No. S220289

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

HOWARD JARVIS TAXPAYERS' ASSOCIATION and JON COUPAL,

Petitioners,

v.

DEBRA BOWEN, in her official capacity as the Secretary of State of the State of California,

Respondent.

LEGISLATURE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

APPLICATION OF FREE SPEECH FOR PEOPLE, INC., *ET AL.* FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE IN SUPPORT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA

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Free Speech For People, Inc. (FSFP), Money Out Voters In (MOVI), California Public Interest Research Group (CALPIRG), California Common Cause, California Clean Money Campaign, and Courage Campaign, through their attorneys and pursuant to Rule 8.520(f) of the California Rules of Court, respectfully apply for leave to file the following brief *amici curiae* in support of the Legislature of the State of California and its right to place an advisory question before California voters. *Amici* present this brief to the court in order to provide historical context of the right of the people to instruct their representatives enshrined in Article I, Section 3(a).

IDENTITY AND INTEREST OF AMICI CURIAE

FSFP is a national nonpartisan campaign launched on the day of the decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), and dedicated to a constitutional amendment to reverse that decision. FSFP is recognized across the country as a key legal resource for the growing constitutional amendment movement, and over the past five years has been closely involved in developing, advocating for, and assisting in the defense of state legislative and ballot measures calling for an amendment to overturn *Citizens United*. FSFP is interested in this case because (1) submission to the voters of the question called by SB 1272 will strengthen the movement for a constitutional amendment, and (2) other state courts may look to this Court for guidance interpreting analogous provisions regarding voter instructions in the context of constitutional amendment resolutions in those states.

MOVI is a coalition group of real people that coordinated citizen efforts to promoted SB 1272, which placed Proposition 49 on the ballot. This effort produced more than 55,000 petition signatures, 40,000 e-mails, 176,000 faxes, and hundreds of personal visits to the state Capital all urging the Legislature to approve SB 1272.

California Clean Money Campaign, California Common Cause, CALPIRG, and Courage Campaign are non-profit, non-partisan organizations of real people who have joined together to advocate governmental responsiveness to the public. The organizations have advocated for a variety of campaign finance laws in order to reduce corruption and promote wide public discourse. The organizations, and their members, actively supported SB 1272 and were preparing to promote Proposition 49 on the ballot. The real people who have advocated for SB 1272 through these incorporated and unincorporated entities have done so in order to give their fellow California citizens the opportunity to speak collectively as We the People to our state and federal elected officials and to direct them to take actions on our behalf.

DISCLOSURE REGARDING AUTHORSHIP OR MONETARY CONTRIBUTION

No party or counsel for any party authored any portion of the brief.

No party or counsel for any party made a monetary contribution intended to fund the preparation or submission of the brief.

No person or entity other than the *amici curiae*, their members and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

DATE: February 2, 2015.

Respectfully,

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INTRODUCTION

This brief makes two separate, but related points. First, Article I, Section 3(a) of the California Constitution provides a separate and independent grant of authority for the Legislature to enact SB 1272. Second, even apart from that constitutional provision, the Legislature has always had the ability to speak on behalf of California's citizens and ask California's representatives in Congress to act in furtherance of what the Legislature believes to be the policy preferences of the People. SB 1272 is a constitutionally appropriate means of bolstering the Legislature's ability to speak for the citizens of this State.

ARGUMENT

I.

SB 1272 IS AUTHORIZED BY ARTICLE I, SECTION 3(a) OF THE CALIFORNIA CONSTITUTION.

Article I, Section 3(a) provides: "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." This provision's text and legislative history, the Legislature's 135-year-old practice of submitting advisory measures to the statewide electorate, and the construction of a similar provision by the Idaho Supreme Court all point to the same conclusion: that statutes like SB 1272 are a legitimate means of implementing the People's constitutional right to instruct their representatives.

A. The Text And Legislative History Of Article I, Section 3(a) Support The Constitutionality Of SB 1272.

The right of the people "to instruct their representatives" has been part of the State Constitution since the beginning. Article I, Section 10 of the 1849 constitution provided: "The people shall have the right freely to assemble together, to consult for the common good, to *instruct their*

representatives, and to petition the legislature for redress of grievances." CAL. CONST. art. I, §10 (1849) (emphasis added). The same language was incorporated in the 1879 Constitution. This provision was modified, but not substantively changed by the Constitution Revision Commission that met in the late 1960s and early 1970s. The Commission rewrote the provision to read as it does today; the Legislature incorporated that language in its revision of Article I; and the electorate approved it when it approved Article I in 1974.

