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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

11 HOWARD JARVIS TAXPAYERS	)	Case No. 34-2016-80002512-CU-WM-GDS
12 ASSOCIATION, a California nonprofit public	)	
13 benefit corporation, and QUENTIN L. KOPP,	)	<b>Unopposed Application of California</b>
14 a California Taxpayer,	)	<b>Common Cause, League of Women Voters</b>
	)	<b>of California, and the California Clean</b>
15 Petitioners and Plaintiffs,	)	<b>Money Campaign for Leave to File an</b>
	)	<b><i>Amici Curiae</i> Brief in Support of</b>
16 v.	)	<b>Respondents and in Opposition to Petition</b>
	)	<b>for Peremptory Writ of Mandate</b>
	)	
17 EDMUND G. BROWN, JR., Governor of the	)	Date: August 4, 2017
18 State of California, and FAIR POLITICAL	)	Time: 10:00 AM
19 PRACTICES COMMISSION, an agency of	)	Dept: 29
the State of California,	)	Judge: The Hon. Timothy M. Frawley
	)	Action Filed: December 12, 2016
20 Respondents and Defendants.	)	Trial Date: Not Set.
	)	

21  
22 California Common Cause, the League of Women Voters of California, and the California  
23 Clean Money Campaign request leave to file an *amici curiae* brief in this case in support of  
24 Respondents and in opposition to the Petition for Writ of Mandate and Verified Complaint for  
25 Injunctive Relief and Declaratory Judgment. Counsel for both Petitioners and Respondents have  
26 consented to *amici* applicants' participation in this case.  
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1 As grounds for this motion, *amici* applicants would show unto the Court that:

2 1. Applicants are filing this *amici* brief to support the legality of Senate Bill 1107  
3 (2016) and to describe how it furthers the purposes of the California Political Reform Act (“PRA”).  
4 *Amici* applicants have a longstanding, demonstrated interest in the design, enactment, and  
5 implementation of programs for the public financing of political campaigns.  
6

7 2. California Common Cause is a nonpartisan grassroots organization dedicated to  
8 upholding the core values of American democracy. It works to create open, honest, and  
9 accountable government that serves the public interest; to promote equal rights, opportunity, and  
10 representation for all; and to empower all people to make their voices heard in the political process.  
11 California Common Cause was a sponsor and strong supporter of Senate Bill 1107.  
12

13 3. The League of Women Voters of California (“LWVC”) is a nonprofit, nonpartisan  
14 organization whose mission is to encourage informed and active participation in government,  
15 increase understanding of major public policy issues, and influence public policy through  
16 education and advocacy. The LWVC believes that methods of campaign financing should enable  
17 candidates to compete equitably for public office and ensure that candidates have sufficient funds  
18 to communicate their messages to the public. In 2016 the League and individual League members  
19 strongly supported Senate Bill 1107.  
20

21 4. The California Clean Money Campaign is a nonprofit, nonpartisan organization  
22 whose mission is to build statewide support for the public funding of election campaigns. Its vision  
23 is achieving an open and accountable government that is responsive to the needs of all Californians.  
24 California Clean Money Campaign was a sponsor and strong supporter of SB 1107. More than  
25 57,000 Californians signed Clean Money petitions urging the Legislature and Governor Brown to  
26 pass SB 1107.  
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COUNTY OF SACRAMENTO

11 HOWARD JARVIS TAXPAYERS ) Case No. 34-2016-80002512-CU-WM-GDS  
12 ASSOCIATION, a California nonprofit public )  
benefit corporation, and QUENTIN L. KOPP, ) **[PROPOSED] Memorandum of Points and**  
13 a California Taxpayer, ) **Authorities of *Amici Curiae* California**  
) **Common Cause, League of Women Voters**  
14 ) **of California, and the California Clean**  
Petitioners and Plaintiffs, ) **Money Campaign in Support of**  
) **Respondents and in Opposition to Petition**  
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**TABLE OF CONTENTS**

	<u>Page</u>
<b>TABLE OF AUTHORITIES</b> .....	iii
<b>INTRODUCTION</b> .....	1
<b>ARGUMENT</b> .....	3
I. Senate Bill 1107 Lawfully Amended the Political Reform Act to Advance its Essential Purposes.....	3
A. Proposition 73 did not implicitly amend the Political Reform Act’s general purposes to add a new, freestanding “purpose” of prohibiting public financing .....	4
B. Senate Bill 1107 furthers the purposes of the Political Reform Act.....	7
1. Federal and California courts have recognized that public financing of election campaigns furthers the same vital interests that animate the Political Reform Act .....	9
2. There is a substantial body of research demonstrating that the salutary effects of public financing are consistent with core purposes of the Political Reform Act .....	12
<b>CONCLUSION</b> .....	18

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
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21  
22  
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24  
25  
26  
27  
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Page

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7  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES<sup>1</sup>**

2 California Common Cause, League of Women Voters of California, and the California Clean  
3 Money Campaign submit the following proposed memorandum of points and authorities as *amici*  
4 *curiae* in support of respondents and in opposition to the petition for writ of mandate.  
5

