IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

HOWARD JARVIS TAXPAYERS ASSOCIATION, a California nonprofit public benefit corporation, and QUENTIN L. KOPP, a California Taxpayer, Plaintiffs and Respondents, v. **EDMUND G. BROWN, JR., Governor of the State of California, and FAIR POLITICAL PRACTICES COMMISSION, an agency of the State of California,** Defendants and Appellants.	Case No. C086334

Sacramento County Superior Court, Case No. 34-2016-80002512-CU-WM-GDS
The Honorable Timothy M. Frawley, Judge

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED BRIEF OF CALIFORNIA COMMON CAUSE, LEAGUE OF WOMEN VOTERS OF CALIFORNIA, AND CALIFORNIA CLEAN MONEY CAMPAIGN IN SUPPORT OF APPELLANTS

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL THIRD **APPELLATE DISTRICT, DIVISION**	COURT OF APPEAL CASE NUMBER: C086334
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 281830 NAME: MEGAN P. MCALLEN FIRM NAME: CAMPAIGN LEGAL CENTER STREET ADDRESS: 1411 K STREET N.W., SUITE 1400 CITY: WASHINGTON STATE: DC ZIP CODE: 20005 TELEPHONE NO.: (202) 736-2200 FAX NO.: E-MAIL ADDRESS: MMCALLEN@CAMPAIGNLEGALCENTER.ORG ATTORNEY FOR (*name*): *AMICI CURIAE* CALIFORNIA COMMON CAUSE ET AL.	SUPERIOR COURT CASE NUMBER: 34-2016-80002512-CU-WM-GDS
APPELLANT/ PETITIONER: GOVERNOR EDMUND G. BROWN, JR. & FAIR POLITICAL PRACTICES COMMISSION RESPONDENT/ REAL PARTY IN INTEREST: HOWARD JARVIS TAXPAYERS ASS'N & QUENTIN KOPP	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS *(Check one):* [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party *(name*): California Common Cause, League of Women Voters of California, and California Clean Money Campaign (Amici Curiae)

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: March 14, 2019

Megan P. McAllen
(TYPE OR PRINT NAME)

/s/ Megan P. McAllen
(SIGNATURE OF APPELLANT OR ATTORNEY)

APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF APPELLANTS

To the Honorable Vance W. Raye, Presiding Justice of the California Court of Appeal, Third Appellate District:

Pursuant to Rule 8.200(c) of the California Rules of Court, California Common Cause, the League of Women Voters of California, and the California Clean Money Campaign respectfully request leave to file the accompanying brief as *amici curiae* in support of Appellants. All parties have consented to the groups' participation as *amici curiae*.[1]

Amici believe their attached brief will assist the Court in its consideration of the issues presented in this case—specifically, whether Senate Bill 1107 (SB 1107) lawfully amended the Political Reform Act (PRA or Act). As *amici* explain in the attached brief, SB 1107 is entirely consistent with state and federal case law. Indeed, U.S. Supreme Court and California Supreme Court precedent, as well as prevailing academic research, recognize that public financing furthers the very ends that are the purposes of the PRA, including preventing political corruption, fostering elected officeholders' responsiveness to constituents, and reducing the unfair advantages of incumbency.

STATEMENT OF INTEREST

Amici have a longstanding interest in promoting effective campaign finance laws and well-designed public financing programs for state and local political campaigns.

California Common Cause (CCC) is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. CCC works to create open, honest, and accountable government that serves

[1] Pursuant to California Rule of Court 8.200(c)(3), proposed *amici* attest that no party's counsel or other person or entity authored this brief, in whole or in part, or contributed money to fund its preparation or submission.

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. CCC was a sponsor and strong supporter of SB 1107.

The League of Women Voters of California (LWVC) is a nonpartisan, nonprofit organization with the mission of encouraging informed and active participation in government, increasing understanding of major public policy issues, and influencing public policy through education and advocacy. LWVC believes that campaign financing should enable candidates to compete equitably for public office and ensure candidates have sufficient funds to communicate their messages to the public. LWVC and individual LWVC members strongly supported SB 1107.

The California Clean Money Campaign (CCMC) is a nonpartisan, nonprofit organization with the mission of building statewide support for the public funding of election campaigns and promoting open and accountable government responsive to the needs of all Californians. CCMC was a sponsor and strong supporter of SB 1107.

Amici urge reversal of the trial court's decision below, which upends voters' clear expression of intent—laid out in the PRA's explicit findings and purposes provisions—by implying previously unrecognized and unarticulated purposes into the statute. As *amici* explain in their brief, the superior court's novel construction of the Act would vitiate the Legislature's ability to amend it and undermine the democratic purposes of the law as a whole.

Dated: March 14, 2019

Respectfully submitted,

/s/ Megan P. McAllen

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INTRODUCTION

In the wake of Watergate, California voters enacted watershed reforms to combat political corruption and address the undue influence of moneyed interests in politics. These reforms, packaged as the Political Reform Act of 1974 (PRA or Act), sought to achieve certain enumerated good-government purposes, including: reducing large donors' "disproportionate influence over governmental decisions"; ensuring that elected officials "serve the needs and respond to the wishes of all citizens equally, without regard to their wealth"; and eliminating "[l]aws and practices unfairly favoring incumbents" to ensure more competitive elections. (Gov. Code, §§ 81001, 81002; Clerk's Transcript (CT) 98-117.[2])

Legislative amendments to the Act must further these purposes. Specifically, the Act allows legislative amendments that "further [the Act's] purposes," are approved by two-thirds of the Legislature, and meet certain publication and timing requirements. (§ 81012.) Voter-enacted amendments need not satisfy these requirements, but every PRA amendment approved by the voters since 1974 has either expressly listed new findings and purposes or incorporated those already articulated in the statute.