Although the "right to instruct" portion of Article I, Section 3(a) has never been construed by the California courts, its meaning can be gleaned from the provision's text and history.

The "committee of the whole" charged with preparing a draft of the 1849 Constitution (J. Ross Browne, *Report of the Debates in the Convention of California on the Formation of the State Constitution in September and October, 1849*, at 33 (1850) ("1849 Debates")) originally proposed language that provided: "The people have the right freely to assemble together to consult for the common good, to make known their opinions to their representatives, and to petition for redress of grievances." *Id.* at 42. But a delegate then objected that the "petition" language did not reflect the People's status as the source of all political power: "It is high time to discard the phraseology which belongs to the old system of petitioning a superior power. The same power that enables the people to govern themselves, surely gives them a right to *remedy* their grievances." *Id.* (emphasis in original). Then, after another amendment was suggested and withdrawn, the drafting committee voted to retain the "petitioning" language, but to substitute "instruct" for "make known their opinions to." *Id.*

The draft was then brought before the convention for further discussion. After one delegate moved to strike the words "instruct their representatives" (*id.* at 295), a spirited debate ensued. The delegate who moved to eliminate this language

thought that the right to instruct was antithetical to a representative democracy. *See id.* ("if [a] representative is compelled by instructions from his own locality to vote in a particular manner . . . what is the good of this representative assembly?") (remarks of Mr. Lippitt). Another delegate thought a legislator "should have the discretionary power to judge of what will best meet the interests of his constituents—the great mass of whom may be ignorant of the reasons for and against the measure." *Id.* at 296 (remarks of Mr. Brown). And yet another delegate thought the provision should be stricken as unnecessary. *Id.* at 297 (remarks of Mr. Hastings).

Despite these arguments, the Convention rejected the motion to delete this provision. *Id.* at 297. Accordingly, the Convention could not have viewed the right to instruct as antithetical to the representative government it was creating. Instead, it must have believed that a "representative democracy" is one in which a legislator "represents the will of those who elect him." *Id.* at 296 (remarks of Mr. Sherwood). As another delegate put it,

> the people have a right to instruct their representatives, and the representative has a right to refuse to obey those instructions. Both have rights. But if the representative cannot conscientiously obey those instructions, he should resign. I regard him as a mere machine, so far as he is instructed, or so far as the wishes of his constituents are known to him." (*Id.* at 296-97 (remarks of Mr. McDougal))[1]

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[1]One delegate also expressed the view that having such a provision in a state constitution was unusual. *Id.* at 296 (remarks of Mr. Brown). But the majority obviously felt otherwise, and with good reason, since at that time the right to instruct had already been included in eleven state constitutions. *See* ROBERT LUCE, LEGISLATIVE PRINCIPLES: THE HISTORY AND THEORY OF LAWMAKING BY REPRESENTATIVE GOVERNMENT 453–55 (1930) (discussing "right of instruction" provisions in state constitutions of Arkansas, Illinois,

(continued . . .)

Much the same happened in the 1879 Convention. There, too, a motion was made to eliminate the right to instruct, along with the right to petition the Legislature. P.K. Stockton & E.B. Willis, *Debates and Proceedings of the Constitutional Convention of the State of California* 264 (1880) ("1879 Debates"). But this amendment was defeated. *Id.* Later in the convention one delegate, in opposing a provision that would have invalidated laws that were the result of "personal solicitation," declared that this proposal was "utterly at war with the very principle upon which our government is founded, which is the principle of representation, the principle that the people have the right to petition, to remonstrate, *to instruct*, and to advise with their representatives." *Id.* at 1284 (emphasis added). And the 1879 Convention, like its predecessor thirty years earlier, voted to keep the right to instruct in the Constitution. *Id.* at 1179.

Similarly, delegates to the 1879 constitutional convention understood, as had their predecessors in 1849, that the right to instruct was morally binding. When sixty citizens of Stanislaus County petitioned the convention to adjourn, one delegate said: "I recognize the right of electors to petition their servants, and further, the right to instruct; and when a majority instructs a public servant it is his duty to obey or resign." 1879 Debates at 1081. "I will obey a majority of my constituents, but will not be driven by any number by a threat." *Id.*

The right to instruct remained in the Constitution after the constitution revision process that occurred in the 1960s and early 1970s. While there was no substantive discussion of the right to instruct during that process, the relevant provision was renumbered and, more importantly, rewritten, so

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(. . . continued)
Indiana, Maine, Massachusetts, Michigan, New Hampshire, North Carolina, Ohio, Tennessee, and Vermont).

that the right to instruct now appears as the first provision in Article I, Section 3(a).

