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

APPELLANTS' OPENING BRIEF

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Case Name: *HOWARD JARVIS TAXPAYERS ASSOCIATION, et al. v. EDMUND G. BROWN, JR., et al.*

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October 10, 2018
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INTRODUCTION

The overriding purposes of the Political Reform Act of 1974, passed by the voters in the wake of Watergate and other political corruption scandals, are to combat the pernicious influence of money in politics and government, and to ensure that all citizens have an opportunity to participate in the political process. (Gov. Code, §§ 81001, 81002.) Although the Act has been amended four times by the voters, and more than 200 times by the Legislature, these core purposes remain unchanged.

In 1988, the voters amended the Act by passing Proposition 73, which contained a package of inter-related reforms aimed at reining in campaign spending and the influence of large donors on political campaigns. Specifically, it imposed strict limits on campaign contributions and a ban on public funding of political campaigns. The ban was not presented to voters as an end in itself, but rather as a means—in conjunction with the contribution limits—of carrying out the Act's express purpose of reducing the influence of large contributors and limiting campaign spending.

In 2016, the Legislature passed Senate Bill 1107, which amended the ban to permit public funding of political campaigns in California under limited, specified conditions. The Legislature acted in accordance with a grant of authority in the Act itself, which permits legislative amendments that further the Act's purposes. The Legislature made detailed findings, supported by empirical studies, that permitting limited public funding of political campaigns will promote the Act's core purposes of reducing the influence of money in politics and empowering ordinary citizens.

The trial court, however, held that the Legislature exceeded its authority, and granted declaratory and injunctive relief barring the implementation of Senate Bill 1107. It determined, essentially, that the Legislature cannot amend a specific provision or mandate of the Act without violating its purposes.

The trial court's decision should be reversed, primarily because: (1) it misconstrued the Act's purposes by declaring that banning public funding of campaigns is a "fundamental" purpose of the Act, when in fact the ban was never presented to voters as an end in itself, but rather as a method of carrying out other express purposes of the Act—purposes that are entirely consistent with Senate Bill 1107; (2) it adopted a rigid rule that, if accepted, would make it difficult if not impossible for the Legislature to amend the Act to further its purposes. Under the trial court's analysis, any legislative amendment to a "specific provision" or "specific mandate" of the Act would be suspect if not invalid per se, regardless of whether the amendment furthers the Act's purposes as an empirical matter and regardless of whether the particular provision or mandate in question is of central importance in the overall scheme of the Act. The trial court's decision frustrates voter intent by vitiating the voters' express grant of authority to the Legislature to amend the Act, and will, if not corrected, preclude the Legislature from adapting the Act to changes in the political environment, and ultimately reduce the Act's effectiveness as a bulwark against corruption and undue influence in politics.

STATEMENT OF APPEALABILITY

The trial court granted Respondents' petition for writ of mandate on August 23, 2017 (Clerk's Transcript (CT) 488) and entered judgment against Appellants on November 6, 2017 (CT 504). The trial court's judgment is appealable under Code of Civil Procedure section 904.1, subdivision (a)(1). Appellants received notice of entry of judgment on November 13, 2017 (Appellants Request for Judicial Notice, Ex. A at pp. 1-3), and timely filed a Notice of Appeal on January 9, 2018 (CT 505).

STATEMENT OF THE CASE

I. BACKGROUND

A. The Political Reform Act

In response to Watergate and other political corruption scandals, California voters adopted Proposition 9, an initiative that created the Political Reform Act of 1974 (the Act), codified at Title 9 of the Government Code. (CT 98-117, 179-328.)

The Act was designed to combat the pernicious effects of money in politics. (See, e.g., *Thirteen Committee v. Weinreb* (1985) 168 Cal.App.3d 528, 532; *Socialist Workers etc. Committee v. Brown* (1975) 53 Cal.App.3d 879, 888.) The Act's purposes and the findings that motivated them were expressly stated in the measure and codified, and remain the same to this day. (CT 99 [adding Gov. Code, §§ 81001, 81002].[1]) Each of these findings and purposes address the influence of money in politics and the voters' determination to reduce that influence, because "government should serve the needs and respond to wishes of all citizens equally, without regard to their wealth." (*Ibid.* [adding § 81001, subd. (a)].) Indeed, the findings in the Political Reform Act reference the increase in the "costs of conducing election campaigns" (§ 81001, subd. (c)), the "influence of large campaign contributors" (§ 81001, subd. (d)), the influence of "wealthy individuals and organizations which make large campaign contributions" (§ 81001, subd. (e)), and the "influence of large campaign contributions in ballot measure elections." (§ 81001, subd. (f).) The concern underlying the Act—then and now—is the amount of money in our political system, and the influence it has over our elected officials.

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

To carry out these purposes, the Act created a comprehensive scheme that includes hundreds of separate provisions, and encompasses numerous "different methods for preventing corruption and undue influence in political campaigns and governmental activities," including strengthening campaign contribution disclosure and conflict-of-interest rules, regulating lobbyists, and establishing a new state agency, the Commission, to enforce laws and draft regulations. (*Fair Political Practices Com. v. Super. Ct.* (1979) 25 Cal.3d 33, 37.)

Proposition 9 provided for both amendment and repeal, not just of the provisions of that initiative, but of any provision of "[t]his title" as it evolved over time. (CT 102 [adding § 81012].) Although the voters are free to adopt any amendment by initiative, the Legislature may amend the Act only to "further its purposes," and may only do so by a supermajority of both houses, according to a specific procedure. (§ 81012, subd. (a).)

In the 45 years since the Act was adopted, the Legislature has amended it more than 200 times. (*People v. Kelly*, 47 Cal.4th 1008, 1042, fn. 59 (hereafter *Kelly*).) These amendments have ensured the Act's "continued viability" and have proven "respectful" of the voters' intent in enacting the Act. (*Ibid*.)

