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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF SACRAMENTO

18 HOWARD JARVIS TAXPAYERS)
19 ASSOCIATION, a California nonprofit public)
20 benefit corporation, and QUENTIN L. KOPP,)
21 a California Taxpayer,)
22 Petitioners and Plaintiffs,)

21 v.)

22 EDMUND G. BROWN, JR., Governor of the)
23 State of California, and FAIR POLITICAL)
24 PRACTICES COMMISSION, an agency of)
25 the State of California,)

25 Respondents and Defendants.)

Case No.: 34-2016-80002512-CU-WM-GDS

**PETITIONER'S 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.

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1 **INTRODUCTION**

2 Government Code section 85300 was added by Proposition 73 in 1988. That section imposes
3 an absolute ban on public financing of political campaigns, fulfilling one of the essential purposes of
4 Proposition 73. This ban on public financing of campaigns was immediately challenged by California
5 Common Cause and others. They argued that section 85300 was unconstitutional because it bound
6 the hands of future Legislatures – taking away their authority to enact laws authorizing public
7 financing of political campaigns. *Cal. Common Cause v. Fair Pol. Pract. Comm’n* (1990) 221 Cal.
8 App. 3d 647, 650. The Court of Appeal agreed with the characterization of the effect of section 85300,
9 but rejected the constitutional challenge. *Id.* at 651. In the exercise of their constitutional power of
10 initiative, the people have the absolute power to determine what authority the Legislature has to amend
11 initiative statutes. *Id.* at 653¹; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal. 4th 1243, 1251.

12 The Legislature and Governor have decided to ignore this judicial ruling. Senate Bill No.
13 1107, sponsored by the same Common Cause that lost the last challenge, purports not just to amend
14 section 85300, but rather to convert its prohibition on public financing of campaigns into an express
15 authorization. This the Legislature may not do. It could not do so in 1990 because a reversal of the
16 ban would not have furthered the purposes of the Political Reform Act as amended by Proposition 73.
17 It cannot do so today for the same reason, but also for a second reason: the people repealed section
18 85103, the statutory provision that provided the Legislature its only authority to amend the provisions
19 of Proposition 73 without voter approval.

20 By this motion, citizens, taxpayers, voters, and one of the proponents of Proposition 73 seek a
21 peremptory writ of mandate commanding the Fair Political Practices Commission to ignore the
22 amendments to section 85300 that Senate Bill No. 1107 purports to make, and to instead continue to
23 enforce the ban on public financing of campaigns as enacted by the voters.

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27 ¹ The court did note that Government Code § 85103 gave the Legislature limited power to amend, but
28 did not discuss what type of amendments would be authorized. *Id.* at 651

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2 **BACKGROUND OF GOVERNMENT CODE SECTION 85300**

3 This action involves Government Code § 85300 as originally enacted by Proposition 73, an
4 initiative statute. Propositions 68 and 73 were two competing initiatives in 1988 proposing
5 comprehensive regulation of campaign financing. *Taxpayers to Limit Campaign Spending v. Fair*
6 *Political Practices Comm’n* (1990) 51 Cal. 3d 744, 770. One of the key differences between the
7 measures is that Proposition 68 expressly provided for public financing of some election campaigns
8 while Proposition 73 expressly forbade public financing of all election campaigns. *Id.* at 751. As the
9 measure with the most affirmative votes, the California Supreme Court ruled that only Proposition 73
10 could take effect under the Constitution. *Id.* at 770-71. Although there were several differences
11 between the two measures, the Supreme Court’s finding of express conflict centered on the question
12 of public financing of election campaigns. *Id.* at 751. This issue was of such central import for
13 Proposition 73 that it was included in the title of the measure: “Campaign Funding. Contribution
14 Limits. Prohibition of Public Funding. Initiative Statute.”

15 As added by Proposition 73, Government Code § 85300 provides: “No public officer shall
16 expend and no candidate shall accept any public moneys for the purpose of seeking elective office.”²
17 The challenged Senate Bill No. 1107 (now Chapter 837 of the Statutes of 2016) purports to reverse
18 this prohibition on public financing of election campaigns. In that bill, the Legislature re-wrote section
19 85300 to expressly authorize public financing of political campaigns: “A public officer or candidate
20 *may* expend or accept public moneys for the purpose of seeking elective office if the state or a local
21 governmental entity establishes a dedicated fund for this purpose by statute, ordinance, resolution, or
22 _____

23 ² The California Supreme Court ruled that this provision does not preclude charter cities from
24 amending their charters to provide for public financing of municipal campaigns. *Johnson v. Bradley*
25 (1992) 4 Cal. 4th 389, 411. The bar on public financing continues to apply to the state, counties, and
26 non-charter cities. *Compare County of Sacramento v. Fair Political Practices Comm’n* (1990) 222
27 Cal. App. 3d 687, 689 with *Johnson v. Bradley*, 4 Cal. 4th at 405-06. The ban also applies to public
28 financing of legislative campaigns. *Taxpayers to Limit Campaign Spending*, 51 Cal. 3d at 751.