6 **INTRODUCTION**

7 During the early history of national efforts to combat political corruption, President  
8 Theodore Roosevelt recognized that public financing would be a powerful means of preserving  
9 the integrity and independence of elected representatives. In his 1907 State of the Union address,  
10 he pressed Congress to “provide[] an appropriation for the proper and legitimate expenses” of  
11 political campaigns to fund candidates who agreed to forgo private fundraising. In a system of  
12 citizen-funded elections, he recognized, “[t]he need for collecting large campaign funds would  
13 vanish.” 42 Cong. Rec. 78 (1907). After Congress finally enacted such a program for presidential  
14 elections, the U.S. Supreme Court emphatically rejected a constitutional challenge to the law,  
15 because it found that electoral subsidies “reduce the deleterious influence of large contributions  
16 on our political process.” *Buckley v. Valeo*, 424 U.S. 1, 91-93 (1976) (per curiam).  
17

18  
19 The California Political Reform Act (“PRA”) serves the significant and well-established  
20 purposes of preventing political corruption, fostering officeholders’ responsiveness to their  
21 constituents, and reducing the unfair advantages of incumbency. *See* Cal. Gov’t Code §§ 81001(a),  
22 (b), (c), (e); 81002(e); *see also Agua Caliente Band of Cahuilla Indians v. Superior Court*, 148  
23 P.3d 1126, 1128, 40 Cal. 4th 239, 244 (Cal. 2006) (finding that the PRA’s purpose is to prevent  
24 “corruption of the political process”). The PRA’s express purposes include reducing candidates’  
25

26  
27 <sup>1</sup> Petitioners and Respondents have consented to the filing of this brief. No party’s counsel  
28 or other person authored this brief, in whole or in part, or contributed money to fund its preparation  
or submission.

1 reliance on large contributions from “lobbyists and organizations who thereby gain  
2 disproportionate influence over governmental decisions,” Cal. Gov’t Code § 81001(c); cultivating  
3 responsive elected officials who “serve the needs and respond to the wishes of all citizens equally,  
4 without regard to their wealth,” *id.* § 81001(a); and eliminating “laws and practices unfairly  
5 favoring incumbents” in order to create more competitive elections, *id.* § 81002(e).  
6

7         Senate Bill 1107—which empowers state and local governments to create voluntary  
8 citizen-funded election programs for candidates—advances those purposes. *See* Stats. 2016, ch.  
9 837 (Senate Bill 1107). As the Supreme Court has long recognized, public financing programs  
10 “eliminat[e] the improper influence of large private contributions” and “enlarge public discussion  
11 and participation in the electoral process,” *Buckley*, 424 U.S. at 92-93, 96—goals that are not only  
12 “vital to a self-governing people,” *id.*, but central to the purposes of the PRA. The California  
13 Supreme Court has echoed this sentiment, finding that public financing reduces “the fundraising  
14 pressures on public office seekers and thereby reduces the undue influence of special interest  
15 groups.” *Johnson v. Bradley*, 841 P.2d 990, 1004, 4 Cal. 4th 389, 410 (Cal. 1992) (citation  
16 omitted).  
17

18         Senate Bill 1107 represents a lawful amendment of the PRA because it was passed by a  
19 two-thirds vote of the Legislature and clearly “furthers [the] purposes” of the PRA. Cal. Gov’t  
20 Code § 81012(a). Petitioners here make no serious claim to the contrary, and they effectively  
21 concede, by remaining silent on the question, that public financing has been found to advance the  
22 purposes explicitly set forth in the PRA. *See id.* §§ 81001, 81002. Instead, they rest their case on  
23 two equally implausible claims: first, that the Legislature has no authority to amend the relevant  
24 sections of the PRA even though section 81012(a) explicitly allows such amendment; and, second,  
25 that Proposition 73, which enacted the original ban on publicly financed campaigns, implicitly  
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28

1 amended the purposes of the PRA, although that initiative neither included a purposes section of  
2 its own nor amended the purposes set forth in sections 81001 and 81002 of the PRA. Pet. Br. 4-9.

3 Both arguments are untenable, but *amici curiae* here will focus on petitioners’ second  
4 argument and the broader question of whether public financing of campaigns promotes the PRA’s  
5 goals of preventing political corruption, encouraging officeholder responsiveness, and reducing  
6 the unfair advantages of incumbency. Courts across the nation—from the U.S. Supreme Court to  
7 the courts of this state—have unambiguously held that public financing programs enhance the  
8 integrity of the electoral process and encourage officeholder responsiveness. A large body of  
9 academic research over the past thirty years confirms that such programs enhance electoral  
10 competition, limit the corrupting influence of special-interest contributors, and reduce the financial  
11 advantages of incumbency. Petitioners’ claims that SB 1107 is invalid have no basis, and the  
12 petition for writ of mandate should be denied.  
13  
14

## 15 ARGUMENT

### 16 I. Senate Bill 1107 Lawfully Amended the Political Reform Act to Advance its Essential 17 Purposes.

18 When the voters enacted the PRA in 1974, they recognized that the law would need to be  
19 updated over time to remain effective and explicitly provided for legislative amendments to  
20 effectuate the Act’s broad purposes. Forty years later, the PRA’s amendment provision is  
21 unchanged: Section 81012 allows the Legislature to amend the PRA’s provisions by a two-thirds  
22 vote, so long as the amendment meets specified publication and timing requirements and “furthers  
23 the PRA’s purposes.” *Santa Clarita Org. for Planning & Env’t v. Abercrombie*, 192 Cal. Rptr. 3d  
24 469, 485 (Cal. Ct. App. 2015); *see also* Cal. Gov’t Code § 81012(a).  
25

26 In 1988, Proposition 73’s principal reforms were incorporated into the PRA, including, as  
27 a new chapter 5, the ban on publicly financed campaigns. *See* Cal. Gov’t Code § 85300. The  
28