Proposition 73 fell into the latter camp. Approved in 1988, Proposition 73 instituted new campaign contribution limits, banned certain publicly funded mass mailings, and restricted the public financing of political campaigns. Although the referendum expressly amended various provisions of the Act, it did not touch the provisions setting forth the Act's official purposes. (CT 131-135.) And because the Act's purposes have the substantial legal effect of precluding future legislative amendments to the contrary, no court has ever presumed these purposes to have been impliedly amended.

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[2] All further statutory references are to the Government Code, unless otherwise indicated.

Thus, the trial court erred in presuming that Proposition 73 amended the Act's explicit purposes to add a new, implicit purpose of "prohibit[ing] the use of public moneys in political campaigns." (CT 498.) Nothing in the text, structure, or history of Proposition 73 indicates that voters sought to erect a permanent public financing ban on its own. Nor does the case law support construing Proposition 73 to have amended the purposes enumerated in sections 81001 and 81002 and thereby imposed a new limit on future legislative amendments.

On the contrary, voters explicitly authorized legislative amendments to the Act to further its purposes—not only in 1974, when they first adopted section 81012, but also in 1988, when they ensured that Proposition 73 would remain subject to the existing amendment process. (CT 132 [former § 85103].) The state legislature acted under this authority when it passed Senate Bill 1107 (SB 1107) in 2016. (CT 169-172 [Stats. 2016, ch. 837]; *Santa Clarita Org. for Planning & the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 320-321 (*Santa Clarita*).) SB 1107 establishes a tailored exception to the Act's public financing prohibition, empowering state and local governments to establish public financing programs if they meet certain specified criteria. (CT 171.) In so doing, SB 1107 clearly advances the Act's purposes.

Federal and state courts have long recognized that public financing enhances the integrity of the electoral process by reducing candidates' reliance on large contributions and encouraging officeholder responsiveness. In 1976, the U.S. Supreme Court ruled that public financing programs "eliminat[e] the improper influence of large private contributions" and "enlarge public discussion and participation in the electoral process." (*Buckley v. Valeo* (1976) 424 U.S. 1, 92-93, 96 (per curiam) (*Buckley*).) Similarly, the California Supreme Court has recognized that public financing

advances the very goals identified in the Act as its "purposes." (*Johnson v. Bradley* (1992) 4 Cal.4th 389, 410-411 (*Johnson*).)

Substantial empirical evidence and academic research confirms that public financing enhances electoral competition, limits the corrupting influence of special interests, and reduces the financial advantages of incumbency. Respondents, for their part, appear to agree, as they do not contest that SB 1107 furthers the Act's express purposes. The trial court sidestepped this question altogether by redefining the statutory purposes to which SB 1107 must conform. Its decision, however, rested on a clear misreading of the Act and relevant case law, and should be reversed.

ARGUMENT

I. The PRA Operates in an Area of Special Significance That Sets It Apart from Other Laws and Underscores Its Need for Regular Revision.

Since voters overwhelmingly approved the PRA in 1974, California's signature campaign finance statute has continually evolved to keep pace with the dynamic political world it regulates. During this time, the Act has also weathered numerous court challenges, legislative amendments, and voter-enacted reforms. These changes have dramatically altered the PRA in substance and in scope, producing the distinctive legal regime within which SB 1107 must be measured.

By permitting these changes, the Act's amendment provision reflects the need for campaign finance law to adapt to rapidly evolving political practices. The trial court, however, disregarded this context when it compared the PRA to other statutes. A more careful analysis illustrates that SB 1107 is consistent with not only the PRA's specific amendment requirements but its purposes and history as well.

A. The history and subject matter of the PRA distinguish it from other laws.

Voters first enacted the PRA to increase the transparency of campaign spending, reduce the potential for corruption or its appearance, and ensure fairer elections.[3] To these ends, the initiative created the Fair Political Practices Commission (FPPC) and established disclosure requirements for elected officials and candidates, among other reforms. (CT 98-117; §§ 81001, 81002.)

As its drafters recognized from the very beginning, the Act would become outdated and ineffective if it failed to keep pace with changing political practices. Candidates and elected officials would quickly find ways to circumvent the statute's requirements unless it were regularly reviewed and revised. Therefore, the Act included a provision allowing the Legislature to amend the law provided each amendment "further[ed] [the statute's] purposes," was approved by two-thirds of each house of the Legislature, and was published in final form at least 40 days (now 12 days) before the houses voted on it. (§ 81012; *see also* Ctr. for Governmental Studies, Democracy by Initiative: Shaping California's Fourth Branch of Government (2d ed. 2008) p. 114 (Democracy by Initiative).)

The amendment provision proved prescient. Since 1974, the Legislature has amended the Act more than 200 times without significant objection by the public or the FPPC. (*People v. Kelly* (2010) 47 Cal.4th 1008, 1042 n.59; Democracy by Initiative, *supra*, at pp. 10, 115.) Among other things, the amendments have created revolving-door restrictions, limited the personal use of campaign funds, and expanded campaign finance law

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[3] *See* Wright, *Supporters of Political Reform on Coast Will Spread Cause*, N.Y. Times (June 10, 1974) <https://www.nytimes.com/1974/06/10/archives/supporters-of-political-reform-on-coast-will-spread-cause-limits-on.html>.

enforcement. (Democracy by Initiative, *supra*, at pp. 117-118.) Voters have also approved four sets of PRA reforms—Propositions 68 (1988), 73 (1988), 208 (1996), and 34 (2000) (CT 120-167, 490)—though court decisions have invalidated parts of these initiatives. (*See, e.g.*, *FPPC v. Superior Court* (1979) 25 Cal.3d 33, 49-50; *Hardie v. Eu* (1976) 18 Cal.3d 371, 378, 380 (*Hardie*); *Citizens for Jobs & Energy v. FPPC* (1976) 16 Cal.3d 671, 675.). This patchwork of amendments, initiatives, and rulings has yielded the distinct statutory scheme in effect today.

