**SUPERIOR COURT OF CALIFORNIA**
**COUNTY OF SACRAMENTO**

**34-2023-00335169-CU-MC-GDS: Family Business Association of California vs. Fair Political Practices Commission**
**05/25/2023 Motion for Judgment on the Pleadings - Civil Law and Motion - Demurrer/JOP in Department 53**

Tentative Ruling

**NOTICE**:

Consistent with Local Rule 1.06(B), any party requesting oral argument on any matter on this calendar must comply with the following procedure:

To request limited oral argument, on any matter on this calendar, you must call the Law and Motion Oral Argument Request Line at (916) 874-2615 by 4:00 p.m. the Court day before the hearing and advise opposing counsel. At the time of requesting oral argument, the requesting party shall leave a voice mail message: a) identifying themselves as the party requesting oral argument; b) indicating the specific matter/motion for which they are requesting oral argument; and c) confirming that it has notified the opposing party of its intention to appear and that opposing party may appear via Zoom using the Zoom link and Meeting ID indicated below. If no request for oral argument is made, the tentative ruling becomes the final order of the Court.

Unless ordered to appear in person by the Court, parties may appear remotely either telephonically or by video conference via the Zoom video/audio conference platform with notice to the Court and all other parties in accordance with Code of Civil Procedure 367.75. Although remote participation is not required, the Court will presume all parties are appearing remotely for non-evidentiary civil hearings. The Department 53/54 Zoom Link is https://saccourt-ca-gov.zoomgov.com/my/sscdept53.54 and the Zoom Meeting ID is 161 4650 6749. To appear on Zoom telephonically, call (833) 568-8864 and enter the Zoom Meeting ID referenced above. NO COURTCALL APPEARANCES WILL BE ACCEPTED.

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list.

Once the form is signed it must be filed with the clerk. If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with

a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will be forward the form to the Court Reporter's Office and an official reporter will be provided.

**TENTATIVE RULING**:

Plaintiffs Family Business Association of California, California Restaurant Association, California Retailers Association, California Building Industry Association, California Business Properties Association, California Business Roundtable, Sacramento Regional Builders Exchange, California Manufacturers & Technology Association, Garrett Gatewood, and Pat Hume's (collectively, "Plaintiffs") bring a motion for judgment on the pleadings directed to Defendants Fair Political Practices Commission and Richard Miadich's (collectively, "Defendants").

The Court issues this tentative ruling which addresses Plaintiffs' motion and also addresses Defendants' cross-motion for judgment on the pleadings directed to Plaintiffs.

I. Introduction

This action arises out of passage of Senate Bill No. 1439 ("SB 1439"), which amends Government Code Section 84308 (all further statutory references are to the Government Code unless otherwise indicated).

The pertinent facts as alleged in the Complaint are as follows:

The Political Reform Act of 1974 (the "PRA" or the "Act") was approved by the voters in June of 1974 through passage of Proposition 9. (Compl. ¶25.) One of Proposition 9's express purposes was to require disclosure of assets and incomes, and in appropriate circumstances, disqualify public officials when a conflict of interest arose. (Compl. ¶27.) The PRA includes Section 87100, which barred public officials from using their official position to influence any government decision in which they knew or had reason to know they had a financial interest. (Compl. ¶25.) The PRA defined "financial interest" and "income" such that campaign contributions were excluded from Section 87100's conflict of interest provisions. (Compl. ¶26.)

On November 29, 2022, the Governor signed SB 1439 into law, which became effective January 1, 2023. (Compl ¶1.) SB 1439 amended the PRA by making changes to Section 84308. (Compl. ¶1.) Previously, Section 84308 did not apply to local elected officials, only to persons appointed to certain government agencies. (Compl. ¶2.) SB 1439 eliminated the prior exception for "local

government agencies whose members are directly elected by the voters" under the definition of "Agency" (Compl. ¶¶1-3) and imposed a prospective "cool-off" period for contributions for 12 months. (Compl. ¶¶1, 5). SB 1439 did not directly amend the general conflict of interest provisions in Section 87100 or its associated definitions. (Compl. ¶29.)

Plaintiffs' complaint asserts causes of action for both injunctive and declaratory relief. Specifically, Plaintiffs seek to have SB 1439 declared unconstitutional under section 10(c) of Article II of the California Constitution and to enjoin its implementation. Plaintiffs further seek to have the bill declared unconstitutional under the First Amendment of the United States Constitution and Sections 2 and 3 of Article I of the California Constitution, and to enjoin its implementation on those grounds.

Plaintiffs now move for judgment on the pleadings on their causes of action.

Defendants cross-move for judgment on the pleadings for failure to allege facts sufficient to state a claim and dismissal of the Complaint without leave to amend.

## II. Legal Standard

A plaintiff may move for judgment on the pleadings if the complaint states facts sufficient to constitute a cause of action against that defendant and the defendant's answer does not state facts sufficient to constitute a defense to the complaint. (CCP § 438(b)(1), (c)(1)(A).) In turn, a defendant may move for judgment on the pleadings if the complaint does not state facts sufficient to constitute a cause of action against the defendant. (CCP § 438(b)(1), (c)(1)(B)(ii).) Except as provided by statute, a motion for judgment on the pleadings is analyzed like a general demurrer. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) Thus, on a motion for judgment on the pleadings, the Court may extend consideration to matters that are subject to judicial notice; in doing so, the Court performs essentially the same task as ruling on a general demurrer. (*Smiley v. Citibank* (1995) 11 C.4th 138, 146.) The Court therefore sets out the general rules governing demurrers below.

A demurrer "tests the pleadings alone and not the evidence or other extrinsic matters." (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905.) The purpose of a demurrer is to test the legal sufficiency of a claim. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal. App. 4th 968, 994.) For the purpose of determining the effect of a complaint, its allegations are liberally construed, with a view toward substantial justice. (CCP § 452; *Amarel v. Connell* (1988) 202 Cal.App.3d 137, 140-141; *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 43, fn. 7.) The Court treats the demurrer as admitting all material facts properly pled, but not contentions, deductions or conclusions of fact or law, and considers matters which may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d at 318; *Poseidon Development, Inc. v.*

*Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1111-1112.) Extrinsic evidence may not properly be considered on demurrer or on a motion to strike. (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal. App. 3d 868, 881; *Hibernia Savings & Loan Soc. v. Thornton* (1897) 117 C. 481, 482.)

A demurrer may be sustained only if the complaint lacks any sufficient allegations to entitle the plaintiff to relief. (*Financial Corp. of America v. Wilburn* (1987) 189 Cal. App. 3d 764, 778.) "Plaintiff need only plead facts showing that he may be entitled to some relief . . . , we are not concerned with Plaintiffs' possible inability or difficulty in proving the allegations of the complaint." (*Highlanders, Inc. v. Olsan* (1978) 77 Cal. App. 3d 690, 696-697.) "[Courts] are required to construe the complaint liberally to determine whether a cause of action has been stated, given the assumed truth of the facts pleaded." (*Picton v. Anderson Union High School Dist*. (1996) 50 Cal. App. 4th 726.) A demurrer admits the truth of all material facts properly pled and the sole issue raised by a general demurrer is whether the facts pled state a valid cause of action - not whether they are true. (*Serrano v. Priest* (1971) 5 Cal. 3d 584, 591.)

III. Judicial Notice

Plaintiffs request the Court take judicial notice of the following exhibits: (A) Senate Bill 1439; (B) Proposition 9, as presented to the voters in the State Voter Information Guide for the 1974 Primary Election; (C) Proposition 73, as presented to the voters in the State Voter Information Guide for the 1988 Primary Election; (D) Proposition 34, as presented to the voters in the State Voter Information Guide for the 2000 General Election; (E) Senate Bill 24; (F) Senate Elections and Constitutional Amendments Committee Analysis of SB 1439; (G) Senate Committee on Appropriations Analysis of SB 1439; (H) Senate Rules Committee Analysis of SB 1439; (I) Assembly Committee on Elections Analysis of SB 1439; (J) Assembly Committee on Appropriations Analysis of SB 1439; (K) Assembly Floor Analysis of SB 1439; (L) Senate Floor Analysis of SB 1439; (M) Secretary of State Report of Registration – 15 Day Report of Registration by Political Subdivision.

