

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

**HOWARD JARVIS TAXPAYERS
ASSOCIATION, et al.**
Petitioners and Plaintiffs,

v.

**EDMUND G. BROWN, JR., Governor of
the State of California, et al.,**
Respondents and Defendants.

Case Number: 34-2016-80002512

RULING ON SUBMITTED MATTER

Date: August 4, 2017

Time: 10:00 a.m.

Dept.: 29

Judge: Timothy M. Frawley

In this proceeding, petitioners/plaintiffs Howard Jarvis Taxpayers Association and Quentin L. Kopp (Petitioners) challenge amendments to section 85300 of the Political Reform Act made by Senate Bill No. 1107 (Chapter 837 of the Statutes of 2016). Senate Bill No. 1107 essentially would remove the 29-year-old ban on public financing of elections imposed by the adoption of Proposition 73 in 1988. Petitioners allege that because the Legislature failed to secure voter approval, the amendments are void. Petitioners seek declaratory, injunctive, and mandamus relief, invalidating the amendments and commanding respondents/defendants to disregard them. The court shall grant the petition and complaint.

Background Law and Facts

The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them. (Cal. Const., Art. II, § 8.) Although the

legislative power generally in California is vested in the Legislature, the people have reserved to themselves the initiative power. (Cal. Const., Art. IV, § 1.) The constitutional provision for the initiative rests on the theory that all power of government ultimately resides in the people. (Cal. Const., Art. II, § 1.) It is the solemn duty of the courts to “jealously guard” this right of the people. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501.) The courts liberally construe the initiative power wherever it is challenged in order that the right be not improperly annulled. (*Ibid*; *National Paint & Coatings Assn. v. State of California* (1997) 58 Cal.App.4th 753, 760.)

Under Article II, § 10 of the California Constitution, the voters have the power to decide whether or not the Legislature may amend or repeal initiative statutes. This power is absolute and includes the power to enable legislative amendment subject to conditions attached by the voters. (*Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251.) Thus, when a statute is enacted by the initiative process, the Legislature may amend it only if the voters specifically give the Legislature that power, and then only upon whatever conditions the voters may attach. (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1483-84.) The purpose of this constitutional limitation on the Legislature’s power is to “protect the people’s initiative powers by precluding the Legislature from undoing what the people have done, without the electorate’s consent.” (*Ibid.*)

Although not required, initiatives commonly include a provision authorizing the Legislature to amend the initiative without voter approval, but only if certain conditions are met. Such conditions often require that the amendment be passed by a two-thirds vote in each house and that the amendment further the purpose(s) of the initiative. (See *Amwest, supra*, 11 Cal.4th at p.1251; *Proposition 103 Enforcement Project, supra*, 64 Cal.App.4th at p.1490; *Gardner v. Schwarzenegger* (2009) 178 Cal.App.4th 1366, 1370.) A legislative amendment that does not comply with the governing conditions is void. (*Amwest, supra*, 11 Cal.4th at p.1265.)

In 1974, the voters adopted Proposition 9, an initiative measure adding title 9 (also known as the Political Reform Act) to the California Government Code. The Political Reform Act was intended to address perceived election abuses in California. The “legislative findings” for the Act criticized the increasing costs of conducting election campaigns, the disproportionate and growing influence of lobbyists and large campaign

contributors, and the unfair advantage held by incumbents. In support of the Act, the people found and declared that government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth, and that public officials should perform their duties in an impartial manner, free from bias caused by their financial interests or the financial interests of those who supported them. (Cal. Gov. Code § 81001.)