1 initiative further stated that “[t]he provisions of section 81012 shall apply to the amendment of this  
2 chapter”—so the voters expressly approved the Legislature’s authority to amend the new chapter  
3 5 as long as the amendment was consistent with the purposes of the PRA.<sup>2</sup> As the Court of Appeal  
4 has recognized, section 85300 is not “an absolute, inflexible provision beyond the power of the  
5 Legislature to change,” because “section 85300—like other provisions of the Act—may be  
6 amended by a bill concurred in by two-thirds of the membership of the Legislature and signed by  
7 the Governor.” *Cal. Common Cause v. FPPC*, 269 Cal. Rptr. 873, 876 (Cal. Ct. App. 1990). In  
8 enacting Senate Bill 1107 pursuant to section 81012, that is precisely what the Legislature did.  
9

10 **A. Proposition 73 did not implicitly amend the Political Reform Act’s general purposes**  
11 **to add a new, freestanding “purpose” of prohibiting public financing.**

12 The findings and purposes of the PRA are separately and explicitly set forth in sections  
13 81001 and 81002. Petitioners contend, however, that Proposition 73 “added a new purpose to the  
14 Act,” namely, an independent purpose of “prohibiting the use of public moneys in political  
15 campaigns.” Pet. Br. 9. To support their claim, they construct a complicated legislative history that  
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20 <sup>2</sup> Petitioners attempt to argue that Propositions 208 and 34—because they formally repealed  
21 section 85103, the Proposition 73 provision that subjected it to section 81012’s amendatory  
22 mechanisms—entirely removed Proposition 73 from the PRA’s structure and placed it beyond the  
23 Legislature’s reach. But section 81012 applies to the entire PRA, including the provisions added  
24 by Proposition 73. Petitioners’ claims simply cannot be squared with the PRA’s history or plain  
25 text—and indeed, if they were accepted, would cast doubt on countless legislative amendments  
26 validly enacted under section 81012. *See, e.g., People v. Kelly*, 222 P.3d 186, 209 n.59, 47 Cal.  
27 4th 1008, 1042 n.59 (Cal. 2010) (noting that “[t]he Legislature has amended the [PRA] over 200  
28 times.” (citation omitted)).

29 Courts have confirmed that section 85300 is subject to legislative amendment. *See, e.g.,*  
30 *Cal. Common Cause v. FPPC*, 269 Cal. Rptr. 873, 876 (Cal. Ct. App. 1990). By its plain language,  
31 all of the provisions of Proposition 73, including section 85300, were designed to be amended in  
32 the same way that the Act has always been amended: according to the procedures and purposes of  
33 the original Act.

1 is at odds with the plain text of the PRA and contrary to the actual language and legislative history  
2 of Proposition 73.

3           Proposition 73 did not include any findings or purposes of its own, nor did it amend the  
4 findings and purposes already included in sections 81001 and 81002. *See* Voter Information Guide  
5 for 1988, Primary Elec., at 32, 63 (Proposition 73). That notably distinguishes it from another  
6 campaign finance initiative that appeared alongside it on the June 1988 primary ballot, Proposition  
7 68, which *did* set forth its own findings and purposes. *See id.* at 13, 53 (Proposition 68, § 1). Thus,  
8 if Proposition 73 was intended to change or supplement the PRA’s purposes, it could and should  
9 have done so directly. The initiative could have added to or revised the PRA’s enumerated findings  
10 and purposes; it could have insulated section 85300 from legislative amendment entirely; and it  
11 could have specified that it could be amended only to further *Proposition 73’s* purposes. But  
12 Proposition 73 did none of those things.<sup>3</sup>

13  
14  
15           Instead, Proposition 73 was deliberately incorporated into the PRA and expressly made  
16 subject to the PRA’s existing amendatory process, which requires consistency with the *PRA’s*  
17 *purposes*. The stated findings and purposes in sections 81001 and 81002 thus remain the best  
18 starting point for the Court’s inquiry under section 81012(a). Indeed, those are the sections to  
19 which the courts have looked in past efforts to discern the PRA’s purposes. *Howard Jarvis*

20  
21  
22 <sup>3</sup>           Notably, all of the cases cited in the petitioners’ brief—and many other relevant  
23 precedents—involve voter initiatives that *did* specify particular findings, purposes, and/or  
24 amendment procedures. *See, e.g., People v. Kelly*, 222 P. 3d at 188 n.2 (articulating “purposes”  
25 applicable to Health & Safety Code provisions adopted via Proposition 215); *Amwest Sur. Ins. Co.*  
26 *v. Wilson*, 906 P.2d 1112, 1120 & n.9, 11 Cal. 4th 1243, 1256 & n.9 (Cal. 1995) (citing Proposition  
27 103 § 1 (“Findings and Declaration”), § 2 (“Purpose”), and § 8 (providing for initiative’s liberal  
28 construction “to fully promote its underlying purposes” and permitting legislative amendments to  
further such purposes) (*see* Voter Information Guide for 1988, Gen. Elec., at 99, 144)); *Gardner*  
*v. Schwarzenegger*, 101 Cal. Rptr. 3d 229, 232 (Cal. Ct. App. 2009) (discussing Proposition 36,  
§ 2 (“Findings and Declaration”), § 3 (“Purpose and Intent”), and § 9 (“Amendment”) (*see* Voter  
Information Guide for 2000, Gen. Elec., at 66, 68)).