1 charter.” (Emphasis added.) These amendments were not put on the ballot for a vote of the people.
2 Instead, respondents claim that they became effective without the requirement for a vote.

3 ARGUMENT

4 I. Mandate Is the Proper Procedure for Challenging the Validity of Senate Bill No. 1007.

5 Mandate is available to “compel the performance of an act which the law specially enjoins.”
6 Code Civ. Proc. §1085. Respondent, Fair Political Practices Commission, has the duty to enforce the
7 provisions of the Political Reform Act, as amended, including a ministerial duty to publish, on an
8 annual basis, the provisions of the Act that are legally in effect. *Cal. Common Cause*, 221 Cal. App.
9 3d at 650; *Compare* Verified Petition for Writ of Mandate and Complaint for Declaratory and
10 Injunctive Relief at ¶ 8 with Answer of Edmund G. Brown, Jr. and Fair Political Practices Commission
11 to Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief at ¶ 8.
12 If the provisions enacted by Senate Bill No. 1107 are not legally in effect, respondent has the legal
13 duty to continue to publish section 85300 as enacted by the people in Proposition 73. A challenge to
14 the Legislature’s attempt to amend section 85300 is thus a proper subject of a petition for writ of
15 mandate. *See e.g., Taxpayers to Limit Campaign Spending*, 51 Cal. 3d at 748; *County of Sacramento*,
16 222 Cal. App. 3d at 689; *Cal. Common Cause*, 221 Cal. App. 3d at 650. As citizens and proponents
17 of Proposition 73, petitioners are beneficially interested in this matter and have standing to bring this
18 petition. *Common Cause v. Board of Supervisors of Los Angeles County* (1989) 49 Cal. 3d 432, 440;
19 *Green v. Obledo* (1981) 29 Cal. 3d 126, 144; *Bd. of Soc. Welfare v. County of Los Angeles* (1945) 27
20 Cal. 2d 98, 100-01.

21 II. The Legislature Has No Power to Amend Section 85300 Without Consent of the 22 Electorate.

23 The Constitution forbids the Legislature from “undoing what the people have done without the
24 electorate’s consent.” *People v. Kelly* (2010) 47 Cal. 4th 1008, 1025-26. The people’s power of
25 initiative cannot be defeated by simple legislative vote. Article II, section 10 of the California
26 Constitution expressly limits the power of the Legislature to amend initiative statutes. Unless the
27 initiative itself gives the Legislature the power to amend, no legislative amendment can take legal
28 effect until it is approved by the voters. Cal. Const. art. II, § 10(c). Thus, any legislative amendment

1 to an initiative statute requires either voter approval or express authorization for Legislative
2 amendment in the initiative. Without that grant of limited power to the Legislature, no legislative
3 amendment can take affect without consent of the voters. *Amwest*, 11 Cal. 4th at 1251.

4 There can be no question that the changes made by Senate Bill No. 1107 constitute an
5 amendment of the provisions of Proposition 73 within the meaning of the Constitution. “An
6 amendment includes any legislative act that changes an existing initiative statute by taking away from
7 it.” *People v. Kelly*, 47 Cal. 4th at 1027. Senate Bill No. 1107 undeniably “takes away” from
8 Proposition 73 the prohibition on public financing of political campaigns, and turns that prohibition
9 into an express authorization. As an amendment of an initiative statute, Senate Bill No. 1107 can have
10 no legal effect unless it complies with the California Constitution.

11 The purpose of the California Constitution’s constitutional limitation on the Legislature’s
12 power to amend initiative statutes is to protect the people’s initiative powers by precluding the
13 Legislature from undoing what the people have done without the electorate’s consent. *People v. Kelly*,
14 47 Cal. 4th at 1025-26; *Amwest*, 11 Cal.4th at1251; *Shaw v. People ex rel. Chiang* (2009) 175 Cal.
15 App. 4th 579, 597; *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 829-30;
16 *Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1484.

