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January 19, 2016

**VIA HAND DELIVERED**

The Honorable Tani G. Cantil-Sakauye,  
Chief Justice of California, and  
Honorable Associate Justices  
California Supreme Court  
350 McAllister St.  
San Francisco, CA 94102

Re: *Howard Jarvis Taxpayers Association v. Padilla* (No. S220289)

Dear Chief Justice Cantil-Sakauye and Honorable Associate Justices:

This letter is submitted on behalf of Amici Free Speech For People, Inc. (FSFP), Money Out Voters In (MOVI), California Public Interest Research Group (CALPIRG), California Clean Money Campaign, and Courage Campaign in support of the Petition for Rehearing that we understand will be filed by the Legislature in the above-referenced case. The Petition seeks modification of that portion of the Court's opinion that, by deeming the controversy moot (*see* Slip Op. at 6), effectively requires the Legislature to pass another statute to place the advisory measure that was the subject of SB 1272 on the ballot. Amici filed a brief *amici curiae* on the merits of this case.

The Court unquestionably has the power to reform SB 1272 by changing the date on which the advisory measure will be submitted to the People. Indeed, it changed the dates in a recently enacted statute under analogous circumstances only four years ago. *See California Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 275-76 (2011). There, too, implementation of a statute was initially stayed by the Court; and the statutory deadlines had passed by the time the statute's constitutionality was upheld. Accordingly, in its decision on the merits the Court reformed the dates so that implementation of the now-validated statute could proceed apace. *Id.*

That power should be exercised here. The Legislature has already decided that the measure embodied in SB 1272 should be voted on by the People. This Court has now

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upheld the constitutionality of that decision. That decision should not be frustrated by the fact that it took until January, 2016 to decide that SB 1272 was constitutional.

Commentators have time and again remarked upon the difficulty of passing legislation in the modern world. *See, e.g.*, Richard L. Hasen, *Political Dysfunction and Constitutional Change*, 61 Drake L. Rev. 989, 992 (2013) (“the mismatch between highly ideological political parties and our divided form of government that makes passing legislation difficult even in the absence of partisan deadlock”); Paul Killebrew, *Where Are All the Left-Wing Textualists?*, 82 N.Y.U. L. Rev. 1895, 1914 (2007) (describing “a world in which drafting legislation is time-consuming and statutes are extraordinarily difficult to pass”); Susan Freiwald, *Comparative Institutional Analysis in Cyberspace: The Case of Intermediary Liability for Defamation*, 14 Harv. J.L. & Tech. 569, 626 n.236 (2001) (“One cannot read too much into legislative inertia because of the difficulty of passing legislation”).

For this reason, every bill that passes the Legislature is the result of a unique confluence of political events, and often reflects both legislative decisions and political pressure from constituents. That was certainly true for SB 1272, the passage of which was the culmination of a long and arduous campaign by grassroots citizen activists.

In August 2013, Michele Sutter (co-founder of MOVI) launched a campaign to have the Legislature put a measure on the ballot asking the voters of California whether the state legislature should ratify a constitutional amendment to overturn *Citizens United*. Ms. Sutter began by attempting to contact various legislators or their staffs to identify a sponsor. However, despite extensive phone and email efforts, Ms. Sutter had difficulty even getting in the door. For the next five months, she repeatedly attempted to arrange meetings with lawmakers from both chambers, usually without success.

Finally, on February 15, 2014, Senator Ted Lieu (Ms. Sutter’s own state senator) agreed to sponsor the MOVI-drafted bill, joined soon afterwards by Senator Hannah Beth Jackson. On February 21, the very last day for proposing new bills for consideration in the 2014 session, SB 1272 was filed as a “spot bill.”<sup>1</sup>

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<sup>1</sup> In California legislative practice, a “spot bill” is a placeholder that holds the place for a bill while the language is developed through legislative counsel. *See* Legislative Counsel, *A Glossary of Legislative Terms*, <http://leginfo.ca.gov/glossary.html> (visited Jan. 16, 2016).