B. The Act's provision for legislative amendment is a necessary feature of campaign finance law.

The Act's complex history is characteristic of campaign finance law, which must be able to adapt to changing political practices and legal developments to remain effective. Most obviously, existing laws need to accommodate and evolve alongside changes in fundraising norms, spending patterns, advertising strategies, and campaign practices. For example, the rapid growth of online political advertising recently prompted the Legislature to amend the Act's disclosure requirements and impose new recordkeeping obligations on digital advertisers. (Stats. 2018, ch. 754.) In fact, many jurisdictions have institutionalized periodic review of their campaign finance laws, recognizing the need to keep these laws current. New York City directs its campaign finance agency to evaluate the effectiveness of the city's campaign finance laws in a quadrennial review, which culminates in a public report and recommendations. (N.Y.C. Admin. Code, § 3-713.) In the same spirit, several California cities require the regular review and revision of their campaign contribution limits and laws. (*E.g.*, Sac. City Code, §§ 2.13.120, 2.14.320; L.A. Mun. Code, § 49.7.3.)

Jurisprudential developments have also demanded new approaches to regulating money in politics. Just two years after the PRA was enacted, the U.S. Supreme Court struck down federal campaign spending limits in

Buckley, *supra*. (424 U.S. at pp. 54-58, 143-144.) Following *Buckley*, California courts invalidated several of the PRA's campaign spending limits. (*See*, *e.g.*, *Citizens for Jobs & Energy v. FPPC*, *supra*, 16 Cal.3d at p. 675; *Hardie*, *supra*, 18 Cal.3d at pp. 378, 380.) Separate rulings invalidated the Act's campaign contribution limits, enacted in Proposition 73. (*Service Employees Int'l Union v. FPPC* (9th Cir. 1992) 955 F.2d 1312, 1320-1321 (*SEIU*).) In response, voters enacted new, less restrictive contribution limits, most recently in Proposition 34. (CT 150-167.) After the invalidation of spending and contribution limits, local governments stepped in as well. For instance, with the California Supreme Court's blessing, Los Angeles established a novel public financing program to alleviate candidates' dependence on wealthy donors. (*Johnson*, *supra*, 4 Cal.4th at pp. 410-411.) These innovations found new ways to achieve the Act's purposes after earlier methods were taken off the table.

Voters expressly chose to allow legislative amendment of the statute, recognizing that it would need to be revisited and revised over time to achieve its purposes. (*Cal. Common Cause v. FPPC* (1990) 221 Cal.App.3d 647, 652 (*Common Cause*).) In construing the PRA, the Court should strive to give effect to this choice. (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1252 (*Amwest*) ["The determination of whether a particular program serves a public purpose is generally vested in the Legislature. . . . In considering the constitutionality of a legislative act we presume its validity, resolving all doubts in favor of the Act." (citations omitted)]; *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814-815 ["'[A]ll presumptions and intendments favor the validity of a statute and mere doubt does not afford sufficient reason for a judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.' [Citations.] If the validity of the measure is 'fairly debatable,' it must be sustained."].)

Respondents, however, ask the Court to construe each initiative-passed amendment to the original Act as establishing a new and binding "purpose" that would preclude the Legislature from later adopting an alternative course of action—without regard to whether the voters so intended, and notwithstanding the purposes expressly provided in section 81002. On this logic, each voter-passed measure would narrow the permissible scope of future amendment, eventually making it impossible to change the Act at all. This would cripple California campaign finance law. Even more troublingly, Respondents' claim casts doubt on the validity of legislative amendments that have long been in place.[4] The Court should decline to freeze the PRA in perpetual stasis.

II. Proposition 73 Did Not Implicitly Amend the PRA's Purposes to Add a New, Freestanding "Purpose" of Prohibiting Public Financing.

The trial court's principal error lay in concluding that Proposition 73 amended the express findings and purposes set forth in sections 81001 and 81002 of the Act.[5] The Act's purposes are specific policy goals that voters have identified as sufficiently important that the Legislature may not deviate from them. (§ 81012.) But each important statutory provision in the PRA does not constitute its own separate "purpose." If it did, any provision—including those in the original 1974 PRA—could be proclaimed a "purpose"

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[4] Respondents' argument, if extended to other statutes containing similar provisions for legislative amendment, would be widely disruptive. (*See* Democracy by Initiative, *supra*, at p. 118 ["The vast majority of initiatives since 1976 (53 out of 65) that authorized legislative amendments required that such amendments 'further the purposes' of the measure."].)

[5] Proposition 73's reforms were incorporated into the Act and thus subject to the Act's amendment procedure—with or without the measure's explicit affirmation to that effect, in then-section 85103. (CT 132.) That section 85103 was later repealed does not remove section 85300 from the Act or place it beyond the Legislature's reach, as Respondents assert. (Opp., at pp. 27-31.)

of the law that would preclude amendments to the contrary. Practically speaking, there are no bounds to this kind of reasoning: it has no basis in the law, and construing the statute in this manner would cast doubt on the validity of countless well-established amendments to the Act, not just SB 1107. Understood in its specific statutory context, Proposition 73 left the Act's purposes unchanged.