17 Although the people originally authorized legislative amendment of Proposition 73 in 1988 (so
18 long as the amendment furthered its purposes), they later repealed that authorization. This means that
19 the provisions of Proposition 73 cannot be amended at all by legislative action alone, even if the
20 amendment furthers the purposes of the initiative. A vote of the electorate is required in all instances.
21 In any event, the changes made by Senate Bill No. 1107 do not advance the purposes of Proposition
22 73 or the Political Reform Act, as amended. Instead, they purport to authorize what Proposition 73
23 forbids. Thus, the provisions of Senate Bill No. 1107 can only take effect if and when they are
24 approved by the voters.

25 **A. As a provision of Proposition 73, section 85300 cannot be amended by the**
26 **Legislature without submitting the amendment to a vote of the people.**

27 Without authorization from the voters, the Legislature has no power to amend an initiative
28 statute. Cal. Const. art. II, § 10. As described below, the voters initially gave limited authority to the

1 Legislature to enact amendments that furthered the purposes of Proposition 73. That authorization
2 was later repealed by the voters in 1996 (and again in 2000). Under the Constitution, the Legislature
3 simply has no power on its own to amend section 85300. Senate Bill No. 1107 is thus an
4 unconstitutional attempt to amend an initiative statute and it can have no legal effect.

5 Proposition 73 originally authorized legislative amendments that furthered the purposes of the
6 Political Reform Act as amended. This authorization was found in former Government Code section
7 85103 which provided “[t]he provisions of section 81012 shall apply to the amendment of this
8 chapter.” Section 81012 permits legislative amendment of the provisions of the Act only if the
9 amendment furthers the purpose of “this title” (Title 9 in the Government Code containing the Political
10 Reform Act and the provisions of Proposition 73) and is passed by a two-thirds vote in each house of
11 the Legislature.

12 The limited authorization for legislative amendment of the provisions of Proposition 73 was
13 itself repealed by two later initiatives. Proposition 208, approved in 1996, repealed all of the
14 provisions of article 1 of chapter 5 of title 9 of the Government Code. Proposition 208 § 1, *reprinted*
15 *in California Ballot Pamphlet, 1996 at 89.* That repeal included Government Code § 85103, which
16 was the only authorization for legislative amendment of Proposition 73. Cal Const. art II, § 10.
17 Proposition 34, approved by the voters in 2000, repealed the provisions of Proposition 208 and further
18 repealed Article 1, chapter 5 of the Government Code as added by Proposition 73. Proposition 34, §§
19 16 and 17, *reprinted in California Ballot Pamphlet, 2000 General Election at 57.* Thus, Proposition
20 34, a measure submitted to the voters by the Legislature, did not revive the power of the Legislature
21 to amend section 85300. Instead, Proposition 34 expressly maintained the repeal of the Legislature’s
22 power to amend section 85300. Further, Proposition 34 restated the purpose of section 85300 in its
23 title: Campaign Contribution and Voluntary Expenditure Limits Without Taxpayer Financing
24 Amendments to the Political Reform Act of 1974. Gov’t Code § 85100. The measure made clear the
25 continued policy of the State of California, as enacted by voters in Proposition 73, to bar public
26 financing of political campaigns. *Id.*

1 The section 85103 restriction on legislative amendments to Proposition 73 was challenged by
2 Common Cause (the sponsor of Senate Bill No. 1107³) almost immediately after the voters’ enactment
3 of the measure. The Court of Appeal of this appellate district rejected that challenge and the
4 California Supreme Court declined review. *Cal. Common Cause*, 221 Cal.App.3d at 649. The court
5 ruled that under the California Constitution, the voters’ power to decide whether and under what
6 conditions the Legislature may amend an initiative statute is “absolute.” *Id.* at 652. The power to
7 legislate in California is one that is shared by voters and the Legislature. Section 10 of article II of the
8 Constitution provides protections against legislative encroachment on the people’s power of initiative.
9 The courts are charged with the duty to zealously protect the initiative power, including the limitations
10 on the Legislature that are part of our Constitution. *Rossi v. Brown* (1995) 9 Cal 4th 688, 694-95.
11 Because the power of initiative enables the people to bind future Legislatures, the people’s power to
12 legislate is greater than that of the Legislature. *Id.* at 715-16. When the people exercise their absolute
13 power to limit or even eliminate the power of the Legislature to amend an initiative statute, the courts
14 must enforce that restriction. *See Amwest* 11 Cal. 4th at 1251; *People v. Kelly*, 47 Cal 4th at 1025.

