Bradley S. Phillips (Cal. Bar No. 85263)
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071
Brad.Phillips@mto.com

Megan P. McAllen (Cal. Bar No. 281830)
CAMPAIGN LEGAL CENTER
1411 K Street N.W., Suite 1400
Washington, DC 20005
(202) 736-2200

Attorneys for *Amici Curiae*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

HOWARD JARVIS TAXPAYERS ASSOCIATION, a California nonprofit public benefit corporation, and QUENTIN L. KOPP, a California Taxpayer, Petitioners and Plaintiffs, v. EDMUND G. BROWN, JR., Governor of the State of California, and FAIR POLITICAL PRACTICES COMMISSION, an agency of the State of California, Respondents and Defendants.	Case No. 34-2016-80002512-CU-WM-GDS **Unopposed Application of California Common Cause, League of Women Voters of California, and the California Clean Money Campaign for Leave to File an *Amici Curiae* Brief in Support of Respondents and in Opposition to Petition for Peremptory Writ of Mandate** Date: August 4, 2017 Time: 10:00 AM Dept: 29 Judge: The Hon. Timothy M. Frawley Action Filed: December 12, 2016 Trial Date: Not Set.

California Common Cause, the League of Women Voters of California, and the California Clean Money Campaign request leave to file an *amici curiae* brief in this case in support of Respondents and in opposition to the Petition for Writ of Mandate and Verified Complaint for Injunctive Relief and Declaratory Judgment. Counsel for both Petitioners and Respondents have consented to *amici* applicants' participation in this case.

As grounds for this motion, *amici* applicants would show unto the Court that:

1. Applicants are filing this *amici* brief to support the legality of Senate Bill 1107 (2016) and to describe how it furthers the purposes of the California Political Reform Act ("PRA"). *Amici* applicants have a longstanding, demonstrated interest in the design, enactment, and implementation of programs for the public financing of political campaigns.

2. California Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. It works to create open, honest, and accountable government that serves the public interest; to promote equal rights, opportunity, and representation for all; and to empower all people to make their voices heard in the political process. California Common Cause was a sponsor and strong supporter of Senate Bill 1107.

3. The League of Women Voters of California ("LWVC") is a nonprofit, nonpartisan organization whose mission is to encourage informed and active participation in government, increase understanding of major public policy issues, and influence public policy through education and advocacy. The LWVC believes that methods of campaign financing should enable candidates to compete equitably for public office and ensure that candidates have sufficient funds to communicate their messages to the public. In 2016 the League and individual League members strongly supported Senate Bill 1107.

4. The California Clean Money Campaign is a nonprofit, nonpartisan organization whose mission is to build statewide support for the public funding of election campaigns. Its vision is achieving an open and accountable government that is responsive to the needs of all Californians. California Clean Money Campaign was a sponsor and strong supporter of SB 1107. More than 57,000 Californians signed Clean Money petitions urging the Legislature and Governor Brown to pass SB 1107.

5. Applicants believe the attached Brief *Amici Curiae* will assist the Court in considering the issues presented in this case. The attached brief covers topics of particular concern to applicants: it reviews both the case law and academic research to demonstrate that the public financing of elections, as SB 1107 permits, advances the PRA's purposes of preventing political corruption, fostering officeholders' responsiveness to their constituents, and reducing the unfair advantages of incumbency. *See* Cal. Gov't Code §§ 81001(a), (b), (c), (e).

6. This filing is timely because this motion and the attached brief are being filed on or before the date Respondents' brief is to be filed.

7. Counsel for *amici* consulted with counsel for the parties on this motion. Counsel for Petitioners and Respondents consented to the *amici* participation of applicants in this case

A copy of applicants' proposed Brief *Amici Curiae* is attached. *Amici* applicants respectfully request the Court to approve this application for leave to file an *amici* brief.

Respectfully submitted,

Bradley S. Phillips (Cal. Bar No. 85263)
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071
Brad.Phillips@mto.com

Megan P. McAllen (Cal. Bar No. 281830)
CAMPAIGN LEGAL CENTER
1411 K Street N.W., Suite 1400
Washington, DC 20005
(202) 736-2200

Attorneys for *Amici Curiae*

Dated: June 28, 2017

Bradley S. Phillips (Cal. Bar No. 85263)
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071
Brad.Phillips@mto.com

Megan P. McAllen (Cal. Bar No. 281830)
CAMPAIGN LEGAL CENTER
1411 K Street N.W., Suite 1400
Washington, DC 20005
(202) 736-2200

Attorneys for *Amici Curiae*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