The purposes to be accomplished by the Act were set forth in section 81002. They include (i) regulating the activities of lobbyists and disclosing their finances, to avoid improper influences; (ii) disclosing the assets and income of public officials which may be materially affected by their official actions, to avoid conflicts of interest; (iii) making the state ballot pamphlet a useful document, to reduce voter dependence on paid advertising for information; and (iv) abolishing laws and practices that unfairly favor incumbents, to promote fair elections. (Cal. Gov. Code § 81002.) To accomplish these purposes, the Act regulates various aspects of the political process, including campaign contributions, the disclosure of financial information relating to public officials and their campaigns, and the activities of lobbyists. (*Citizens to Save California v. California Fair Political Practices Com.* (2006) 145 Cal.App.4th 736, 740.)

As an initiative measure, the Political Reform Act cannot be amended except as permitted by its terms or by another initiative measure approved by the electorate. Section 81012 describes the terms under which the Act may be amended by the Legislature. It provides that title 9 (the Act) may be amended by statute only if (i) the amendment furthers “the purposes” of the Act and is passed by a two-thirds vote of each house, or (ii) is approved by the electorate.

In the intervening years since the Political Reform Act was adopted in 1974, the Act has been amended many times, including the following four voter-approved initiatives: Proposition 68 (1988), Proposition 73 (1988), Proposition 208 (1996), and Proposition 34 (2000).

In 1988, Propositions 68 and 73 were competing initiatives, each proposing comprehensive regulation of campaign financing. Both measures proposed to amend the Political Reform Act, but in sometimes conflicting ways. One key difference between the measures was that Proposition 68 created a mechanism for public

financing of candidates seeking election to the State Legislature. Proposition 73, in contrast, proposed to add section 85300 to the Act, prohibiting the use of public money in political campaigns:

No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office. (Former Cal. Gov. Code § 85300.)

The ban on public financing was an important component of Proposition 73 and was included in the title of the measure: “Campaign Funding. Contribution Limits. Prohibition of Public Funding. Initiative Statute.” (The Proposition also sought to impose campaign contribution limits for statewide and local offices, although those limits were later enjoined.)

Both Proposition 68 and 73 were approved by the voters, but Proposition 73 received the greater number of votes. Thus, the provisions of Proposition 73 prevailed and took effect.

(Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com (1990) 51 Cal.3d 744, 747.)

When Proposition 73 was adopted, it contained an express provision, section 85103, allowing the Legislature to amend it without voter approval. It provided: “The provisions of Section 81012 shall apply to the amendment of this chapter.” (Former Cal. Gov. Code § 85103.) As described above, section 81012 authorizes legislative amendments of title 9 (the Act) if the amendment (i) furthers “the purposes” of the Act and is passed by a two-thirds vote of each house, or (ii) is approved by the electorate. However, Proposition 208, approved in 1996, repealed the provisions of article 1 of chapter 5 of title 9 of the Government Code, including section 85103.¹

In 2016, the Legislature adopted Senate Bill No. 1107, amending section 85300 to eliminate the voter-approved ban on public financing. The Bill permits a public officer or candidate to expend or accept public moneys for the purpose of seeking elective

¹ Proposition 34, approved by the voters in 2000, repealed the provisions of Proposition 208, but did not revive section 85103.

office if the state or a local government entity has established a dedicated fund for this purpose. As amended by Senate Bill No. 1107, section 85300 now provides:

(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.

The effect of the amendments to section 85300 is to remove the ban on public financing of election campaigns.

Senate Bill No. 1107 was passed by a two-thirds vote of each house of the Legislature, and it includes a finding by the Legislature that the Bill "furthers the purposes of the Political Reform Act" within the meaning of subdivision (a) of section 81012."

On December 12, 2016, Petitioners filed this action seeking to invalidate the amendments to section 85300 of the Political Reform Act made by Senate Bill No. 1107. Petitioners argue that the Legislature has no power to amend section 85300 without voter approval. Since the provisions of Senate Bill No. 1107 have not been approved by the voters, Petitioners contend the purported amendments to section 85300 are void and have no legal effect. Petitioners seek a declaration that the amendments to section 85300 are void; a declaration that the Legislature has no power to amend section 85300 without voter approval; and a peremptory writ of mandate (or injunction) compelling

Respondents (Governor Brown and the Fair Political Practices Commission) to enforce the provisions of section 85300 without the amendments made by Senate Bill No. 1107.