15 As an initiative statute, Proposition 73 can only be amended by the voters, or by Legislature
16 acting under specific authorization from the voters. Cal. Const. art. II, § 10. The voters can grant or
17 limit authority for legislative amendments in any way they choose. Their power in this arena is
18 “absolute.” *Cal. Common Cause*, 221 Cal.App.3d at 652; *Amwest*, 11 Cal. 4th at 1251. When they
19 enacted Proposition 73, the people initially gave limited authority for legislative amendment – so long
20 as that amendment furthered the purposes of the proposition, including the prohibition of public
21 financing of political campaigns. The people later exercised their absolute power to repeal this
22 authorization for legislative amendment by adopting Proposition 208 in 1996 and Proposition 34 in
23 2000. As the law currently stands, there is no voter-granted authority for legislative amendment of
24 the provisions of Proposition 73. Since the provisions of Senate Bill No. 1107 have not been approved

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27 ³ *See* Report of the Senate Committee on Elections and Constitutional Amendments, March 28,
28 2016 at p. 7.

1 by the voters, the purported amendments to Government Code § 85300 are void and can have no legal
2 effect. Respondent, therefore, has the legal duty to enforce section 85300 as enacted by the voters and
3 to publish its restrictions on public financing of political campaigns.

4 **B. Even if subject to the amendment procedure for the Political Reform Act, the**
5 **amendments made to Section 85300 do not “further the purposes” of the Title 9**
6 **of the Government Code, as amended, and cannot take effect without consent of**
7 **the electorate.**

8 As discussed more fully above in Part A, the voters exercised their absolute power to prohibit
9 legislative amendment of section 85300 by repealing section 85103 in Proposition 34 (and earlier in
10 Proposition 208). Even had the voters not repealed section 85103, however, the amendments made
11 by Senate Bill No. 1107 would still not be permitted. Section 85103 authorized amendment according
12 to the provisions of section 81012. That section itself only authorizes very limited legislative
13 amendments. Any amendments made pursuant to section 81012 must “further the purposes” of Title
14 9 of the Government Code, as amended by Proposition 73. The amendments made by Senate Bill No.
15 1107 do not “further the purposes” of prohibiting public financing of political campaigns but instead
16 purport to authorize what Proposition 73 forbids. Senate Bill No. 1107 can have no legal effect.

17 Section 81002 sets out the purposes of the original Political Reform Act of 1974. But those
18 purposes have been expanded over the years as voters enacted new provisions and placed them in Title
19 9. The court is not limited to the list of purposes in the general statement of purpose of the original
20 1974 initiative that enacted the Political Reform Act. *See Amwest* 11 Cal. 4th at 1256; *Shaw*, 175 Cal.
21 App. 4th at 598, 602.

22 The courts have held that the original purposes cannot be the guide star for determining the
23 constitutionality of legislative amendments. *Amwest*, 11 Cal. 4th at 1256. Instead, the court must also
24 examine the subsequent amendments to Title 9, including section 85300 added by Proposition 73 and
25 the amendments added by Proposition 34 advertised as reforming campaign contributions “without
26 taxpayer financing.” *See Californians for Political Reform Foundation v. Fair Political Practices*
27 *Comm’n* (1998) 61 Cal. App. 4th 472, 483; *Shaw*, 175 Cal. App. 4th at 602; *see also Citizens to Save*
28 *California v. California Fair Political Practices Comm’n* (2006) 145 Cal. App. 4th 736, 748 (court

1 examined Proposition 34’s amendments to the Political Reform Act to determine whether regulation
2 furthered the purposes of the Act).

3 In *Californians for Political Reform Foundation*, the court considered the validity of a Fair
4 Political Practices Commission regulation enforcing Proposition 208 under the standard of whether
5 the regulation was “consistent” with the provisions of the Political Reform Act. 61 Cal. App. 4th at
6 482-83. To make this determination, the court looked at the purposes of the Political Reform Act *as*
7 *amended* by Proposition 208. *Id.* at 483. If the regulation was not consistent with the changes made
8 by Proposition 208 it could not be consistent with the Political Reform Act. *Id.*

9 *Shaw v. People ex rel. Chiang* is also instructive. To determine whether a legislative
10 amendment furthered the purpose of a statutory initiative, the court ruled that it must look not only at
11 the specific statute, but also the entire context of the statutory framework. 175 Cal. App 4th at 598.
12 Importantly, the court also considered later enacted constitutional initiatives. *Id.* at 592, 602. This is
13 especially applicable to the Political Reform Act. The initiative at issue in *Shaw* permitted
14 amendments that furthered the purpose of a single statute. The court still looked at the overall context,
15 including later constitutional amendments. Section 81012, by contrast, allows amendments that
16 further the purposes of all of Title 9 of the Government Code. That title includes not only the original
17 Political Reform Act of 1974, but also section 85300 as enacted by Proposition 73 and the provisions
18 of Proposition 34. By its own terms, section 81012 compels consideration of the purposes of all later
19 amendments to Title 9 of the Government Code.