This history demonstrates three important, and related, principles. First, the right to instruct certainly must mean more than the right of individual citizens, or groups of citizens, to make their views known to, or to petition, the Legislature. After all, the "right to instruct" clause has coexisted with the "petition" clause since 1849, and it must therefore have an independent meaning. *City & Cnty. of San Francisco v. Farrell*, 32 Cal. 3d 47, 54 (1982) ("In construing the words of a statute or constitutional provision . . . an interpretation which would render terms surplusage should be avoided, and every word should be given some significance, leaving no part useless or devoid of meaning"). Moreover, the drafters of the 1849 constitution inserted the right to instruct into original language that addressed only the right to assemble and to petition. Consequently, they must have believed that an "instruction" given by a legislator's constituents had greater force than a mere "petition."

Second, both the Framers of the 1849 constitution and their counterparts in 1879 viewed instructions as morally binding, if not judicially enforceable. A legislator who refused to follow the instructions of his or her constituents was morally obligated to resign.[2] But that would not be true for a

[2]The delegates to the 1849 and 1879 conventions would not have been surprised by this conclusion. "The binding power of constituent instructions remained substantial in the nineteenth century." Kris W. Kobach, *May "We The People" Speak?: The Forgotten Role of Constituent Instructions in Amending the Constitution*, 33 U.C. DAVIS L. REV. 1, 76 (1999). Indeed, two future Presidents—John Quincy Adams (in 1807) and John Tyler (in 1836)—"resigned from the Senate when the instructions of their state legislatures conflicted with their personal views." *Id.* (citation omitted). As these example indicate, the "common understanding" was "that, when confronted with instructions, a senator's choice was to obey or resign." *Id.* at 77.

mere "petition" to a legislator, which might or might not represent the views of a majority of his or her constituents, and which therefore could have no binding effect. That explains why the drafters of the 1849 and 1879 constitutions viewed the right to instruct and the right to petition as separate and distinct.

Third, the Framers of the 1849 and 1879 constitution must have believed legislators could be at least morally bound by such instructions without violating their duties as representatives of the people. Indeed, the 1849 convention defeated an attempt to eliminate the right to instruct as antithetical to a representative democracy.

To be sure, neither the 1849 Convention nor the 1879 Convention nor the Constitution Revision Commission expressly discussed how the right to instruct would be implemented. But an important piece of constitutional history demonstrates that this right at the very least includes the Legislature's right to submit advisory measures to the statewide electorate.

B. The Legislature's Contemporaneous Practice Of Submitting Advisory Measures To The Statewide Electorate Indicates That This Practice Is Not Constitutionally Impermissible.

The decision made by the 1879 Convention to retain the right to instruct in the state constitution is particularly striking because it was made contemporaneously with the Legislature's passage of an advisory measure that asked the voters for their views on a central political issue of the day. On December 31, 1877, four months before the Legislature passed the Enabling Act calling for the 1879 Convention (1879 Debates at 11), the Legislature put an advisory measure on the ballot asking voters whether they favored a ban on Chinese immigration. 1877 Cal. Stat. ch. 5. However, the electorate didn't vote on this measure until the general

election of September 3, 1879, after the Constitutional Convention had adjourned and after the voters had approved the Constitution in the May 18, 1879, special election. The drafters of the 1879 Constitution could not have meant to invalidate an advisory measure that the Legislature had just enacted. To the contrary, the advisory ballot was expressly mentioned during the convention's deliberations. *See* 1879 Debates at 703. Nor could the voters have intended in May 1879, when they approved the 1879 Constitution, to curtail their ability to vote on an advisory four months later.[3]

Moreover, the Legislature put two more advisory measures on the ballot only twelve years after adoption of the 1879 Constitution. In 1891, the Legislature put on the ballot (1) an advisory measure asking the electorate whether Senators should be directly elected by the People (1891 Cal. Stat ch. 48); and (2) an advisory measure asking the electorate whether voters should be required to read and write English (1891 Cal. Stat. ch. 113). Both measures were placed on the ballot as the result of explicit legislative findings that "[i]t is expedient that the wishes of the people of this State upon the subject [of the advisory measure] be unmistakably expressed." 1891 Cal. Stat. chs. 48, 113.[4] Again, these legislative actions

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[3] *Amici* hasten to add that they in no way condone the racist motives that led the Legislature to ask the electorate for its views about Chinese immigration. But that is irrelevant to the present case. The fact that the power to submit advisory measures can be used for both ignoble purposes (such as Chinese exclusion) or for democratic ones (such as to further the direct election of Senators) has no bearing on whether the power exists in the first instance.