The Court grants Plaintiffs' requests for judicial notice of the above exhibits. (See Evid. Code §§ 451(a) and 452(c); *Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 170-171, fn.3 [judicial notice of voter information pamphlets]; *People v. Snyder (*2000) 22 Cal.4th 304, 309, fn. 5 [judicial notice of ballot arguments to propositions and legislative history material]; *Board of Education v. Watso*n (1966) 63 Cal.2d 829, 836, fn.3 [judicial notice of data contained in a publication issued by an agency of the state].)

Defendants request the Court take judicial notice of the following exhibits: (1) Voter Information Guide for June 4, 1974 Primary Election; (2) Senate Rules Committee, Office of Senate Floor Analysis, Analysis of SB 1439; (3) Assembly Floor Analysis, Senate Third Reading Analysis of

SB 1439; (4) Assembly Committee on Appropriations, Analysis of SB 1439; (5) Assembly Committee on Elections, Analysis of SB 1439; (6) Senate Rules Committee, Office of Senate Floor Analysis, Senate Third Reading, Analysis of SB 1439; (7) Senate Committee on Appropriations, Analysis of SB 1439; (8) Senate Committee on Elections and Constitutional Amendments, Analysis of SB 1439; (9) Plea Agreement for Defendant Jose Luis Huizar filed on January 19, 2023, in *United States v. Huizar* (No. CR 20-236(A)-JFW-l), in the United States District Court for the Central District of California; (10) Plea Agreement for Defendant Gabriel Chavez filed on October 7, 2022, in *United States v. Chavez* (No. CR 2:22-cr-00462-MWF), in the United States District Court for the Central District of California; (11) Press Release from the United States Attorney's Office for the Southern District of California "Press Release: Former Calexico City Officials Sentenced to Prison for Bribery"; (12) Information filed on September 9, 2021, in *United States v. Recology San Francisco, et al.* (No. CR21-356 WHO), in the United States District Court for the Northern District of 9 California.

The Court grants Defendants' requests for judicial notice of Exhibits 1-8. (See Evid. Code §§ 451(a) and 452(c); *Edelstein*, *supra*, 29 Cal.4th at 170-171, fn.3; *Snyder*, *supra*, 22 Cal.4th at 309, fn. 5.) The Court grants Defendants' request for judicial notice of Exhibits 9-12 as to the existence of the documents and the allegations contained therein, but not the truth of their contents. (*Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A.* (2009) 174 Cal.App.4th 883, 888, fn. 34 [court may take judicial notice of the existence of press releases but not the truth of their contents]; *Johnson & Johnson v. Superior Court* (2011) 192 Cal.App.4th 757, 768 [court may take judicial notice of the existence of court documents, but not truth of hearsay statements in other decisions or court files, or of the truth of factual findings made in another action].)

The Court notes that page references to Plaintiffs' and Defendants' respective Request for Judicial Notices refer to their pages within each parties' respective Requests, not to the internal pagination of each exhibit.

Plaintiffs object to two items in Defendants' briefings: (1) a reference to an article entitled "Los Angeles staggers under cascade of scandals" on page 20 of Defendants' opening brief and (2) a reference to an article referring to "classic culture of pay-to-play" in Huntington Park in Defendants' opposition to Plaintiffs' opening brief. Defendants did not request and the Court does not take judicial notice of the aforementioned articles.

Plaintiffs also object to various requests for judicial notice from Common Cause of California. The Court does not rule on Plaintiffs' objections as the Court denies Common Cause of California's application to file an amicus brief. (See *infra*, Section V.)

IV. Analysis

A. Claims under Article II of the California Constitution (First and Second Causes of Action)

Plaintiffs seek to enjoin SB 1439 and to have it declared unconstitutional under section 10(c) of Article II of the California Constitution in its first and second causes of action.

1. Standard Required to Amend the PRA

Section 10(c) provides that the legislature "may amend or repeal an initiative statute by another statute [when]…the initiative statute permits amendment or repeal without the elector's approval." (Cal. Const., Art. II, §10, subd.(c).) "The PRA provides that it may be amended or repealed if (1) the new law was passed by a two-thirds majority of the Legislature, (2) the new law furthers the PRA's purposes, and (3) the Legislature delivers a copy of the final bill, at least 12 days prior to its passage, to the Fair Political Practices Commission and anyone else who requests a copy." (*Santa Clarita Organization for Planning & the Environment v. Abercrombie* (2015) 240 Cal.App.4th 300, 320; Gov. Code § 81012.)

The express purposes of the PRA are set forth in Sections 81001 and 81002. In pertinent part, the Act declares that "[p]ublic officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Gov. Code § 81001, subd. (b).) Further, the PRA was enacted so that receipts and expenditures in election campaigns should be fully and truthfully disclosed such that "voters may be fully informed and improper practices may be inhibited." (Gov. Code § 81002, subd. (a).) Along with disclosure, the Act envisions that "in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided." (Gov. Code § 81002, subd.(c).) The Act also dictates that it "should be liberally construed to accomplish its purposes." (Gov. Code § 81003.)

The courts are not "constrained to the express statement of purposes in determining the purpose of an initiative. Instead, evidence of its purpose can be drawn from many sources, including its historical context and ballot arguments in its favor." (*Howard Jarvis Taxpayers Assn. v. Newsom* (2019) 39 Cal.App.5th 158, 170, citing *Amwest Sur. Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1256.) Courts are "concerned with the purpose of *the Act as a whole*. In resolving that question, [courts] are guided by the express statements of purposes in the Act, but also consider the initiative as a whole and the 'particular language' used. [Citation]." (*Ibid*, internal citations omitted.) "[A] legislative amendment that alters and conflicts with a fundamental purpose or primary mandate of an initiative does not further the purpose of the initiative and is invalid." (*Id*. at 174.) An amendment does not further an initiative's fundamental purpose or primary mandate if it takes "a significantly different policy approach" to an express purpose, "undermine[s] the specific rules" of the ballot initiative, and is "inconsistent with the other primary purposes." (*Id*.

at 172.)

The proponents of Proposition 9 sought "an end to corruption in politics." (Plaintiffs' Request for Judicial Notice ("Plaintiffs' RJN"), Exh. B, p.15.) In outlining "the problem," Proposition 9's proponents highlighted the "special favors" individuals and organizations "contracting with local government" obtained in return from their contributions "to the campaigns of local officials." (Plaintiffs' RJN, Exh. B, p. 15.) Proponents also identified the "impact of Watergate and related events," which "contributed to the serious decline of citizen confidence in the governmental process." (Plaintiffs' RJN, Exh. B, p.16.) Voters approved amendments to the PRA through Propositions 73, 208, and 34. These propositions sought to establish, *inter alia*, limits on campaign contributions for elected officials. (Plaintiffs' RJN, Exh. C, p.35; Exh. D, p.42.)

2. SB 1439's amendments to the PRA

Plaintiffs first contend that SB 1439 is an unconstitutional amendment to the PRA because its original text specifically excluded campaign contributions from creating a conflict of interest. (Memorandum of Points and Authorities ISO Plaintiffs' Motion for Judgment on the Pleadings ("Plaintiffs' MJOP"), 8:9-10:3.) Plaintiffs rely on *Woodland Hills Residents Association, Inc. v. City Council of the City of Los Angeles* (1980) 26 Cal.3d 938. *Woodland Hills* is wholly inapplicable to Plaintiffs' instant argument. There, the California Supreme Court considered the existing text of the PRA and concluded that it "provides for disclosure of campaign contributions by recipients of contributions rather than disqualification of recipients from acting in matters in which the contributor is interested." (*Id*. at 945.) The Court further noted that the PRA – "dealing comprehensively with problems of campaign contribution and conflict of interest – does not prevent a city council member from acting upon a matter involving the contributor." (*Id*. at 946.) As Judge Tobriner noted in his *Woodland Hills* concurrence, however, "nothing in [the majority] opinion is intended to preclude the Legislature or a local government entity from enacting appropriately defined legislation providing for the disqualification of a decisionmaker…." (*Id*. at 953.) Two years after the *Woodland Hills* decision, the legislature did exactly that when it passed AB 1040, also known as the Levine Act, which codified Section 84308 into law. (See Stats. 1982, ch. 1049 §1.) An amendment to the PRA was not before the court in *Woodland Hills*. The remaining cases cited by Plaintiffs consider the text of the PRA as it existed at the time – not whether any amendments were valid. (See *Consumers Union of U.S. Inc. v. California Milk Producers Advisory Bd*. (1978) 82 Cal.App.3d 433 [whether FPPC validly interpreted provisions of the PRA in its regulations]; *All Towing Services LLC v. City of Orange* (2013) 220 Cal.App.4th 946 [analyzing the text of the PRA].) "It is axiomatic that cases are not authority for propositions not considered." (*People v. Gilbert* (1969) 1 Cal.3d 475, 482, fn. 7.)

