

1 [Reaffirming Support For An Independent, Impartial and Qualified Judiciary]

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3 **Resolution reaffirming support for the fundamental role of an independent, impartial,**
4 **and qualified judiciary in upholding the law in the pursuit of justice and the functional**
5 **operation of a healthy democracy.**

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7 WHEREAS, Following national trends and starting earlier this year, political action
8 committees with undisclosed donors have capitalized on voter frustrations with societal
9 problems post-pandemic and, looking for individuals to scapegoat blame, have forwarded a
10 continuous recall campaign for all levels of government, including actively recruiting
11 challengers to sitting incumbent judges appointed by the Governor; and

12 WHEREAS, Former Governor Jerry Brown’s lasting legacy was diversifying the bench
13 through appointments, with 44% of the 644 judges chosen by Brown since 2011 representing
14 women, nearly 45% identifying as people of color, and nearly 6% identifying as lesbian, gay,
15 bisexual or transgender, setting records for the state of California, in order to represent the
16 diversity of California’s population, regardless of the judges’ political party affiliation; and

17 WHEREAS, A healthy and functional democracy relies on the fundamental principle of
18 checks and balances within a tripartite government and the trusted tenet that the judicial
19 branch will protect and operate with judicial independence, impartiality and qualified
20 representation; and

21 WHEREAS, The judicial branch differs from the executive and legislative branches in
22 one significant way, in that they do not make majoritarian decisions but rather operate and
23 rule based on what the facts show and the law demands, as opposed to based on the political
24 pressures that are invariably presented during competitive and politically-charged elections;
25 and

1 WHEREAS, The appearance of an independent judiciary is just as important as actual
2 independence in promoting public trust in the courts, and that appearance is substantially
3 undermined when judges run in contested elections that have the look and feel of elections for
4 other local, political offices engaged in contentious and often dangerous rhetoric; and

5 WHEREAS, Judicial impartiality and fairness are the bedrock upon which our judicial
6 system is built, and everyone in society has an interest in promoting, preserving, and
7 protecting the impartiality and fairness of judicial processes, which is just as important in
8 resolving a traffic ticket as it is in deciding felony prosecutions or great questions of civil or
9 constitutional law; and

10 WHEREAS, Most judges are, by temperament, training and practice, insulated from
11 engaging in political campaigns for election, and it is in the public's interest that judges
12 behave impartially and adhere to the law, and not behave as politicians who must succumb to
13 the pressure of popular opinion; and

14 WHEREAS, Under current law, unless an opponent files for a judicial election, an
15 incumbent's name does not appear on the ballot, and the incumbent is deemed to be retained
16 as a matter of law, reducing or eliminating the need for sitting trial judges to raise campaign
17 funds; and

18 WHEREAS, Judicial candidates in contested races have no choice but to raise funds,
19 where even a semblance of a campaign requires raising substantial amounts of money, with
20 judicial campaigns around the country occasionally involving millions of dollars; and

21 WHEREAS, The conflicts of interest provoked by this level of spending inherently
22 undermine judicial impartiality, as the persons most interested in judicial elections are: (1)
23 candidates; (2) lawyers who appear regularly in court; and (3) persons or organizations that
24 regularly have legal issues before courts (e.g., large businesses, public interest groups); and

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1 WHEREAS, Although Canon 5 of the Code of Judicial Ethics does allow judges to
2 express some amount of personal opinions, incumbent judges are bound to strict adherence
3 to impartiality and cannot predetermine or opine on what they would do in a hypothetical or
4 specific case that may be before them in the court, and an incumbent judge shall not engage
5 in any political activity except (i) as authorized under any other Section of this Code, (ii) on
6 behalf of measures to improve the law, the legal system or the administration of justice, or (iii)
7 as expressly authorized by law; and

8 WHEREAS, Public safety is best served when experienced, qualified, and impartial
9 judges sit on the bench who understand the nuances of the law and exercise judicial
10 independence to make decisions absent of any undue influence; and

11 WHEREAS, The independence of the judiciary serves to protect individual civil rights
12 and liberties, including unpopular individuals or groups of people, from the whims of changing
13 political tides and influence; and

14 WHEREAS, An example of a majoritarian decision can be found in the overwhelming
15 support in the United States of America for slavery, which our highest courts have
16 unequivocally found to be unconstitutional and a violation of human and civil rights, making
17 this settled law; and

18 WHEREAS, Recent attacks on the judiciary and a growing trend of politicizing the
19 courts is playing out across the country, and have threatened the independence of the
20 judiciary by proposing and passing laws that limit the ability of judges to exercise their
21 professional discretion, and politicizing the judicial decision making process in a partisan
22 fashion, including in 25 states where legislatures have proposed laws limiting and further
23 constraining judicial independence; and

24 WHEREAS, As researched and published by the Brennan Center, inciting aggressive
25 campaigns to unseat incumbent judges leads to high-stakes fundraising, often and mostly

1 from the private law sector, which presents a potential conflict of interest for elected judges,
2 who must then hear cases for which potential campaign contributors may represent
3 participating parties; and

4 WHEREAS, During the last judicial election cycle, nearly \$100,000,000 (most of it
5 raised from privately practicing attorneys) was spent for the purpose of electing candidates to
6 state supreme court judgeships, raising alarming concerns of potential conflicts of interest;
7 and

8 WHEREAS, Political action committees and outside influence lobbying groups
9 contribute also contribute vast amounts of money to judicial elections, and most states'
10 recusal laws for judges do not account for the fact that donors to these groups may appear
11 before judges elected with the help of their donations; and

12 WHEREAS, Candidates for superior and appellate judgeships have expended similarly
13 alarming amounts on judicial campaigns to unseat incumbents; and

14 WHEREAS, California Penal Code, Section 1096, defines a presumption of innocence;
15 a defendant in a criminal action is presumed to be innocent until the contrary is proved; and

16 WHEREAS, Arraignment judges must follow the California Constitution, Article 1,
17 Section 12, which defines a presumption of pretrial release, and that a person shall be
18 released on bail by sufficient sureties, except in cases involving Capital crimes when the facts
19 are evident or the presumption great and in felony offenses involving acts of violence or
20 sexual assault on another person, or other felony offenses where evidence that the person
21 has threatened another with great bodily harm and that there is a substantial likelihood that
22 the person would carry out the threat if released; and

23 WHEREAS, In 2021, the California Supreme Court affirmed a decision by the California
24 First District Court of Appeals in a Habeas Corpus case deciding that setting money bail in an
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1 amount a defendant cannot possibly afford amounts to unconstitutional detention of a person
2 before they have been convicted of a crime; and

3 WHEREAS, As of the filing deadline, at least two incumbent SF Superior Court judges
4 will be forced to raise money and campaign to defend their seats but will not be able to speak
5 on defending their records or on what happens in closed courtrooms; and

6 WHEREAS, By reducing the courts' enforcement of the law to highly-politicized and
7 over-simplified rhetoric, the judiciary's independence is not only compromised but the lack of
8 accurate reporting and nuance for the electorate coupled with angry calls to blame judges for
9 crime, creates an unsafe work environment; now, therefore, be it

10 RESOLVED, That the Board of Supervisors of the City and County of San Francisco do
11 hereby reaffirm support for the fundamental role of an independent, impartial, and qualified
12 judiciary in upholding the law in the pursuit of justice and the functional operation of a healthy
13 democracy; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
15 Francisco do hereby direct the Clerk of the Board to transmit this Resolution as official settled
16 city policy to the SF Superior Courts upon final passage.

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