20 Thus, the court must examine the amendments added by Proposition 73 in discerning the
21 purposes of the Political Reform Act. Importantly, the court may not defer to the Legislature’s
22 determination of whether its amendment furthers the purposes of the initiative. *Gardner v.*
23 *Schwarzenegger* (2009) 178 Cal App 4th 1366, 1374; *see Amwest*, 11 Cal. 4th at 1255-56.

24 It is no secret that a significant purpose of Proposition 73 was to prohibit the use of public
25 moneys in political campaigns. The measure as presented to the voters included “Prohibition of Public
26 Funding” in its title and sought to accomplish this purpose with the addition of Government Code §
27 85300. This purpose was further highlighted by the Legislative Analyst in the ballot pamphlet.
28 California Ballot Pamphlet, 1988 at 32. The very first sentence in the argument in favor of the measure

1 by the proponents noted “Proposition 73 will reform the way political campaigns are financed in
2 California WITHOUT GIVING YOUR TAX MONEY TO POLITICIANS!” *Id.* at 34 (emphasis in
3 original). The closing argument in favor of the measure noted in the last sentence “Support true
4 campaign finance reform WITHOUT RAIDING THE STATE TREASURY.” *Id.* at 35 (emphasis in
5 original).

6 The courts have also recognized this ban on public monies for political election campaigns as
7 a key purpose of Proposition 73. Noting this language in the arguments and analysis of Proposition
8 73, the courts have held that there is no “ambiguity or uncertainty” in the purpose of Proposition 73 to
9 ban the use of public moneys to fund election campaigns. *Center for Public Interest Law v. Fair*
10 *Political Practices Comm’n* (1989) 210 Cal. App. 3d 1476, 1486. The California Supreme Court has
11 also noted the prohibition on public financing of campaigns as a purpose of Proposition 73. *Johnson,*
12 *4 Cal. 4th* at 392 (holding that the prohibition did not apply to charter cities); *Taxpayers to Limit*
13 *Campaign Spending,* 51 Cal. 3d at 762 (noting the conflict between the prohibition on public financing
14 in Proposition 73 and the authorization for public financing in Proposition 68).

15 Proposition 73’s amendments to the Political Reform Act, adding Government Code § 85300,
16 added a new purpose to the Act. That purpose is to prohibit the use of public moneys for political
17 campaigns. Even if section 81012 authorized the Legislature to amend the provisions of Proposition
18 73, the Legislature would still be bound by the restriction that any such amendment must further the
19 purposes of the Political Reform Act as amended by Proposition 73. That is, any legislative
20 amendment must further the purpose of prohibiting the use of public moneys for political campaigns.

21 Senate Bill No. 1107 does not further that purpose. Instead, it directly contradicts the purposes
22 of Proposition 73 and the Political Reform Act, as amended, by removing the prohibition on public
23 financing of political campaigns and substituting an express authorization for such public financing.
24 Because Senate Bill No. 1107 does not further the purposes of the Political Reform Act as amended
25 by Proposition 73, the Legislature’s only option is to submit its proposed amendment to the people for
26 approval. Since the Legislature failed to seek approval from the electorate, the amendments to section
27 85300 are unconstitutional and of no effect.

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CONCLUSION

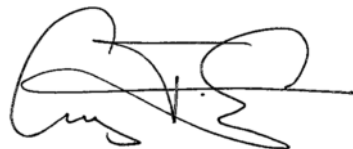
The Legislature had no power to reverse the prohibition on public financing of political campaigns. Such a radical change can only be effective if approved by the voters of California. This Court should issue the writ as prayed for commanding the respondent Fair Political Practices Commission to continue to enforce the ban on public financing of political campaigns as enacted by the people of this state.

DATED: May 15, 2017.

JOHN C. EASTMAN
ANTHONY T. CASO

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ALLEN DICKERSON



By ANTHONY T. CASO
Attorneys for Petitioners and Plaintiffs

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DECLARATION OF SERVICE

I, Anthony T. Caso, declare as follows:

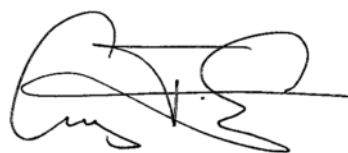
I am a resident of the State of California, over the age of 18 years and not a party to the within action. My business address is Center for Constitutional Jurisprudence, c/o Chapman University, Fowler School of Law, 1 University Drive, Orange, California, 92866.

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

On, May15, 2017 true copies of **MOTION FOR ISSUANCE OF PEREMPTORY WRIT OF MANDATE** and **PETITIONER’S 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

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 15th day of May, 2017, at Orange, California.



By ANTHONY T. CASO