Discussion²

Petitioners contend the purported amendments to Government Code section 85300 are void because they were not approved by the voters. As described above, article II, section 10 of the California Constitution expressly limits the power of the Legislature to amend initiative statutes. Unless the initiative itself gives the Legislature the power to amend, no legislative amendment can take effect without voter approval. (*Amwest, supra*, 11 Cal.4th at p.1251.)

When Proposition 73 was enacted, it authorized legislative amendments to “further the purposes” of title 9 (i.e., the Political Reform Act). This authorization was found in former Government Code section 85103, which provided that “[t]he provisions of section 81012 shall apply to the amendment of this chapter.” (See Former Cal. Gov. Code § 85103.) However, the electorate subsequently repealed section 85103 with Proposition 208 in 1996. As a result, Petitioners argue, there is no authority for legislative amendment of the provisions of Proposition 73 without voter approval. Because the provisions of Senate Bill No. 1107 were not approved by the voters, Petitioners contend the purported amendments to Government Code section 85300 are void.

Respondents argue that, despite the repeal of section 85103, the Legislature retains authority to amend “title 9” under section 81012.³ That section authorizes legislative amendments provided they are passed by a two-thirds vote and further the purposes of title 9. Section 85300 is part of title 9. Thus, Respondents argue, it is subject to legislative amendment under section 81012, notwithstanding the repeal of section 85103.

On this point, the court agrees with Respondents. Section 85103 merely confirmed the Legislature’s authority to amend the provisions of Proposition 73 under section 81012.

² In reaching its decision, the court has granted Respondents’ unopposed Request for Judicial Notice.

³ The court has granted the application of California Common Cause, the League of Women Voters of California, and the California Clean Money Campaign for leave to file an *Amici Curiae* Brief in support of Respondents. For simplicity, the court shall refer to Respondents and Amici collectively as “Respondents.”

The subsequent repeal of section 85103 did not repeal the Legislature's authority to amend "title 9" under section 81012.⁴ Section 85300 is part of title 9. Therefore, it is subject to legislative amendment under section 81012, notwithstanding the repeal of section 85103.

Petitioners argue that section 81012 only authorizes amendments to "further the purposes" of title 9. According to Petitioners, the amendments made by Senate Bill No. 1107 do not "further the purposes" of title 9, as amended by Proposition 73. Thus, Petitioners argue even if section 81012 applies the amendments to section 85300 are invalid.

Respondents contend that Senate Bill No. 1107 is a valid amendment because it furthers the purposes of the Act (title 9). To determine the purposes of the Act, Respondents contend, the court must look to the "clearly expressed purposes of the Act," set forth in sections 81001 and 81002. Such purposes include reducing the influence of large campaign contributors, abolishing laws and practices that unfairly favor incumbents, and promoting fair elections.

Respondents argue that Proposition 73 did not amend these purposes, because Proposition 73 included no findings or statements of purpose. Thus, according to Respondents, Senate Bill No. 1107 need not be consistent with the purposes of Proposition 73. As long as the Bill furthers the "clearly expressed purposes" of the Act, as set forth in sections 81001 and 81002, the Bill is valid. Applying this test, Respondents argue that Senate Bill No. 1107 is a valid amendment because it furthers the Act's purposes of reducing the unfair advantage of incumbency and the influence of large contributions, while ensuring that elected officials are responsive to all citizens equally.

