September 18, 2018

The Hon. Chair Miadich
Hon. Members
Fair Political Practices Commission
1102 Q St #3000,
Sacramento, CA 94249

RE: Item 30 – Request Review of SB 1107 Decision

Dear Chair Miadich and Commissioners,

On behalf of California Common Cause, League of Women Voters of California, and the California Clean Money Campaign, we urge the Commission to petition the California Supreme Court to review the ruling in *Howard Jarvis Taxpayers Association, et al. v. Gavin Newsom, et al.*, invalidating Senate Bill 1107, which authorizes the state and local governments to establish campaign public financing systems. We believe the decision was in error, goes against the purpose of the Political Reform Act (PRA), and deprives local governments of the opportunity to adopt meaningful reform to empower ordinary citizens, prevent corruption, and combat the public's disillusionment with our present campaign finance system.

SB 1107 (Allen, 2016) furthers the fundamental purposes of the PRA. The PRA was created by voters through Proposition 9 in 1974 to prevent "corruption of the political process."[1] In recognition of the fact that times change and new tools will be needed to effectively combat corruption, the PRA allows the Legislature to amend the Act by a two-thirds vote to "further its purposes."[2] There is no legal question as to whether public financing furthers the goal of combating political corruption: both the United States Supreme Court and California Supreme Court have held that it does.[3] By reducing candidates' reliance on large donors to fund their campaigns, public financing enables elected officials to better represent the interests of their constituents.

Nonetheless, the Court of Appeal for the Third District held that Proposition 73 (1988), which amended the PRA to include the absolute ban on public financing, silently amended the purposes of the Act itself.

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[1] *Agua Caliente Band of Cahuilla Indians v. Superior Court*, 40 Cal.4th 239, 244 (2006).
[2] Government Code Section 81012(a). The findings and purposes of the PRA are codified at Sections 81001 and 81002, respectively.
[3] *See Buckley v. Valeo*, 424 U.S. 1, 96 (1976) ("public financing as a means of eliminating the improper influence of large private contributions furthers a significant governmental interest") *and Johnson v. Bradley*, 4 Cal.4th 389, 410 (1992) ("it seems obvious that public money reduces rather than increases the fund raising pressures on public office seekers and thereby reduces the undue influence of special interest groups") (quoting approvingly from lower court opinion).

This holding is ripe for review. There is no prior case law saying that Proposition 73 altered the purposes of the PRA and made the ban on public financing un-amendable. In fact, existing case law, which the Court of Appeal brushed away as dictum, suggests the contrary.[4]

The structure and language of the initiative also indicate the opposite. Proposition 73 could have placed its provisions in a new, unamendable title of code, but it did not; it inserted them into the PRA, with its preexisting purposes and process for legislative amendment. Further, Proposition 73 could have amended or entirely revised the PRA's enumerated findings and purposes, but again, it did not. Instead, Proposition 73 explicitly incorporated the PRA's mechanism for legislative amendments, which requires consistency with the Act's purposes.

The strongest argument that Proposition 73 established its own standalone purpose comes from the legislative history; proponents had highlighted the ban in their ballot arguments. However, this misses the fuller picture of Proposition 73's unique ballot history. Proposition 73, establishing contribution limits *and banning* public financing, was on the same ballot as Proposition 68, establishing contribution limits *and establishing* public financing for state elections. *Both* measures passed, but only Proposition 73 went into effect, because it received a few more in votes. That Proposition 68 and Proposition 73 both passed separated by only a few percentage points, however, strongly suggests that the majority of voters passed both initiatives out of a shared desire to further the PRA's existing purpose, to prevent corruption. As former California Supreme Court Justice Mosk explained in his concurrence in *Johnson v. Bradley*:[5]

> "Though I have no crystal ball, it is highly unlikely that the electorate would have enacted the ban on public financing in the absence of the campaign finance reform provisions invalidated by the federal courts. … While portions of the argument of the proponents of Proposition 73 were devoted to persuading the voters, for example, that "TAXPAYER FINANCING OF POLITICAL CAMPAIGNS MAKES NO SENSE," the argument was directed at a competing initiative, not at establishing the independent need for a ban on public financing. At the same election, the voters were offered Proposition 68, an initiative measure providing for campaign finance reform with partial public financing. The proponents of Proposition 73 offered their package of reform with no public financing as an alternative. Again, there is no indication at all that the prohibition against public financing was seen as an end in itself, even by the proponents of Proposition 73. Such an end would have been particularly pointless, as the state had no public financing of statewide elections — unless the rival reform package were to be enacted."

[4] In *California Common Cause v. Fair Political Practices Commission*, 221 Cal. App. 3d. 647, 651 (1990), a case where the proponents were asking the Court to throw out the ban on public financing, the Court upheld the ban but stated the now "that section 85300 has been added to the Act, it likewise is capable of amendment by a two-thirds vote of the Legislature."

[5] *Johnson v. Bradley*, 4 Cal.4th at 418-19 (citations omitted, emphasis added).

Proposition 73 was a means to achieving the PRA's traditional ends. When time and experience show that those means are incongruous with achieving the Act's purposes, the Legislature can amend them by a two-thirds vote. That is what occurred here.

Letting this decision stand has real consequences and would deprive counties, general law cities, school districts, and other governments of important policy tools to combat corruption and build a more accountable, responsive, and inclusive democracy. For example, studies of public financing have found that such systems can increase the ethnic and economic diversity of who donates to campaigns, runs for office, and gets elected,[6] resulting in more representative representatives.

There is a strong desire among Americans and Californians for systemic campaign finance reform. According to a 2015 poll, more than 80% of Americans of *all* political stripes believe money has too much influence in political campaigns and 85% want to see fundamental changes to our campaign finance system.[7] Reflecting this, SB 1107 was passed by a *bipartisan*, two-thirds vote. The bill was supported by almost 40 organizations, representing a broad cross-section of California, including good government organizations like Common Cause, Clean Money Campaign, and the League of Women Voters; civil rights organizations like the ACLU and Southwest Voter Registration and Education Project; labor organizations like the Los Angeles County Labor Federation and the UFCW Western States Council; business organizations like the American Sustainable Business Council; and faith organizations like California Church Impact.

We believe the decision in *HJTA* was incorrect as a matter of law and democratically damaging as matter of public policy. For the foregoing reasons, we strongly urge the Commission to petition the Supreme Court to review the decision.

/s/ Rey Lopez-Calderon
Executive Director
California Common Cause

/s/ Carol Moon Goldberg
President
League of Women Voters of California

/s/ Trent Lange
Executive Director
California Common Cause

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[6] *See, e.g.*, Elizabeth Genn, Michael J. Malbin, Sundeep Iyer, and Brendan Glavin, *Donor Diversity Through Public Matching Funds*, Brennan Center for Justice at New York University and the Campaign Finance Institute (2012) *and* Center for Governmental Studies, *Public Campaign Financing in California: A Model Law for 21st Century Reform* (2012).

[7] New York Times, *Americans' Views on Money in Politics* (June 2, 2015).