clear that the LAO is inquiring as to which voters would be entitled to cast ballots in a referendum election to repeal rate or fee increases -- it correctly presupposes that a referendum is entirely appropriate when pursued to repeal an enactment of local fee or rate increases.

More broadly, it is clear that where Prop. 218 mentions the "initiative power," it undeniably includes the power of referendum. This is because the structure of our Constitution is that if the right of initiative can be invoked, the corollary right to referendum must be conceded to exist. (See, e.g., *Save Stanislaus Area Farm Economy v. Bd. of Sup'rs.* (1993) 13 Cal.App.4th 141, 152 fn. 3 ["There is no textual basis for construing the power of referendum as broader than the initiative power, or vice versa".].)

The petition qualified by YLTA requests a vote to repeal the District Board's recent rate increase. Utilizing a referendum procedure to qualify the repeal question for the ballot is entirely consistent with the California Supreme Court's repeated "recognition that the local electorate's right to initiative and referendum is guaranteed by the California Constitution ... and is generally co-extensive with the legislative power of the local governing body...." (*DeVita, supra*, 9 Cal. 4th at 775 ["(W)e will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of (local agencies)...are subject to initiative and referendum"], quoting *Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal. 4th 765, 777.) Since referendum matters frequently follow in response to unpopular action or inaction by the local government, the potential for misuse of power by a governmental body strongly supports the referendum power in local fee/rate matters.

Moreover, even if (contrary to fact) the District Board had raised some conceivable doubt about YLTA's petition, that doubt would necessarily have to be resolved in favor of the electorate's power to repeal increases to water rates by means of the YLTA petition. It is long accepted in California that if doubts can reasonably be resolved in favor of the use of the reserve power of initiative and referendum, our courts will preserve it. (*Blotter v. Farrell* (1954) 42 Cal.2d 804, 809; *McFadden v. Jordan* (1948) 32 Cal.2d 330, 332; *Martin v. Smith* (1959) 176 Cal.App.2d 115, 117; and see *DeVita, supra*, 9 Cal. 4th at 776 [Recognizing and applying the longstanding "judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right (to local initiative or referendum) be not improperly annulled"].) In fact, this concept is laid-out in Prop. 218. Once again, citation to the actual text of Prop. 218 is instructive: "The provisions of this (measure) shall be liberally construed to effectuate its purposes of limiting local government revenue and enhancing taxpayer consent." (Prop. 218, § 5 (reprinted in Art. XIII C, preceding § 1) (emphasis added).)

Finally, no voter signing YLTA's referendum petition would have been misled as to the intent or purpose of the petition (to place a measure on the ballot seeking repeal of

the YLWD's water rate increase). The statement at the top of each petition section made clear the purpose of the petition was demand the YLWD reconsider and repeal the water rate increase "or if not entirely repealed, that RESOLUTION NO. 15-22 be submitted to a public vote of the VOTERS OF THE YORBA LINDA WATER DISTRICT at the next regular election." Each petition section also included a copy of the challenged enactment.

YLTA gathered over 5000 signatures on its referendum petition -- approximately double the amount necessary to qualify the measure for the ballot. There is no allegation that even a single voter was misled into signing the petitions, but it is inconceivable that 5000 voters would somehow have been misled because the petition was not styled specifically as an initiative (in fact most voters are not aware of the detailed differences between the two). On this basis alone, YLTA's petition should be accepted by the YLWD and the rates immediately reconsidered by the Board or set for election.

Courts in California have held that it is appropriate to withhold a question from the ballot based upon defects in the petitioning process *only* when the alleged defect in the challenged referendum petitions threatens, as a realistic and practical matter, to frustrate or undermine the purposes of the statutory requirements in ensuring the integrity of the referendum process, such as when a defect "affect[s] the integrity of the process by misleading (or withholding vital information from) those persons whose signatures are solicited." (*Costa v. Superior Court* (2006) 37 Cal.4th 986, 1016-17.) The court in *Costa* explained that the governing cases in this area have recognized that an "unreasonably literal or inflexible application of constitutional or statutory requirements" fails to take into account the purpose underlying the particular requirement at issue "would be inconsistent with the fundamental nature of the people's constitutionally enshrined" initiative and referendum power and with the well-established "judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled." (*Id.* at p. 1013 [internal quotations and citations omitted].)

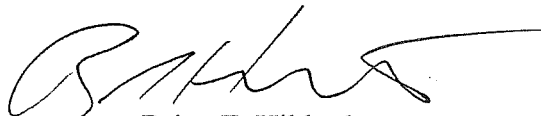
IV. Conclusion.

The YLWD continues to improperly infringe upon rights reserved by our client under the California Constitution, and continues to use alleged technical deficiencies to summarily invalidate a repeal effort with which it disagrees. The District Board's refusal to act on YLTA's petition is a patent violation of the constitutional rights afforded to YLTA's members as proponents of the petition. By this letter, our client reserves all rights to pursue enforcement of establish constitutional, statutory and case law in pursuit of a resolution of this matter. Our client further reserves the right to recover any and all attorneys' fees expended in pursuit of enforcing their rights and enumerated herein.

Please contact the undersigned within 72 hours to discuss further our client's position and any possible resolution the parties may reach to avoid a court challenge.

Thank you in advance for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. Hildreth", with a long horizontal flourish extending to the right.

Brian T. Hildreth