Plaintiffs rely on *Woodland Hills*'s discussion of the PRA as a "comprehensive system" to suggest that the express definitions of "financial interest," "income," and "gift" foreclose the

amendments made by SB 1439. Plaintiff maintains "[t]hat system specifically excluded campaign contributions as a source of potential conflict." (Plaintiffs' MJOP, 9:2-3.) The legislature may nevertheless amend the original text of a ballot initiative if it furthers the purposes of the initiative. (See *O.G. v. Superior Court* (2021) 11 Cal.5th 82, 97 [authorizing change to "statutory provisions" of Proposition 57, noting such "change is what makes Senate Bill 1391 an amendment to Proposition 57"].) Even if the PRA provides such a comprehensive system, it does not follow that the legislature cannot amend that system. Plaintiffs' argument is belied by the fact that the PRA has been amended over 200 times since its inception. (*People v. Kelly* (2010) 47 Cal.4th 1008, 1042, fn. 59.) Plaintiffs argue that "the voters['] fall-back position was voter approval, not broad legislative power to amend the PRA." (Plaintiffs' Reply, 1:24-2:1.) Voter approval is the exclusive means of amendment under the PRA only if Section 81012, subdivision (a) is declared invalid. Section 81012, subdivision (a) was not found invalid, and the courts have routinely used subdivision (a) as the basis for PRA amendment analysis. (See *Abercrombie*, *supra*, 240 Cal.App.4th at 320.)

Plaintiffs suggest that because SB 1439 conflicts with Section 87100's conflict of interest provisions, it is invalid. (Plaintiffs' MJOP, 7:21-10:3.) First, Section 84308 does not conflict with Section 87100. Section 87100 is a general prohibition against state or local public officials making decisions in which *the public official* may have a financial interest. Section 84308, on the other hand, addresses the situation where the *contributor* has a financial interest in the result of a decision. One express concern of the PRA is that "[p]ublic officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by *their own financial interest* or *the financial interest of persons who have supported them*." (Gov. Code § 81001, subd.(b) [emphasis added].) While Section 87100 addresses the financial interest of the public official, Section 84308 addresses the interest of the public official's supporters. Both were concerns of the PRA and both are addressed in different sections of the Act.

Even assuming that a conflict exists between Sections 84308 and 87100, the canons of statutory interpretation dictate that the more specific statute controls, not that it is invalidated. (See *Abercrombie*, *supra*, 204 Cal.App.4th at 318-319.) In *Abercrombie*, *supra*, the Court of Appeals looked at the conflict between Section 1090 and Section 87100. Section 1090 included an exception to a conflict of interest which would otherwise fall within the ambit of Section 87100. (*Id*. at 317.) "In reconciling [the two provisions], [the Court] …give[s] effect to the more specific statute" because "section 1090's focus on conflicts involving contracts is more specific than section 87100's broader proscription of conflicts involving any governmental decision." (*Id*. at 318-319.) The appellate court then upheld the trial court's determination that Section 1090 carved out an exception to Section 87100. (*Id*. at 321.) The same is true here. While Section 87100's broad proscription applies to any governmental decision, Section 84308 applies only to "a proceeding involving a license, permit, or other entitlement for use." (Gov. Code § 84308, subd. (b).) If there is a conflict, Section 84308 carves out an exception to the general conflict of interest rules articulated in Section 87100.

Further, an amendment is invalid if it conflicts "with the fundamental purpose or primary mandate" of the PRA. (*Howard Jarvis*, *supra*, 39 Cal.App.5th at 174.) It remains valid, however, even if it changes the original text of the proposition as long as it does not conflict with the initiative's fundamental purpose. (*O.G.*, *supra*, 11 Cal.5th at 97.) The conflict between Sections 84308 and 87100, if there is one, is not a conflict "with the fundamental purpose or primary mandate" of the PRA.

3. Furthering the purposes of the PRA

Plaintiffs next contend that SB 1439 is unconstitutional because its amendments do not "further the purposes" of the PRA. While the legislature made an express finding that SB 1439 furthered the purposes of the PRA, courts are "not bound by this finding and are not required to defer to it. [Citation.] [The courts] do, however, apply the general rule that a 'strong presumption of constitutionality supports the Legislature's acts.' [Citation.]" (*Howard Jarvis*, *supra*, 39 Cal.App.5th at 169 [internal citations omitted].) Courts "afford a highly deferential standard" when considering legislative amendments to voter initiatives: it "must presume the Legislature acted within its authority if by 'any reasonable construction' of [the Proposition], [the senate bill's] amendments are 'consistent with and further the intent' of the proposition." (*O.G.*, *supra*, 11 Cal.5th at 91.)

Plaintiffs argue that SB 1439 does not further the purposes of the PRA because "The PRA, as Enacted, Specifically Excluded Campaign Contributions from Creating a Conflict of Interest and Recusal." (Plaintiffs' MJOP, 7:20-10:3; 10:12-25.) In essence, Plaintiffs argue that the express *exclusion* of campaign contributions from Section 87100 is itself a significant mandate of the Act. Plaintiffs' argument turns the purposes of the PRA on its head, making the exception the rule. Where courts have struck down legislative amendments as unconstitutional under Section 10(c), the legislature attempted to expand exceptions, not eliminate them.

In 2016, for instance, the legislature enacted Senate Bill No. 1107 ("SB 1107"), which amended the PRA to provide exceptions to the prohibition against public funding of political campaigns enacted by Proposition 73. (*Howard Jarvis*, *supra*, 39 Cal.App.5th at 165.) After finding that the ban on public funding of political campaigns was a fundamental purpose of Proposition 73, the *Howard Jarvis* Court held that SB 1107 altered "the terms of the Act 'in a significant respect' by removing the ban on publicly funded election campaigns." (*Id*. at 174.) In the guise of amending the PRA, SB 1107 "has instead 'undercut and undermine[d] a fundamental purpose' of the Act to ban public funds in election campaigns." (*Ibid*.) "Because Senate Bill No. 1107 expressly conflicts with a primary mandate of the Act, the ban on public funding of election campaigns, it is invalid." (*Ibid*.)

In *Gardner v. Schwarzenegger* (2009) 178 Cal.App.4th 1366, the court looked at Senate Bill No. 1137 ("SB 1137"), which sought to amend Proposition 36. One of the proposition's express

purposes was to divert nonviolent drug offenders from incarceration into community-based substance abuse treatment programs. (*Id*. at 1370.) The proposition excluded "certain defendants who had previously been convicted of serious or violent felonies." (*Id*. at 1376.) SB 1137 further "expand[ed] the exclusion to encompass [additional] defendants" not contained in the proposition. (*Ibid*.) The court held that SB 1137 undermines the proposition "insofar as it expands the ability to incarcerate defendants." (*Id*. at 1378.) In other words, Proposition 36's purpose was to reduce incarceration, with certain exceptions, but SB 1137 expanded those exceptions, contradicting the proposition's purpose of reducing incarceration. The court concluded that those provisions of the bill "cannot reasonably be read to further the purposes of Proposition 36." (*Id*. at 1380.)