A. Nothing in the text, structure, or history of Proposition 73 reflects an intent to amend the Act's purposes to further limit legislative amendment.

Contrary to Respondents' assertions, Proposition 73 contains no indication that it instituted an immutable ban on public financing. Rather, the initiative's text, structure, and history suggest that voters sought to enact an interlocking set of reforms to reduce overall campaign spending. The ban on public financing codified at section 85300 was only one means toward that end. And, in any case, there is no evidence that voters intended to amend the Act's enumerated purposes and impose a new restriction on future legislative amendments.

Most importantly, the text of Proposition 73 left the Act's express findings and purposes untouched. (*See Howard Jarvis Taxpayers Ass'n v. Bowen* (2011) 192 Cal.App.4th 110, 114 (*Bowen*).) The findings and purposes articulated in sections 81001 and 81002 apply to the entire Act, and have since the amendment provision was first adopted in 1974. Every subsequent voter-approved initiative amending the Act has included its own findings and purposes sections that resemble sections 81001 and 81002—except for Proposition 73. (*See* CT 121, 124 [Prop. 68, art. 1 (1988)]; CT 132, 135 [Prop. 73 (1988)]; CT 142-143 [Prop. 208, art. 1 (1996)]; CT 157 [Prop. 34, § 1 (2000)].) Absent a provision expressly amending the Act's

existing findings and purposes, Proposition 73 is presumed to have incorporated them.[6]

The structure of the "initiative as a whole" suggests that Proposition 73 did not amend the Act to institute a public financing ban as an independent purpose. (*Gardner v. Schwarzenegger* (2009) 178 Cal.App.4th 1366, 1374 (*Gardner*).) The ban was not implemented in isolation. It was accompanied by new limits on campaign contributions, a restriction on publicly funded mass mailings, and other amendments. There is no evidence that voters intended to single out any individual element of this reform package as a freestanding "purpose" of the law that would restrict future legislative amendments. Rather, these different parts of Proposition 73 were intended to work together, and if voters had any overarching goal in mind, it was likely to reduce overall campaign spending. (*Gerken v. FPPC* (1993) 6 Cal.4th 707, 730-732 (*Gerken*) ["Checking the flow of campaign funds was *the* central purpose of the measure, the core rationale animating a majority of voter support in the June 1988 Primary Election. . . . [I]t is clear from the very title

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[6] All of the cases cited by the court below (CT 495-499) involved voter initiatives that specified particular findings, purposes, and/or amendment procedures. (*E.g.*, *Gardner v. Schwarzenegger* (2009) 178 Cal.App.4th 1366, 1370 [discussing Prop. 36 (2000) sections 2, 3, and 9 ("Findings and Declaration"; "Purpose and Intent"; and "Amendment") (*see* Ballot Pamp., Gen. Elec. (Nov. 7, 2000), at pp. 66, 68)]; *Amwest*, *supra*, 11 Cal.4th at 1256 & n.9 [citing Prop. 103 (1988), sections 1 and 2 of which enumerated its "Findings" and "Purpose," respectively, and section 8 provided for the initiative's liberal construction "to fully promote its underlying purposes") (*see* Ballot Pamp., Gen. Elec. (Nov. 8, 1988), at pp. 99, 144)]; *Consulting Engineers & Land Surveyors of Cal., Inc. v. Prof. Engineers in Cal. Gov.* (2007) 42 Cal.4th 578, 581 [citing Prop. 35 (2000), section 2 of which enumerated its "Purpose and Intent") (*see* Ballot Pamp., Gen. Elec. (Nov. 7, 2000), at p. 65)]; *see also Bowen*, *supra*, 192 Cal.App.4th at pp. 125-126 [discussing the PRA's purposes by pointing to sections 81001 and 81002]; *Shaw v. People ex. rel. Chiang* (2009) 175 Cal.App.4th 577, 601 [discussing Prop. 116 (1990), § 1, wherein voters clearly "expressed their intent" and listed the initiative's findings].)

of Proposition 73 that the ban on public financing was indissolubly linked to limits on campaign contributions."] (dis. opn. of Arabian, J.).) At a minimum, there was no indication that voters intended to amend the Act's purposes to enact an irreversible ban on public financing.

Proposition 73's history casts further doubt on Respondents' claim. It appeared on the 1988 primary ballot alongside a competing initiative, Proposition 68. Both were presented to voters as package deals: Proposition 73 proposed campaign contribution limits accompanied by prohibitions on public financing and state-funded mass mailers, while Proposition 68 offered contribution limits for state legislative candidates paired with public funding for candidates who complied with spending limits. Each initiative proposed a "comprehensive regulatory scheme" as an "all-or-nothing alternative" to the other. (*Taxpayers to Limit Campaign Spending v. FPPC* (1990) 51 Cal.3d 744, 770 (*Taxpayers*).) The ballot arguments underscored that both initiatives were aimed at addressing "share[d]" concerns about "skyrocketing campaign spending" and "outrage over the influence of special interest money." (CT 120-123 [Prop. 68]; *see also* CT 131-134 [Prop. 73].)

Both Propositions 73 and 68 sought to enact comprehensive campaign finance reform; both imposed new campaign contribution limits; and both were passed by a majority of voters in the 1988 primary. Labeling the ban a clear "purpose" of the Act would require turning a blind eye to this history and ignoring the fact that a majority of voters simultaneously embraced public financing (in Proposition 68) and restricted it (in Proposition 73).

