JOHN C. EASTMAN, No. 193726
ANTHONY T. CASO, No. 088561
Center for Constitutional Jurisprudence
c/o Chapman Univ. Fowler Sch. of Law
One University Drive
Orange, CA 92806
Telephone: (916) 601-1916
Fax: (916) 307-5164
E-Mail: tom@caso-law.com

CHARLES H. BELL, JR., No. 060553
BELL, McANDREWS & HILTACHK, LLP
455 Capitol Mall, Suite 600
Sacramento, CA 95814
Telephone: (916) 442-7757
Fax: (916) 442-7759
E-mail: cbell@bmhlaw.com

ALLEN DICKERSON, Pro hac vice (pending)
CENTER FOR COMPETITIVE POLITICS
124 S. West Street, Suite 201
Alexandria, VA 22314
Telephone: (703) 894-6800
Fax: (703) 894-6811
E-mail: adickerson@campaignfreedom.org

Attorneys for Petitioners Howard Jarvis Taxpayers Association and Quentin Kopp

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

HOWARD JARVIS TAXPAYERS ASSOCIATION, a California nonprofit public benefit corporation, and QUENTIN L. KOPP, a California Taxpayer, Petitioners and Plaintiffs, v. EDMUND G. BROWN, JR., Governor of the State of California, and FAIR POLITICAL PRACTICES COMMISSION, an agency of the State of California, Respondents and Defendants.	Case No.: 34-2016-80002512-CU-WM-GDS **PETITIONER'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ISSUANCE OF PEREMPTORY WRIT OF MANDATE** Date: August 4, 2017 Time: 10:00 am Dept: 29 Judge: The Honorable Timothy M. Frawley Action Filed: December 12, 2016 Trial Date: Not Set.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

INTRODUCTION

Although the people in enacting Proposition 73 initially granted limited power to the Legislature to amend the terms of the initiative (but not to enact laws conflicting with it), that authority was revoked by two later carefully drafted initiatives. The first one, Proposition 208 put forward by amici, carefully left the ban on taxpayer financing of campaigns for elective office in place, but repealed the statute added by Proposition 73 that allowed legislative amendment. Proposition 34, put forward by the California Legislature, similarly was careful to maintain Government Code § 85300's ban on public financing of political campaigns and similarly repealed the authority of the Legislature to amend that section. The Constitution is clear. The Legislature, on its own, has no authority to amend voter-enacted statutes without express authority from the voters. The attempted amendment of Section 85300 to authorize that which the voters prohibited is void as an act beyond the powers of the Legislature.

Even if there were some hidden authority for legislative amendments of the voter-enacted provisions of Proposition 73, Senate Bill No. 1107 must fall because its amendments do not "further the purposes" of Title 9 of the Government Code as amended by Proposition 73 and Proposition 34. Respondents argue that the Legislature is free to define the purposes of Proposition 73, and implies that this Court must defer to that interpretation. Respondents then build on this erroneous foundation by arguing that a statutory initiative enacted in 1974 altered the meaning of the California Constitution, that provisions of a statutory initiative were mere surplusage, that voters and proponents of initiatives should be presumed ignorant of the law, and that the purpose of the measure can *only* be determined if that initiative contains a "purposes" section and thus the ballot pamphlet is irrelevant. This superstructure of flawed argument is then crowned with the claim that Proposition 73's ban on public financing is at once an inseparable part of the Political Reform Act, but at the same time contrary to the purposes of the Act.[1] These arguments are contrary to settled.

---

[1] Amici argue that Senate Bill No. 1107 merely authorizes "citizen" funding of political campaigns. That, of course, is false. Political campaigns are already funded by citizens through voluntary contributions. Senate Bill No. 1107 authorizes the use of public monies for political campaigns for

The people, in enacting Proposition 73, evinced a clear purpose to prohibit public financing of political campaigns. That purpose became embedded in Title 9 of the Government Code when Proposition 73 was enacted.[2] Proposition 34, an initiative put forward by the *Legislature*, confirmed that purpose both in its title and its ballot arguments. An amendment reversing the ban on public financing of campaigns can in no way further the purposes of Title 9, as amended by the voters.

ARGUMENT

I. The People Revoked the Power of the Legislature to Alter the Ban on Public Financing enacted by Proposition 73.

As originally enacted, Proposition 73 included a mechanism to allow legislative amendment of its provisions. Government Code § 85103 stipulated that the Legislature could amend the voter-enacted statutes added by Proposition 73 so long as those amendments furthered the purposes of Title 9 as amended by Proposition 73. With the addition of Government Code § 85300, these purposes now include a ban on public financing of political campaigns for elective office. That purpose was again confirmed in Proposition 34. See Part II.B., *infra*. That authority was later revoked by Proposition 208 of 1996 and again by Proposition 34 of 2000.