Petitioners do not agree that the court's review should be limited to the general statement of purposes adopted in 1974. Instead, Petitioners contend the court must look to the purposes of the Act as amended by later voter-approved initiatives, including Proposition 73. Petitioners argue that a significant purpose of Proposition 73, as reflected by section 85300, was to prohibit the use of public moneys in political

⁴Both Proposition 208 and Proposition 34 expressly provide that, unless specifically superseded, the definitions and provisions of title 9 shall govern the interpretation of chapter 5.

campaigns. (See *Ctr. for Public Interest Law v. Fair Political Practices Com* (1989) 210 Cal.App.3d 1476, 1481; 1988 California Ballot Pamphlet.) Because Senate Bill No. 1107 directly contravenes that purpose, Petitioners argue the amendments to section 85300 are unconstitutional.

When interpreting a voter initiative, the court applies the same principles that govern statutory construction. (*Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 598.) The court's fundamental task is to ascertain the intent of the lawmakers – in this case, the voters – so as to effectuate the purpose of the law. In determining such intent, the court looks first to the words of the measure. If the meaning is clear, the language governs; if not, then the court may use various interpretative aids, such as ballot analysis, official summary, and arguments presented to the voters. (*Prof'l Eng'rs v. Wilson* (1998) 61 Cal.App.4th 1013, 1019-20.)

The language of section 81012 seems straightforward. It provides that “[t]his title may be amended to further its purposes by [a] statute, passed in each house by rollcall vote . . . , two-thirds of the membership concurring” By the plain language, any amendments made under section 81012 must further the “purposes” of “this title,” meaning title 9 (the Political Reform Act).

The question that arises is whether, in determining the purposes of title 9, the court should look to the stated purposes of title 9 when it was enacted, and ignore later amendments, or look to the purposes of title 9 as amended by the voters from time to time. Respondents argue that the court should be limited to the express statement of purpose included as part of the original initiative adding title 9 (Proposition 9). The court disagrees, for several reasons.

First, section 81012 expressly provides that title 9 may be amended to further “its purposes,” meaning the purposes of title 9. Section 81012 does not incorporate the express findings and purposes codified at sections 81001 and 81002. If section 81012 was intended to limit legislative amendments to those consistent with the stated purposes in sections 81001 and 81002, it would have said so. (See, e.g., *Consulting Engineers & Land Surveyors of California, Inc. v. Professional Engineers in California Government* (2007) 42 Cal.4th 578, 581 [discussing Proposition 35, which provides: “This initiative may be amended to further its purposes by statute, passed in each house

by roll call vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor.]) Instead, section 81012 permits legislative amendments as long as they further the purposes of “this title.”

Second, section 81012, subdivision (b), expressly authorizes the voters to amend (or repeal) title 9 and, unlike legislative amendments under subdivision (a), voter-approved amendments need not further the purposes of the title. Thus, the voters presumably recognized that, in allowing legislative amendments to further the purposes of “this title,” the purposes of “this title” might change over time. It follows that the voters intended section 81012 to allow amendments that further the purposes of title 9, at the time of the amendment, rather than the purposes of title 9 at the time it was first enacted. (See, e.g., *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 58-59 [reciting the well-established principle of statutory construction that, where a statute refers to laws generally, the referring statute takes the laws as amended from time to time].)

Finally, if the court were to adopt Respondents’ interpretation of section 81012, it would lead to the absurd consequence that the phrase “this title” would have two different meanings within the same sentence. For purposes of deciding whether section 81012 applies, “this title” would mean title 9 as amended, but for purposes of deciding whether a legislative amendment furthers the purposes of “this title,” it would mean title 9 as originally enacted, ignoring subsequent amendments. Such construction cannot stand. If the Legislature has authority to amend section 85300 because it is part of title 9, as amended by Proposition 73, then its amendment must be consistent with the purposes of title 9, as amended by Proposition 73.⁵

Respondents argue that the court should not infer from the adoption of Proposition 73 a change in the purposes of title 9 (the Political Reform Act) because Proposition 73 did not amend the “clearly expressed purposes” set forth in sections 81001 and 81002. However, in determining the purposes of an initiative, courts are not limited to the general statement of purpose found in the initiative. (See *Amwest, supra*, 11 Cal.4th at p.1256.) Evidence of purpose may be drawn from many sources, including the language