Voters have enacted four amendments to the Act: Propositions 68, 73, 208, and 34. (CT 120-67.) While these initiatives presented different combinations of reforms to voters, they all focused on limiting campaign contributions and campaign spending. (*Ibid.*) Successive initiatives were necessary because state and federal courts struck them down, at least in part, one by one until finally Proposition 34 was passed. (*Cal. Prolife Council Political Action Comm. v. Scully* (E.D. Cal. 1998) 989 F.Supp. 1282 [holding Proposition 208's contribution limits unconstitutional]; *Service Employees Intern. Union, AFL-CIO, CLC v. Fair Political Practice Com'n* (9th Cir. 1992) 955 F.2d 1312 [holding Proposition 73's

contribution limits unconstitutional] (hereafter *SEIU II*); *Taxpayers to Limit Campaign Spending v. Fair Political Practices Com'n* (1990) 51 Cal.3d 744 [holding Proposition 68 inoperative] (hereafter *Taxpayers*); Stats. 1977, c. 1095, § 4 [repealing Proposition 9's spending limits in light of *Buckley v. Valeo* (1976) 424 U.S. 1].)

1. Propositions 68 and 73

The first two of these voter-enacted amendments—Propositions 68 and 73—were offered to voters as competing campaign-finance reform packages on the June 1988 primary ballot. (*Taxpayers*, *supra*, 51 Cal.3d at pp. 747-48, 754.) Proposition 68 created a system of contribution limits, spending limits, and a public funding program for state legislative campaigns. (*Id.* at pp. 751-52.) By contrast, Proposition 73 included similar contribution limits (applied more broadly to all candidates for state or local office), but expressly prohibited the use of public funds in political campaigns. (*Ibid.*)

These two "all-or-nothing" reform packages were both aimed at reducing campaign contributions and spending, and curbing the "undue influence" of large contributors. (*Id.* at pp. 748, 754; see *Johnson v. Bradley* (1992) 4 Cal. 4th 389, 407) (hereafter *Johnson*); CT 122, 133.) Echoing the Act's express purposes, Proposition 73's supporters, for instance, argued in their ballot materials that "too much money is spent in political campaigns today," and that politicians "can be unduly influenced by special interest groups that donate large amounts of money." (CT 133.)

While the competing measures shared the same goals of reducing campaign spending and undue influence, they parted company with respect to the issue of public funding for political campaigns. (*Taxpayers*, *supra*, 51 Cal.3d at pp. 748, 754.) Proposition 73's supporters contended that, to rein in campaign spending, "IT CERTAINLY MAKES NO SENSE TO OPEN THE BIGGEST MONEY SOURCE OF ALL, THE TAXPAYERS'

PURSES AND WALLETS." (CT 133 [official Voter Guide arguments in favor of Proposition 73] (emphasis in original).) In contrast, Proposition 68's supporters argued that the measure banning public funding was a "fraud" reform that "would actually prohibit citizens from limiting campaign spending in California." (CT 134 [official Voter Guide arguments against Proposition 73].)

Both measures passed, with Proposition 73 receiving more votes. (*Taxpayers*, *supra*, 51 Cal.3d at p. 748.) This triggered a nearly decade-long legal battle. (See, e.g., *Kopp v. Fair Political Practices Com.* (1995) 11 Cal.4th 607, 616-620 [citing cases]; *Taxpayers*, *supra*, 51 Cal.3d at pp. 755-60.) The courts ultimately determined that as competing "all-or-nothing" reform packages, Propositions 68 and 73 were irreconcilable in full, and thus none of Proposition 68 was operative. (*Taxpayers*, *supra*, 51 Cal.3d at p. 747; see also *Center for Public Interest Law v. Fair Political Practices Com.* (1989) 210 Cal.App.3d 1476). Further, although the contribution limits in Proposition 73 were invalidated on First Amendment grounds (*Service Employees International Union v. Fair Political Practices Commission* (E.D. Cal. 1990) 747 F. Supp. 580 (*SEIU I*); *SEIU II*, *supra*, 955 F.2d 1312), the ban on public funding, codified at section 85300, survived. Specifically, section 85300 provided that "[n]o public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office." (CT 132 [adding § 85300].)

2. Propositions 208 and 34

After previous attempts to modify the Act's spending and contribution limits were blocked in court, the voters passed Proposition 208 in 1996. (CT 138-147.) That initiative expressly reiterated the Act's goals of reducing the influence of large contributors and giving all individuals a fair and equitable opportunity to participate in elective politics. (CT 142.) Proposition 208 implemented these purposes through a regime of

mandatory campaign contribution limits and voluntary spending limits (which, as an incentive, were tied to higher contribution limits and access to ballot pamphlets for candidates who agreed to limit spending). (See CT 138-139.) It did not affect the ban on public funding in section 85300.

After a district court enjoined Proposition 208's contribution limits as unconstitutionally low (*Cal. Prolife Council Political Action Comm. v. Scully* (E.D. Cal. 1998) 989 F.Supp. 1282, 1296, affd. (9th Cir. 1999) 164 F.3d 1189), the voters passed Proposition 34 in 2000. Consistent with the Act and previous voter initiatives amending the Act, Proposition 34's expressly stated intent was to ensure a fair and equitable opportunity for all individuals to participate in the political processes, and reduce the influence of large contributors in political campaigns. (CT 157.) Proposition 34 did this by repealing Proposition 208's provisions and replacing them with generally higher contribution and spending limits. CT 150-152. These provisions remain in effect today. (See §§ 85100-85802.)