Respondents argue that the authority granted in the original Political Reform Act of 1974 for limited legislative amendments applies not only to that 1974 initiative, but also to *any* future voter-enacted measure that amends the Political Reform Act of 1974. No authority is cited for such an astounding proposition. The repeal of the legislative authority to amend the provisions of Proposition

---

elective office. This is something that the voters have rejected. Petitioners will not respond to amici's claim that the Governor that signed, and the Legislature that enacted Senate Bill No. 1107 owe their offices to endemic "corruption." Amici Curiae Brief in Support of Respondents and in Opposition to Petition for Peremptory Writ of Mandate at 9.

[2] Respondents point out that many of the provisions of Proposition 73 were enjoined by the Ninth Circuit. They fail to note, however, that that decision was later recognized as legally erroneous. *DJB Holding Corp. v. CIR*, 803 F.3d 1014, 1022 (9th Cir. 2015); *Montana Right to Live Ass'n v. Eddleman*, 343 F.3d 1085, 1091 n.2 (9th Cir. 2003). Since that time, the affected portions of Proposition 73 have been repealed and replaced by Proposition 34. Proposition 34 §16. As noted below, Proposition 34 confirmed the purpose of Proposition 73 to reform campaign financing without taxpayer financing for political campaigns for elective office.

73 is clear in both Proposition 208 and Proposition 34, and the voters are presumed to know the legislative scheme they are amending in a statutory initiative. Further, each part of a statutory scheme is presumed to have meaning. Respondents' unique interpretation compels the conclusion that provisions in Proposition 73 and Proposition 208 were mere surplusage.

Propositions 208 and 34 clearly repealed the authority granted in Proposition 73 to amend its provisions. Nothing in Propositions 208 and 34 granted new authority to amend the ban on taxpayer financing of campaigns for elective office in section 85300.

A. The Political Reform Act of 1974 did not alter the constitutional rules for legislative amendment of statutory initiatives

The people reserved a portion of the legislative power to themselves, exercised through the initiative. Cal. Const. art. I, § 1; art. IV, § 1; art. II, § 8; *Legislature v. Eu* (1991) 54 Cal. 3d 492, 500. This reservation of power would be useless if the Legislature were free to amend initiative statutes at will. Thus, the Constitution expressly limits the power of legislative amendment of initiative statutes. Unless the initiative statute itself provides differently, legislative amendments are not effective unless approved by the people. Cal. Const. art II, sec 10; *People v. Kelly* (2010) 47 Cal. 4th 1008, 1025-26. Proposition 9 from 1974 (the Political Reform Act) did not alter this constitutional rule. Proposition 9 was a statutory initiative. It had no power to amend the Constitution.

Proposition 9 added Government Code § 82012 to permit legislative amendment of the Political Reform Act if the amendment was enacted by two-thirds majority vote and it furthered the purpose of "this title" – Title 9 of the Government Code. That was the title added to the Government Code as the Political Reform Act of 1974. Nothing in Proposition 9 purported to affect future statutory initiatives – even if the provisions of the initiative were placed in Title 9 of the Government Code.

Amendment of statutory initiatives is governed by the Constitution. It is axiomatic that a statute cannot amend the Constitution. *See C and C Const. v. Sacramento Mun. Util. Dist.* (2004) 122 Cal. App. 4th 284, 302. Thus, Proposition 9 of 1974 did not alter the command of California Constitution, article II, § 10. The Legislature has no power to amend a statute enacted by initiative

without submitting that amendment to a vote of the people unless the initiative grants that power to the Legislature.

The authority for legislative amendment of Section 85300 was repealed by Propositions 208 and 34. The general rule applicable to the Legislature's power to amend a voter-enacted statute is found in California Constitution article II, § 10, not in Government Code § 81012. The statutory authority for legislative amendment of an initiative enacted 14 years before Proposition 73 cannot grant the Legislature a power withheld by the Constitution.

B. Respondents' argument violates fundamental cannons of statutory construction.

Respondents' argument requires the court to ignore the voter-enacted repeal of legislative authority to amend section 85300. The argument boils down to the claim that the original authorization for legislative amendment in Proposition 73 was mere surplusage and/or the voters who enacted Propositions 208 and 34 and the proponents who drafted those measures did not know what they were doing when they repealed section 85103. Both arguments violate fundamental cannons of statutory construction.

First, each word in a statute must be interpreted to give it some operative effect. *Imperial Merch. Servs., Inc. v. Hunt* (2009) 47 Cal. 4th 381, 390. The court may not construe a statute in a way to make its provisions superfluous. *Id.*; *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 22. Respondents' argument that *every* subsequently voter enacted statute included in Title 9 is impressed by the authorization of legislative amendment in the 1974 initiative first renders provisions of the Constitution superfluous and then renders the provisions of initiative measures dictating amendment procedure superfluous.