[4] The second of these advisory measures stated that it was "expedient" to ascertain the views of the People "in order that future Legislatures may be guided thereby in submitting amendments to the Constitution of the State." 1891 Cal. Stat. ch. 113. And, indeed, the Legislature followed the electorate's approval of the advisory measure with a proposal to amend the California Constitution to require that a voter be able to

(continued . . .)

are particularly noteworthy because the 1879 constitutional convention had occurred relatively recently, and the legislators in 1891 presumably understood what the right to instruct contained in the 1879 constitution meant. In other words, the Convention that drafted the 1879 Convention, and the voters who approved it, must have understood that the right to instruct included the right of the Legislature to place advisory measures on the ballot.

C. The Only Case Construing The Right To Instruct Confirms That It Includes A Legislature's Power To Place Advisory Measures On The Ballot.

This understanding of the right to instruct is consistent with the only published decision of any state court interpreting a "right to instruct" provision. In *Simpson v. Cenarrusa*, 944 P.2d 1372 (Idaho 1997), the court had no difficulty holding that a measure asking the voters whether the federal constitution should be amended was a permissible exercise of the right to instruct. While the court held the ballot label and pledge portions of a term limits initiative unconstitutional, it severed and upheld the portion instructing Idaho's members of Congress to use their delegated powers to pass a constitutional amendment imposing term limits on Members of Congress. The court specifically noted that "the Idaho Constitution, Article I, §10, gives the people the right to instruct their representatives and to petition the legislature for the redress of grievances. This section enables voters to instruct the Idaho members of congress and legislators." *Id.* at 1377. Accordingly, the only case on point holds that an advisory measure similar to SB 1272 was a permissible exercise of the right to instruct.[5]

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read the Constitution and write his name. Assembly Const. Amend. No. 8, ch. 4, 30th Leg. (Cal. Jan. 28, 1893).

[5]This Court's refusal to follow *Simpson* in *Bramberg v.* (continued . . .)

D. SB 1272 Is A Permissible Means Of Implementing The Right To Instruct.

We do not suggest that the right to instruct is self-executing, and the Court need not decide that issue. As a practical matter, though, the People cannot exercise the right to instruct without a means to do so. That is precisely what SB 1272 does—it gives the People a right to instruct their state and federal legislators regarding the advisability of a federal constitutional amendment to overturn *Citizens United*. And it gives each set of legislators specific instructions that conform to their unique role in the process of amending the federal constitution. It asks the Congress to propose, and the California Legislature to ratify, a specific constitutional amendment. And it relies explicitly on the right to instruct, declaring that "[t]he people of California and of the United States have previously used ballot measures as a way of instructing their elected representatives about the express actions they want to see them take on their behalf, including provisions to amend the United States Constitution." S.B. 1272, 2014 Cal. Stat. ch. 175, §2(m).

Petitioners' Reply Brief asserts that SB 1272 cannot implement the right to instruct because that "is a right of the people, not the Legislature." Pet. Rep. 14. They then contend that "this Court in *AFL-CIO* [*v. Eu*, 36 Cal. 3d 687 (1984)]

(. . . continued)
Jones, 20 Cal. 4th 1045 (1999), is irrelevant. There the Court held, contrary to *Simpson*, "that the provisions of Proposition 225 that explicitly 'instruct' California's congressional delegation and state legislators to use all of their delegated legislative powers to enact a specific amendment to the United States Constitution" could not "properly . . . be characterized as 'non-binding, advisory' provisions that are permissible under Article V." *Id.* at 1063 n.19. But the Court's disagreement with *Simpson* on a matter of *federal* constitutional law is no reason to disagree with the Idaho's court's conclusion that the initiative in that case was a permissible exercise of the right to instruct granted by the state constitution.