HOWARD JARVIS TAXPAYERS ASSOCIATION, a California nonprofit public benefit corporation, and QUENTIN L. KOPP, a California Taxpayer, Petitioners and Plaintiffs, v. EDMUND G. BROWN, JR., Governor of the State of California, and FAIR POLITICAL PRACTICES COMMISSION, an agency of the State of California, Respondents and Defendants.	Case No. 34-2016-80002512-CU-WM-GDS **[PROPOSED] Memorandum of Points and Authorities of *Amici Curiae* California Common Cause, League of Women Voters of California, and the California Clean Money Campaign in Support of Respondents and in Opposition to Petition for Peremptory Writ of Mandate** Date: August 4, 2017 Time: 10:00 AM Dept: 29 Judge: The Hon. Timothy M. Frawley Action Filed: December 12, 2016 Trial Date: Not Set.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Materials:

MEMORANDUM OF POINTS AND AUTHORITIES[1]

California Common Cause, League of Women Voters of California, and the California Clean Money Campaign submit the following proposed memorandum of points and authorities as *amici curiae* in support of respondents and in opposition to the petition for writ of mandate.

INTRODUCTION

During the early history of national efforts to combat political corruption, President Theodore Roosevelt recognized that public financing would be a powerful means of preserving the integrity and independence of elected representatives. In his 1907 State of the Union address, he pressed Congress to "provide[] an appropriation for the proper and legitimate expenses" of political campaigns to fund candidates who agreed to forgo private fundraising. In a system of citizen-funded elections, he recognized, "[t]he need for collecting large campaign funds would vanish." 42 Cong. Rec. 78 (1907). After Congress finally enacted such a program for presidential elections, the U.S. Supreme Court emphatically rejected a constitutional challenge to the law, because it found that electoral subsidies "reduce the deleterious influence of large contributions on our political process." *Buckley v. Valeo*, 424 U.S. 1, 91-93 (1976) (per curiam).

The California Political Reform Act ("PRA") serves the significant and well-established purposes of preventing political corruption, fostering officeholders' responsiveness to their constituents, and reducing the unfair advantages of incumbency. *See* Cal. Gov't Code §§ 81001(a), (b), (c), (e); 81002(e); *see also Agua Caliente Band of Cahuilla Indians v. Superior Court*, 148 P.3d 1126, 1128, 40 Cal. 4th 239, 244 (Cal. 2006) (finding that the PRA's purpose is to prevent "corruption of the political process"). The PRA's express purposes include reducing

[1] Petitioners and Respondents have consented to the filing of this brief. No party's counsel or other person authored this brief, in whole or in part, or contributed money to fund its preparation or submission.

candidates' reliance on large contributions from "lobbyists and organizations who thereby gain disproportionate influence over governmental decisions," Cal. Gov't Code § 81001(c); cultivating responsive elected officials who "serve the needs and respond to the wishes of all citizens equally, without regard to their wealth," *id.* § 81001(a); and eliminating "laws and practices unfairly favoring incumbents" in order to create more competitive elections, *id.* § 81002(e).

Senate Bill 1107—which empowers state and local governments to create voluntary citizen-funded election programs for candidates—advances those purposes. *See* Stats. 2016, ch. 837 (Senate Bill 1107). As the Supreme Court has long recognized, public financing programs "eliminat[e] the improper influence of large private contributions" and "enlarge public discussion and participation in the electoral process," *Buckley*, 424 U.S. at 92-93, 96—goals that are not only "vital to a self-governing people," *id.*, but central to the purposes of the PRA. The California Supreme Court has echoed this sentiment, finding that public financing reduces "the fundraising pressures on public office seekers and thereby reduces the undue influence of special interest groups." *Johnson v. Bradley*, 841 P.2d 990, 1004, 4 Cal. 4th 389, 410 (Cal. 1992) (citation omitted).

Senate Bill 1107 represents a lawful amendment of the PRA because it was passed by a two-thirds vote of the Legislature and clearly "furthers [the] purposes" of the PRA. Cal. Gov't Code § 81012(a). Petitioners here make no serious claim to the contrary, and they effectively concede, by remaining silent on the question, that public financing has been found to advance the purposes explicitly set forth in the PRA. *See id.* §§ 81001, 81002. Instead, they rest their case on two equally implausible claims: first, that the Legislature has no authority to amend the relevant sections of the PRA even though section 81012(a) explicitly allows such amendment; and,

second, that Proposition 73, which enacted the original ban on publicly financed campaigns, implicitly amended the purposes of the PRA, although that initiative neither included a purposes section of its own nor amended the purposes set forth in sections 81001 and 81002 of the PRA. Pet. Br. 4-9.

Both arguments are untenable, but *amici curiae* here will focus on petitioners' second argument and the broader question of whether public financing of campaigns promotes the PRA's goals of preventing political corruption, encouraging officeholder responsiveness, and reducing the unfair advantages of incumbency. Courts across the nation—from the U.S. Supreme Court to the courts of this state—have unambiguously held that public financing programs enhance the integrity of the electoral process and encourage officeholder responsiveness. A large body of academic research over the past thirty years confirms that such programs enhance electoral competition, limit the corrupting influence of special-interest contributors, and reduce the financial advantages of incumbency. Petitioners' claims that SB 1107 is invalid have no basis, and the petition for writ of mandate should be denied.