Article II, § 10 of the Constitution provides that the Legislature has *no* power to amend an initiative statute unless the people grant that power in the initiative. Respondents' argument reverses this default rule – at least for amendments that are placed in Title 9 of the Government Code. Now the presumption is that the initiative statute is subject to legislative amendment simply because the 1974 initiative allowed limited legislative amendments. As noted above, however, the initiative statute did not, and could not, amend the Constitution.

Respondents argument also renders superfluous the original authorization for legislative amendment of the provisions of Proposition 73 and the carefully crafted legislative amendment authority in Proposition 208. Proposition 73, as enacted, added Government Code § 85103. That section authorized limited legislative amendment of the provisions of Proposition 73 if the Legislature followed the procedure in section 82012. Section 85103 was later repealed by Proposition 208 and again by Proposition 34. However, under respondents' argument, section 85103 never had any operative effect because the provisions of Proposition 73 were added to Title 9, and the 1974 initiative made all future voter-enacted amendments to Title 9 subject to legislative amendment.

The argument also renders superfluous the specific authorization for legislative amendment included in Proposition 208. Section 45 of Proposition 208 purported to allow the limited authority for legislative amendment contained in Section 81012 apply to some, but not all the provisions of the initiative. The ballot argument urged support because the measure was "carefully written." Yet respondents' argument is that this careful draftsmanship was for naught – at least as to the provisions regarding authority for legislative amendment. According to respondent, if the statutes enacted by the initiative amend Title 9 of the Government Code, then section 81012 applies regardless of what the initiative provides. Respondents offer no support for this argument that departs so radically from fundamental cannons of statutory interpretation.

Respondents also seem to argue that the voters did not know what they were doing when they voted for Propositions 208 and 34. Did the voters know that they were repealing the limited legislative authority for amendment of Proposition 73 when they approved Propositions 208 and 34? This Court must presume that they did. *Prof'l Engineers in California Gov't v. Kempton* (2007) 40 Cal. 4th 1016, 1047-48; *People v. Weidert* (1985) 39 Cal.3d 836, 844. The Court's task is to implement voter intent. Where there is no ambiguity about the repeal of the limited legislative authority to amend section 85300, the court must "presume that the voters intend the meaning apparent on the face of an initiative measure." *Lesher Commun., Inc. v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 543.

Like Proposition 208, Proposition 34 includes a clear repeal of section 85103. Unlike Proposition 208, however, Proposition 34 does not include permission for legislative amendments.

The measure does refer to section 81012, but only for the requirement that Proposition 34 must be approved by the voters. Like Proposition 208, the arguments in favor of the measure tell voters that it was carefully written.

When they approved Proposition 34, the voters repealed section 85103 – the Legislature's only authority to amend section 85300. The voters are presumed to have read and understood all of this – especially in light of the claims in both measures that they were carefully written. The Legislature has no authority to amend section 85300 without voter approval.

C. Section 85202 does not empower the Legislature to repeal the ban on public financing of political campaigns.

Finally, respondents argue that both Propositions 208 and 34 "both contained express authorization for the Legislature to amend Title 9." This claim is demonstrable false.

First, respondents claim that section 85202 added by Proposition 208 is an "express" grant of authority to the Legislature to amend section 85300. Section 85202 as added to the Government Code by Proposition 208 provided: "Unless specifically superseded by this act, the definitions and provisions of this title shall govern the *interpretation of this law*." Respondents argue that this statute regarding interpretation somehow imports the operative provisions of section 81012 into all the provisions of Proposition 208 and indeed the remaining provisions of Proposition 73. This construction expressly conflicts with section 45 of Proposition 208, which includes a specific and limited incorporation of section 81012's limited authorization for legislative amendment. That limited authorization for legislative amendment only applied to the provisions of "this act," that is "the California Political Reform Act of 1996" or Proposition 208.

The interpretation also conflicts with Section 50 of Proposition 208 which also incorporates the nonconflicting portions of the then existing Political Reform Act, as amended to "apply to the provisions of this chapter," again referring only to the provisions of Proposition 208. Neither section 45 nor 50 apply to Government Code § 85300.

Section 85202, added by Proposition 34, is no more helpful to respondents' case. As added by Proposition 34, section 85202 reads: "Unless specifically superseded by the act that adds this section,

the definitions and provisions of this title shall govern the *interpretation* of this chapter." As was the case with Proposition 208, this section only talks about interpretation. Sections such as this are meant to resolve doubts about meaning or clarify ambiguous terms. 1A Sutherland Statutory Construction § 27:1 (7th ed.). For this section to apply at all to this case, respondents must identify some ambiguous term or unclear language regarding the Legislature's power to amend section 85300. Respondents have not done so.