1 *Taxpayers Ass'n v. Bowen*, 120 Cal. Rptr. 3d 865, 868 (Cal. Ct. App. 2011) (noting that “purposes  
2 to be accomplished by the Political Reform Act are set forth in section 81002”); *id.* at 874 (“[T]he  
3 purposes of the Political Reform Act [], among other things, are to promote impartiality and  
4 eliminate conflicts of interest in the performance of governmental duties.” (citing § 81001));  
5 *Huening v. Eu*, 282 Cal. Rptr. 664, 667 (Cal. Ct. App. 1991) (“The general purposes sought to be  
6 accomplished by the Political Reform Act are found in Government Code section 81002.”); *Santa*  
7 *Clarita*, 192 Cal. Rptr. 3d at 484 (citing § 81002 in reference to the PRA’s purposes). Petitioners  
8 cite no case law to the contrary.

9  
10       Moreover, petitioners’ version of the PRA’s legislative history is incomplete and incorrect.  
11 Most notably, they elide the fact that Proposition 73 was presented to the voters as a package of  
12 campaign finance reforms—most of which were subsequently struck down by a federal appeals  
13 court for unconstitutionally advantaging incumbents. Voters approved two reform initiatives  
14 amending the PRA in June 1988: Propositions 68 and 73. Both measures called on Californians to  
15 adopt, for the first time, limits on certain political contributions, but they were packaged as two  
16 opposed regulatory schemes and presented to the voters as “all-or-nothing alternatives.” Because  
17 the two measures were deemed to conflict and Proposition 73 garnered more affirmative votes, its  
18 provisions prevailed. *Taxpayers To Limit Campaign Spending v. FPPC*, 799 P.2d 1220, 1236-37,  
19 51 Cal. 3d 744, 770-71 (Cal. 1990). But both initiatives were “designed to regulate political  
20 campaign contributions and spending by adding a new chapter to an existing statutory scheme.”  
21 *Yoshisato v. Superior Court*, 831 P.2d 327, 332, 2 Cal. 4th 978, 987 (Cal. 1992). Therefore, insofar  
22 as the legislative history of Proposition 73 is relevant here, petitioners have not fairly described  
23 the campaign reform goals of “the initiative as a whole.” *Gardner v. Schwarzenegger*, 101 Cal.  
24 Rptr. 3d 229, 235 (Cal. Ct. App. 2009).  
25  
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28

1           Because the law’s text, legislative history, and clearly stated purposes are devoid of any  
2 intent to change the operation of section 81012—particularly when the supposed new purpose  
3 would be in direct conflict with the PRA’s core objectives, as both California’s Legislature and its  
4 Supreme Court have recognized—the Court should resist petitioners’ attempts to endow the Act  
5 with new and contradictory purposes. Courts “do not construe statutes in isolation, but rather read  
6 every statute ‘with reference to the entire scheme of law of which it is part so that the whole may  
7 be harmonized and retain effectiveness.’” *Horwich v. Superior Court*, 980 P.2d 927, 930, 21  
8 Cal. 4th 272, 276 (Cal. 1999) (quoting *People v. Pieters*, 802 P.2d 420, 423, 52 Cal. 3d 894, 899  
9 (Cal. 1997)). Here, the Legislature explicitly found that the “absolute prohibition on public  
10 campaign financing allows special interests to gain disproportionate influence and unfairly favors  
11 incumbents,” Stats. 2016, ch. 837, § 1(m)—placing the ban squarely at odds with the “entire  
12 scheme” of the PRA and impairing the Act’s effectiveness. Therefore, to “harmonize” the PRA  
13 with its overall purposes, the Legislature created a valid exception to section 85300 “to permit  
14 citizen-funded election programs so that elections may be conducted more fairly.” *Id.*

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17           **B. Senate Bill 1107 furthers the purposes of the Political Reform Act.**

18           Whether a legislative amendment furthers the PRA’s purposes is “a question of law.”  
19 *Gardner*, 101 Cal. Rptr. 3d at 235. When considering whether a particular legislative amendment  
20 furthers the purposes of an initiative, courts generally apply a “presumption that the Legislature  
21 acted within its authority.” *Amwest Sur. Ins. Co. v. Wilson*, 906 P.2d 1112, 1120, 11 Cal. 4th 1243,  
22 1256 (Cal. 1995); *see also Found. for Taxpayer & Consumer Rights v. Garamendi*, 34 Cal. Rptr.  
23 3d 354, 361 (Cal. Ct. App. 2005). If, “by any reasonable construction, it can be said that the statute  
24 furthers the purposes of [the PRA],” *Gardner*, 101 Cal. Rptr. at 235 (citing *Amwest*, 906 P.2d at  
25 1120), it should be upheld as a valid exercise of the Legislature’s authority under the Act. In  
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1 making that determination, the Court should look to the PRA’s “specific language” and its “major  
2 and fundamental purposes,” *id.*, and should also credit the Legislature’s findings “unless they are  
3 found to be unreasonable and arbitrary.” *Consumers Union of U.S., Inc. v. Cal. Milk Producers*  
4 *Advisory Bd.*, 147 Cal. Rptr. 265, 274 (Cal. Ct. App. 1978) (“Legislative findings as to public  
5 purpose . . . are not binding on the courts, but are given great weight and will be upheld unless  
6 they are found to be unreasonable and arbitrary.”); *see also Gardner*, 101 Cal. Rptr. 3d at 235-36  
7 (noting that legislative findings are also “given great weight” in evaluating whether an enactment  
8 furthers an initiative’s purpose (citation omitted)).  
9

