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September 16, 2016

The Honorable Jerry Brown
State Capitol
Sacramento, CA 95814

Re: Senate Bill 1107 – accountable elections – Support

Dear Governor Brown:

On behalf of the Campaign Legal Center, we urge you to sign Senate Bill 1107 into law. Senate Bill 1107 amends the Political Reform Act, which presently prohibits public financing for elections except in charter cities, by empowering the State of California and local governments to establish voluntary public financing programs for candidates who satisfy specified criteria for participation.

Historically, California has been a leader in its efforts to respond to changing circumstances and amend its laws to enact meaningful campaign finance and election laws. The state has some of the most robust reporting and disclosure requirements in the country, and the Fair Political Practices Commission is consistently a model for an effective campaign finance enforcement agency. Most recently, the state enacted an automatic voter registration law to remove barriers in the registration process and encourage greater electoral participation. The current prohibition on public financing, however, is at odds with California's otherwise strong commitment to a transparent and accessible electoral system.

By allowing California localities the option to establish public financing programs, SB 1107 could change the dynamics of campaigning and encourage candidates to engage a broader section of the electorate. Studies by the Campaign Finance Institute[1] and the National Institute of Money in State Politics[2] have shown that public financing programs foster greater civic engagement than campaign finance systems exclusively relying on private donations. Similarly, the U.S. Supreme Court in *Buckley v. Valeo* recognized that public financing programs "facilitate

[1] CAMPAIGN FIN. INST., CITIZEN FUNDING FOR ELECTIONS 1 (2016), http://www.cfinst.org/press/releases_tags/15-11-19/CFI_Report_Citizen_Funding_for_Elections.aspx.
[2] ZACH HOLDEN, NAT'L INST. ON MONEY IN STATE POLITICS, 2013 AND 2014: MONETARY COMPETITIVENESS IN STATE LEGISLATIVE RACES (2016), http://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races.

and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people."[3]

In additional to these vital goals, SB 1107 simultaneously lessens the sway of special interests over elected officials and diminishes the financial advantages of incumbency. Studies have documented that special interests are more likely to contribute to incumbents' than political newcomers, and that money from special interests is a major factor in incumbents' electoral advantage.[4] Public financing programs reduce candidates' reliance on special interests and offer an alternative to deep-pocketed donors as the source of campaign funding. In turn, these programs embolden newcomers, without the backing of wealthy donors, to enter the political arena. The result is elected officials responsive to the needs and priorities of their actual constituents—not just special interest donors.

Beyond enabling public financing, SB 1107 would require an officeholder convicted of certain felonies to forfeit any campaign funds within his or her control, other than those required to pay outstanding debts or to return contributions. This good-government provision is a meaningful step toward cleaner election campaigns.

Critics of SB 1107 contend it represents an impermissible legislative end-run around a voter-approved initiative and question how the bill, by permitting publicly-funded elections, can "further [the] purposes" of a law that currently forbids public financing of elections. A review of the constitutional and statutory mechanics behind legislative amendments to the Political Reform Act, however, demonstrates that this argument mischaracterizes both the legislative amendment process and the purposes of the Political Reform Act.

Article II, Section 10, of the California Constitution provides the legislature two methods of amending an initiative statute. First, legislators may pass a law amending the initiative statute that becomes effective only if subsequently approved by the voters. Alternatively, the legislature can amend an initiative statute directly if the law expressly "permits amendment or repeal without [voter] approval." The Political Reform Act explicitly provides that the legislature may directly amend its provisions, without voter approval, in order "to further [the Act's] purposes." The Political Reform Act's professed purposes include (1) creating more responsive state and local government that "serve[s] the needs and respond to the wishes of all citizens equally, without regard to their wealth;" (2) regulating special interests to ensure "that improper influences will not be directed at public officials;" and (3) abolishing "[l]aws and practices unfairly favoring incumbents . . . in order that elections may be conducted more fairly."[5] SB 1107 advances all three of these goals.

Conversely, California's prohibition on publicly-financed elections was enacted in 1988 as part of Proposition 73, a ballot initiative that amended various provisions of the Political Reform Act. Since the public financing prohibition was enacted by ballot initiative, rather than through the

[3] 424 U.S. 1, 92-93 (1976).
[4] *See* Alexander Fouirnaies & Andrew B. Hall, *The Financial Incumbency Advantage: Causes and Consequences*, 76 J. POL. 711 (2014).
[5] Cal. Gov't Code §§ 81001, 81002.

legislative amendment procedure relevant to SB 1107, the statutory requirement that the amendments "further [the] purposes" of the Political Reform Act was not applicable to the ban. And indeed the public financing prohibition does not "further [the] purposes" of the Political Reform Act. On the contrary—the public financing ban directly conflicts with the purposes of the Political Reform Act.

While Proposition 73 was marketed as an effort to curb money in politics, the initiative's authors were all sitting members of the California legislature with a presumed interest in reelection. A few years after its passage, a federal appeals court invalidated separate provisions of Proposition 73 on the basis that they unconstitutionally advantaged incumbents.[6] Although the public financing prohibition was not challenged in that litigation, the decision demonstrated that much of Proposition 73 was squarely at odds with one of the Political Reform Act's core purposes: reducing incumbency advantage.

In conclusion, SB 1107 comports with California's standing as the national forerunner for smart and effective campaign finance regulation. More crucially, SB 1107 "furthers [the] purposes" of the Political Reform Act by fostering responsiveness in elected officials, diminishing the outsized influence of special interests, and creating more competitive elections. For these reasons, the Campaign Legal Center urges you to sign SB 1107 into law.

Sincerely,

Paul S. Ryan
Deputy Executive Director

Catherine Hinckley Kelley
State & Local Reform Program Director

[6] *See* Service Emp. Intern. v. Fair Political Practices Comm'n, 955 F.2d 1312 (9th Cir. 1992), *cert. denied*, 505 U.S. 1230 (1992).