Nothing in section 85300 creates an ambiguity. The only authority enacted by voters authorizing amendment of that section was repealed by voters in later initiatives. The Constitution clearly provides that unless the voters have granted authority to the Legislature, the Legislature has no power to amend a voter-enacted initiative without voter approval. The repeal of section 85103 and the operation of the California Constitution are clear. As the Supreme Court noted in *Lesher* "[a]bsent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure. *Lesher*, 52 Cal. 3d at 543.

II. Propositions 73 and 34 Made the Prohibition on Public Financing of Political Campaigns a Purpose of Title 9 of the Government Code as Amended.

Respondents argue that the ban on public funding of campaign financing, enacted by Proposition 73, is subject to amendment under Government Code sec 82012. This requires respondents to first argue that the ban on public campaign financing is part and parcel of the Political Reform Act, but at the same time contrary to the purposes of the Political Reform Act.[3] Both propositions cannot be true. Respondents rely on a legislative finding that the ban on public financing

[3] Contrary to respondents' suggestion, the California Supreme Court *never* ruled that the ban on public financing of political campaigns is contrary to the purposes of Political Reform Act as amended by Proposition 73. In *Johnson v. Bradley* (1992) 4 Cal. 4th 389, the court ruled that the conduct of municipal elections in a charter city was a municipal, rather than statewide, concern. *Id.* at 402. The court ruled that the ban on public financing of political campaigns for elective office was not narrowly tailored to limit incursion on the municipal affairs of a charter city. Conservation of local, municipal funds is a municipal concern. *Id*. at 407. The court was not asked to rule, and did not rule, on whether Proposition 73 could possibly by contrary to the Political Reform Act as amended by Proposition 73. As demonstrated below, Proposition 73 added a purpose to the Title 9 of the Government Code to ban taxpayer financing of campaigns for elective office.

of political campaigns gives powers to special interest and "unfairly favors incumbents.[4] Chapter 837 of the Statutes of 2016, § 1(m). Whatever the merits of the political science behind this "finding" may be, it cannot serve as a finding regarding the purposes of Propositions 9, 73, or 34. The Legislature has no power to define the "purposes" of an initiative statute and those findings are not entitled to any deference by the courts. If the question is the purposes of all of Title 9 of the Government Code (as it must be under section 82012), then those purposes must include later amendments, such as Proposition 73 and Proposition 34. The court is not limited to the "purposes" of Proposition 9 of 1974. Instead, the purposes of Title 9 must include the 1988 and 2000 initiative measures adding, repealing, and amending portions of Title 9. Both Proposition 73 and 34 evince a clear intent on the part of the voters to prohibit public financing of political campaigns.

A. The Legislature is not entitled to deference on the purposes of Title 9 as amended.

The purpose of section 10 of Article II of the Constitution is to prohibit the Legislature from "undoing what the people have done without the electorate's consent." *People v. Kelly*, 47 Cal. 4th at 1025. When the powers of initiative and referendum were adopted in 1911, the people consciously chose to impose the strictest possible restrictions on legislative amendment of initiatives. *Id*. at 1035. To preserve the people's power, legislative amendment of initiative statutes was forbidden. *Id*.

Courts are tasked with the duty to "jealously guard" the initiative power of the people. *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 776; *Brosnahan v. Brown* (1982) 32 Cal. 3d 236, 261–62; *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal. 3d 582, 591. The power of initiative includes the power to restrict the Legislature's the authority to amend the initiative statute without the consent of the voters. Thus, the court must give a liberal interpretation to the people's power, even when that interpretation is contrary to legislative desire. *See People v. Kelly*, 47 Cal. 4th

[4] Ironically, the legislators that voted for this measure and the governor that signed it are all incumbents.

at 1025. As the Supreme Court has noted, "the voters should get what they enacted, not more and not less." *Hodges v. Superior Court* (1999) 21 Cal. 4th 109, 114.

Assuming the Legislature has *any* power to reverse the ban on public funding of political campaigns, that change must "further the purposes" of Title 9 of the Government Code. The ban on public funding of political campaigns was placed in Title 9 of the Government Code by Proposition 73. Thus, the question for the Court (if it determines that the Legislature even has power to amend the provisions of Proposition 73), is whether repealing a ban on public funding in Title 9 is consistent with the ban on public funding in Title 9. The Legislature proposes to solve this logical dilemma with a "finding" that the ban on public funding is contrary to the purposes of Title 9, which includes the ban on public funding. This "finding" is not binding on the Court and is contrary to common sense.

Amwest Surety Insurance Company v. Wilson (1995) 11 Cal. 4th 1243 is instructive on the deference owed to legislative findings and interpretation of the "purposes" of an initiative statute. As is the case here, the Attorney General and Governor urged the court to extend a deferential standard of review to the Legislature's findings. *Id*. at 1251 and n.8. This deference was required, according to the argument, by the strong presumption that legislative acts are constitutional. The Court rejected that argument. The California Constitution grants voters the absolute power to control the Legislature's power to amend initiative statutes. *California Common Cause v. Fair Pol. Pract. Com'n* (1990) 221 Cal. App. 3d 647, 651–52. This limitation on the Legislature's power "must be given the effect the voters intended it to have." *Amwest*, 11 Cal. 4th at 1255-56. The Court noted that if it accepted the Attorney General's and Amwest's argument of deference, it would lead to "the absence of effective judicial review" and lead future initiative drafters to exclude the power of legislative amendment in all cases. *Id*. at 1256.