B. Senate Bill 1107

In 2016, the Legislature passed Senate Bill (SB) 1107, amending the ban on public funding of campaigns. Effective January 1, 2017, SB 1107 carved out an exception for qualifying programs. (CT 169-172.) As amended, section 85300 now provides in full:

> (a) Except as provided in subdivision (b), a public officer shall not expend, and a candidate shall not accept, any public moneys for the purpose of seeking elective office.
>
> (b) A public officer or candidate may expend or accept public moneys for the purpose of seeking elective office if the state or a local governmental entity establishes a dedicated fund for this purpose by statute, ordinance, resolution, or charter, and both of the following are true:
>
> > (1) Public 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.
>
> (2) The state or local governmental entity has established criteria for determining a candidate's qualification by statute, ordinance, resolution, or charter.

As required by section 81012, SB 1107 was passed by a two-thirds vote in each house of the Legislature. The bill included extensive findings declaring that authorizing "[c]itizen-funded election programs, in which qualified candidates can receive public funds," would:

- mitigate the "increasing costs of political campaigns," which can give "wealthy donors and special interests disproportionate influence over governmental decisions";
- "reduc[e] the financial advantages of incumbency and mak[e] it possible for citizens from all walks of life . . . to run for office"; and
- "reduc[e] reliance on wealthy donors and special interests"; "inhibit improper practices, protect against corruption or the appearance of corruption, and protect the political integrity of our governmental institutions."

(CT 169-172, 492 [Stats. 2015-2016, ch. 837, Sec. 1(c), (g), and (h)].) In keeping with these findings, the Legislature further determined that amending section 85300 would "further[] the purposes of the Political Reform Act of 1974 within the meaning of [section 81012]." (CT 172 [Stats. 2015-2016, ch. 837, Sec. 6].)

II. PROCEDURAL HISTORY

On December 12, 2016, Respondents Howard Jarvis Taxpayers Association and Quentin Kopp (collectively Respondents) sued to invalidate SB 1107 and bar its enforcement. (CT 2-3.) Respondents sought a writ of mandate and injunctive and declaratory relief, alleging that SB 1107 does not further the Act's purposes, and is therefore void as a matter

of law. (CT 8-10.) After briefing by the parties and amici and an oral argument, the trial court granted the writ and entered judgment for Respondents. (CT 499.)

The trial court rejected Respondents' contention that the Legislature has no power to amend section 85300. (CT 494.) It ultimately concluded, nonetheless, that the Legislature exceeded its authority. (CT 495.) It held, in summary, that: (1) banning public funding of political campaigns was both a "significant purpose" of Proposition 73 and a "fundamental purpose" of the Act as a whole; and (2) SB 1107 "directly contradicts," rather than furthers, that purpose by "removing the prohibition on public financing of political campaigns and substituting an express authorization for public financing." (CT 495-99.) The trial court further held that to be valid, a legislative amendment must not only further the purposes of the Act in general, but also must not "do violence to specific provisions" of the Act enacted by voters. (CT 497-98 [citation omitted].) Based on these determinations, the trial court held that "the amendments made to Government Code section 85300 by [SB 1107] are void and have no legal effect." (CT 499.)

STANDARD OF REVIEW

Whether a legislative amendment furthers the purposes of a voter initiative is a question of law subject to de novo review by the court of appeal. (*Gardner v. Schwarzenegger* (2009) 178 Cal. App.4th 1366, 1374 (hereafter *Gardner*); *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, 1365 (hereafter *Foundation*).) This analysis begins with "the general rule that 'a strong presumption of constitutionality supports the Legislature's act.'" (*Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1253 (hereafter *Amwest*) (citation omitted).) "If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's

action." (*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691; *Shaw v. People ex Rel. Chiang* (2009) 175 Cal. App.4th 579, 595.)

Without seeking voter approval, the Legislature may only amend a voter initiative if the initiative "permits amendment . . . without [voter] approval." (Cal. Const., art. II, § 10, subd. (c).) "It is common for initiative measures to include a provision authorizing the Legislature to amend the initiative without voter approval only if the amendment furthers the purposes of the initiative." (*Amwest, supra*, 11 Cal.4th at p. 1252.) Such a provision must be "given the effect the voters intended it to have" and, when invoked as a limitation on the Legislature's authority, must be "strictly construed." (*Id.* at pp. 1255-1256.) "[S]tarting with the presumption that the Legislature acted within its authority," a legislative amendment to a voter initiative will be upheld so long as "by any reasonable construction, it can be said that the statute furthers the purposes of [the initiative]." (*Id.* at p. 1256.)

ARGUMENT

I. THE TRIAL COURT MISCONSTRUED THE PURPOSES OF THE ACT.

This Court has specifically held that the ban on public funding of political campaigns in section 85300 is not an "absolute inflexible provision beyond the power of the Legislature to change"; rather, like other provisions of the Act, it can be amended so long as the amendment furthers the purposes of the Act, and the Legislature complies with the other procedures set forth in section 81012. (*Cal. Common Cause v. Fair Political Practices Com'n* (1990) 221 Cal.App.3d 647, 651 & fn. 2 (hereafter *Common Cause*) [citing § 81012, subd. (a)]). Further, there was no dispute in the trial court that the Legislature followed the correct procedure. (CT 79, 492.) Thus, the only question at issue here is whether

SB 1107, by allowing public funding of political campaigns in some circumstances, furthers the Act's purposes. It does.

Empirical studies support the common-sense conclusion that public funding does in fact further the Act's—and Proposition 73's—core purposes of shrinking the influence of large campaign contributors, reducing campaign spending and the advantages of incumbency, and giving equal voice in electoral politics to all citizens regardless of their wealth. (CT 83-85.) The Legislature made detailed, explicit findings to that effect when it passed SB 1107, and Respondents adduced no evidence contradicting those findings. The trial court erred by concluding otherwise. The trial court disregarded the Act's express purposes and elevated the ban on public funding—which was just one part of a "package deal" enacted by voters in Proposition 73—into both a "significant" purpose of that initiative and a "fundamental" purpose of the Act as a whole.