ARGUMENT

I. Senate Bill 1107 Lawfully Amended the Political Reform Act to Advance its Essential Purposes.

When the voters enacted the PRA in 1974, they recognized that the law would need to be updated over time to remain effective and explicitly provided for legislative amendments to effectuate the Act's broad purposes. Forty years later, the PRA's amendment provision is unchanged: Section 81012 allows the Legislature to amend the PRA's provisions by a two-thirds vote, so long as the amendment meets specified publication and timing requirements and "furthers the PRA's purposes." *Santa Clarita Org. for Planning & Env't v. Abercrombie*, 192 Cal. Rptr. 3d 469, 485 (Cal. Ct. App. 2015); *see also* Cal. Gov't Code § 81012(a).

In 1988, Proposition 73's principal reforms were incorporated into the PRA, including, as a new chapter 5, the ban on publicly financed campaigns. *See* Cal. Gov't Code § 85300. The initiative further stated that "[t]he provisions of section 81012 shall apply to the amendment of this chapter"—so the voters expressly approved the Legislature's authority to amend the new chapter 5 as long as the amendment was consistent with the purposes of the PRA.[2] As the Court of Appeal has recognized, section 85300 is not "an absolute, inflexible provision beyond the power of the Legislature to change," because "section 85300—like other provisions of the Act—may be amended by a bill concurred in by two-thirds of the membership of the Legislature and signed by the Governor." *Cal. Common Cause v. FPPC*, 269 Cal. Rptr. 873, 876 (Cal. Ct. App. 1990). In enacting Senate Bill 1107 pursuant to section 81012, that is precisely what the Legislature did.

A. Proposition 73 did not implicitly amend the Political Reform Act's general purposes to add a new, freestanding "purpose" of prohibiting public financing.

The findings and purposes of the PRA are separately and explicitly set forth in sections 81001 and 81002. Petitioners contend, however, that Proposition 73 "added a new purpose to the Act," namely, an independent purpose of "prohibiting the use of public moneys in political

---

[2] Petitioners attempt to argue that Propositions 208 and 34—because they formally repealed section 85103, the Proposition 73 provision that subjected it to section 81012's amendatory mechanisms—entirely removed Proposition 73 from the PRA's structure and placed it beyond the Legislature's reach. But section 81012 applies to the entire PRA, including the provisions added by Proposition 73. Petitioners' claims simply cannot be squared with the PRA's history or plain text—and indeed, if they were accepted, would cast doubt on countless legislative amendments validly enacted under section 81012. *See, e.g.*, *People v. Kelly*, 222 P.3d 186, 209 n.59, 47 Cal. 4th 1008, 1042 n.59 (Cal. 2010) (noting that "[t]he Legislature has amended the [PRA] over 200 times." (citation omitted)).

Courts have confirmed that section 85300 is subject to legislative amendment. *See, e.g.*, *Cal. Common Cause v. FPPC*, 269 Cal. Rptr. 873, 876 (Cal. Ct. App. 1990). By its plain language, all of the provisions of Proposition 73, including section 85300, were designed to be amended in the same way that the Act has always been amended: according to the procedures and purposes of the original Act.

campaigns." Pet. Br. 9. To support their claim, they construct a complicated legislative history that is at odds with the plain text of the PRA and contrary to the actual language and legislative history of Proposition 73.

Proposition 73 did not include any findings or purposes of its own, nor did it amend the findings and purposes already included in sections 81001 and 81002. *See* Voter Information Guide for 1988, Primary Elec., at 32, 63 (Proposition 73). That notably distinguishes it from another campaign finance initiative that appeared alongside it on the June 1988 primary ballot, Proposition 68, which *did* set forth its own findings and purposes. *See id.* at 13, 53 (Proposition 68, § 1). Thus, if Proposition 73 was intended to change or supplement the PRA's purposes, it could and should have done so directly. The initiative could have added to or revised the PRA's enumerated findings and purposes; it could have insulated section 85300 from legislative amendment entirely; and it could have specified that it could be amended only to further *Proposition 73's* purposes. But Proposition 73 did none of those things.[3]

Instead, Proposition 73 was deliberately incorporated into the PRA and expressly made subject to the PRA's existing amendatory process, which requires consistency with the *PRA*'s *purposes*. The stated findings and purposes in sections 81001 and 81002 thus remain the best starting point for the Court's inquiry under section 81012(a). Indeed, those are the sections to