Similarly, in *Amwest Sur. Inc. Co. v. Wilson* (1995) 11 Cal.4th 1243, the court looked at legislative amendments to Proposition 103. The proposition, in pertinent part, added provisions which applied to "all insurance on risks or on operations in [the] state," with the exception of certain types of insurance. (*Amwest*, *supra*, 11 Cal.4th at 1248.) The legislature subsequently enacted Assembly Bill No. 3798 ("AB 3798"), effectively adding an exemption for surety insurance which was not in the original text of Proposition 103. (*Id*. at 1250.) Plaintiff Amwest argued that AB 3798 merely "clarified" whether "surety insurance was meant to be included within the ambit of Proposition 103." (*Id*. at 1259-1260.) The Court rejected this argument, noting that it had rejected "a similar argument that the voters intended a constitutional amendment passed by initiative to have a narrower scope than would follow from its broad language." (*Id*. at 1260.) Like SB 1137, AB 3798 sought to create an additional exception where none existed in the voter initiative. In so doing, it "altered its terms in a significant respect."

In *O.G.*, *supra*, the court considered Proposition 57, which required prosecutors to commence all cases involving a minor in juvenile court. (11 Cal.5th 82 at 87.) Prior to the proposition, the Welfare and Institutions Code allowed the district attorney to file a motion to transfer a minor who was 16 years age or older, to the criminal court. Proposition 57, however, allowed an exception for those ages 14 or 15 to also be transferred to criminal court if they were accused of murder. (*Id*. at 89; see Amendment approved by voters, Prop. 57 § 4.2, effective November 9, 2016.) SB 1391 changed the language of the proposition such that the exception no longer applied. (*Id*. at 96.) Even though the bill changed the express language of the proposition, the court upheld the change, noting that "Proposition 57's fundamental purposes…[include] promoting rehabilitation of youthful offenders and reducing the prison population." (*Ibid*.) The court effectively approved an elimination of an exception contained in the Proposition because its elimination furthered the purposes of the Proposition.

Like the change in *O.G.*, *supra*, SB 1439 furthers the purpose of the PRA by eliminating an exception. The primary purpose of the PRA as articulated in the June 4, 1974 Primary Election Voters Pamphlet by its proponents is to "put an end to corruption in politics." (Plaintiffs' RJN, Exh. B, p. 15.) It identified the problem as undue influence from individuals and organizations resulting in special favors (i.e. quid pro quo corruption). (Plaintiffs' RJN, Exh. B, p. 15.) The

elimination of an exception from the definition of "Agency" in Section 84308 does not contravene the primary purpose of the Act. In passing AB 1040 in 1982, the legislature carved out an exception for local elected officials not contained in Proposition 9. (See Stats. 1982, ch. 1049, §1 [exempting legislative bodies such as city council, county boards of supervisors]; cf. Gov. Code § 82003 [Agency means any state agency or local government agency].) SB 1439 partially restores the definition of "Agency" approved by the voters by eliminating an exception created by AB 1040. Unlike the legislative actions in *Howard Jarvis*, *Gardner*, and *Amwest*, SB 1439 does not add or expand exceptions to a voter initiative but eliminates the exception for local elected officials. As noted in its legislative history, SB 1439 sought to apply existing campaign contribution prohibitions to local elected agencies, such as city councils and boards of supervisors, and expand the prospective "cool-down" period prohibiting contributions from 3 to 12 months. (Plaintiffs' RJN, Exh. F, p. 66; Exh. G, p. 75; Exh. H, p. 79; Exh. I, p. 88, Exh. J, p. 95; Exh. K, p. 99; Exh. L, p. 104.) By eliminating an exception to already existing law meant to combat quid pro quo corruption and its appearances, SB 1439 furthers the purposes of the PRA. Nothing in the legislative history suggests that the *exception* for campaign contributions is a primary purpose of the PRA.

Plaintiffs also point to the definitions of "income" and "gift" to support their contention that SB 1439 "alters and conflicts" with a significant mandate of the PRA. (Plaintiffs' MJOP, 10:25-11:3.) As noted above, however, Section 84308 addresses a different concern than Section 87100: the financial interest of contributors versus those of public officials. Where the provisions overlap, Section 84308 is a specific carve out for "a proceeding involving a license, permit, or other entitlement for use" from the general conflict of interest provision of Section 87100. (See *Abercrombie*, *supra*, 204 Cal.App.4th at 321.) In addition, these definitions and the resulting exception, do not constitute a significant mandate of the PRA.

SB 1439 merely amended the existing provisions of Section 84308. (See Plaintiffs' RJN, Exh. A.) Many of the provisions Plaintiffs object to have been part of the PRA for decades, some dating back to the passage of the Levine Act in 1982. (See Gov. Code § 84308, added by Stats. 1982, ch. 1049 §1 [$250 limitation triggering recusal, 12-month lookback period for disclosure and recusal, definition of what constitutes "actively" supports or opposes an application at a proceeding]; as amended by Stats 1989, ch. 764 §2; as amended by Stats. 2021 ch. 50 §170.) Plaintiffs argue, for instance, that "[t]he new $251 recusal law" takes a significantly different policy approach to conflicts of interests by local elected officials. (Plaintiffs' MJOP, 11:4-5.) The $250 limitation, however, has been part of the PRA since AB 1040 was adopted in 1982. (Gov Code § 84308, added by Stats. 1982, ch. 1049, §1.) The recusal provision is "new" only to the extent that local elected officials are no longer exempt from its provisions as they had been in the past. Yet, the PRA's express concerns involved "[p]ublic officials, whether *elected or appointed*." (Gov. Code § 81001, subd.(b) [emphasis added].) Accordingly, the policy approach of Section 84308 has been the same since at least 1982 and it addresses the express concerns of Proposition 9 with regard to elected public officials.

Because Plaintiff has failed to demonstrate that AB 1439 violates Section 10(c) of Article II of the California Constitution, Plaintiffs' motion for judgment of the pleadings as to its second cause of action is DENIED.

Plaintiffs' cause of action for injunctive relief is derivative of its cause of action for declaratory relief. Accordingly, Plaintiffs' motion for judgment on the pleadings on its first cause of action for injunctive relief is also DENIED.

Because Plaintiffs has failed to allege facts sufficient to state a claim for its requested declaratory relief, Defendants' motion for judgment on the pleading as to Plaintiffs' first and second causes of action is GRANTED, without leave to amend.

B. Claims under Freedom of Speech and Liberty of Speech Provisions of the Federal and California Constitutions (Third and Fourth Causes of Action)

Plaintiffs also seek to enjoin SB 1439 and have it declared unconstitutional in violation of the First Amendment to the United States Constitution and Article I, Sections 2 and 3 of the California Constitution.

1. Standard of Scrutiny under the United States and California Constitutions

"The right to participate in democracy through political contributions is protected by the First Amendment, but that right is not absolute." (*McCutcheon v. FEC* (2014) 572 U.S. 185, 191.) The legislature "may regulate campaign contributions to protect against corruption or the appearance of corruption." (*Ibid*. [citing *Buckley v. Valeo* (1976) 424 U.S. 1, 26-27].) While expenditure limits are subject to "exacting scrutiny applicable to limitations on core First Amendment rights of political express," contribution limits impose a lesser "but still rigorous standard of review." (*Id*. at 197 [internal citations omitted].) "Under that standard, '[e]ven a "'significant interference" with protected rights of political association' may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." (*Ibid*. [internal citations omitted].)