A. Four Core Purposes of the Act Are Reining In Campaign Spending and the Influence of Large Contributors, Reducing the Advantages of Incumbency, and Ensuring That All Citizens Have Access to the Political Process Regardless of Their Wealth.

In discerning an initiative's purposes, courts examine the initiative's text, along with its historical context and the ballot materials presented to voters. (*Gardner*, *supra*, 178 Cal.App.4th at p. 1377 [focusing on the initiative's "expressed purposes, its findings and declarations, and the Voter Information Guide arguments for its passage" to determine its primary purposes]; *Amwest*, *supra*, 11 Cal.4th at pp. 1257-1260.) Courts give particular consideration to any statements of intent and purpose contained in the initiative. (*Amwest*, *supra*, 11 Cal.4th at p. 1257 [courts "are guided by, but are not limited to, the general statement of purpose found in the initiative"].) "If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the

Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) In other words, "[a]bsent ambiguity," the court "presume[s] that the voters intend the meaning apparent on the face of an initiative measure . . . and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language." (*Prof. Engineers in Cal. Government v. Kempton* (2007) 40 Cal.4th 1016, 1037 (citations omitted).)

Here, the voters could not have been clearer or more consistent in expressing the Act's purposes, even as the Act has evolved and expanded over the past 45 years. Those purposes are expressly set forth in sections 81001 and 81002. Indeed, in two later-enacted initiatives amending the Act, Propositions 208 and 34—three, if Proposition 68 is included—the voters expressly reaffirmed that sections 81001 and 81002 comprise the Act's purposes. (See §§ 81001, subds. (a), (c), (e), 81002, subd. (c); CT 121-124 [Prop. 68: §§ 85101, subd. (c), 85102, subds. (a)-(b)]; CT 142 [Prop. 208: §§ 85101, subd. (b), 85102, subds. (a), (c), (e)]; and CT 157 [Prop. 34: § 1, subds. (a)(2), (b)(1), (b)(3)-(4)].)[2]

The courts have also repeatedly looked to sections 81001 and 81002 to interpret the Act's purposes, and have held—consistent with their express terms—that the Act is designed to:

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[2] All three of these initiatives invoked the same findings and purposes adopted by the voters at the Act's inception in 1974, and declared that the amendments at issue would further those purposes by "reduc[ing] the influence of large contributors" and "ensur[ing] that individuals and interest groups in our society have a fair and equal opportunity to participate in the elective and governmental processes." (CT 121, 124 [Prop. 68]; CT 142 [Prop. 208]; CT 157 [Prop. 134]; see also CT 120-121, 138-139, and 151-152 [titles and summaries and Legislative Analyst's analysis of contribution and spending limits proposed by Propositions 68, 208, and 34].) Proposition 73 did not disturb any of these findings.

- Reduce the advantages of incumbency;
- Reduce the influence of large contributors on candidates for political office;
- Reduce campaign spending; and
- Ensure equal opportunity to participate in the electoral process to all citizens.

(*Californians for Political Reform Foundation v. Fair Political Practices Com.* (1998) 61 Cal.App.4th 472 [relying on the express purposes of Proposition 208]; *Citizens to Save California v. California Fair Political Practices Com.* (2006) 145 Cal.App.4th 736, 748, 751-753 [relying on the express purposes of Proposition 34]; see also *Griset v. Fair Political Practices Com.* (1994) 8 Cal.4th 851, 861–62 [relying on express purposes set forth in § 81002 in First Amendment challenge to mass mailing disclosure requirements]; *People v. Hedgecock* (1990) 51 Cal.3d 395, 406 [relying on express purposes to apply broad meaning to term "material" in a disclosure requirement]; *Hays v. Wood* (1979) 25 Cal.3d 772, 788 [relying on express purposes in constitutional challenge to Act's conflict-of-interest disclosure requirements after Legislative amendments]; *Howard Jarvis Taxpayers Ass'n v. Bowen* (2011) 192 Cal.App.4th 110, 123, 125 [relying on findings of § 81001 to find that Act's purposes "are to promote impartiality and eliminate conflicts of interest in the performance of governmental duties"]; *Thirteen Committee, supra*, 168 Cal.App.3d at p. 532 [relying on express purposes to find that "manifest purpose" of disclosure provisions "is to insure a better informed electorate and to prevent corruption of the political process"]; *Socialist Workers etc. Committee, supra*, 53 Cal.App.3d at p. 888 [relying on express purposes of the Act in First Amendment challenge to disclosure requirements].)

Proposition 73 is the only voter-approved amendment to the Act that did not contain an express statement of purpose, but it, too, was aimed at

achieving the same purposes set forth in sections 81001 and 81002. (See *Gerken v. Fair Political Practices Com.* (1993) 6 Cal.4th 707, 718 ["Because Proposition 73 contains no express policy statement or declaration of purpose, we must look to the measure's text and the ballot materials for guidance."].) Its supporters twice stated in ballot materials that "too much money is spent in political campaigns today." (CT 133.) They argued that "[c]andidates and officeholders can be unduly influenced by special interest groups that donate large amounts of money," and that incumbent politicians had refused to reform a system "run for their benefit." *Ibid.* As the official proponents of the initiative themselves stated, voters were "'clearly informed Proposition 73's aim was reducing the costs of political campaigns through a system of contribution limitations and prohibition on public funding.'" (*Johnson*, *supra*, 4 Cal. 4th at p. 407.)