10         Senate Bill 1107 is an attempt by California lawmakers to advance the PRA’s core  
11 purposes by permitting the enactment of public-financing programs for state and local election  
12 campaigns. By enabling localities to adopt public-financing systems, SB 1107 allows legislatures  
13 to pursue reforms that will make their elections more “fair, open, and competitive.” Stats. 2016,  
14 ch. 837, § 1(b). As the Legislature recognized, citizen-funded election programs diminish the  
15 “disproportionate influence” of wealthy donors and special interests “over governmental  
16 decisions,” *id.* § 1(c); foster responsiveness in elected officials and ensure that they are “serving  
17 the needs and responding to the wishes” of their constituents, *id.* § 1(d); and “encourage  
18 competition” in elections for public office, *id.* § 1(g).  
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21         Federal and state courts, along with a significant body of academic research, have  
22 overwhelmingly concluded that the availability of public financing for election campaigns  
23 promotes many of the specific goals that the PRA was designed to address, including in particular  
24 its express goals of (1) combatting political corruption by reducing candidates’ reliance on large  
25 contributions from “lobbyists and organizations who thereby gain disproportionate influence over  
26 governmental decisions,” Cal. Gov’t Code § 81001(c); (2) creating more responsive state and local  
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1 governments that “serve the needs and respond to the wishes of all citizens equally, without regard  
2 to their wealth,” *id.* § 81001(a); and (3) abolishing “[l]aws and practices unfairly favoring  
3 incumbents . . . in order that elections may be conducted more fairly,” *id.* § 81002(e). SB 1107  
4 advances all three of these goals.

5  
6 **1. Federal and California courts have recognized that public financing of election  
7 campaigns furthers the same vital interests that animate the Political Reform  
8 Act.**

9 The compelling interests advanced by the adoption of effective public-financing systems  
10 are well established. When the U.S. Supreme Court upheld the presidential public-financing  
11 system in *Buckley*, it affirmed that public financing works generally “to reduce the deleterious  
12 influence of large contributions on our political process.” 424 U.S. at 91; *see also* Stats. 2016, ch.  
13 837, § 1(j)-(k).

14 Of paramount importance, public financing prevents the corruption often endemic to  
15 privately financed elections and diminishes candidates’ reliance on large donations and special  
16 interest money: “It cannot be gainsaid that public financing as a means of eliminating the improper  
17 influence of large private contributions furthers a significant governmental interest.” *Buckley*, 424  
18 U.S. at 96 (internal citation omitted). The *Buckley* Court also noted that public financing  
19 “facilitat[es] and enlarg[es] public discussion and participation in the electoral process” and  
20 “reliev[es] major-party Presidential candidates from the rigors of soliciting private contributions.”  
21 *Id.* at 93, 96. The Supreme Court had no trouble concluding that these interests were “sufficiently  
22 important” to support public financing. *Id.* at 95-96.

23  
24 A few years later, a three-judge federal district court revisited *Buckley*, ultimately rejecting  
25 a claim that the presidential system violated the First Amendment rights of either candidates or  
26 their supporters by conditioning eligibility for public funds upon compliance with expenditure  
27

1 limits. *Republican Nat'l Comm. v. FEC*, 487 F. Supp. 280, 283-84 (S.D.N.Y.) (“RNC”), *aff'd*, 445  
2 U.S. 955 (1980). The court further held that, even if the public-financing system *did* impose a  
3 burden on speech, any burden was outweighed by the countervailing benefits identified in  
4 *Buckley*—*i.e.*, “reduc[ing] the deleterious influence of large contributions,” “facilitat[ing]  
5 communication” with voters, and “free[ing] candidates from the rigors of fundraising.” *Id.* at 285  
6 (quoting *Buckley*, 424 U.S. at 91). In particular, the three-judge court emphasized the program’s  
7 powerful anticorruption effects: “If the candidate chooses to accept public financing he or she is  
8 beholden unto no person and, if elected, should feel no post-election obligation toward any  
9 contributor of the type that might have existed as a result of a privately financed campaign.” *Id.* at  
10 284. The Supreme Court summarily affirmed. 445 U.S. 955.  
11

12  
13 Both *Buckley* and *RNC* made clear that public-financing programs effectuate the “vital”  
14 governmental interests in combating actual and apparent corruption and “facilitat[ing]  
15 communication” between candidates and voters.<sup>4</sup> In the decades since *Buckley*, courts have  
16 continued to approve public financing as an effective method of campaign reform; and, in so  
17 holding, have reasoned that public-financing systems are justified by the same vital interests as  
18 those at the heart of the PRA.  
19

20 For example, numerous courts have accepted that public financing lessens the influence  
21 and importance of large contributions, particularly those from lobbyists and special interests. *See,*  
22 *e.g., Green Party of Conn. v. Garfield*, 616 F. 3d 213, 230 (2d Cir. 2011) (finding Connecticut  
23

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24 <sup>4</sup> More recently, even as it deemed the First Amendment injury worked by certain “trigger”  
25 provisions contained in some programs too severe to pass constitutional muster, the Court  
26 reaffirmed its longstanding recognition that public financing generally serves valuable interests.  
27 *Ariz. Free Enterprise Club’s Freedom PAC v. Bennett*, 564 U.S. 721, 752 (2011) (“We have said  
28 that a voluntary system of ‘public financing as a means of eliminating the improper influence of  
large private contributions furthers a significant governmental interest.” (quoting *Buckley*, 424  
U.S. at 96)).