It was only after several years of litigation and a ruling from the California Supreme Court that Proposition 73 prevailed. (*Taxpayers*, *supra*, 51 Cal.3d at p. 771.) Even then, the legal battles continued, and Proposition

73's contribution limits were eventually struck down in federal court.[7] (*SEIU*, *supra*, 955 F.2d at pp. 1320-1321.) Though the public funding ban remained, the Supreme Court noted that the ban, standing alone, was inconsistent with the Act's purposes. (*Johnson*, *supra*, 4 Cal.4th at pp. 410-411.) Other provisions of Proposition 73 were repealed by Proposition 34 in 2000. (CT 159-161.) Now, Respondents are singling out one of the few surviving components of Proposition 73 and asserting that voters clearly intended to institute it as a limit on future legislative amendments. This assertion cannot be squared with the law's history.

Moreover, Respondents' argument would render the Act's stated purposes—and its provision for amendments consistent with those purposes—a nullity. If any aspect of the Act could be deemed a purpose, amending the law would become impossible. Litigants could come to court claiming that any voter-passed provision in the Act reflects popular support for some broad policy that should be declared an official "purpose" of the PRA and block any amendments to the contrary. On this logic, every change to the law would narrow the field for future amendment, effectively eviscerating the Act's legislative amendment provision and California's capacity to keep its election law up to date with political practices.

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[7] The Act's post-Proposition 73 history reinforces the likelihood that voters had broader campaign reform goals in mind, even though legal challenges continued to stymie such efforts. Voters again enacted campaign contribution limits, along with voluntary spending limits, when they approved Proposition 208 in 1996, although the initiative was enjoined. (*Cal. Pro-life Council PAC v. Scully* (E.D. Cal. 1998) 989 F.Supp. 1282, 1292-1302.) Voters then repealed most of Proposition 208 in Proposition 34 (2000), which instituted new contribution limits. (CT 150-167.)

B. Respondents' "evidence" of the Act's purposes is unavailing.

Finding no evidence in its text, structure, or history that Proposition 73 amended the Act's purposes, Respondents resort to inapposite arguments to support their claim.

First, Respondents point to the requirement that the Attorney General prepare a title and summary for each ballot measure as evidence of Proposition 73's "purposes." Under California law, the Attorney General identifies the "chief purpose and points" of an initiative in a title and summary to ensure voters are not misled about the measure. (*Yes on 25, Citizens for an On-Time Budget v. Superior Court* (2010) 189 Cal.App.4th 1445, 1452.) But the ballot summary and title do no more than that. California law does not instruct that the "purpose and points" identified in an initiative's title or summary are equivalent to the substantive statutory "purposes" that limit legislative amendments to the PRA. And it would be illogical to equate the two. Reading the law in this manner would give the Attorney General the authority to restrict legislative amendments to initiatives that permit them simply by crafting titles and summaries in a certain way.

Nor do the ballot arguments or Legislative Analyst's opinion have this expansive effect. To be sure, the Court can consult the ballot pamphlets and Legislative Analyst's opinion to understand the "meaning of the measure," particularly when the initiative text is ambiguous. (Opp., at p. 21.) But Respondents take this argument a step too far. The ballot pamphlets and Legislative Analyst's description of an initiative may shed light on its intended effects, but there is no authority suggesting that they can be understood as establishing limits on future amendments to the measure.

Respondents' severability discussion is equally misplaced. The test for severability involves examining whether voters would have enacted that provision in the absence of another provision in the same statute. But whether

voters thought some aspect of an initiative was "sufficiently highlighted 'to identify it as worthy of independent consideration'" has little bearing on whether voters deemed that aspect so significant that they sought to bar future legislative amendments to the contrary. (*Gerken*, *supra*, 6 Cal.4th at p. 719 (citation omitted).[8])

It is precisely because "purpose" has such a distinctive meaning in this statutory context that the Court should tread carefully. Assuming an initiative implicitly amended the Act's purposes would have the serious legal consequence of foreclosing future legislative amendments to the statute, absent any evidence that voters sought to do so. Speculation should cede to caution, and the Court should refrain from presuming voter intent where none can be ascertained.

C. The case law does not support the claim that Proposition 73 tacitly amended the Act's purposes.

None of the decisions relied upon by the trial court support its conclusion that a law's express purposes can be implicitly amended. Instead, the case law suggests that SB 1107 creates a valid exception to the Act's default ban on public financing.

The trial court erred in relying on two cases—*Gardner*, *supra*, 178 Cal.App.4th 1366, and *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354 (*Foundation*)—neither of which suggests that Proposition 73 should be construed as having silently amended the Act's purposes. Like the PRA, the initiative in *Gardner* enumerated findings and purposes and included a provision only allowing amendments consistent with the initiative's purposes. (178 Cal.App.4th at pp. 1369-1370.) In light of these provisions, the court held that a legislative amendment

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[8] In *Gerken*, *supra*, the California Supreme Court expressly declined to address whether Proposition 73's prohibition on public financing was severable. (6 Cal.4th at pp. 716-720.)

contravening the initiative's *express* purposes was impermissible. (*Id.* at pp. 1377-1380.) There were no intervening initiatives resembling Proposition 73 or implicit amendments to the original measure's purposes.