B. The Trial Court Erred in Finding that Proposition 73 Implicitly Altered the Act's Purposes

Against this backdrop, the trial court's conclusion that the ban on public funding, by itself, constitutes a "significant" purpose of Proposition 73, and a "fundamental" purpose of the Act as a whole, is plainly incorrect.

1. The Purpose of Proposition 73's Reforms Was to Reduce the Influence of Large Contributors and Reduce Campaign Spending, Not to Ban Public Funding as an End in Itself.

As Respondent Kopp, an official proponent of Proposition 73, argued before the Supreme Court in *Johnson*, *supra*, Proposition 73 offered "a *system* of contribution limitations and prohibition on public funding," the purpose of which was to "reduc[e] the costs of political campaigns." (4 Cal.4th at p. 407 (emphasis added).) This system was expressly offered to voters as an "all-or-nothing," "comprehensive regulatory scheme." (*Taxpayers*, *supra*, 51 Cal.3d at p. 747, 749-51, 755 [citing Legislative Counsel's report that the measure was "a comprehensive and interrelated

system of campaign finance"].) In other words, Proposition 73's two main elements—the contribution limits and the ban on public funding—were "inextricably intertwined in the text of the proposition and the ballot arguments" and offered as "package deal, not a smorgasbord." (*Johnson*, *supra*, 4 Cal.4th at pp. 420 (conc. & dis. opn. of Mosk, J.).)[3]

Thus, the purposes of Proposition 73 were reducing the cost of political campaigns and reforming the way campaigns are financed, through a package of inter-related reforms—not, as the trial court held, banning public funding of political campaigns as an end in itself. Justice Mosk made that very point in *Johnson*, *supra*, explaining that *"[i]n no way was the prohibition against public funding presented as an end in itself*."[4]

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[3] This was evident, for instance, in the measure's self-proclaimed title—the "Campaign Contribution Limits Without Public Taxpayer Financing Amendments to the Political Reform Act"—and the ban's placement, together with the contribution limits, in a new, separate article (title 9, chapter 5, article 3) titled "Contribution Limitations." (CT 132, 135 [§§ 85100, 85300-85307]; *Johnson*, *supra*, 4 Cal.4th at p. 418 (conc. & dis. opn. of Mosk, J.).) The ballot arguments, too, emphasized this connection, "promising—with capital letter emphasis—that 'Proposition 73 will reform the way political campaigns are financed in California WITHOUT GIVING YOUR TAX MONEY TO POLITICIANS!' and that the proposition 'ACCOMPLISHES THIS NEEDED REFORM OF CAMPAIGN FINANCING WITHOUT GIVING YOUR HARD-EARNED TAX MONEY TO POLITICIANS.'" (*Johnson*, *supra*, 4 Cal.4th at p. 418 (conc. & dis. opn. of Mosk, J.).)

[4] In *Johnson*, the Supreme Court examined whether the ban on public funding applied to charter cities. (*Johnson*, *supra*, 4 Cal.4th at pp. 392-410.) Justice Mosk's concurring and dissenting opinion addressed an issue not raised by the majority in *Johnson*—or by the Court's subsequent decision in *Gerken*, *supra*, 6 Cal. 4th at p. 717—whether the ban on public funding should be deemed severable from the contribution limits struck down by the federal courts. (*Johnson*, *supra*, 4 Cal.4th at pp. 416-421 (conc. & dis. opn. of Mosk, J.).) Because "the two elements [were] inextricably intertwined," Justice Mosk concluded that section 85300 should not be considered severable. (*Id.* at p. 420.)

(4 Cal.4th at p. 418 (conc. & dis. opn. of Mosk, J.) (emphasis added).) He further explained that the ballot arguments in support of Proposition 73 were "directed at" criticizing the public-funding system proposed by Proposition 68, and "*not at establishing the independent need for a ban on public financing*." (*Ibid.* (emphasis added); see also CT 133-34 [rebuttal to argument against Proposition 73 focusing exclusively on Proposition 68]); *Taxpayers*, *supra*, 51 Cal.3d at pp. 773-74 (conc. & dis. opn. of Mosk, J.) [concluding the campaign contribution limits were Proposition 73's "*raison d'etre*" and "the issues on which voters' approval was sought"].)

2. The Trial Court's Interpretation of the Ban as a "Significant Purpose" of Proposition 73 Conflates the Act's Methods and Purposes

By elevating the ban on public funding to a "significant" purpose of Proposition 73 (and by extension the Act as a whole), the trial court conflated the Act's methods with its purposes. But this Court has been careful to distinguish between the Act's purposes, on the one hand, and the Act's operative provisions—which are the means of carrying out those purposes—on the other. (See e.g., *Citizens to Save Cal.*, *supra*, 145 Cal.App.4th at p. 478 [distinguishing Proposition 34's express declarations and purposes from the "precise limits on contributions" that implement "[t]his legislative purpose"].)

This problem with the trial court's analysis is illustrated by applying the same reasoning to other parts of Proposition 73. In finding that banning public funding of campaigns was itself a significant purpose of Proposition 73, the trial court relied heavily on the ballot title drafted by the Attorney General: "Campaign Funding. Contribution Limits. *Prohibition of Public Funding*." (CT 498 (emphasis added); see CT 131 [title and summary].) Not only was this reliance on the title alone excessive (see *Becerra v. Superior Court* (2017) 19 Cal.App.5th 967, 976 [title and summary should

be read as a whole and not independently]), but this "Prohibition on Public Funding" described two separate and distinct prohibitions: the ban on public funding of campaigns, and a separate ban on the sending of newsletters and mass mailings "at public expense." (See § 89001; CT 131, 135.) In the Attorney General's summary of Proposition 73, the prohibition on sending out newsletters and mass mailings at public expense was summarized ahead of the prohibition on public funding of campaigns, indicating its relative importance as between the two. (CT 131.) By the trial court's logic, then, the newsletter ban is a "significant" purpose of Proposition 73 and a "fundamental" purpose of the Act overall. But there is no evidence that this was the voters' intent. The initiative's ballot arguments, for instance, are entirely silent about the newsletter ban. In fact, such a conclusion would be contradicted by the text of the initiative. It is clear from the effect of the newsletter ban and its placement in chapter 9 of the Act (titled "Incumbency"), that the provision was aimed at preventing incumbents from exploiting their positions for campaign advantage. In other words, like the ban on public funding, it was meant simply to implement an express purpose of the Act (reducing the advantages of incumbency) rather than a new purpose of the Act.