1 program worked to “eliminate improper influence on elected officials”); *Rosenstiel v. Rodriguez*,  
2 101 F.3d 1544, 1553 (8th Cir. 1996) (recognizing public financing promotes “compelling  
3 interests” in reducing “possibility for corruption that may arise from large campaign contributions”  
4 and diminishing “the time candidates spend raising campaign contributions, thereby increasing the  
5 time available for discussion of the issues and campaigning”); *Vote Choice, Inc. v. DiStefano*, 4  
6 F.3d 26, 39 (1st Cir. 1993) (validating state’s interest in public financing “because such  
7 programs . . . tend to combat corruption”). These lower courts have also found that public  
8 financing encourages engagement between candidates and voters,<sup>5</sup> and both increases electoral  
9 competitiveness and reduces the advantages of incumbency.<sup>6</sup>

11 For example, the Second Circuit upheld provisions of New York City’s public-financing  
12 regime, which imposed special restrictions on contributions from individuals having specified  
13 “business dealings”<sup>7</sup> with the city. *Ognibene v. Parkes*, 671 F. 3d 174 (2d Cir. 2011). The city’s  
14 program, which is still in effect, matches eligible contributions from city residents to participating  
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17  
18 <sup>5</sup> E.g., *DiStefano*, 4 F.3d at 39 (“When . . . the legislature has adopted a public funding  
19 alternative, the state possesses a valid interest in having candidates accept public financing because  
20 such programs ‘facilitate communication by candidates with the electorate’”) (quoting *Buckley*,  
21 424 U.S. at 91)); *Corren v. Sorrell*, 167 F. Supp. 3d 647, 659 (D. Vt. 2016) (“Vermont’s public  
22 financing system allows candidates to communicate freely with, and receive meaningful assistance  
23 from, their supporters.”), *appeal docketed sub. nom. Corren v. Donovan*, No. 17-1343 (2d Cir.  
24 Apr. 28, 2017).

25 <sup>6</sup> E.g., *Ognibene v. Parkes*, 671 F.3d 174, 193 (2d Cir. 2011) (explaining that New York  
26 City’s public funding-program “encourages small, individual contributions, and . . . discourag[es]  
27 the entrenchment of incumbent candidates”); *Green Party*, 616 F. 3d at 237 (acknowledging that  
28 “minor-party candidates as a whole, many of them running in safe districts, appear to have done  
better” following state’s enactment of public financing); *Rosenstiel*, 101 F.3d at 1557 (“If the  
incumbent enrolls in the State’s public financing plan, then he is bound by the State’s expenditure  
limits and his alleged advantage in fundraising capacity is diminished significantly.”).

<sup>7</sup> Covered “business dealings” include, among other things, certain public contracts,  
licenses, applications for preferential tax treatment, and lobbying activities. *Ognibene*, 671 F.3d at  
174; see also N.Y.C. Admin. Code § 3-702(18).

1 candidates at a 6-to-1 rate up to \$175,<sup>8</sup> but it excludes contributions from individuals doing  
2 business with the city, including lobbyists, from eligibility for a match. *Id.* at 179-81. The court—  
3 noting that the City’s matching system both “encourages small, individual contributions, and is  
4 consistent with [an] interest in discouraging entrenchment of incumbent candidates,” *id.* at 193—  
5 upheld the restrictions, recognizing that the restrictions were intended “to avoid stacking the deck  
6 in favor of incumbents.” *Id.* at 192.

8 The California Supreme Court has also suggested that public-financing programs would  
9 further the PRA’s central objectives. In *Johnson v. Bradley*, the court rebuffed the contention that  
10 the ban enacted by Proposition 73 was “reasonably related” to the state’s interest in “enhancing  
11 the integrity of the electoral process.” 841 P.3d at 1003. The court found that, to the contrary, “a  
12 ban on public funding would actually frustrate achievement of that goal.” *Id.* at 1004. It proceeded  
13 to explain at length how public financing would further the PRA’s key purposes:

15 [I]t seems obvious that public money reduces rather than increases the fundraising  
16 pressures on public office seekers and thereby reduces the undue influence of  
17 special interest groups . . . . [Moreover], the goals of campaign reform and  
18 reduction of election costs, including the reduction of the influence of special  
19 interest groups and large contributors, is in no way embarrassed by public  
20 financing. To the contrary, those goals can only be furthered.

21 *Id.* (second alteration in original) (citation omitted).

22 **2. There is a substantial body of research demonstrating that the salutary effects of  
23 public financing are consistent with core purposes of the Political Reform Act.**

24 Current empirical and academic research on existing public-financing systems further  
25 demonstrates that these programs advance the purposes of the PRA. Different analyses have

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26 <sup>8</sup> For example, the city would match a \$175 contribution from a “natural person resident” to  
27 a participating candidate with \$1,050 in public funds (6 x \$175=\$1,050). Thus, the total value of  
28 the resident’s contribution would increase to \$1,225 after the match (\$175 + \$1,050). N.Y.C.  
Admin. Code § 3-703(3); *How it works*, N.Y.C. Campaign Finance Bd., [https://www.nycfb.info/  
program/how-it-works](https://www.nycfb.info/program/how-it-works) (last visited June 23, 2017).