The Government's interest in preventing quid pro quo corruption or its appearance is sufficiently important to meet the Supreme Court's "closely drawn" standard. (*Buckley*, *supra*, 424 U.S. at 26-27; see also *Nixon v. Shrink Mo. Gov't Pac* (2000) 528 U.S. 377, 389.) Such an interest may satisfy even strict scrutiny. (*McCutcheon*, *supra*, 572 U.S. at 199 [citing *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.* (1985) 470 U.S. 480, 496-497].) The State must also avoid "unnecessary abridgment of associational freedoms." (*Buckley*, *supra*, 424 U.S. at 25.) In determining whether, in the context of campaign contributions, a restriction constitutes such an abridgement, the *Buckley* court "rejected the contention that $1,000, *or any other amount, was*

*a constitutional minimum* below which legislatures could not regulate." (*Nixon*, *supra*, 528 U.S. 377 at 397 [emphasis added].) Rather, courts must ask "whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." (*Ibid*.) In *Nixon v. Shrink Mo. Gov't Pac*, *supra*, the Supreme Court upheld a Missouri statute imposing contribution limits ranging from $250 to $1,000, depending on the state office and size of constituency. (*Id*. at 381.) Courts have upheld complete bans on some campaign contributions under the *Buckley* analysis. (See *Casino Ass'n v. State* (2002) 820 So.2d 494 [upholding ban on campaign contributions by riverboat and land-based casino industries]; *Wagner v. FEC* (D.C. Cir. 2015) 793 F.3d 1 [upholding ban on contributions by government contractors]; *Green Party of Conn. V. Garfield* (2d Cir. 2010) 616 F.3d 189 [upholding ban on contributions by contractors but not lobbyists].)

Plaintiffs argue that the SB 1439 does not merely implicate contribution limits but also recusal, a "prophylaxis-upon-prophylaxis," which triggers strict scrutiny. (Plaintiffs' Reply, 9:18-10:1 [citing *McCutcheon*, *supra*, 572 U.S. at 218, 221]; see also Plaintiffs' MJOP, 16 fn. 8.) As Defendants note, however, recusal does not implicate the First Amendment at all. (See *Nev. Comm'n on Ethnics v. Carrigan* (2011) 564 U.S. 117, 125-128 [public official's vote does not implicate the First Amendment because it is a function of office and not an expression of belief].) Moreover, recusal is one of two *remedies* for violation of the contribution limit, not a limitation itself. A public official may either return the contribution or recuse themselves if the contribution limit is exceeded. (Gov. Code § 84308, subd.(d).) Rather than limit speech, Defendants argue, recusal allows more speech by effectively eliminating the contribution limit for those who recuse themselves. (See Defendants' Reply, 13:19-23.) As such, it cannot be considered an additional imposition that would trigger strict scrutiny.

Plaintiffs also argue that the United States Supreme Court has "largely abandoned the distinction between the "narrowly tailored" and "closely drawn" tests, citing to *McCutcheon*, *supra*. (Defendants' Reply, 10 fn. 8.) *McCutcheon* is clear in which test it applies: "the aggregate limits violate the First Amendment because they are not *closely drawn to avoid unnecessary abridgement of associational freedoms*." (572 U.S. at 218 [emphasis added].) While the language used in recitation to other cases may be imprecise, there is little to suggest that anything but the "closely drawn" test is applied to challenges to campaign contribution limits.

California's liberty of speech clause in Article I of the California Constitution "is broader and more protective than the free speech clause in the First Amendment." (*Los Angeles Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352, 365.) "Merely because [California's] provision is worded more expansively and has been interpreted as more protective than the First Amendment, however, does not mean that it is broader than the First Amendment in all its applications." (*Ibid*.) When asked to "interpret a provision of the California Constitution that is similar to a provision of the federal Constitution, [the courts] will not depart from the United States Supreme Court's construction of the similar federal provision unless…given cogent reasons to do so." (*Edelstein*, *supra*, 29 Cal.4th at 168 [refusing to apply a different standard of

review than a First Amendment analysis despite the broader language of California's liberty of speech clause in write-in voting election law].)

Plaintiffs argue that the California Supreme Court has never wavered in its application of strict scrutiny in these circumstances. (Plaintiffs' MJOP, 16:2-8.) They refer to *Woodland Hills*, *supra*, for the proposition that "[g]overnmental restraint on political activity must be strictly scrutinized and justified only by compelling state interest." (*Id*. at 946 [citing *Buckley*, *supra*, 424 U.S. at 25].) Plaintiffs' argument fails for several reasons. First, *Woodland Hills* cites to *Buckley* for the general observation that political activity must be strictly scrutinized. (*Ibid*.) Yet as repeatedly clarified by subsequent Supreme Court cases, campaign contributions are afforded a lesser standard of review. (*McCutcheon*, *supra*, 572 U.S. at 197; *Nixon v. Shrink Mo. Gov't Pac*, *supra*, 528 U.S. at 387-388.) To the extent that *Woodland Hills* suggests strict scrutiny applies to campaign contributions under *Buckley*, the United States Supreme Court has repeatedly clarified that it does not. Second, *Woodland Hills* does not stand for the proposition that a different level of scrutiny is required for California's liberty of speech clause compared to the First Amendment. The Court made no distinction between the level of scrutiny under federal and California constitutional free speech provisions. Third, as Defendants note, *Woodland Hills* was not a constitutional challenge to the PRA's contribution limits. (Defendants' MJOP, 17-18; Reply, 9:4-8.) It merely held that nothing in the PRA required recusal of city council members who previously accepted campaign contributions. (*Woodland Hills*, *supra*, 26 Cal.3d at 945.) The Court's discussion regarding the possibility of constitutional issues was *dicta* in this regard.

In contrast, *Fair Political Practices Com. v. Superior Court* (1979) 25 Cal.3d 33 directly considered whether certain provisions of the PRA violated the First Amendment. The Court performed a detailed analysis of *Buckley* and addressed arguments that strict scrutiny applied to campaign contributions. (*Id*. at 43-49.) The Court rejected the strict scrutiny standard, noting that "[a]lthough a fundamental interest may be involved, both the United States Supreme Court and *this court* have recognized that not every limitation or incidental burden on a fundamental right is subject to the strict scrutiny standard. When the regulation merely has an incidental effect on exercise of protected rights, strict scrutiny is not applied." (*Id.* at 47 [emphasis added].) The Court's analysis here, like *Woodland Hills*, is *dicta* to the extent that the constitutional challenge before the Court was to the First Amendment and not California's liberty of speech clause. Nevertheless, given the Court's detailed analysis of *Buckley* and its recognition that California courts also recognize that "not every limitation or incidental burden on a fundamental right is subject to the strict scrutiny standard," the Court indicated that *Buckley*'s "closely drawn" analysis also applies to the California's liberty of speech clause. (*Id*. at 43-47.) While *Fair Political Practices Com.* analyzed the constitutional challenge before it in detail, *Woodland Hills* spared 3 paragraphs in a case where no constitutional challenge was brought. (*Ibid*.; *Woodland Hills*, *supra*, 26 Cal.3d at 946-947.) A court's cursory treatment of an issue "affords little confidence in the [court's] pronouncement." (*All Towing Services*, *supra*, 220 Cal.App.4th at 955, citing *People v. Mendoza* (200) 23 Cal.4th 896, 915 [courts "must view with caution

seemingly categorical directives not essential to earlier decisions"].)

While Plaintiffs assert that the California constitution is broader and more protective, they have not articulated any "cogent reasons" why this Court should depart from the United States Supreme Court's analysis. Defendants also argue that because Plaintiffs do not develop their arguments under the California Constitution, such arguments are waived. (Defendants' MJOP, 16, fn.5; Reply, 10, fn.3.) For all the aforementioned reasons, the Court agrees with Defendants that the "closely drawn" standard applies for both the federal and California constitutional challenges.

2. Preventing Quid Pro Quo Corruption or its Appearance

Plaintiffs argue that SB 1439 fails to redress quid pro quo corruption or the appearance of corruption. They point to the bill's legislative history, claiming that "the author of SB 1439 stat[ed] that its purpose was to address 'the problem of special interests seeking to influence local-decision making'." (Plaintiffs' MJOP, 14-2-5.) SB 1439's author's full comments as to the bill's purpose is often repeated in the legislative history:

> This bill seeks to apply the same prohibitions that exist for state and local agencies to local elected agencies. Current state law counter-intuitively permits local elected officials running for re-election to solicit and accept sizable contributions from those who are seeking permits or licenses before them but prohibits identical contributions to an appointed official running for office who is acting in exactly the same way. Beyond counter-intuitive, the problem of special interests seeking to influence local decision-making is longstanding, well-documented, and real. SB 1439 would ensure the same pay-to play prohibitions that apply to state agency appointees or appointed local officials when approving a license, permit, or entitlement for use also apply to local elected officials when acting in an identical capacity.