This blurring of methods and purposes is particularly problematic in the context of the Political Reform Act. Unlike most statutes created by voter initiative, the Act comprises a sprawling regulatory scheme with hundreds of implementing provisions that have been expanded and amended hundreds of times by both voters and the Legislature. (See §§ 81000-91013.7.) If the trial court's ruling were applied to the Act as a whole, the Legislature's hands would be tied over this entire area of law. This is particularly problematic in the context of electoral and campaign finance reforms, where the Legislature must respond to changes in how

campaigns are conducted, changes to the constitutional landscape, social media, and the internet.

3. Even if the Ban Were a Purpose of Proposition 73, There Is No Support for the Trial Court's Conclusion that It Is a Major Purpose of the Act Overall

Even if banning public funding of campaigns could be read as a purpose of Proposition 73 standing alone, it does not follow that it is a "fundamental purpose" of the Act as a whole, which is the relevant frame of reference. (§ 81012, subd. (a) [legislative amendment must further the purposes of "[t]his title"]; *Shaw*, *supra*, 175 Cal.App.4th at p. 598 [canons of statutory construction dictate that the Court examine the Act as a whole in order to determine its purposes].)[5] The trial court erred by ruling to the contrary. (CT 498.) Indeed, it did not explain its reasoning, or cite any case holding that banning public funding is a fundamental purpose of the Act as a whole.[6] No such case exists.

As explained above, the voters expressly and unambiguously delineated the purposes of the Act in sections 81001 and 81002. (CT 121, 124, 142, 157.) In passing Propositions 68, 208, and 34 amending the Act, they expressly reiterated and expanded on those purposes. (CT 121, 124,

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[5] Voters could have limited amendments to section 85300 to amendments that further the purposes of Proposition 73, separate and apart from the Act as a whole. (Shaw, *supra*, 175 Cal.App.4th at p. 599.) They did not. Instead, they expressly reiterated that amendments to Proposition 73 are subject to the same standard set forth in section 81012, that an amendment must further the purposes of "[t]his title," i.e., the Act as a whole. (CT 132 [former § 85103].).

[6] The trial erroneously stated that other courts have recognized the ban "as a key purpose of Proposition 73." (CT 498.) The two cases the court cited did not hold the ban was a "purpose" of Proposition 73 or the Act, rather they simply acknowledged the ban was a prominent feature of Proposition 73. (See *Johnson*, *supra*, 4 Cal.4th at p. 392; *Center for Public Interest Law*, *supra*, 210 Cal.App.3d at p. 1486.)

142, 157.) Yet, when they passed Proposition 73, they did not alter the Act's purposes, or make any express statement of purpose at all. Further, the only direct evidence of voter intent available, the arguments in support of the measure set out in the official Voter Guide, confirm that Proposition 73 was designed to reduce the influence of large contributors and rein in campaign spending—consistent with sections 81001 and 81002—and *not* to ban public funding of campaigns as an end in itself. (*Johnson*, *supra*, 4 Cal.4th at p. 407; *id*. at p. 418 (conc. & dis. opn. of Mosk, J.).) In sum, Proposition 73 was designed to carry out the existing purposes of the Act, not to alter or add to them.

4. The Trial Court Erred in Concluding that the Legislature Cannot Amend Section 85300 Because It Is a "Specific Mandate" of the Act.

In addition to holding that banning public funding is a "fundamental" purpose of the Act, the trial court erroneously determined that SB 1107 "conflicts with the purposes" of the Act because it "violates" a "specific mandate" of the Act, as amended by Proposition 73. (CT 498.) Relying on *Foundation*, *supra*, and *Gardner*, *supra*, the trial court reasoned that, "to be valid," an amendment not only has to further the purposes of the initiative in general, but also "'cannot do violence to *specific provisions*'" of the initiative. (CT 497 [quoting *Foundation*, *supra*, 132 Cal.App.4th at p. 1370] (emphasis added).) The trial court's holding was wrong on two fronts: (1) it took an unduly narrow view of the Legislature's power to amend the provisions of voter initiatives generally and the Act specifically; and (2) it failed to properly distinguish *Foundation*, *supra*, and *Gardner*, *supra*, on their facts.

The trial court's unduly narrow reading of the Legislature's power stemmed from its faulty reading of the case law. It relied heavily on the statement above from *Foundation*, *supra*, that the Legislature has no power

to amend "specific provisions" of an initiative, but this was the argument of a party, not part of the court's holding. (See 132 Cal.App.4th at p. 1070.) The *Foundation* court held that an amendment may be held invalid if it contradicts a "specific *primary mandate*" of an initiative, not any "specific provisions," or any "specific mandate," as the trial court held. (*Ibid.* (emphasis added).) As applied to the Act specifically, by the trial court's logic, any legislative attempt to amend section 85300 would be invalid. But that cannot be right, because this Court has already rejected the suggestion that section 85300 is "an absolute, inflexible provision beyond the power of the Legislature to change." (*Common Cause, supra*, 221 Cal.App.3d at p. 651).[7] And taken to its logical conclusion, the Legislature could not amend any voter-enacted provision of the Act, in contravention of section 81012.