1 concluded that public funding of campaigns lessen the potential for political corruption by  
2 decreasing candidates' dependence on large private contributions, Cal. Gov't Code § 81001(b)-  
3 (c); encourage political engagement among a broader class of citizens and thereby promote greater  
4 responsiveness from candidates, *id.* § 81001(a); and improve measures of electoral  
5 competitiveness and thereby reduce the advantages of incumbency, *id.* § 81002(e).  
6

7 A defining feature of many public finance programs is candidates' voluntary acceptance of  
8 lower contribution limits and expenditure caps in exchange for a jurisdiction's provision of public  
9 funds. *See* Michael J. Malbin, Campaign Finance Inst., *Citizen Funding for Elections* 5, Table 1  
10 (2015), [http://www.cfinst.org/pdf/books-reports/CFI\\_CitizenFundingforElections.pdf](http://www.cfinst.org/pdf/books-reports/CFI_CitizenFundingforElections.pdf). By design,  
11 these controls decrease the need for candidates to solicit large contributions and thereby lessen the  
12 risk of political corruption. Data from jurisdictions with public financing structures illustrates this  
13 effect.  
14

15 Following Connecticut's introduction of full public financing for statewide election  
16 campaigns in 2010, the prominence of small contributions in these races increased dramatically.  
17 In 2006, prior to the enactment of public financing, successful candidates for statewide office in  
18 Connecticut raised about eight percent of their total campaign funds in contributions from  
19 individuals ranging between \$5 and \$100. Conn. State Elections Enforcement Comm'n ("SEEC"),  
20 *Citizens' Election Program 2010: A Novel System with Extraordinary Results* 8-12 (2011),  
21 [http://www.ct.gov/seec/lib/seec/publications/2010\\_citizens\\_election\\_program\\_report\\_final.pdf](http://www.ct.gov/seec/lib/seec/publications/2010_citizens_election_program_report_final.pdf).  
22

23 When public financing was introduced for statewide races in 2010, every successful candidate  
24 opted to participate in the program. *Id.* at 8. In accordance with the program's strictures, these  
25 candidates raised a full 100% of their campaign contributions from individuals in amounts between  
26 \$5 and \$100. *Id.* Individual donors also played a greater role in Connecticut's legislative races  
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28

1 following the introduction of public financing. In 2010, individuals provided 97% of all  
2 contributions received by candidates for the state legislature. *Id.* at 4-5. By comparison, individuals  
3 were the source of 49% of contributions received by legislative candidates during the 2006  
4 elections. *Id.*

5  
6 Similarly, an examination of New York City’s public-financing program found that the  
7 city’s implementation of multiple-matching funds in 2001 resulted in a significant increase both  
8 in the number of small contributors, measured as donors of \$250 or less, and in the proportional  
9 importance of small contributors to competitive candidates for City Council participating in the  
10 program. Michael J. Malbin *et al.*, *Small Donors, Big Democracy: New York City’s Matching*  
11 *Funds as a Model for the Nation and States*, 11 Election L. J. 3, 9-10 (2012), [http://www.cfinst.org/](http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf)  
12 [pdf/state/NYC-as-a-Model\\_ELJ\\_As-Published\\_March2012.pdf](http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf). These effects were consistent  
13 across challengers, incumbents, and open-seat candidates. *Id.*

14  
15 Beyond reducing candidates’ reliance on large contributions, research also indicates that  
16 public financing fosters engagement between candidates and a broader cross-section of voters. A  
17 study focusing on New York City’s matching funds program found that 92% of the city’s census  
18 block groups had at least one contributor of \$250 or less to a city candidate in the 2009 municipal  
19 elections. Malbin, *Small Donors, supra*, at 12-13. Moreover, census-block groups with at least one  
20 small donor were statistically less affluent and more racially diverse than census-block groups with  
21 at least one large donor (those who gave \$1,000 or more), suggesting that the city’s program  
22 spurred candidates to interact with a broader swath of the city populace. *Id.* at 13.

23  
24  
25 A separate analysis of New York City’s matching-funds system by the New York City  
26 Campaign Finance Board revealed that more than half of the people who made a contribution  
27 during the 2013 city elections were first-time contributors. N.Y.C. Campaign Finance Bd., *By the*  
28

1 *People: The New York City Campaign Finance Program in the 2013 Elections* 41 (2014),  
2 [http://www.nycfb.info/PDF/per/2013\\_PER/2013\\_PER.pdf](http://www.nycfb.info/PDF/per/2013_PER/2013_PER.pdf). And 76% of these first-time donors  
3 made a small contribution of \$175 or less. *Id.* These figures buttress the proposition that public  
4 financing brings new and diverse voices into the political process.

5  
6 In addition, public financing frees candidates to engage in meaningful voter outreach and  
7 to focus their campaigning on substantive issues, and it allows incumbents to focus on advancing  
8 their constituents' interests through legislative and executive action instead of soliciting money for  
9 re-election. A 2008 survey of state legislative candidates found that candidates accepting full  
10 public funding devoted significantly more time to non-fundraising interaction with the public, such  
11 as canvassing and public speaking, than did candidates who declined to participate in public  
12 financing. Michael G. Miller, *Subsidizing Democracy: How Public Funding Changes Elections*  
13 *and How It Can Work in the Future* 56-62 (2013). In the aggregate, a statistical review of the  
14 survey results determined that legislative candidates accepting full public funding spent about  
15 11.5% more time per week on direct voter outreach than privately financed candidates. *Id.*

16  
17 Finally, analysis of elections in jurisdictions with public financing show these systems  
18 increase some measures of electoral competitiveness and may weaken incumbents' advantage over  
19 challengers.<sup>9</sup> After taking effect in 2000, the Maine Clean Elections Act immediately increased  
20 the number of candidates and decreased the margin of victory in state senate elections in 2000 and  
21 2002—compared to 1994 through 1998—in districts where a candidate accepted public funding.  
22 Neil Malhotra, *The Impact of Public Financing of Electoral Competition: Evidence from*

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25 \_\_\_\_\_  
26 <sup>9</sup> Studies have demonstrated that PACs and access-motivated interest groups, such as highly  
27 regulated industries, are more likely to make contributions to incumbent candidates than  
28 challengers. See Alexander Fournaies & Andrew B. Hall, *The Financial Incumbency Advantage: Causes & Consequences*, 76 J. Pol. 711 (2014); Michael Barber, *Donation Motivations: Testing Theories of Access & Ideology*, 69 Pol. Res. Q. 148 (2016).