---

[3] Notably, all of the cases cited in the petitioners' brief—and many other relevant precedents—involve voter initiatives that *did* specify particular findings, purposes, and/or amendment procedures. *See, e.g.*, *People v. Kelly*, 222 P. 3d at 188 n.2 (articulating "purposes" applicable to Health & Safety Code provisions adopted via Proposition 215); *Amwest Sur. Ins. Co. v. Wilson*, 906 P.2d 1112, 1120 & n.9, 11 Cal. 4th 1243, 1256 & n.9 (Cal. 1995) (citing Proposition 103 § 1 ("Findings and Declaration"), § 2 ("Purpose"), and § 8 (providing for initiative's liberal construction "to fully promote its underlying purposes" and permitting legislative amendments to further such purposes) (*see* Voter Information Guide for 1988, Gen. Elec., at 99, 144)); *Gardner v. Schwarzenegger*, 101 Cal. Rptr. 3d 229, 232 (Cal. Ct. App. 2009) (discussing Proposition 36, § 2 ("Findings and Declaration"), § 3 ("Purpose and Intent"), and § 9 ("Amendment") (*see* Voter Information Guide for 2000, Gen. Elec., at 66, 68)).

which the courts have looked in past efforts to discern the PRA's purposes. *Howard Jarvis Taxpayers Ass'n v. Bowen*, 120 Cal. Rptr. 3d 865, 868 (Cal. Ct. App. 2011) (noting that "purposes to be accomplished by the Political Reform Act are set forth in section 81002"); *id.* at 874 ("[T]he purposes of the Political Reform Act [], among other things, are to promote impartiality and eliminate conflicts of interest in the performance of governmental duties." (citing § 81001)); *Huening v. Eu*, 282 Cal. Rptr. 664, 667 (Cal. Ct. App. 1991) ("The general purposes sought to be accomplished by the Political Reform Act are found in Government Code section 81002."); *Santa Clarita*, 192 Cal. Rptr. 3d at 484 (citing § 81002 in reference to the PRA's purposes). Petitioners cite no case law to the contrary.

Moreover, petitioners' version of the PRA's legislative history is incomplete and incorrect. Most notably, they elide the fact that Proposition 73 was presented to the voters as a package of campaign finance reforms—most of which were subsequently struck down by a federal appeals court for unconstitutionally advantaging incumbents. Voters approved two reform initiatives amending the PRA in June 1988: Propositions 68 and 73. Both measures called on Californians to adopt, for the first time, limits on certain political contributions, but they were packaged as two opposed regulatory schemes and presented to the voters as "all-or-nothing alternatives." Because the two measures were deemed to conflict and Proposition 73 garnered more affirmative votes, its provisions prevailed. *Taxpayers To Limit Campaign Spending v. FPPC*, 799 P.2d 1220, 1236-37, 51 Cal. 3d 744, 770-71 (Cal. 1990). But both initiatives were "designed to regulate political campaign contributions and spending by adding a new chapter to an existing statutory scheme." *Yoshisato v. Superior Court*, 831 P.2d 327, 332, 2 Cal. 4th 978, 987 (Cal. 1992). Therefore, insofar as the legislative history of Proposition 73 is relevant here,

petitioners have not fairly described the campaign reform goals of "the initiative as a whole." *Gardner v. Schwarzenegger*, 101 Cal. Rptr. 3d 229, 235 (Cal. Ct. App. 2009).

Because the law's text, legislative history, and clearly stated purposes are devoid of any intent to change the operation of section 81012—particularly when the supposed new purpose would be in direct conflict with the PRA's core objectives, as both California's Legislature and its Supreme Court have recognized—the Court should resist petitioners' attempts to endow the Act with new and contradictory purposes. Courts "do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.'" *Horwich v. Superior Court*, 980 P.2d 927, 930, 21 Cal. 4th 272, 276 (Cal. 1999) (quoting *People v. Pieters*, 802 P.2d 420, 423, 52 Cal. 3d 894, 899 (Cal. 1997)). Here, the Legislature explicitly found that the "absolute prohibition on public campaign financing allows special interests to gain disproportionate influence and unfairly favors incumbents," Stats. 2016, ch. 837, § 1(m)—placing the ban squarely at odds with the "entire scheme" of the PRA and impairing the Act's effectiveness. Therefore, to "harmonize" the PRA with its overall purposes, the Legislature created a valid exception to section 85300 "to permit citizen-funded election programs so that elections may be conducted more fairly." *Id.*

B. Senate Bill 1107 furthers the purposes of the Political Reform Act.

Whether a legislative amendment furthers the PRA's purposes is "a question of law." *Gardner*, 101 Cal. Rptr. 3d at 235. When considering whether a particular legislative amendment furthers the purposes of an initiative, courts generally apply a "presumption that the Legislature acted within its authority." *Amwest Sur. Ins. Co. v. Wilson*, 906 P.2d 1112, 1120, 11 Cal. 4th 1243, 1256 (Cal. 1995); *see also Found. for Taxpayer & Consumer Rights v. Garamendi*, 34 Cal. Rptr. 3d 354, 361 (Cal. Ct. App. 2005). If, "by any reasonable construction, it can be said that the