The trial court also ignored that the Court of Appeal has already upheld a similar legislative amendment to a prohibition in the Act that was originally enacted by the voters. In *Santa Clarita Org. for Planning & the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 320-321, the Court of Appeal held that the Legislature had authority to create an exception (for particular transactions entered into by wholesale water agencies) to the Act's prohibition on conflicts-of-interest in governmental decision-making (§ 87100)—one of the cornerstones of the Act—because the amendment in question furthered the purposes of the Act. Although the amendment "takes away" from the prohibition, the Court of Appeal held

[7] The Legislature's express power to "amend" the Act (§ 81012, subd. (a)) includes the power to adopt exceptions to particular requirements or prohibitions (as it did with SB 1107). (See *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 124, citing *Franchise Tax Board v. Cory* (1978) 80 Cal.App.3d 772, 776 [a statute that "takes away from an existing statute is considered an amendment"].)

that it nonetheless "furthers the [Act's] purposes of ensuring the disclosure of conflicts of interest (and, on occasion, recusal from such conflicts)," and was therefore a valid exercise of the Legislature's authority under section 81012. (*Ibid*.)

Section 87100 prohibits public officials from participating in or influencing any governmental decision in which he or she has a financial interest. As such, it operationalizes one of the Act's express—and truly fundamental—purposes: to ensure that "[p]ublic officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of those who have supported them." (§ 81001, subd. (b); see also § 81002, subd. (c).) Given that the Legislature had the power to amend this foundational provision of the Act by essentially permitting certain financial conflicts that would otherwise be illegal, it undoubtedly had the power to amend the ban set forth in section 85300, which, unlike section 87100, was not sold to the voters as an end in itself, but rather as one part of a package of reforms designed to carry out *other* express purposes of the Act—purposes that are wholly consistent with SB 1107.

The trial court dismissed the *Santa Clarita* case in a terse footnote (see CT 498), and relied heavily instead on two cases involving other initiative schemes: *Foundation*, *supra* (involving Proposition 103, governing insurance rates); and *Gardner*, *supra* (involving Proposition 36, governing diversion programs for drug offenders). The trial court's reliance on those cases, which are distinguishable on their facts, was misplaced.

In both of those cases, the Legislature amended a voter initiative to further one its purposes, but in doing so violated another, competing purpose. And in both those cases, unlike here, those purposes were expressly stated in the initiative. The courts held that the Legislature could

not modify a primary mandate of the initiative in order to further a particular purpose, because doing so would violate another, countervailing purpose of the initiative. (*Foundation*, *supra*, 132 Cal.App.4th at pp. 1370-71; *Gardner*, *supra*, 178 Cal.App.4th at pp. 1378-79.)

In *Foundation*, *supra*, this Court examined a legislative amendment to Proposition 103, the "Insurance Rate Reduction and Reform Act." (132 Cal.App.4th 1354.) Voters passed that initiative "with the express intention to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable insurance commissioner and to ensure that insurance is fair, available, and affordable for all Californians." (*Id*. at p. 1359 (citing Prop. 103 § 2 (uncodified purposes).) One provision of the initiative set forth specific factors that insurance carriers could and could not apply in setting rates and premiums for automobile insurance. (*Ibid.*) One prohibited factor was whether a driver had previously been insured or not. (*Id.* at p. 1360.) The Legislature then amended that provision by allowing insurers to give "persistency discounts" to drivers with a history of insurance coverage—effectively allowing insurers to penalize previously uninsured drivers. (*Id.* at p. 1362.) The Legislature supported its action by finding that it would promote competition, one of the initiative's express purposes. (*Ibid.*) The court disagreed, holding that the Legislature's amendment ran "contrary to the declared purposes of Proposition 103 and contravene[d] the voters' directive against insurance rates that are 'excessive, inadequate [or] unfairly discriminatory.'" (*Id.* at pp. 1366, 1370.) In particular, prohibiting discrimination in rates generally, and against uninsured drivers in particular, was a "fundamental purpose" of the initiative. (*Id.* at p. 1370.) Because the legislative amendment "violate[d] this primary mandate," it was held invalid. (*Ibid.*)

The situation in *Gardner* was similar. There, the court considered a legislative amendment to Proposition 36, which called for diverting drug offenders away from incarceration and into probation with drug treatment programs. (*Gardner*, *supra*, 178 Cal.App.4th at p. 1369.) Under the initiative, an offender on probation could be incarcerated if his probation were revoked, but the initiative did not allow probation to be revoked for a first or second drug-related probation violation. (*Id.* at p. 1375.) The legislature later amended this provision, allowing judges to impose short-term or "flash" incarceration for drug-related probation violations as a tool to enhance compliance with the drug programs. (*Id.* at pp. 1371, 1375.) It also narrowed eligibility for drug treatment diversion programs. (*Id.* at p. 1376.) As with *Foundation*, the court found the legislative amendment "clearly contravene[d]" the initiative's express purposes of enhancing public safety by freeing jail cells and saving money, as well as its "apparent purpose" of giving two chances to nonviolent drug offenders who commit additional nonviolent drug offenses or probation violations. (*Id.* at pp 1377-78.)

Unlike the provisions at issue in *Foundation* and *Gardner*, the ban on public funding is not so important in the overall scheme of the Act that any legislative amendment would necessarily contradict the Act's purposes. Rather, the ban is one of numerous, inter-related provisions through which the Act's purposes are carried out. As such, it is subject to amendment by the Legislature, so long as "by any reasonable construction, it can be said that the [amendment] furthers the purposes of" the Act. (*Amwest*, 11 Cal.4th at p. 1256 (emphasis added).)