1 *Arizona and Maine*, 8 State Pol. & Pol’y Q. 263, 275-77 (2008), [https://web.stanford.edu/~](https://web.stanford.edu/~neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf)  
2 [neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf](https://web.stanford.edu/~neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf).

3 A separate study of Maine following its adoption of public financing concluded that, through 2004,  
4 “electoral competitiveness” had improved, as measured by percentage of incumbents facing major-  
5 party opposition, percentage of incumbents winning with less than 60% of the vote, and incumbent  
6 re-election rate. Kenneth R. Mayer, Timothy Werner & Amanda Williams, *Do Public Funding*  
7 *Programs Enhance Electoral Competition?*, in *The Marketplace of Democracy: Electoral*  
8 *Competition & American Politics* 245, 247-49 (Michael P. McDonald & John Samples, eds.,  
9 2006).<sup>10</sup>

10  
11 Connecticut reported a comparable uptick in electoral competition following the  
12 introduction of public funding for legislative elections in 2008. According to data compiled by the  
13 State Elections Enforcement Commission, the number of unopposed legislative races dropped  
14 considerably after the program’s rollout, from 53 unopposed elections in 2008 to 32 in 2010.  
15 SEEC, *Citizens’ Election Program 2010*, *supra*, at 6. This jump in contested elections was  
16 consistent with an overall increase in the number of legislative candidates in 2010, many of whom  
17 cited the availability of public funds as a factor in their decision to seek office. *Id.* at 6-7. Moreover,  
18 the availability of public funds for legislative candidates in 2008 and 2010 correlated with a general  
19 decline in candidates’ margins of victory in “competitive” races. *Id.* at 7-8.

20  
21 Broader studies similarly show increased competitiveness in states with public financing.  
22 In 2016, the National Institute for Money in State Politics issued a report on monetary  
23 competitiveness in state legislative races in 2013 and 2014. Zac Holden, *2013 and 2014: Monetary*  
24 *Competitiveness in State Legislative Races*, Nat’l Inst. for Money in State Politics (Mar. 9, 2016),  
25

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28 <sup>10</sup> This article is available via SelectedWorks at <https://works.bepress.com/mayer/15>.



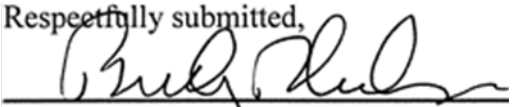
1 <https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary->  
2 competitiveness-in-state-legislative-races. Under the report’s methodology, a legislative race was  
3 considered monetarily competitive if the race’s top fundraiser raised no more than twice the  
4 amount of the next-highest fundraiser. *Id.* Analyzing campaign data from 47 states, the report  
5 found that only 18% of legislative races nationally were monetarily competitive during the 2013  
6 and 2014 elections. *Id.* However, the percentage of monetarily competitive elections was  
7 considerably higher in the five states offering public financing for legislative candidates: an  
8 average of 41% of legislative races in states with public financing programs (Table 2) were  
9 monetarily competitive in 2014. *Id.* Moreover, three of the five *most* monetarily competitive states  
10 had public financing systems for legislative candidates, while none of the five *least* monetarily  
11 competitive states offered public funds. *Id.* The report also concluded that public financing  
12 increased the number of contested legislative races. In states with public financing for legislative  
13 elections, 87% of legislative seats were contested. By comparison, only 61% of legislative seats  
14 were contested in states lacking public financing programs. *Id.*

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16  
17 As the studies of jurisdictions such as Maine, Connecticut, and New York City  
18 demonstrate, provision of public financing serves the PRA’s important goals of reducing  
19 candidates’ reliance on corrupting large contributions, encouraging officeholder responsiveness,  
20 and reducing the unfair advantages of incumbency.  
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**CONCLUSION**

For these reasons, the petition for writ of mandate should be denied.

Respectfully submitted,  


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Dated: June 28, 2017

1 **DECLARATION OF SERVICE**

2 I, Mary L. Pantoja, declare as follows:

3 I am a resident of the State of California, over the age of 18 years and not a party to the  
4 within action. My business address is Munger, Tolles & Olson LLP, 350 South Grand Avenue,  
5 Fiftieth Floor, Los Angeles, California, 90071.  
6

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

8 On June 28, 2017 true copies of **Unopposed Application of California Common Cause**  
9 **et al. for Leave to File an Amici Curiae Brief in Support of Respondents and in Opposition**  
10 **to Petition for Peremptory Writ of Mandate and [Proposed] Memorandum Of Points And**  
11 **Authorities Of Amici Curiae** were sent via email (pursuant to the parties’ agreement for  
12 electronic service) to:  
13

14 Emmanuelle Soichet  
15 Deputy Attorney General  
16 Emmanuelle.Soichet@doj.ca.gov  
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27 I declare under penalty of perjury that the foregoing is true and correct and that this  
28 declaration was executed this 28th day of June, 2017, at Los Angeles, California.

  
\_\_\_\_\_  
Mary L. Pantoja