Foundation, *supra*, also dealt with an omnibus initiative with an express purposes section and a provision permitting legislative amendments that "further the purposes" of the initiative. (132 Cal.App.4th at pp. 1370-1371.) The *Foundation* court found a legislative amendment to this initiative unlawful—but again, only because the amendment contravened one of the initiative's *express* purposes. (*Ibid.*) *Foundation* did not involve an implicit amendment to an existing law's express purposes, nor did it authorize courts to read new purposes into existing laws.

In short, neither case applies here.[9]

Instead, relevant case law indicates that SB 1107 created a valid exception to the Act's default ban. As here, *Santa Clarita*, *supra*, 240 Cal.App.4th 300, 304-307, 313-316, involved a PRA provision imposing an express ban—section 87100, which prohibits a public official from using his or her office to influence a government decision in which the official has a financial interest. The case involved a challenge to a legislative enactment allowing a regulated entity to seat a director on a local water agency's board notwithstanding section 87100. The Court of Appeal rejected the challenge,

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[9] The trial court also cited *Gardner* and *Foundation* in support of its statement that a legislative amendment may be invalid if it violates a "specific mandate" of an initiative with a "further[s] the purposes" amendment provision. (CT 497.) But these cases spoke of an initiative's "'specific *primary* mandate'" as another way of referring to one of the initiative's express purposes. (*Foundation*, *supra*, 132 Cal.App.4th at p. 1370 (emphasis added).) Neither *Gardner* nor *Foundation* held that every amendment to the original initiative is a "specific primary mandate" that limits future amendment. And as a practical matter, if every amendment to an initiative constituted a "specific mandate" precluding future amendment, amending the law would quickly become impracticable.

ruling that the statute created a valid exception to the Act's default ban and did not unlawfully nullify section 87100. The decision emphasized that construing the statute in this way would harmonize it with the Act and further its express purposes. (*Id.* at pp. 316-321.)

SB 1107 clearly follows this pattern.[10] It likewise "takes away" from a single statutory provision (*see Santa Clarita*, *supra*, 240 Cal.App.4th at p. 320) in order to achieve the declared purposes of the statutory scheme as a whole. Specifically, SB 1107 creates an exception to the default restriction on public financing, allowing state and local entities to create public funding programs that meet certain criteria and further the Act's express purposes.[11]

Moreover, SB 1107 was enacted consistent with this Court's clear assurances in *Common Cause*, *supra*, that Proposition 73 did not unconstitutionally bind the hands of future legislatures, because, "like other provisions of the Act," the public-funding prohibition it instituted (§ 85300) could still be amended under the PRA's existing procedures (§ 81012). (221 Cal.App.3d at p. 651.) Indeed, in urging that section 85300 was not "an absolute, inflexible provision beyond the power of the Legislature to change," the Court plainly understood that Proposition 73 did not create a new official purpose that would constrain future legislative amendment beyond the purposes expressly enumerated in the Act. (*See id.*)

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[10] The court below recognized that *Santa Clarita* undermined its conclusion but declined to address it. (CT 498.)

[11] SB 1107 amends section 85300 to permit a state or local government to establish a public funding mechanism so long as (i) "[p]ublic moneys held in the fund are available to all qualified, voluntarily participating candidates for the same office without regard to incumbency or political party preference," and (ii) "[t]he state or local governmental entity has established criteria for determining a candidate's qualification by statute, ordinance, resolution, or charter." (§ 85300, subd. (b).)

III. SB 1107 Furthers the Purposes of the PRA.

In evaluating whether a legislative amendment furthers the purposes of an initiative, the court must apply a "presumption that the Legislature acted within its authority." (*Amwest*, *supra*, 11 Cal.4th at p. 1256; *see also Foundation*, *supra*, 132 Cal.App.4th at p. 1365.) If, "by any reasonable construction, it can be said that the statute furthers the purposes" of the Act, it must be upheld as a valid exercise of the Legislature's authority. (*Amwest*, *supra*, 11 Cal.4th at p. 1256.) In making this determination, the Court should look to the Act's "specific language" and "major[] and fundamental purposes" (*Gardner*, *supra*, 178 Cal.App.4th at p. 1374) and "give[] great weight" to 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.* (1978) 82 Cal.App.3d 433, 447).

For decades, federal and state courts have recognized that the public financing of political campaigns promotes the Act's express purposes. As these courts have concluded, public financing combats political corruption by reducing candidates' reliance on "large contributions from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions," (§ 81001, subd. (c)), creates more responsive state and local governments that "serve the needs and respond to the wishes of all citizens equally, without regard to their wealth," (§ 81001, subd. (a)), and abolishes "[l]aws and practices unfairly favoring incumbents . . . in order that elections may be conducted more fairly," (§ 81002, subd. (e)). Empirical evidence from states and localities with public financing programs supports these conclusions. (*See* CT 474-482.)

A. Both the U.S. Supreme Court and the California Supreme Court have long recognized that public financing advances the Act's core purposes.

Time and again, courts have acknowledged that public financing advances the Act's purposes. In *Buckley*, the U.S. Supreme Court upheld the presidential public financing system, concluding that public financing reduces the "improper influence of large private contributions" and relieves candidates from "the rigors of soliciting private contributions." (*Buckley*, *supra*, 424 U.S. at p. 96; *see also id.* at p. 91; CT 170-171 [Stats. 2016, ch. 837, § 1, subds. (j)-(k)].) A few years later, a three-judge federal court rejected another challenge to the presidential public financing program and emphasized its 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."[12] (*Republican Nat'l Comm. v. FEC* (S.D.N.Y. 1980) 487 F.Supp. 280, 284, affd. (1980) 445 U.S. 955.)