Although acts of the Legislature carry a presumption of constitutionality, the courts must protect the people's right of initiative – and this includes limitations on the Legislature's power to amend initiative statutes. If a legislative amendment "*may* conflict with the subject matter of initiate measures," that amendment may only be accomplished by submitting it to the voters for approval.

DeVita v. County of Napa, 9 Cal. 4th at 792; *Proposition 103 Enforcement Project v. Charles Quackenbush* (1998) 64 Cal. App. 4th 1473, 1486.

The Legislature's "finding" that the repeal of the ban on public financing of elections is in accord with the purposes of Title 9 of the Government Code, including Title 9's ban on public financing, is entitled to no deference. As noted below, the Legislature's claim regarding the purposes of Title 9 ignores later amendments to that law, including Proposition 73 (the statutory initiative that enacted the ban on public financing of political campaigns) and Proposition 34, the statutory initiative put forward by the Legislature that confirmed in its Title and arguments the ban enacted by Proposition 73.

B. The prohibition on public financing of political campaigns is one of the purposes of Title 9 of the Government Code.

To make the argument that Senate Bill No. 1107 "furthers the purposes" of Title 9, respondents are forced to argue for a limited view of what are included in the purposes of Title 9. As they did in *Amwest*, the Attorney General and Governor argue that the purposes of an initiative statute are only those items found in the section of the initiative setting forth a list of purposes. *Amwest*, 11 Cal. 4th at 1256. The Supreme Court flatly rejected this argument. Instead, the Court ruled that "evidence of its purpose may be drawn from many sources, including the historical context of the amendment, and the ballot arguments favoring the measure." *Id*. Respondents never address the ballot arguments put forward in support of Proposition 73 or Proposition 34.

Respondents argument appears to be that Proposition 73 had no "purposes" since it did not include a section with a statement of purposes. The ballot materials accompanying Proposition 73 and Proposition 34 put to rest the notion that the measure had no "purpose." *Center for Public Interest Law v. Fair Pol. Pract. Comm'n* (1989) 210 Cal. App. 3d 1476, 1485-86 (Discerning the purpose of Proposition 73 to prohibit public financing of political campaigns by reviewing ballot pamphlet materials).

Statutes, including statutes enacted by initiative, must be construed to implement "the intent of the adopting body." *Lesher*, 52 Cal. 3d at 543. If there is ambiguity in the meaning of the measure,

the court can review the ballot arguments and Legislative Analyst's opinion in the official ballot pamphlet. *People v. Johnson* (2015) 61 Cal. 4th 674, 687; *Robert L. v. Superior Court* (2003) 30 Cal. 4th 894, 906; *San Francisco Taxpayers Assn. v. Bd. of Supervisors* (1992); 2 Cal. 4th 571, 579; *Eu*, 54 Cal. 3d at 505.

In this case, there is no ambiguity in the language of Proposition 73 that one of the purposes it added to Title 9 of the Government Code was to prohibit public financing of political campaigns for elective office. The language of Government Code § 85300 is clear. Politicians are forbidden to accept and government entities are forbidden to offer public financing for political campaigns.

The ballot pamphlet materials confirm the clarity of this purpose. Proposition 73 was entitled "Campaign Funding. Contribution Limits. Prohibition of Public Funding. Initiative Statute." The title of the measure established the prohibition of public funding for political campaigns as a central purpose of the initiative. *See Center for Public Interest Law*, 210 Cal. App. 3d at 1485-86. The Legislative Analyst explained that the initiative would prohibit the use of public funds for political campaigns. This included a prohibition on using public funds for newsletters and mass mailings.

The argument in favor of Proposition 73 emphasized "*TAXPAYER FINANCING OF POLITICAL CAMPAIGNS MAKES NO SENSE!* … Your tax money would be given to candidates you disagree with." The argument in opposition was just as emphatic "What they do not tell you is that *U.S. Supreme Court has ruled that we can't limit campaign spending without providing some form of public funding*. And we can't have effective campaign reform without limiting spending." The closing argument in favor of Proposition 73 removes any doubt about its purpose. "WHY ALLOW THESE SPECIAL INTERESTS TO MULTIPLY THEIR POLITICAL INFLUENCE WITH YOUR TAX MONEY? *TAXPAYERS SHOULD NOT BE FORCED TO SHELL OUT UP TO $70 MILLION EVERY TWO YEARS FOR THEIR EXTRAVAGANT PLAN.* Join nearly 600,000 of your fellow Californians who placed Proposition 73 on the ballot. Support true campaign finance reform WITHOUT RAIDING THE STATE TREASURY."