(Plaintiffs' RJN, Exh. F, p.71; Exh. H, p.84; Exh. I, p.90 Exh. J. p.95; Exh. K, p.101; Exh. L, p.109.) Although the author of SB 1439 notes the "well-documented, and real" "problem of special interests seeking to influence local decision-making," the bill's express purpose is "to apply the same prohibitions that exist for state and local agencies to local elected agencies." (Plaintiffs' RJN, Exh. F, p.71; see *Ognibene v. Parkes* (2d Cir. 2011) 671 F.3d 174, 188 [contribution limits valid when quid pro quo corruption and its appearance are the concern, "even though the record occasionally also speaks to the presence of mere 'influence'"].) In addition, California Common Cause's arguments in support of SB 1439 expressly stated that "SB 1439 speaks to the concerns of California Voters by protecting against quid pro quo corruption and its appearances… [and that] [s]uch corruption and its appearance threaten the confidence in our system of representative government." (Plaintiffs RJN, Exh. F, p.72; Exhibit I, p.93; Exh. J, p.96; Exh. K, p.101.)

Plaintiffs argue that the legislature made no attempt to justify SB 1439 with empirical evidence or governmental findings of actual corruption requiring legislative action. They point to *Citizens for Clean Government v. City of San Diego* (9th Cir. 2007) 474 F.3d 64 in support. In *Citizens for Clean Gov't*, the appellate court noted that the lower court's findings "rested on hypothetical situations not derived from any record evidence or governmental finding." (*Id*. at 653.) Defendants point out, however, that "[t]he heightened evidentiary requirement in *Citizens for Clean Gov't* stemmed from the novelty of limiting contributions to recall campaign committees, as opposed to limiting the sort of direct candidate contributions in normal campaign cycles addressed in *Buckley*." (*Thalheimer v. City of San Diego* (9th Cir. 2011) 645 F.3d 1109, 1112.) When "an anti-corruption interest…is not novel or implausible… it is not required to meet a heightened evidentiary burden." (*Id*. at 1123.) "It is not necessary to produce evidence of actual corruption to demonstrate the sufficiently important interest in preventing the appearance of corruption." (*Ognibene*, *supra*, 671 F.3d at 183.)

There is nothing novel about the "pay-to-play" provisions contained in Section 84308. (See *Wagner*, supra, 793 F.3d at 21 ["There is nothing novel or implausible about the notion that contractors may make political contributions as a quid pro quo for government contracts…"].) *Wagner* notes that as of 2015, at "least seventeen states now limit or prohibit campaign contributions from some or all state contractors or licensees" and cites to the very provision at issue in the instant action. (*Id*. at 16, fn.18.) When campaign contributions are limited to narrow circumstances instead of general election contributions, courts do not require evidence of actual corruption. (*Ognibene*, *supra*, 671 F.3d at 181.) "There is no reason to require the legislature to experience the very problem it fears before taking appropriate prophylactic measures." (*Id*. at 188.)

The legislative history of SB 1439 shows that the legislature reviewed the history of AB 1040, which was enacted "in response to reports in the *Los Angeles Times* that several coastal commissioners had solicited and received large campaign contributions for persons who had applications pending before them." (Plaintiffs' RJN, Exh. F, p.69; Exh. G, p.75; Exh. H, p.83; Exh. I, p.90; Exh. J, p. 96; Exh. K, p.100; Exh. L, p.109.) The history further notes 17 enforcement actions which occurred under Section 84308 and summarized a handful of these actions. (Plaintiffs' RJN, Exh. F, p.70; Exh. G, p.76; Ex. I, p.91-92.) This history and the aforementioned violations are neither mere conjecture nor hypothetical. Given SB 1439's common anti-corruption interests and its limitation to "proceedings involving a license, permit, or other entitlement for use," the legislative history provides sufficient evidence of addressing actual quid pro quo corruption or its appearance.

In addition, Defendants' judicially noticed documents demonstrate a valid concern with at least the appearance of elected local officials engaging in quid pro quo corruption. The plea agreements recount allegations of recent quid pro quo schemes. (Defendants' RJN, Exh. 9, p.80 [councilmember "demanded and solicited financial benefits from developers and their proxies in exchange for official acts"']; Exh. 10, p.131 [defendant acted as an intermediary of

councilmember and mayor pro temp's scheme to "solicit bribe payments from companies seeking marijuana development agreements and related permits"].) The press release and information also attest to the appearance of quid pro quo corruption involving local city officials. (Defendants' RJN, Exh. 11, p.155 [press release announcing two-year sentence after former city officials' convictions on bribery charges]; Exh.12, p.160-161 [Information filed alleging bribes to the director of public works for the city and county of San Francisco to obtain contracts from the City].) While the court does not take judicial notice of the truth of the facts therein, the allegations themselves demonstrate the appearance of quid pro quo corruption.

The legislative history and Defendants' judicially noticed documents are sufficient evidence of the state's important interest in preventing quid pro quo corruption or its appearance.

3. Overbreadth and Underinclusiveness

Plaintiffs also argue that SB 1439 does not address "the prevention of *quid pro quo* corruption because its overbreadth compels disqualification based on contributions without regard to the actual existence, or even the potential opportunity for a *quid pro quo*." (Plaintiffs' MJOP, 14:10-12.) They point to several scenarios which they argue do not address quid pro quo corruption. (Plaintiffs' MJOP, 14:17-15:10.) Plaintiffs note that SB 1439 "bases its recusal requirement on the expiration of time – randomly selected at 12 months **prior** to the proceeding and 12 months **thereafter**." (Plaintiffs' MJOP 14:15-17.) Rather than random, the expiration of 12 months repeats the timeframe the voters approved when they passed Proposition 9. Under Section 87103 of the proposition, an official has a financial interest if they receive any source of income "aggregating two hundred fifty dollars ($250) or more in value received by or promised to the public official within *twelve months prior* to the time when the decision is made." (Plaintiffs' RJN, Exh. B, p.24 [emphasis added].) Prior to its amendment by SB 1439, Section 84308 also had a time limitation for contributions for 12 months prior to a decision. (See Gov. Code § 84308, added by Stats. 1982, ch. 1049 §1, as amended by Stats. 1989, ch. 764 §2, as amended by Stats. 2021 ch. 50 §170.) This same 12-month limitation is repeated throughout the PRA. (See Gov. Code §§87100, 87102.8, 87103.5, 87302.) Such limitations do not make a statute overbroad for campaign contribution purposes. (See *Blount v. SEC* (D.C. Cir. 1995) 61 F.3d 938, 947 [regulation valid despite barring contributor from engaging in business for two years after making a contribution]; see also *New York Republican State Comm. v. SEC* (D.C. Cir. 2019) 927 F.3d 499, 503.) Plaintiffs present the scenario of a restaurant owner contributing to a public official not knowing that she would need a permit approval in the future. (Plaintiffs' MJOP, 14:17-15:4.) Defendants note that the restaurateur's situation can be resolved by the provisions of Section 84308: the official can either recuse themselves or return the contribution. (Gov. Code § 84308, subd.(d).) Regardless, the statute addresses precisely the scenario envisioned by the Supreme Court: it prevents the *appearance* of quid pro quo corruption. (See *Yamada v. Snipes* (9th Cir. 2015) 786 F.3d 1182, 1205-1206; *Green Party of Conn.*, *supra*, 616 F.3d at 200;

*Buckley*, *supra*, 424 U.S. at 30; *Wagner*, *supra*, 793 F.3d at 22-23.) While the scenario presented by Plaintiffs may not be actual quid pro quo corruption, a campaign contribution followed by an application for a permit in front of the same public official may certainly give the appearance of a quid pro quo.