The California Supreme Court applied this reasoning to the Act in *Johnson v. Bradley*, *supra*, where it held that charter cities in California could lawfully establish public financing programs despite the default prohibition in the Act.[13] (4 Cal.4th at pp. 410-411.) The *Johnson* Court emphasized that

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[12] Other federal courts have agreed that public financing diminishes the influence of large contributions from lobbyists and special interests, encourages broader voter engagement, and bolsters electoral competitiveness, offsetting the unfair advantages of incumbency. (*See, e.g.*, *Ognibene v. Parkes* (2d Cir. 2011) 671 F.3d 174, 193; *Green Party of Conn. v. Garfield* (2d Cir. 2010) 616 F.3d 213, 230, 237; *Rosenstiel v. Rodriguez* (8th Cir. 1996) 101 F.3d 1544, 1553, 1557; *Vote Choice, Inc. v. DiStefano* (1st Cir. 1993) 4 F.3d 26, 39.)

[13] Even before SB 1107 was passed, six major charter cities in California had established public financing programs: Los Angeles (1990), Long Beach

public financing would further the Act's purposes: "'It cannot be gainsaid that public financing as a means of eliminating improper influence of large private contributions furthers a significant governmental interest.'" (4 Cal.4th at p. 410 [quoting *Buckley*, *supra*, 424 U.S. at p. 96].) Eliminating the improper influence of large contributions is a core purpose of the Act. (§ 81001, subd. (c) ["Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking *large contributions* from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions." (emphasis added)]; § 81001, subd. (f) ["The wealthy individuals and organizations which make *large campaign contributions* frequently extend their influence by employing lobbyists and spending large amounts to influence legislative and administrative actions." (emphasis added)]; § 81001, subd. (g) ["The influence of *large campaign contributors* in ballot measure elections is increased . . . ." (emphasis added)]; *see also* § 81001, subd. (a) ["State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth."].)

Johnson described the value of public financing in language that nearly mirrored the express purposes of the Act:

> [T]he use of public funds for campaign financing will not, almost by definition, have a corrupting influence. [Instead] . . . it seems obvious that public money reduces rather than increases the fund raising 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

(1994), Oakland (1999), San Francisco (2000), Richmond (2003), and Berkeley (2016). (*See* Kelley & Graham, Campaign Legal Ctr., Buying Back Democracy: The Evolution of Public Financing in U.S. Elections (2018) pp. 23-26.)

> no way embarrassed by public financing. To the contrary, those goals can only be furthered.

(*Johnson*, *supra*, 4 Cal.4th at p. 410, alterations original; *see* § 81001, subds. (b), (c), (d), (f).) In short, the Supreme Court has already concluded that public financing advances the Act's purposes.

On this basis, the Court upheld Los Angeles's public funding system, concluding that the Act's ban on public financing was not reasonably related to the statewide concern of "enhancing the integrity of the electoral process" meaning charter cities could choose to depart from the statewide ban.[14] (*Johnson*, *supra*, 4 Cal.4th at p. 410.) SB 1107 is clearly consistent with both the spirit of these rulings and the purposes of the Act.

B. Empirical evidence demonstrates that public financing promotes the Act's purposes.

These courts' conclusions do not stand alone. As discussed below and in greater detail in *amici*'s trial court brief (CT 474-482), academic research and empirical evidence about the effects of public financing demonstrate that SB 1107 furthers the Act's express purposes. Specifically, public financing curtails political candidates' reliance on large campaign contributions (*see* § 81001, subds. (b), (c)), promotes the responsiveness of officeholders to all citizens (*see* § 81001, subd. (a)), and increases electoral competitiveness to reduce the unfair advantages of incumbency (*see* § 81001, subd. (e)).

Public financing allows political candidates to rely less on large contributions from lobbyists and special interests, in part because it typically facilitates a rise in small-dollar donations. (*See* § 81001, subds. (b), (c).) By

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[14] The California Supreme Court never concluded that permitting charter cities to establish their own public financing mechanisms would conflict with the law's purposes. Nor did it find that Proposition 73 had changed the purposes of the Act. Indeed, before the decision below, no court had ever held that Proposition 73 amended the Act's purposes, despite years of litigation about the ballot measure.

design, many public financing programs offer candidates public funds if they agree to lower contribution limits and caps on campaign spending. (CT 365-366 [Malbin, Campaign Fin. Inst., Citizen Funding for Elections (2015)].).

In Connecticut, for example, candidates must raise all of their contributions from individuals in amounts between $5 and $100 to receive public funds. Following Connecticut's adoption of its public financing program in 2010, individual donors gave 97 percent of all contributions to state legislative candidates, up from 49 percent in 2006. Remarkably, every successful candidate for statewide office participated in the program, meaning that 100 percent of the contributions to successful candidates in 2010 were under $100, whereas only 8 percent had been in 2006.[15] The enhancement of New York City's public financing program had a comparable effect: more than half of all City campaign donors in the 2013 elections were first-time contributors, and 76 percent of these first-time contributors gave $175 or less.[16] Seattle's public financing program also dramatically reduced candidates' dependency on large donors. Candidates participating in the city's voucher program in 2017 were subject to a $250 limit on cash contributions. Candidates in that year's elections collectively raised 82 percent of their total campaign funds in contributions of $199 or

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[15] *See* Conn. State Elections Enf't Comm'n (CT SEEC), Citizens' Election Program 2010: A Novel System with Extraordinary Results (2011) pp. 4-5, 8-12 <http://www.ct.gov/seec/lib/seec/publications/2010_citizens_election_program_report_final.pdf>.