In sum, contrary to the trial court's decision, there is no blanket rule prohibiting the Legislature from amending a specific prohibition in the Act, including but not limited to the prohibition in section 85300. Instead of carefully considering whether SB 1107 could be upheld by any reasonable

construction, the trial court adopted a rigid analytical framework that, if accepted, would largely vitiate the Legislature's authority to amend the Act, and Proposition 73 in particular (Gov. Code, § 81012, subd. (a)); CT 132 [former § 85103])—and undermine the voters' intent in granting the Legislature this power in the first place. The power to amend gives the Legislature some leeway to adapt the Act to changes in the political environment, and experiment with new (and better) ways of achieving the Act's purposes. (*Kelly, supra*, 47 Cal.4th at 1043, fn. 59.) If a fundamental *change* in purpose had to be found every time the Legislature adopted a new means of achieving that same purpose, this flexibility would be lost, and the Act would soon become ossified, outdated, and ineffective.

II. PUBLIC FUNDING OF POLITICAL CAMPAIGNS FURTHERS THE ACT'S CORE PURPOSES

Unlike the amendments at issue in either *Foundation*, *supra*, or *Gardner*, *supra*, SB 1107 is not "contrary to the declared purposes" of the Act (*Foundation*, *supra*, 132 Cal.App.4th at p. 1366), or *any* of its declared purposes. The opposite is true: it indisputably supports and furthers the Act's purposes.

Appellants established below that public funding furthers the Act's core purposes of reducing the unfair advantages of incumbency and the influence of large campaign contributors, while ensuring that all citizens have an opportunity to participate in the political process, whether as constituents or candidates. (§§ 81001, subds. (a)-(c), 81002, subd. (e).) The Legislature made numerous, detailed findings to that effect when it passed SB 1107. (CT 169-172.)

And, as Appellants and their amici demonstrated in depth, the Legislature's findings are supported by a substantial body of case law and academic research. (CT 83-85 [Appellants' brief]; CT 474-82 [brief of amici curiae]; see also *Johnson, supra,* 4 Cal.4th at pp. 410-411.) For

instance, studies have shown that incumbents have a fundraising advantage in part because they receive significant contributions from special interest groups seeking access. (CT 330, 335-338, 341 [study showing that party incumbency leads to a 20 to 25 percent increase in campaign contributions, driven by special interest groups]; CT 346 [studying showing incumbency increases contributions by political action committees by 150 percent].) While incumbents enjoy this financial advantage, the costs of running for office continue to rise in elections across the state. (See, e.g., § 81001, subd. (c); CT 84 [citing news and academic reports].)

Studies have also shown that public funding is a viable method of combating the financial advantage of incumbents and impact of special interests. It can significantly increase the number and influence of small donors. (CT 380-386 [report examining New York City program that increased participation of small donors, as a percentage of all donors, from 39 to 68 percent].) It can also diversify the donor base. (*Ibid.*) It may also provide critical seed money for challengers to enter races that ultimately may lead to an increase in the number of contested elections. (CT 375-376; CT 399-408.) This effect in improving competition is most significant in races with an incumbent. (CT 422-423.) Thus, evidence shows that public funding serves as one means of furthering the Act's anti-incumbency purposes and its goal of reducing elected officials' and candidates' reliance on large contributions. (§§ 81001, subds. (a-c), 81002, subd. (e).)

Respondents failed to offer any evidence contradicting the cases or academic studies cited by the Legislature, Appellants, and amici.[8] Thus,

[8] Instead of making an evidentiary showing, Respondents argued in desultory fashion in their reply brief that the studies relied on by Appellants and amici failed to definitively establish that public funding would promote the Act's *anti-incumbency* purpose, either because the studies were outdated or inconclusive. (CT 450-452.)

there is no basis on this record to second-guess the Legislature's findings, which "are given great weight and will be upheld unless they are found to be unreasonable and arbitrary." (*Foundation*, *supra*, 132 Cal.App.4th at p. 1365, citing *Amwest*, *supra*, 11 Cal.4th at p. 1252.)

In sum, SB 1107 preserves and promotes the Act's purposes. The trial court reached a contrary result only by misconstruing those purposes and by misreading existing case law to hold, essentially, that the Legislature may never alter a "specific provision" or "specific mandate" of the Act. Its decision should be reversed.

CONCLUSION

For the reasons stated above, this Court should reverse the trial court's order granting the writ of mandate and direct the trial court to enter judgment for Appellants.

Dated: October 10, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached APPELLANTS' OPENING BRIEF uses a 13 point Times New Roman font and contains 7,770 words.

Dated: October 10, 2018

XAVIER BECERRA
Attorney General of California

/s/ Emmanuelle S. Soichet

EMMANUELLE S. SOICHET
Deputy Attorney General
Attorneys for Defendants and Appellants

DECLARATION OF SERVICE

Case Name: **Howard Jarvis Taxpayers Assn., et al. v. Edmund G. Brown, Jr., et al.**

No.: **C086334**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On October 10, 2018, I served the attached **APPELLANTS' OPENING BRIEF** on the parties by transmitting a PDF version of the document to the parties listed below through TrueFiling e-service:

John C. Eastman Anthony T. Caso Center for Constitutional Jurisprudence E-mail: tom@caso-law.com	*Attorneys for Petitioners Howard Jarvis Taxpayers Association and Quentin Kopp*

Additionally, I served the said document by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Superior Court of California County of Sacramento 720 9th Street Sacramento, CA 95814-1398	

And an electronic copy sent via the Third District Court of Appeal's electronic filing system, pursuant to Rule 8.212(c)(2), to:

Clerk, Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797	

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 10 2018, at San Francisco, California.

J. Wong	/s/ J. Wong
Declarant	Signature

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