⁵ Section 85300 was not part of title 9 when it was enacted; it was added to title 9 by Proposition 73. Thus, if “this title” is construed to mean title 9 as originally enacted by Proposition 9, section 81012 would not apply, and Petitioners would prevail because the Legislature would have no power to amend section 85300 -- such authority having been repealed by Proposition 208.

used in the measure, the historical context of the measure, and the ballot arguments favoring the measure. (*Ibid*; *Gardner, supra*, 178 Cal.App.4th at p.1374; *Foundation for Taxpayer & Consumer Rights v. Garamendi* (2005) 132 Cal.App.4th 1354, 1370; see also *Shaw, supra*, 175 Cal.App.4th at p.602.)

In identifying the purposes of an initiative, courts must examine the initiative as a whole and be mindful of the specific language used. (*Gardner, supra*, 178 Cal.App.4th at pp.1374, 1378; *Amwest, supra*, 11 Cal.4th at p.1257.) Even if a legislative amendment could be deemed to further a general purpose of an initiative, it nonetheless may be invalid if it violates a specific mandate of the initiative. (See *Foundation, supra*, 132 Cal.App.4th at pp.1370-71; *Gardner, supra*, 178 Cal.App.4th at pp.1378-79.)

In *Foundation*, the Court held that a legislative amendment to Proposition 103 was invalid because it facially contradicted the primary mandates of the initiative, including that the absence of prior automobile insurance coverage not be a criterion for determining insurance rates. (*Foundation, supra*, 132 Cal.App.4th at pp.1370-71.) The Court held that the Legislature cannot, while professing to “further” the purposes of Proposition 103, undercut and undermine one of Proposition 103’s fundamental purposes. Thus, to be valid, an amendment “must not only further [the] purposes [of Proposition 103] in general, but [it] cannot do violence to specific provisions of [the initiative].” (*Id.* at p.1370.)

In *Gardner*, the Court invalidated a legislative amendment that sought to amend Proposition 36, the California Substance Abuse and Crime Prevention Act. The Court held that provisions of the bill allowing incarceration for drug-related probation violations were inconsistent with the specific mandates of Proposition 36. Thus, even if the bill could be deemed to further a public health purpose, it could not reasonably be found to further the purposes of Proposition 36 because it was inconsistent with another primary purpose of the initiative. (*Gardner, supra*, 178 Cal.App.4th at pp.1378-79; see also *Proposition 103 Enforcement Project, supra*, 64 Cal.App.4th 1473 [legislative amendment did not further the purposes of Proposition 103 because it both took away from the provisions of Proposition 103 and changed its scope and effect]; *Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110 [legislation specifying ballot label,

title, and summary for a measure held to be invalid because it did not further the Political Reform Act's purposes and was not approved by the voters].)⁶

Petitioners have shown that a significant purpose of Proposition 73, which added chapter 5 to the Political Reform Act, was to prohibit the use of public moneys in political campaigns. Proposition 73 amended the Act to add section 85300, providing: "No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office." The purpose of this language is straightforward: to ban taxpayer financing of political campaigns for elective office. This purpose also is included in the ballot title of the measure, which lists "Prohibition of Public Funding" as a key purpose of the initiative. Courts too have recognized the prohibition on public financing of campaigns as a key purpose of Proposition 73. (See *Ctr. for Public Interest Law v. Fair Political Practices Com* (1989) 210 Cal.App.3d 1476, 1486; *Johnson v. Bradley* (1992) 4 Cal.4th 389, 392.) Senate Bill No. 1107 conflicts with the purposes of the Political Reform Act, as amended by Proposition 73, because it violates this specific mandate of the Act.