statute furthers the purposes of [the PRA]," *Gardner*, 101 Cal. Rptr. at 235 (citing *Amwest*, 906 P.2d at 1120), it should be upheld as a valid exercise of the Legislature's authority under the Act. In making that determination, the Court should look to the PRA's "specific language" and its "major and fundamental purposes," *id.*, and should also credit the Legislature's findings "unless they are found to be unreasonable and arbitrary." *Consumers Union of U.S., Inc. v. Cal. Milk Producers Advisory Bd.*, 147 Cal. Rptr. 265, 274 (Cal. Ct. App. 1978) ("Legislative findings as to public purpose . . . are not binding on the courts, but are given great weight and will be upheld unless they are found to be unreasonable and arbitrary."); *see also Gardner*, 101 Cal. Rptr. 3d at 235-36 (noting that legislative findings are also "given great weight" in evaluating whether an enactment furthers an initiative's purpose (citation omitted)).

Senate Bill 1107 is an attempt by California lawmakers to advance the PRA's core purposes by permitting the enactment of public-financing programs for state and local election campaigns. By enabling localities to adopt public-financing systems, SB 1107 allows legislatures to pursue reforms that will make their elections more "fair, open, and competitive." Stats. 2016, ch. 837, § 1(b). As the Legislature recognized, citizen-funded election programs diminish the "disproportionate influence" of wealthy donors and special interests "over governmental decisions," *id.* § 1(c); foster responsiveness in elected officials and ensure that they are "serving the needs and responding to the wishes" of their constituents, *id.* § 1(d); and "encourage competition" in elections for public office, *id.* § 1(g).

Federal and state courts, along with a significant body of academic research, have overwhelmingly concluded that the availability of public financing for election campaigns promotes many of the specific goals that the PRA was designed to address, including in particular its express goals of (1) combatting political corruption by reducing candidates'

reliance on large contributions from "lobbyists and organizations who thereby gain disproportionate influence over governmental decisions," Cal. Gov't Code § 81001(c); (2) creating more responsive state and local governments that "serve the needs and respond to the wishes of all citizens equally, without regard to their wealth," *id.* § 81001(a); and (3) abolishing "[l]aws and practices unfairly favoring incumbents . . . in order that elections may be conducted more fairly," *id.* § 81002(e). SB 1107 advances all three of these goals.

1. Federal and California courts have recognized that public financing of election campaigns furthers the same vital interests that animate the Political Reform Act.

The compelling interests advanced by the adoption of effective public-financing systems are well established. When the U.S. Supreme Court upheld the presidential public-financing system in *Buckley*, it affirmed that public financing works generally "to reduce the deleterious influence of large contributions on our political process." 424 U.S. at 91; *see also* Stats. 2016, ch. 837, § 1(j)-(k).

Of paramount importance, public financing prevents the corruption often endemic to privately financed elections and diminishes candidates' reliance on large donations and special interest money: "It cannot be gainsaid that public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest." *Buckley*, 424 U.S. at 96 (internal citation omitted). The *Buckley* Court also noted that public financing "facilitat[es] and enlarg[es] public discussion and participation in the electoral process" and "reliev[es] major-party Presidential candidates from the rigors of soliciting private contributions." *Id.* at 93, 96. The Supreme Court had no trouble concluding that these interests were "sufficiently important" to support public financing. *Id.* at 95-96.

A few years later, a three-judge federal district court revisited *Buckley*, ultimately rejecting a claim that the presidential system violated the First Amendment rights of either candidates or their supporters by conditioning eligibility for public funds upon compliance with expenditure limits. *Republican Nat'l Comm. v. FEC*, 487 F. Supp. 280, 283-84 (S.D.N.Y.) ("*RNC*"), *aff'd*, 445 U.S. 955 (1980). The court further held that, even if the public-financing system *did* impose a burden on speech, any burden was outweighed by the countervailing benefits identified in *Buckley*—*i.e.*, "reduc[ing] the deleterious influence of large contributions," "facilitat[ing] communication" with voters, and "free[ing] candidates from the rigors of fundraising." *Id.* at 285 (quoting *Buckley*, 424 U.S. at 91). In particular, the three-judge court emphasized the program's powerful anticorruption effects: "If the candidate chooses to accept public financing he or she is beholden unto no person and, if elected, should feel no post-election obligation toward any contributor of the type that might have existed as a result of a privately financed campaign." *Id.* at 284. The Supreme Court summarily affirmed. 445 U.S. 955.

Both *Buckley* and *RNC* made clear that public-financing programs effectuate the "vital" governmental interests in combating actual and apparent corruption and "facilitat[ing] communication" between candidates and voters.[4] In the decades since *Buckley*, courts have continued to approve public financing as an effective method of campaign reform; and, in so holding, have reasoned that public-financing systems are justified by the same vital interests as those at the heart of the PRA.