has already held that the people's right to instruct does not include the people's right to place an advisory measure on the ballot." *Id.* They conclude as follows: "It follows that the right to instruct does not imply power in the Legislature to place an advisory measure on the ballot. In short, the Legislature cannot derive more power from the right to instruct than granted to the people." *Id.*

This response is wide of the mark, in several respects. To begin with, *AFL-CIO* did not address, much less decide, whether the initiative at issue in that case could be sustained under Article I, Section 3(a). The issue was simply not raised by the Real Party in that case. Cases are not authority for propositions they do not decide. *Styne v. Stevens*, 26 Cal. 4th 42, 57 (2001) ("An opinion is not authority for a point not raised, considered, or resolved therein"). Accordingly, *AFL-CIO* did not hold that the "right to instruct" excludes advisory measures.

Moreover, and more fundamentally, any such holding would render the "right to instruct" a nullity. If the right to instruct in Article I Section 3(a) were coextensive with the right of initiative granted by Article II, Section 8(a), the former provision would have no meaning. But Article I, Section 3(a) *must* have some independent meaning. For one thing, it long pre-dates addition of the initiative and referendum to the California Constitution. *See* Part I(A), *supra*. Moreover, as discussed above, what is true of statutes is no less true of constitutions: significance should be given not only to every word but—much more importantly—every provision. *Farrell*, 32 Cal. 3d at 54.

Petitioners also ignore the fact that, as also mentioned above, Article I, Section 3(a) is not self-executing—that is, it provides no means by which the People may exercise the "right to instruct their representatives." In at least one state, Massachusetts, the Legislature has enacted a statute

authorizing citizens in each legislative district of either house to submit applications with a certain number of signatures "asking for the submission to the voters of that senatorial or representative district of any question of instructions to the senator or representatives from that district, and stating the substance thereof." MASS. GEN. LAWS ch. 53, §19 (2014). In California, the Legislature has asked the statewide electorate to give it instructions less frequently: once in 1877 (*see* pp.6-7, *supra*), twice in 1891 (*see* pp.7-8, *supra*), twice in 1933 (*see* 1933 Cal. Stat. ch. 435), and again in 2014. But whether the power has been exercised frequently or sparingly is of no constitutional moment; instead, what matters is that Article I, Section 3(a) gives the Legislature power to ask the voters to provide non-binding instructions.

It is of no moment that the Framers of the 1849 and 1879 constitution believed that instructions were at least morally binding (*see* pp.5-6, *supra*) while SB 1272 is expressly labeled "advisory." After all, no one has ever suggested that a legislator could be compelled—say, by a lawsuit for specific performance—to vote in accordance with his or her instructions. That would certainly violate the separation of powers, because legislators may not be held to account for their votes and speeches as legislators. *Traweek* v. *City & Cnty. of San Francisco*, 659 F. Supp. 1012, 1031 (N.D. Cal. 1984) (city and county officials could not be held liable for sponsoring or enacting legislation), *aff'd in part & vacated in part on other grounds*, 920 F.2d 589 (9th Cir. 1990); *see Steiner v. Superior Court*, 50 Cal. App. 4th 1771, 1786 n.20 (1996) ("[T]he California Constitution contains no provision like the 'Speech or Debate Clause' of the federal Constitution. The California separation of powers provision, however, provides a sufficient ground to protect legislators from punitive action that unduly impinges on their function") (citation omitted). Nor, of course, could a legislator be compelled to resign, before the end of his

or her constitutionally-fixed term, for failing to vote as instructed. Accordingly, even a supposedly "binding" instruction is only advisory; the legislator is legally free to disregard the instruction and suffer the political consequences, if any.[6] For these reasons, the fact that SB 1272 is expressly labeled "advisory" does not prevent it from being a permissible means of implementing the People's right "to instruct their representatives."

II.

SB 1272 IS ALSO A PERMISSIBLE MEANS FOR THE LEGISLATURE TO BOLSTER ITS POWER TO EXPRESS THE VIEWS OF CALIFORNIA'S CITIZENS.

"A legislative assembly, when established, becomes vested with all the powers and privileges which are necessary and incidental to a free and unobstructed exercise of its appropriate functions." *Ex parte McCarthy*, 29 Cal. 395, 403 (1866). One of these "appropriate functions" is to express its views "on behalf of" the People of this State. And, indeed, the Legislature often asks Congress both to enact ordinary legislation[7] and to propose constitutional amendments for

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[6]Indeed, one law review commentator has suggested that, due to political considerations, there is no dividing line between a supposedly binding instruction and one that is labeled "advisory." *See* Kenneth Bresler, *Rediscovering the Right To Instruct Legislators*, 26 NEW ENG. L. REV. 355, 385 (1991) ("The absence of a specific mechanism to enforce instructions does not mean that Massachusetts citizens lack a process to do so. The people can enforce the right of instruction through the political process . . .").