Respondents argue that the court should defer to the Legislature's finding that Senate Bill No. 1107 furthers the purposes of the Act. However, the usual rule of deference to legislative interpretation has no application here. (See *Gardner, supra*, 178 Cal.App.4th at p.1374; *Amwest, supra*, 11 Cal.4th at pp.1253, 1255-56.) A limitation on legislative authority, although strictly construed, must be given the effect the voters intended it to have. (*Amwest, supra*, 11 Cal.4th at p.1256.)

In *Amwest*, the California Supreme Court held that a legislative amendment of Proposition 103 was invalid because it did not further the Act's purposes. The Court ruled that the Legislature's stated purpose in enacting the statute – to clarify the scope of Proposition 103 – did not "withstand scrutiny." Rather than clarify Proposition 103's terms, the bill "altered its terms in a significant respect." (*Amwest, supra*, 11 Cal.4th at p.1261.) The same is true here.

⁶ But see *Santa Clarita Organization for Planning & the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300 [upholding a legislative amendment creating an express exception to Government Code § 1090's conflict of interest provisions].) The decision in *Santa Clarita* failed to address the decisions in *Foundation* and *Gardner*. To the extent there is a conflict, this court finds the decisions in *Foundation* and *Gardner* more persuasive.

Senate Bill No. 1107 directly contradicts a fundamental purpose of the Political Reform Act, as amended by Proposition 73, by removing the prohibition on public financing of political campaigns and substituting an express authorization for public financing. Therefore, Senate Bill No. 1107 cannot reasonably be found to further the purposes of the Act. (See *Foundation, supra*, 132 Cal.App.4th at pp.1370-71; *Gardner, supra*, 178 Cal.App.4th at pp.1378-79.)

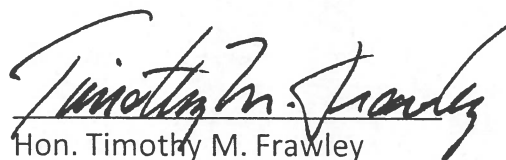
As Petitioners correctly note, the issue in this case is not whether the Legislature's reversal on the ban on public financing of political campaigns is a good idea, it is only whether the amendment furthers the purposes of the Act. For the reasons described above, the court concludes it does not. Accordingly, the court shall grant the petition.

Disposition

The request for declaratory relief is granted. The court shall enter a judgment declaring that the amendments made to Government Code section 85300 by Senate Bill No. 1107 are void and have no legal effect; and an injunction restraining Respondents from enforcing the unconstitutional amendments made by Senate Bill No. 1107. The other relief requested in the petition is denied.

This ruling shall serve as the court's statement of decision. Counsel for Petitioners is directed to prepare a formal judgment, consistent with this ruling; submit it to opposing counsel for approval as to form; and thereafter submit it to the court for signature and entry of judgment in accordance with Rule of Court 3.1312.

Dated: August 23, 2017



Hon. Timothy M. Frawley
California Superior Court Judge
County of Sacramento

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled RULING ON SUBMITTED MATTER in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Anthony Caso
John C. Eastman
Center for Constitutional Jurisprudence
c/o Chapman University Fowler Sch. of Law
One University Drive
Orange, CA 92806

Allen Dickerson
Center for Competitive Politics
124 S. West Street, Ste. 201
Alexandria, VA 22314

Megan P. McAllen
Campaign Legal Center
1411 K Street N.W., Suite 1400
Washington DC 20005

Charles H. Bell, Jr.
Bell McAndrews & Hiltachk, LLP
455 Capitol Mall, Ste. 600
Sacramento, CA 95814

Bradley S. Phillips
Munger Tolles & Olson, LLP
350 South Grand Avenue
Fiftieth Floor
Los Angeles, CA 90071

Emmanuelle Soichet
Department of Justice
Office of the Attorney General
455 Golden Gate Ave., Ste. 11000
San Francisco, CA 94102

Superior Court of California,
County of Sacramento

Dated: August 24, 2017

By: F. Temmerman
Deputy Clerk, Department 29