---

[4] More recently, even as it deemed the First Amendment injury worked by certain "trigger" provisions contained in some programs too severe to pass constitutional muster, the Court reaffirmed its longstanding recognition that public financing generally serves valuable interests. *Ariz. Free Enterprise Club's Freedom PAC v. Bennett*, 564 U.S. 721, 752 (2011) ("We have said that a voluntary system of 'public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest.'" (quoting *Buckley*, 424 U.S. at 96)).

For example, numerous courts have accepted that public financing lessens the influence and importance of large contributions, particularly those from lobbyists and special interests. *See, e.g.*, *Green Party of Conn. v. Garfield*, 616 F. 3d 213, 230 (2d Cir. 2011) (finding Connecticut program worked to "eliminate improper influence on elected officials"); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1553 (8th Cir. 1996) (recognizing public financing promotes "compelling interests" in reducing "possibility for corruption that may arise from large campaign contributions" and diminishing "the time candidates spend raising campaign contributions, thereby increasing the time available for discussion of the issues and campaigning"); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 39 (1st Cir. 1993) (validating state's interest in public financing "because such programs . . . tend to combat corruption"). These lower courts have also found that public financing encourages engagement between candidates and voters,[5] and both increases electoral competitiveness and reduces the advantages of incumbency.[6]

For example, the Second Circuit upheld provisions of New York City's public-financing regime, which imposed special restrictions on contributions from individuals having specified

---

[5] *E.g.*, *DiStefano*, 4 F.3d at 39 ("When . . . the legislature has adopted a public funding alternative, the state possesses a valid interest in having candidates accept public financing because such programs 'facilitate communication by candidates with the electorate'") (quoting *Buckley*, 424 U.S. at 91)); *Corren v. Sorrell*, 167 F. Supp. 3d 647, 659 (D. Vt. 2016) ("Vermont's public financing system allows candidates to communicate freely with, and receive meaningful assistance from, their supporters."), *appeal docketed sub. nom. Corren v. Donovan*, No. 17-1343 (2d Cir. Apr. 28, 2017).

[6] *E.g.*, *Ognibene v. Parkes*, 671 F.3d 174, 193 (2d Cir. 2011) (explaining that New York City's public funding-program "encourages small, individual contributions, and . . . discourag[es] the entrenchment of incumbent candidates"); *Green Party*, 616 F. 3d at 237 (acknowledging that "minor-party candidates as a whole, many of them running in safe districts, appear to have done better" following state's enactment of public financing); *Rosenstiel*, 101 F.3d at 1557 ("If the incumbent enrolls in the State's public financing plan, then he is bound by the State's expenditure limits and his alleged advantage in fundraising capacity is diminished significantly.").

"business dealings"[7] with the city. *Ognibene v. Parkes*, 671 F. 3d 174 (2d Cir. 2011). The city's program, which is still in effect, matches eligible contributions from city residents to participating candidates at a 6-to-1 rate up to $175,[8] but it excludes contributions from individuals doing business with the city, including lobbyists, from eligibility for a match. *Id.* at 179-81. The court—noting that the City's matching system both "encourages small, individual contributions, and is consistent with [an] interest in discouraging entrenchment of incumbent candidates," *id.* at 193—upheld the restrictions, recognizing that the restrictions were intended "to avoid stacking the deck in favor of incumbents." *Id.* at 192.

The California Supreme Court has also suggested that public-financing programs would further the PRA's central objectives. In *Johnson v. Bradley*, the court rebuffed the contention that the ban enacted by Proposition 73 was "reasonably related" to the state's interest in "enhancing the integrity of the electoral process." 841 P.3d at 1003. The court found that, to the contrary, "a ban on public funding would actually frustrate achievement of that goal." *Id.* at 1004. It proceeded to explain at length how public financing would further the PRA's key purposes:

> [I]t seems obvious that public money reduces rather than increases the fundraising pressures on public office seekers and thereby reduces the undue influence of special interest groups . . . . [Moreover], the goals of campaign reform and reduction of election costs, including the reduction of the influence of special interest groups and large contributors, is in no way embarrassed by public financing. To the contrary, those goals can only be furthered.

---

[7] Covered "business dealings" include, among other things, certain public contracts, licenses, applications for preferential tax treatment, and lobbying activities. *Ognibene*, 671 F.3d at 174; *see also* N.Y.C. Admin. Code § 3-702(18).

[8] For example, the city would match a $175 contribution from a "natural person resident" to a participating candidate with $1,050 in public funds (6 x $175=$1,050). Thus, the total value of the resident's contribution would increase to $1,225 after the match ($175 + $1,050). N.Y.C. Admin. Code § 3-703(3); *How it works*, N.Y.C. Campaign Finance Bd., https://www.nyccfb.info/program/how-it-works (last visited June 23, 2017).

Id. (second alteration in original) (citation omitted).

2. There is a substantial body of research demonstrating that the salutary effects of public financing are consistent with core purposes of the Political Reform Act.