The 12-month prospective "cool-off" period of Section 84308, subdivision (b) is no different. A quid pro quo exists regardless of which act is considered a quid and which a quo. (See *Pfizer, Inc. v. United States HHS* (2022) 42 F.4th 67, 74 ["'Quid pro quo' translates literary to 'something for something']; *McCutcheon*, *supra*, 572 U.S. at 192 [the phrase quid pro quo "captures the notion for a direct exchange of an official act for money"].) Corruption or its appearance is no less a concern simply because payment is made after the fact. (See Defendants' RJN, Exh. 10, p.137 [plea agreement detailing payments to be made *after* public official voted for and company obtained permit].) The prospective nature of the limitation is also not new to Section 84308. SB 1439 merely amended its length of time from 3 to 12 months. (Gov. Code §84308, as amended by Stats. 1984, ch. 1681 §2 [setting a 3-month prospective bar on contributions].) The legislative history also notes that multiple jurisdictions have similar prospective limitations. (Plaintiffs' RJN, Exh. H, p.84 [some jurisdictions have prohibitions on campaign contributions that "range beyond three months following an action"]; Ex. L, p.109; Defendants' RJN, Exh. 2, p.13; Exh. 6, p.38.)

Plaintiffs' concerns about a public official being barred from receiving contribution despite not voting on the decision is unfounded. Section 84308, subdivision (b) reads:

> While a proceeding involving a license, permit, or other entitlement for use is pending, and for 12 months following the date a final decision is rendered in the proceeding, an officer of an agency shall not accept, solicit, or direct a contribution of more than two hundred fifty dollars ($250)….

The entire phrase beginning with "while" is a dependent clause, requiring that the proceeding be pending in front of the officer before the requirements of the independent clause are triggered. The conjunction "and" joins the 12-month prospective prohibition to the dependent clause requiring pendency of the action before the independent clause takes effect. Thus, Section 84308 applies only to officers who were present while the proceeding was pending and imposes a 12-month "cool-off" period after a final decision has been made. Defendants also note that the regulations promulgated by the FCCP defines an officer as one who serves as a member of the governmental boards and commissions or as head of an agency. (Defendants' Reply, 12:20-24 [citing Cal. Code Regs. tit. 2, § 18738.1, subd. (d)].) Accordingly, the candidate in Plaintiffs' scenario is not subject to Section 84308.

Plaintiffs also raise an underinclusive argument, noting that it can reveal that a law does not actually advance a compelling interest. (Plaintiffs' MJOP, 14 fn.7.) As the Supreme Court has repeated, however, "[a] state need not address all aspects of a problem in one fell swoop; policy

makers may focus on their most pressing concerns." (*Williams-Yulee v. Fla. Bar* (2015) 575 U.S. 433, 449.) Indeed, this is the case here, where the legislature addressed its most pressing concerns about appointed public officials, such as those identified in the *Los Angeles Times* article, by passing AB 1040. It now seeks to impose the same limitations on elected officials forty years later. *Harwin v. Goleta Water District* (1991) 953 F.2d 488, cited by Plaintiffs, is distinguishable. There, the Ninth Circuit held that a law limiting campaign contributions from proponents but not opponents was unconstitutional. In contrast, Section 84308 sets contribution limitations on both proponents and opponents who have a financial interest in the outcome of a proceeding. (See Gov. Code §§84308, subd.(b)-(c) [barring contributions from both a "party" and a "participant"]; Gov. Code §84308, subd.(a)(2) [defining a "participant" as any person not a party who actively supports or opposes a particular decision].) Plaintiffs pose a scenario where a labor union opposing a covered action is not subject to the contribution limits because their interest does not qualify as a "financial interest." (Plaintiffs' MJOP, 14, fn. 7.) The same is true for any proponent of the action; if their interest does not qualify as a "financial interest," they are not subject the contribution limits. (See Gov. Code § 84308, subd.(b)-(c).)

The amendments made by AB 1439 do not render Section 84308 either overbroad or underinclusive.

4. Closely Drawn

Plaintiffs also contend that SB 1439 is not narrowly tailored to the state's compelling interest. As noted above, courts apply the "closely drawn" standard in campaign contribution cases involving the First Amendment. Given no California cases directly on point, this Court follows the detailed consideration of *Fair Political Practices Com.*, *supra*, rather than *Woodland Hills*, *supra*, and applies the same "closely drawn" analysis under both the federal and California Constitutions.

Plaintiffs raise several issues with how well SB 1439 addresses the State's interest in preventing quid pro quo corruption and its appearance. Plaintiffs argue that the Supreme Court has rejected similarly low contribution limits in prior cases. (See *Thompson v. Hebdon* (2019) 140 S. Ct. 348; see also *Randall v. Sorrell* (2006) 548 U.S. 230.) Such decisions were based on general contribution limits. Defendants point out that courts have held otherwise when statutes are more limited in scope. (See *Yamada*, *supra*, 786 F.3d at 1206; *Casino Ass'n*, *supra*, 820 So.2d 494; *Wagner*, *supra*, 793 F.3d 1; *Green Party of Conn.*, *supra*, 616 F.3d 189.) In *Ognibene*, *supra*, a local law restricted contributions to between $250 to $400 made from persons who had business dealings with the City. (*Id*. at 179-180.) The Court upheld the restriction, noting that contributions "from persons with a particularly direct financial interests" involving public officials' decisions "pose a heightened risk of actual and apparent corruption, and merit heightened government regulation." (*Id*. at 188.) In *Wagner*, the court observed that "the contracting context greatly sharpens the risk of corruption and its appearance." (793 F.3d at 22.)

"Moreover, because of that sharpened focus, the appearance problem is also greater: a contribution made while negotiating or performing a contract looks like a quid pro quo, whether or not it truly is." (*Ibid*.) The court also observed that "[b]ecause a contractor's need for government contracts is generally more focused than a member of the general public's need for other official acts, his or her susceptibility to coercion is concomitantly greater." (*Id*. at 23.)

Defendants note that Section 84308 is limited to "a proceeding involving a license, permit, or other entitlement for use." It only affects those who have a "financial interest" in the proceeding. Similar to the situations in *Ognibene* and *Wagner*, these contributors have a "particularly direct financial interest[]" and thus the "appearance problem [of quid pro quo corruption] is also greater." (*Ognibene*, *supra*, 671 F.3d at 188; *Wagner*, *supra*, 793 F.3d at 22.) The financial interests of persons in these limited proceedings are also more focused than a member of the general public and may make them more susceptible to coercion. The existence of the plea agreements in Defendants' judicially noticed documents certainly attests to the appearance of direct financial interest and susceptibility as raised in the courts. (See Defendants' RJN, Exh. 10, p. 80 [Defendant councilmember "who had jurisdiction over hundreds of development projects undergoing the application and approval process" "demanded and solicited financial benefits from developers and their proxies in exchange for official acts"]; Exh. 11, p.131 [Council member "decided to corruptly solicit bribe payments from companies seeking marijuana development agreements and related permits"].)

Plaintiffs also suggest that SB 1439 is constitutionally infirm because it sets "a new limit of $250" for contributions. This $250 limit is not new and had been in place for decades prior to the passage of SB 1439. (See Gov. Code §83408, added by Stats. 1982, ch. 1049, §1.) Any issues involving the contribution cap pre-dated the bill. Holding SB 1439 unconstitutional would not alleviate Plaintiffs' concerns. Section 84308's $250 limit is also separate from general campaign contribution limits imposed by Section 85301. SB 1439 applies only to limited proceedings involving licenses, permits, and other entitlements for use – and only to those who have a financial interest in those proceedings. It does not implicate larger issues of campaign contribution limits which are "so radical in effect as to render political association ineffective…." (*Nixon*, *supra*, 528 U.S. 377 at 397; *Yamada*, *supra*, 786 F.3d at 1206 [contribution ban is closely drawn because it targets direct contributions most closely linked to actual and perceived quid pro quo corruption]; *Ognibene*, *supra*, 671 F.3d at 192 [contribution limits upheld because they "apply only to certain contributions"]; *Green Party*, *supra*, 616 F.3d at 201 [contribution limits closely drawn when they do not impose general contributions to all citizens but to on discrete groups of citizens].) Plaintiffs' concern regarding the size of the jurisdiction is unavailing. The number of licenses, permits, and other entitlements for use would be proportional to the size of the jurisdictions.