Proposition 34, the measure put on the ballot by the Legislature, confirms these purposes. Although the measure had no operative provisions to add to the general ban of section 85300, the

arguments in favor of Proposition 34 emphasized that the ban on public funding of political campaigns would remain in place. The argument in favor of the measure noted "PROPOSIITON 34 DOES NOT ALLOW TAXPAYER FUNDED CAMPAIGNS. Proposition 34 does not impose [sic] taxpayer dollars to be used to finance political campaigns in California. Our tax money is better spent on schools, roads and public safety." The argument concluded "VOTE YES ON PROPOSITION 34 if you don't want taxpayers to pay for political campaigns." The continued ban on public financing of political campaigns was even included in the title of the measure. "This chapter shall be known as the 'Campaign Contribution and Voluntary Expenditure Limits *Without Taxpayer Financing* Amendments to the Political Reform Act of 1974.'" Gov't Code § 85100 (emphasis added). This echoes the title to the chapter originally enacted by Proposition 73: "This chapter shall be known and cited as the 'Campaign Contribution Limits *Without Taxpayer Financing* Amendments to the Political Reform Act.'" Proposition 73, § 1 (adding section 85100) (emphasis added).

The purpose of adding section 85300 to Title 9 of the Government Code could not be clearer. In title, analysis, and argument, it clearly amended Title 9 to add a ban on taxpayer financing of political campaigns for elective office as a purpose of that law. Whatever other campaign reform measures might be included in Title 9, one important measure insisted on by the voters was a ban on public financing of political campaigns. Even if effective campaign reform required public financing, voters decided they would rather have the prohibition on public funding of political campaigns than amici's vision of effective reform. *See Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com*. (1990) 51 Cal.3d 744, 751, 754. Proposition 34 reinforced this purpose even while it repealed the authority for the Legislature to amend section 85300.

C. Legislation that conflicts with Government Code § 85300, a voter-enacted statute, cannot further the purpose of Title 9, which includes section 85300.

As noted above, California courts have rejected the notion that they are limited to a "purposes" section of an initiative in determining whether a legislative amendment furthers the purposes of the voter-enacted measure. The purpose of Title 9, as amended, clearly includes the ban on taxpayer financing of political campaigns. But even when it is not clear from the stated purposes, courts have

held that a measure does not advance the purposes if it conflicts with a voter-enacted section of the law. *Howard Jarvis Taxpayers Ass'n v. Bowen* (2011) 192 Cal.App.4th 110, 116; *Gardner v. Schwarzenegger* (2009) 178 Cal. App. 1366, 1374. It does not matter if the Legislature argues that it is "advancing the purposes" of a voter-enacted statute. If the legislative amendment conflicts with the voter-enacted statute, the amendment cannot be said to advance the purposes of the initiative. Indeed, the courts rejected several attempts of the Legislature to amend Proposition 103, notwithstanding legislative declarations that the amendments "furthered the purposes" of the initiative. *See Amwest*, 11 Cal. 4th at 1265; *DeVita v. County of Napa*, 9 Cal. 4th at 792; *Foundation for Taxpayer and Consumer Rights v. Garamendi* (2005) 132 Cal. App. 4th 1354, 1366; *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal. App. 4th 1473, 1494.

"Purposes" are often stated in general terms, inviting the Legislature to argue that its amendment somehow "furthers" those general "purposes." The duty of the courts, however, is to protect the people's right of initiative. *DeVita v. County of Napa*, 9 Cal. 4th at 776. This includes the people's "absolute" right to restrict the power of the Legislature to make changes to voter-enacted statutes. *California Common Cause v. Fair Pol. Pract. Comm'n*, 221 Cal. App. 3d at 651–52.

The decision in *Foundation for Taxpayer and Consumer Rights* is instructive in this regard. The court in that case considered a legislative amendment to Proposition 103, a voter-enacted insurance reform measure. In the amendment, the Legislature authorized insurers to give discounts based on "persistency" – the insured's maintenance of prior insurance. The petitioners in *Foundation*, argued that using "persistency" as a rating factor did not advance the purposes of Proposition 103. As in this case, the Attorney General argued that nothing in Proposition 103's "statement of purposes" section spoke to the issue of "persistency" as a rating factor. The Legislature made a finding that the amendment would increase competition, and this, it was argued, was a purpose of Proposition 103. The "purposes" section of Proposition 103 provided only that the measure was intended "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." *Amwest*, 11 Cal. 4th at 1256 n.9. The petitioners

argued that the legislative amendment conflicted with a purpose of prohibiting discrimination against drivers who did not have prior insurance. The state argued that prohibition of discrimination is not mentioned in the purposes section and the amendment was within the Legislature's power.