Current empirical and academic research on existing public-financing systems further demonstrates that these programs advance the purposes of the PRA. Different analyses have concluded that public funding of campaigns lessen the potential for political corruption by decreasing candidates' dependence on large private contributions, Cal. Gov't Code § 81001(b)-(c); encourage political engagement among a broader class of citizens and thereby promote greater responsiveness from candidates, *id.* § 81001(a); and improve measures of electoral competitiveness and thereby reduce the advantages of incumbency, *id.* § 81002(e).

A defining feature of many public finance programs is candidates' voluntary acceptance of lower contribution limits and expenditure caps in exchange for a jurisdiction's provision of public funds. *See* Michael J. Malbin, Campaign Finance Inst., *Citizen Funding for Elections* 5, Table 1 (2015), http://www.cfinst.org/pdf/books-reports/CFI_CitizenFundingforElections.pdf. By design, these controls decrease the need for candidates to solicit large contributions and thereby lessen the risk of political corruption. Data from jurisdictions with public financing structures illustrates this effect.

Following Connecticut's introduction of full public financing for statewide election campaigns in 2010, the prominence of small contributions in these races increased dramatically. In 2006, prior to the enactment of public financing, successful candidates for statewide office in Connecticut raised about eight percent of their total campaign funds in contributions from individuals ranging between $5 and $100. Conn. State Elections Enforcement Comm'n ("SEEC"), *Citizens' Election Program 2010: A Novel System with Extraordinary Results* 8-12 (2011),

http://www.ct.gov/seec/lib/seec/publications/2010_citizens_election_program_report_final.pdf. When public financing was introduced for statewide races in 2010, every successful candidate opted to participate in the program. *Id.* at 8. In accordance with the program's strictures, these candidates raised a full 100% of their campaign contributions from individuals in amounts between $5 and $100. *Id.* Individual donors also played a greater role in Connecticut's legislative races following the introduction of public financing. In 2010, individuals provided 97% of all contributions received by candidates for the state legislature. *Id.* at 4-5. By comparison, individuals were the source of 49% of contributions received by legislative candidates during the 2006 elections. *Id.*

Similarly, an examination of New York City's public-financing program found that the city's implementation of multiple-matching funds in 2001 resulted in a significant increase both in the number of small contributors, measured as donors of $250 or less, and in the proportional importance of small contributors to competitive candidates for City Council participating in the program. Michael J. Malbin *et al.*, *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11 Election L. J. 3, 9-10 (2012), http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf. These effects were consistent across challengers, incumbents, and open-seat candidates. *Id.*

Beyond reducing candidates' reliance on large contributions, research also indicates that public financing fosters engagement between candidates and a broader cross-section of voters. A study focusing on New York City's matching funds program found that 92% of the city's census block groups had at least one contributor of $250 or less to a city candidate in the 2009 municipal elections. Malbin, *Small Donors*, *supra*, at 12-13. Moreover, census-block groups with

at least one small donor were statistically less affluent and more racially diverse than census-block groups with at least one large donor (those who gave $1,000 or more), suggesting that the city's program spurred candidates to interact with a broader swath of the city populace. *Id.* at 13.

A separate analysis of New York City's matching-funds system by the New York City Campaign Finance Board revealed that more than half of the people who made a contribution during the 2013 city elections were first-time contributors. N.Y.C. Campaign Finance Bd., *By the People: The New York City Campaign Finance Program in the 2013 Elections* 41 (2014), http://www.nyccfb.info/PDF/per/2013_PER/2013_PER.pdf. And 76% of these first-time donors made a small contribution of $175 or less. *Id.* These figures buttress the proposition that public financing brings new and diverse voices into the political process.

In addition, public financing frees candidates to engage in meaningful voter outreach and to focus their campaigning on substantive issues, and it allows incumbents to focus on advancing their constituents' interests through legislative and executive action instead of soliciting money for re-election. A 2008 survey of state legislative candidates found that candidates accepting full public funding devoted significantly more time to non-fundraising interaction with the public, such as canvassing and public speaking, than did candidates who declined to participate in public financing. Michael G. Miller, *Subsidizing Democracy: How Public Funding Changes Elections and How It Can Work in the Future* 56-62 (2013). In the aggregate, a statistical review of the survey results determined that legislative candidates accepting full public funding spent about 11.5% more time per week on direct voter outreach than privately financed candidates. *Id.*

Finally, analysis of elections in jurisdictions with public financing show these systems increase some measures of electoral competiveness and may weaken incumbents' advantage

over challengers. [9] After taking effect in 2000, the Maine Clean Elections Act immediately increased the number of candidates and decreased the margin of victory in state senate elections in 2000 and 2002—compared to 1994 through 1998—in districts where a candidate accepted public funding. Neil Malhotra, *The Impact of Public Financing of Electoral Competition: Evidence from Arizona and Maine*, 8 State Pol. & Pol'y Q. 263, 275-77 (2008), https://web.stanford.edu/~neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf. A separate study of Maine following its adoption of public financing concluded that, through 2004, "electoral competitiveness" had improved, as measured by percentage of incumbents facing major-party opposition, percentage of incumbents winning with less than 60% of the vote, and incumbent re-election rate. Kenneth R. Mayer, Timothy Werner & Amanda Williams, *Do Public Funding Programs Enhance Electoral Competition?, in The Marketplace of Democracy: Electoral Competition & American Politics* 245, 247-49 (Michael P. McDonald & John Samples, eds., 2006).[10]