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The Senate Elections and Constitutional Amendments Committee set a date for the first committee hearing on April 22, 2014—two months before the June 26 deadline. MOVI immediately began to reach out to activist communities and organizations for endorsements and support, hoping to stir enough interest and excitement about the bill to make an impact on the legislators in the first committee hearing.

This effort was successful. Well over 50 supporters crowded the Committee's small chamber and many more were outside the doors. (MOVI is based in Los Angeles and those who flew up to Sacramento for the hearing did so at their own expense.) The committee's members each received over 3,000 individual faxes, and countless emails and phone calls, from SB 1272's supporters. At the hearing, MOVI volunteers presented committee members with over 40,000 petition signatures asking them to approve the bill.

In addition, the MOVI team created materials to deliver to every member of every committee that held a hearing on SB 1272, as well as other key legislators and their staffs. At their own expense, Ms. Sutter and a small team of MOVI volunteers repeatedly flew to Sacramento to meet with lawmakers and their staffs before various committee and floor votes,<sup>2</sup> and Ms. Sutter flew to Sacramento to testify at all but one committee hearing.

As the legislative process continued, MOVI kept on amassing popular support and mobilizing activists, increasing attendance at each committee hearing. By the end of the legislative process, supporters of SB 1272 had sent legislators over 176,000 individual faxes, more than 55,000 petition signatures, 40,000 e-mails, and hundreds of personal visits to the state Capital. As a result of this effort, SB 1272 passed the Legislature on July 3, 2014.

Writing of the grassroots campaign to push SB 1272 through the Legislature, longtime campaign finance reform advocate Derek Cressman, the former Vice President for States at Common Cause, wrote “[i]n nearly twenty years of reform advocacy, I had never seen a grassroots effort this substantial.” Derek Cressman, *When Money Talks: The*

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<sup>2</sup> The dates of the official votes were April 22 (Senate committee), May 5 (Senate committee), May 23 (Senate committee), May 28 (Senate floor), June 10 (Assembly committee), June 18 (Assembly committee), June 26 (Assembly floor), June 30 (Assembly floor), and July 3 (Senate floor). Ms. Sutter went to Sacramento for six of these nine dates.

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*High Price of "Free" Speech and the Selling of Democracy* 162 (2016). This effort was necessary to overcome the initial skepticism of legislators and their staffs, who believed that the Legislature had already spoken on the matter and that giving the electorate a voice was unnecessary.

As this history reveals, the passage of SB 1272 was the result of a grassroots effort driven largely by Amici. In particular, MOVI's unpaid volunteers self-financed nearly all of the thousands of dollars in costs for flights, hotels, meals, packet materials and copying necessary for that effort to succeed. Forcing these unpaid citizen activists to undertake a duplicate and uncertain effort to achieve the same result would be an enormous burden and, in light of the circumstances that resulted in the advisory measure being removed from the 2014 ballot, inequitable and unjust. It would disserve the democratic values that both the Court's decision and the passage of SB 1272 itself were intended to further.

Very truly yours,



Steven L. Mayer

cc: per attached POS

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## 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, Tenth Floor, San Francisco, California 94111-4024. On January 19, 2016, I served the following document(s) described as:

### **AMICUS LETTER IN SUPPORT OF PETITION FOR REHEARING**

- 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 Arnold & Porter LLP, located at Three Embarcadero Center, Tenth Floor, San Francisco, California.
- by transmitting via email the document(s) listed above to the email address(es) set forth below on this date by 9:00 a.m.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by causing the document(s) listed above to be served by hand on the person(s) at the address(es) set forth below.

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Jon Coupal, Petitioner

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Debra Bowen, Respondent

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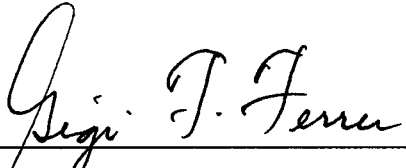
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I am readily familiar with the firm's practice for collection and processing of documents for delivery by overnight service by Federal Express, and that practice is that the document(s) are deposited with a regularly maintained Federal Express facility 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 January 19, 2016.

  
\_\_\_\_\_  
Gigi Francisco-Ferrer