[7]*See, e.g.*, S.J. Res. No. 22, ch. 73, 2013-2014 Reg. Sess. (Cal. June 24, 2014) (urging Congress "to enact legislation that would establish reasonable deadlines for the prohibition of the testing and marketing of cosmetic products that have been tested on animals"); S.J. Res. No. 10, ch. 121, 2013-2014 Reg. Sess. (Cal. Sept. 12, 2013) (urging Congress to "reauthorize the federal Workforce Investment Act and to include specified policies and strategies in support of the act.").

ratification, as it did in this case. A.J. Res. No. 1, ch. 77, 2013-2014 Reg. Sess. (Cal. June 27, 2014).

The Legislature's right to declare state policy—as it does when it enacts statutes—has never been questioned. But its right to declare state policy is not limited to policy declarations that accompany legislation. For example, the Court has held that "it is permissible for a public entity to evaluate the merits of a proposed ballot measure and to make its views known to the public." *Vargas v. City of Salinas*, 46 Cal. 4th 1, 36 (2009).[8] It would be odd if the Legislature had fewer rights to express its views on a proposed federal constitutional amendment than it does with respect to a proposed statewide measure. Indeed, as the Court noted in *Vargas*, a local legislative body takes a position on a proposed measure every time it votes to submit such a measure to the electorate. *See id.* ("when a city council or county board of supervisors votes to place a bond or tax measure before the voters, it generally is quite apparent that the governmental entity supports the measure and believes it should be adopted by the electorate"). The same is true when the Legislature asks the electorate to approve a constitutional amendment or a measure amending a statutory initiative.

For these reasons, the Legislature unquestionably has the power to ask Congress to pass a constitutional amendment to overturn *Citizens United*. But if that is so, it necessarily has the right to ask the People whether it agrees with that policy. For the Legislature's voice will obviously be stronger once it is joined with the People's imprimatur. Accordingly, asking the People for an advisory opinion on a matter as to which the Legislature itself has a right to request Congressional action

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[8]Of course, funds from the public treasury may generally not be used to support or oppose such measures. *Stanson v. Mott*, 17 Cal. 3d 206 (1976). But that limitation is irrelevant to this case.

is "necessary and incidental" to the Legislature's exercise of one of its "appropriate functions."

CONCLUSION

The Petition should be denied.

DATE: February 2, 2015.

Respectfully,

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By: /s/
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Attorneys for Amici Curiae Free Speech for People, Inc., et al.[9]

35035018F

[9]The authors of this brief wish to acknowledge the extraordinary work done by our librarian, Michael Ginsborg, in finding the materials on which this brief is based.

CERTIFICATE OF COMPLIANCE PURSUANT TO CAL. R. CT. 8.520(c)

Pursuant to California Rule of Court 8.520(c), and in reliance upon the word count feature of the software used to prepare this document, I certify that the foregoing **Brief Amici Curiae Of Free Speech For People, Inc., *et al.*** contains 4,144 words, exclusive of those materials not required to be counted under Rule 8.520(c)(3).

DATED: February 2, 2015.

/s/
STEVEN L. MAYER

35035018F

PROOF OF SERVICE

I, Gigi Francisco-Ferrer, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024. On February 2, 2015, I served the following document(s) described as:

APPLICATION OF FREE SPEECH FOR PEOPLE, INC., *ET AL.* FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE IN SUPPORT OF THE LEGISLATURE OF THE STATE OF CALIFORNIA

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date by 9:00 a.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, for deposit in the United States Postal Service through the regular mail collection process at the law offices of Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, located at Three Embarcadero Center, Seventh Floor, San Francisco, California.

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The Center for State and Local Government Law, Amicus curiae

I am readily familiar with the firm's practice for collection and processing of documents for delivery by overnight service by Federal Express, and that practice is that the document(s) are deposited with a regularly maintained Federal Express facility in an envelope or package designated by Federal Express, fully prepaid, the same day as the day of collection in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on February 2, 2015.

/s/
Gigi Francisco-Ferrer