Connecticut reported a comparable uptick in electoral competition following the introduction of public funding for legislative elections in 2008. According to data compiled by the State Elections Enforcement Commission, the number of unopposed legislative races dropped considerably after the program's rollout, from 53 unopposed elections in 2008 to 32 in 2010. SEEC, *Citizens' Election Program 2010*, *supra*, at 6. This jump in contested elections was

---

[9] Studies have demonstrated that PACs and access-motivated interest groups, such as highly regulated industries, are more likely to make contributions to incumbent candidates than challengers. *See* Alexander Fouirnaies & Andrew B. Hall, *The Financial Incumbency Advantage: Causes & Consequences*, 76 J. Pol. 711 (2014); Michael Barber, *Donation Motivations: Testing Theories of Access & Ideology*, 69 Pol. Res. Q. 148 (2016).

[10] This article is available via SelectedWorks at https://works.bepress.com/mayer/15.

consistent with an overall increase in the number of legislative candidates in 2010, many of whom cited the availability of public funds as a factor in their decision to seek office. *Id.* at 6-7. Moreover, the availability of public funds for legislative candidates in 2008 and 2010 correlated with a general decline in candidates' margins of victory in "competitive" races. *Id.* at 7-8.

Broader studies similarly show increased competitiveness in states with public financing. In 2016, the National Institute for Money in State Politics issued a report on monetary competitiveness in state legislative races in 2013 and 2014. Zac Holden, *2013 and 2014: Monetary Competitiveness in State Legislative Races*, Nat'l Inst. for Money in State Politics (Mar. 9, 2016), https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races. Under the report's methodology, a legislative race was considered monetarily competitive if the race's top fundraiser raised no more than twice the amount of the next-highest fundraiser. *Id.* Analyzing campaign data from 47 states, the report found that only 18% of legislative races nationally were monetarily competitive during the 2013 and 2014 elections. *Id.* However, the percentage of monetarily competitive elections was considerably higher in the five states offering public financing for legislative candidates: an average of 41% of legislative races in states with public financing programs (Table 2) were monetarily competitive in 2014. *Id.* Moreover, three of the five *most* monetarily competitive states had public financing systems for legislative candidates, while none of the five *least* monetarily competitive states offered public funds. *Id.* The report also concluded that public financing increased the number of contested legislative races. In states with public financing for legislative elections, 87% of legislative seats were contested. By comparison, only 61% of legislative seats were contested in states lacking public financing programs. *Id.*

As the studies of jurisdictions such as Maine, Connecticut, and New York City demonstrate, provision of public financing serves the PRA's important goals of reducing candidates' reliance on corrupting large contributions, encouraging officeholder responsiveness, and reducing the unfair advantages of incumbency.

CONCLUSION

For these reasons, the petition for writ of mandate should be denied.

Respectfully submitted,

Bradley S. Phillips (Cal. Bar No. 85263)
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, California 90071
Brad.Phillips@mto.com

Megan P. McAllen (Cal. Bar No. 281830)
CAMPAIGN LEGAL CENTER
1411 K Street N.W., Suite 1400
Washington, DC 20005
(202) 736-2200

Attorneys for *Amici Curiae*

Dated: June 28, 2017

DECLARATION OF SERVICE

I, Mary L. Pantoja, declare as follows:

I am a resident of the State of California, over the age of 18 years and not a party to the within action. My business address is Munger, Tolles & Olson LLP, 350 South Grand Avenue, Fiftieth Floor, Los Angeles, California, 90071.

The parties have agreed to electronic service of documents in this matter.

On June 28, 2017 true copies of **Unopposed Application of California Common Cause *et al.* for Leave to File an *Amici Curiae* Brief in Support of Respondents and in Opposition to Petition for Peremptory Writ of Mandate** and **[Proposed] Memorandum Of Points And Authorities Of *Amici Curiae*** were sent via email (pursuant to the parties' agreement for electronic service) to:

Emmanuelle Soichet
Deputy Attorney General
Emmanuelle.Soichet@doj.ca.gov
Janet.Wong@doj.ca.gov

Anthony T. Caso
Center for Constitutional Jurisprudence
tom@caso-law.com

Charles H. Bell, Jr.
Bell, McAndrews & Hiltachk, LLP
cbell@bmhlaw.com

Allen Dickerson
Center for Competitive Politics
adickerson@campaignfreedom.org

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 28th day of June, 2017, at Los Angeles, California.

Mary L. Pantoja