The court in *Foundation* rejected the state's argument. The purpose of a voter-enacted measure is found in its operative provisions. *Foundation*, 132 Cal. App. 4th at 1369-70. A legislative amendment must not only further the "purposes in general" of an initiative measure – it also cannot violate "a specific primary mandate." *Id.* That is, the legislative amendment may not conflict with the express terms of the voter-enacted statute.

As noted above, Proposition 73 amended the Political Reform Act to include a ban on taxpayer financing of political campaigns. In furtherance of this purpose, Proposition 73 added Government Code Section 85300. That section, as enacted by Proposition 73, prohibits candidates from accepting public monies for political campaigns. It further prohibits any public officer from expending public monies for political campaigns for elective office. Subsequent voter-enacted measures, Proposition 208 and Proposition 34, carefully left section 85300 in place even as they repealed other provisions of Proposition 73. Indeed, Proposition 34 proclaimed that it achieved campaign finance reform "without taxpayer financing."

Senate Bill No. 1107 (Chapter 837 of the Statutes of 2016) reverses this "specific primary mandate" of Proposition 73. By converting the *ban* on public financing of political campaigns for elective office into and express *authorization* for public financing, Senate Bill No. 1107 conflicts with the operative provisions of a voter-enacted statute. By definition, Senate Bill No. 1107 cannot advance the purposes of Title 9 of the Government Code as amended by Proposition 73.

D. Respondents' claim that public financing of election campaigns will promote better, more responsive, elected officials is both irrelevant and inaccurate.

The merits of respondents' and amici's extended political science argument public financing of campaigns is irrelevant to the issues before this Court. The issue (assuming legislative authority to amend the provisions of Proposition 73) is not whether the Legislature's reversal of the ban on public financing of political campaigns is a good idea, it is only whether it promoted the purposes of Title 9

as a whole – as it was amended by Propositions 73 and 34. *Amwest*, 11 Cal. 4th at 1256; *Gardner*, 178 Cal. App. 4th at 1378.

Respondents argue that Senate Bill No. 1107 furthers the purposes of the Act, pointing to various academic studies and policy arguments. For the reasons already given, these efforts are insufficient as a matter of law. They fail to take into account the purposes added to Title 9 bu the voters when they adopted Propositions 73 and 34. But respondents' arguments are also incomplete and misleading as a matter of fact. The various authorities cited by respondents and their *amici*—many of which are a decade old and do not account for more recent developments—do not support the Attorney General's claim that public financing serves the 1974 Act's anti-incumbency purpose.

To the contrary, the legislation challenged here will neither diminish incumbency nor increase competition. Academic and policy research is consistent on this question. In the most comprehensive study to date, the Federal Government Accountability Office, which in 2003 found that public financing had a minimal impact on competitiveness,[5] has subsequently concluded that public financing produced "no statistically significant differences observed for the other measures of electoral competition: contestedness[6] and incumbent reelection rates."[7] Similarly, Kenneth Mayer, who originally published research that was supportive of public funding's possible positive impacts, has admitted in more recent work that "despite unexpectedly high participation in [public funding], there was no difference in electoral competition in incumbent-challenger matchups."[8] Research also indicates that "the longer term pattern has shown no significant change in incumbency reelection rates,

---

[5] Center for Governmental Studies, 2003. *Investing in Democracy: Creating Public Financing of Elections in Your Community*, at page 15. (July 13, 2017) available at http://www.policyarchive.org/handle/10207/231.

[6] Contestedness is defined as the number of candidates per race.

[7] Government Accountability Office. *Campaign Finance Reform: Experiences of Two States That Offered Full Public Funding for Political Candidates.* (July 12, 2017), accessible at, http://www.gao.gov/assets/310/305079.pdf.

[8] Amnon Cavari, & Kenneth R. Mayer. *Why Didn't Public Funding Generate More Competition in State Legislative Elections?* (April 18, 2011), *in* American Politics Workshop, University of Wisconsin. April, 2011.

margins of victory, or legislature demographics."[9] Another recent report states that "our results indicate that, despite claims that this policy increases electoral competition, taxpayer financing of political campaigns does not produce statistically significantly lower re-election rates for incumbent state legislators."[10] Finally, though some studies have found increases in participation rates under public financing, and increases in contested primaries, it must be noted that "simply because an election is contested does not necessarily mean that the race is competitive."[11]

Equally telling, the 2015 Campaign Finance Institute study cited by the Attorney General itself acknowledged that public funding does not "reduce the unfair advantages of incumbency and the influence of large contributions,"[12] concluding that "[i]t is obvious – certainly in the new world of independent spending – that citizen funding programs do not and cannot squeeze private money out of politics," and that public money does not help competition when defined as "the margins of victory in competitive races, or the defeat of incumbents."[13] The National Institute for Money in Politics study cited by the Attorney General, begins by stating that public financing *influences* the competitiveness of races but goes on to find that there is not necessarily a clear link. The report further noted that public financing in several states may have shown no, or even inverse responses.[14] And in a more recent study, completed in 2017, the Institute found that candidates who opt for public funding in some

---

[9] Kenneth R. Mayer. *Public Election Funding: An Assessment of What We Would Like to Know.* Vol 11. No. 3 The Forum: A Journal of Applied Research in Contemporary Politics. 365, 366 (October, 2013).