[16] N.Y.C. Campaign Fin. Bd., By the People: The New York City Campaign Finance Program in the 2013 Elections (2014) p. 41 <http://www.nyccfb.info/PDF/per/2013_PER/2013_PER.pdf>; *see also* Malbin et al., *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States* (2012) 11 Elec. L.J. 3, 9-10 <http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf> (*Small Donors*).

less.[17] Analyses of data from Seattle's elections in 2017 and New York's elections in 2009 also illustrate that a broader, more socioeconomically diverse swath of city residents made campaign contributions after the introduction of public financing.[18]

The lesson is clear: by encouraging a broader base of donors, public financing diminishes the disproportionate influence of the lobbyists and special interests that typically make larger contributions. (*See* § 81001, subds. (b), (c).) And by galvanizing a wider range of people to participate in elections, public financing compels public officials to be responsive to the interests of all citizens, without regard to their wealth. (*See* § 81001, subd. (a).)

States with public financing also have considerably more competitive elections. In a recent study, the National Institute on Money in Politics examined the "monetary competitiveness" of state legislative races in 2013 and 2014. A single-seat race was considered monetarily competitive if the top fundraiser raised no more than twice the amount raised by the next-highest fundraiser. The study found that the proportion of monetarily competitive legislative races was considerably higher in the five states that

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[17] Seattle Ethics & Elections Comm'n, Democracy Voucher Program Biennial Report 2017 (2018) p. 18 <https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%2003_15_2018.pdf>; Seattle Ethics & Elections Comm'n, *Chart of 2017 City Elections Contributors* <http://web6.seattle.gov/ethics/elections/charts.aspx?cycle=2017&n1=contributions&n2=size&n3=groupings&n4=allcategories&n5=allcandidates&n6=number#aChartTop>.

[18] Heerwig & McCabe, Univ. of Wash. Ctr. for Studies in Demography & Ecology, Expanding Participation in Municipal Elections: Assessing the Impact of Seattle's Democracy Voucher Program (2018) pp. 3-4, figs. 7-9; Malbin, *Small Donors*, *supra*, at pp. 12-13; *see also* Every Voice Ctr., First Look: Seattle's Democracy Voucher Program (Nov. 15, 2017) p. 3 <https://www.proteusfund.org/wp-content/uploads/2018/09/FINAL-Seattle-Post-Election-Report-1-Nov2017.pdf>.

offered public financing than those that did not: on average, 41 percent of legislative races in states with public financing were monetarily competitive, as compared to 18 percent of legislative races in 47 states nationwide. Moreover, 87 percent of legislative seats were contested in states with public financing, compared to 61 percent of legislative seats in states without public financing programs. (CT 399-408 [Holden, *2013 and 2014: Monetary Competitiveness in State Legislative Races*, Nat'l Inst. on Money in Politics (Mar. 9, 2016)].).

State-specific evidence leads to the same conclusion. In Connecticut, the adoption of public financing for state legislative elections was followed by a substantial increase in the number of legislative candidates, many of whom identified the availability of public funds as a reason for running for office.[19] In Maine, the enactment of public financing was followed by an increase in electoral competitiveness across a range of measures—the rate of incumbent re-election, and the percentage of incumbents who faced majority-party opposition or won with under 60 percent of the vote.[20]

By bolstering electoral competitiveness and small-dollar donations, public financing offsets the unfair advantages of incumbency. Studies show that PACs and highly regulated industries are more likely to contribute to incumbents than challengers. (CT 345-356 [Barber, *Donation Motivations: Testing Theories of Access & Ideology* (2016) 69 Pol.Res.Q. 148]; CT 330-343 [Fouirnaies & Hall, *The Financial Incumbency Advantage: Causes & Consequences* (2014) 76 J.Pol. 711].) Public funding programs can counter the disproportionate influence of these special interests by diminishing

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[19] *See* CT SEEC, Citizens' Election Program 2010, *supra*, at pp. 6-7.

[20] *See* Mayer et al., *Do Public Funding Programs Enhance Electoral Competition?*, in The Marketplace of Democracy: Electoral Competition & American Politics (McDonald & Samples, eds., 2006) pp. 245, 247-249.

candidates' dependence on large private contributions. (*See* § 81002, subds. (b), (c), (e).)

This is just a sample of the research on the benefits of public financing. But it suffices to illustrate that SB 1107, by creating a limited exception permitting state and local bodies to establish public financing programs, furthers the Act's express purposes and effectuates its pro-democracy goals.

CONCLUSION

For these reasons, the decision below should be reversed.

Dated: March 14, 2019

Respectfully submitted,

/s/ Megan P. McAllen

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CERTIFICATE OF COMPLIANCE

I certify that the attached brief of *amici curiae* uses a 13 point Times New Roman font and contains 6,584 words.

Dated: March 14, 2019

Respectfully submitted,

/s/ Megan P. McAllen
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DECLARATION OF SERVICE

I, Megan P. McAllen, declare as follows:

I am, and was at the time of service mentioned hereafter, at least 18 years of age and not a party to the above-captioned action. I am a citizen of the United States and am employed in Washington, D.C. My business address is Campaign Legal Center, 1411 K Street NW, Suite 1400, Washington, D.C., 20005.

On March 14, 2019, I served a true copy of the foregoing **APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND PROPOSED BRIEF**, via email through the TrueFiling e-service to:

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Additionally, I placed a copy of this brief in an envelope, postage prepaid, addressed to:

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 14th day of March, 2019, in Washington, D.C.

/s/ Megan P. McAllen
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