Plaintiffs also indicate that SB 1439 is not closely drawn because it regulates a significant amount of governmental decisions, "from A (alcohol) to Z (zoning)." (Plaintiffs' MJOP, 17:15-17.) First, SB 1439 did not amend the definition of "license, permits, and other entitlement

proceedings." Rather, the definition was first introduced in 1984 and remained the same through multiple amendments to Section 84308. (See Gov. Code § 83408, as amended Stats. 1984 ch. 1681 §2; Stats. 1989 ch. 764 §2; Stats. 2021 ch. 50 §170.) Holding SB 1439 unconstitutional would not change Section 84308's applicability to these governmental decisions. Second, Defendants argue that similar campaign limitations on parties "doing business" with a city are closely drawn to the state's interest in preventing quid pro quo corruption and its appearance. (*Ognibene*, *supra*, 671 F.3d at 188 [limitations applied to certain contracts, real property acquisitions or dispositions, applications regarding office space, land use, or zoning changes, certain concessions and franchises, certain grants, economic development agreements, contracts for investment of pension funds, and transactions with lobbyists].) This is so because, unlike general campaign contributions, these instances involve a direct financial benefit for the contributor. (*Ognibene*, *supra*, 671 F.3d at 194 ["Certain contributors – those with direct financial stakes in the elected candidate's decisions – are treated differently" than general campaign contributions].) Section 84308 does not apply to all governmental decisions – only to those with a financial interest in the decision as defined by the PRA. (Gov. Code §§84308, subd.(b)-(c).) Third, the Court of Appeals has noted that Section 84308 is limited in nature and not as expansive as Plaintiffs depict. (*City of Agoura Hills v. Local Agency Formation Com*. (1988) 198 Cal.App.3d 480, 497-498 [deferring to FCCP's interpretation that Section 84308 "does not cover proceedings where general policy decisions or rules are made or where the interest affected are many and diverse"].) As Defendants' point out, the FCCP's regulations also make it clear that it does not apply to ministerial acts. (Cal. Code Regs. Tit. 2, §18438.2, subd.(b)(3).) SB 1439 is closely drawn because it applies to only those with a financial interest in the outcome of specific proceedings before the same officials for whom the same persons have contributed $250 or more. Moreover, SB 1439 includes remedies to cure any appearance of quid pro quo corruption by allowing the decision makers to either recuse themselves or return the contribution.

Plaintiffs also suggests that the recusal requirements as applied to agents are not closely drawn. (Plaintiffs' MJOP, 18-18-19:6.) The regulations define an agent as a person who "represents that party or participant in connection with the proceeding involving a license, permit or other entitlement for use." (2 Cal. Code of Regs., §18438.3, subd.(a).) Plaintiffs suggests this is "exceedingly broad." Despite Plaintiffs' suggestion, however, not all employees or contractors are agents subject to Section 84308. Only those who represent another person "in connection with the proceeding" would be subject to the contribution limitations. Thus, employees and contractors are free to contribute to their local elected officials in their individual capacity. Plaintiffs' reference to the Labor Code is a *non-sequitur*. The Labor Code prohibits an employer from forbidding or preventing employees from engaging or participating in politics. (Lab. Code § 1101.) When an employee is acting as an agent of the employer "in connection with the proceeding," that employee is not acting in their own capacity but on behalf of the employer. If agents, acting within the scope of their agency (e.g. when they represent the party or participant in connection with the proceeding), are able to circumvent the contribution limits, the limits

themselves would be meaningless. (See *Green Party*, *supra*, 616 F.3d at 203-204 [upholding ban on contributions by spouses and children of contractors because of concerns about circumventing of regulations].) Persons with financial interests would simply hire agents to do their bidding and avoid the prohibitions of Section 84308. The prohibition on agents is not only closely drawn but essential to preventing quid pro quo corruption and its appearance. (See Defendants' RJN, Exh. 11, p. 131 [council member used "intermediary" defendant to conduct quid pro quo scheme].) Plaintiffs also suggest that SB 1439 requires very little "participation" to trigger disqualification, from either a party or a participant. Yet, participation alone does not trigger disqualification as Plaintiffs suggest. Defendants note that a person must have a "financial interest" in the proceeding and a public official must know or have reason to know about that interest before Section 84308 applies. This same "financial interest" requirement is found under Section 87100.

Finally, Plaintiffs argue that, in the aggregate, the 12-month look-back, 12-month cooling-off, and the pendency periods make SB 1439 not closely drawn. This argument is contradicted by case law. As Defendants note, *Wagner*, *supra*, upheld a contribution ban during the pendency of a government contract. (793 F.3d at 3.) In *Blount*, *supra*, the appellate court considered a regulation which contained both a bar against soliciting contributions "during the time that it is engaged in or seeking business with the issuer" and "for two years after it makes a contribution." (61 F.3d 938 at 947.) The court concluded that "the regulation is 'closely drawn' and thus 'avoids unnecessary abridgement' of the First Amendment rights." (*Ibid*.) The regulation contained a similar $250 contribution limit per election before triggering the bar. (*Id*. at 947-948.) The court noted that those affected "are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views, giving speeches, soliciting votes, writing books, or appearing at fundraising events." (*Id*. at 948.)

The United States Supreme Court has recognized that preventing quid pro quo corruption or its appearance is a compelling state interest. Defendants have provided sufficient evidence that SB 1439 sought to address this corruption by eliminating an exception for local elected officials in the legislative history. They have also provided documents detailing the appearance of quid pro quo corruption the bill seeks to address. In addition, because the bill applies to only limited persons who have a direct financial interest in specific proceedings, the law is closely drawn to avoid abridgment of associational rights. It also provides remedies for violation of the contribution limits.

As SB 1439 does not violate the First Amendment or the Sections 2 and 3 of Article I of the California Constitution, Plaintiffs' motion for judgment on the pleadings as to its fourth cause of action is DENIED.

Plaintiffs' cause of action for injunctive relief is derivative of its cause of action for declaratory relief. Accordingly, Plaintiffs' motion for judgment on the pleadings on its third cause of action for injunctive relief is also DENIED.

Because Plaintiffs has failed to allege facts sufficient to state a claim for its requested declaratory relief, Defendants' motion for judgment on the pleading as to Plaintiffs' third and fourth causes of action is GRANTED, without leave to amend.

V. Amicus Curiae Application

Common Cause of California applied for leave to file an amicus curiae brief, along with the brief, on May 4, 2023. "Amici curiae, literally 'friends of the court,' perform a valuable role for the judiciary precisely because they are nonparties who often have a different perspective from the principal litigants." (*Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1177.) Amicus curiae briefs assist the court by "broadening its perspective on the issues raised by the parties." (*Ibid*.) Although trial courts have considered such amicus briefs, they are not commonly filed in the trial court. (See, e.g., *Ramon v. County of Santa Clara* (2009) 173 Cal.App.4th 915, 922; *In re Veterans' Industries, Inc.* (1970) 8 Cal.App.3d 902, 924; *cf.* Cal. Rule of Court, rule 8.200, subd.(c) [describing procedures for filing amicus briefs only in the appellate courts].)

In the exercise of its discretion, this Court denies the application. (See *Conservatorship of Joseph W.* (2011) 199 Cal.App.4th 953, 957, fn. 2.) Defendants adequately represent the interests of the applicants, and an amicus brief is unlikely to offer a different perspective from those of the parties at this stage of litigation.

VI. Conclusion

In sum, Plaintiffs' motion for judgment on the pleadings is DENIED, in its entirety. Defendants' motion for judgment on the pleadings is GRANTED, without leave to amend.

Plaintiffs' notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 1.06(D). Plaintiffs' counsel is ordered to notify Defendants immediately of the tentative ruling system and to be available at the hearing in person, via Zoom, or by telephone, in the event Defendant appears without following the procedures set forth in Local Rule 1.06(B).

Defendants shall submit a proposed order and judgment for the Court's signature pursuant to CRC 3.1312.