[10] Joe Albanese, *Do Taxpayer-Funded Campaigns Increase Political Competitiveness?* CENTER FOR COMPETITIVE POLITICS, June 2017. (July 12, 2017) available at http://www.campaignfreedom.org/wp-content/uploads/2017/06/2017-06-05_Issue-Analysis-10_Do-Taxpayer-Funded-Campaigns-Increase-Political-Competitiveness.pdf.

[11] Neil Malhotra. *The Impact of Public Financing on Electoral Competition.* Vol. 8, No.3 State Politics and Policy Quarterly 263, 269 (Fall, 2008).

[12] Campaign Finance Institute. *Citizen Funding for Elections.* (July 10, 2017) available at http://www.cfinst.org/press/PReleases/15-11-19/CFI_Report_Citizen_Funding_for_Elections.aspx.

[13] *Id.*

[14] National Institute on Money in State Politics, 2013 and 2014: Monetary Competitiveness in State Legislative Races. (July 13, 2017) available at https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races/.

states are increasingly more likely to lose.[15] While one study of public funding cited by the Attorney General showed positive effects on competitiveness in a single election cycle,[16] that study was forced to concede that public funding for challengers did "not necessarily increase their chance of winning."[17] That study is nine years old. In subsequent research with a larger sample of states and elections, the "lack of effect [from public financing] was striking, and forces a reconsideration of the early conclusions which found that public funding programs increase competition."[18] It is true that politicians do not have to work as hard to compile campaign contributions when public funding is available, but studies also show that incumbents are more likely than challengers to raise and use public funding effectively.[19]

Policy arguments cannot rescue the Legislature from its decision to pass amendments that clearly violate the electorate's decree. But the Attorney General's arguments fail on their own merits, especially as the state has relied upon outdated research and failed to cite later work—sometimes by the same authors—refuting those early, tentative conclusions.

---

[15] J.T. Stepleton. *The Rise and Fall of Public Funding in Arizona.* The National Institute on Money in State Politics. (July 10, 2017) available at https://www.followthemoney.org/research/blog/the-rise-and-fall-of-public-funding-in-arizona/.

[16] Based on findings of the Maine and Arizona election cycles of 2000.

[17] Malhotra, *supra* footnote 11.

[18] Cavari & Mayer, *supra* footnote 8.

[19] Campaign Finance Institute, *supra* footnote 12.

CONCLUSION

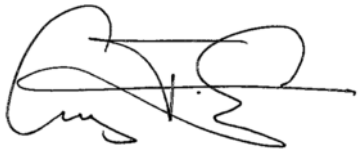
The Legislature has no authority to amend section 85300. In any event, a statute that authorizes that which the voters prohibited cannot be said to advance the purpose of the law that the voters enacted. Senate Bill No. 1107 is void and the motion for issuance of the peremptory writ should be granted.

DATED: July 19, 2017.

JOHN C. EASTMAN
ANTHONY T. CASO

CHARLES H. BELL, JR
BELL, McANDREWS & HILTACHK, LLP

.
ALLEN DICKERSON



By ANTHONY T. CASO
Attorneys for Petitioners and Plaintiffs

DECLARATION OF SERVICE

I, Anthony T. Caso, declare as follows:

I am a resident of the State of California, over the age of 18 years and not a party to the within action. My business address is Center for Constitutional Jurisprudence, c/o Chapman University, Fowler School of Law, 1 University Drive, Orange, California, 92866.

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

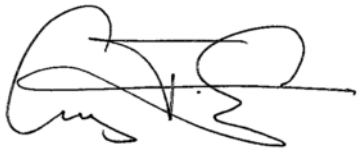
On, July 19, 2017 true copies of **PETITIONER'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ISSUANCE OF PEREMPTORY WRIT OF MANDATE** were sent via email (pursuant to the parties' agreement for electronic service) to:

Emmanuelle S. Soichet
Deputy Attorney General
Emmanuelle.Soichet@doj.ca.gov
janet.wong@doj.ca.gov

Bradley S. Phillips
Munger, Tolles & Olson LLP
Brad.Phillips@mto.com
Mary.Pantoja@mto.com

Megan P. McAllen
Campaign Legal Center
mmcallen@campaignlegalcenter.org

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 19th day of July, 2017, at Orange, California.



By ANTHONY T. CASO