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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 ROBIN CREST, EARL DE VRIES, and  
13 JUDY DE VRIES,

14 Plaintiffs,

15 v.

16 ALEX PADILLA, in his official capacity as  
17 Secretary of State of the State of California.

18 Defendants.

Case No. 20STCV37513

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1. Plaintiffs ROBIN CREST, EARL DE VRIES, and JUDY DE VRIES, taxpayers and citizens of the State of California, seek to enjoin Defendant ALEX PADILLA from expending taxpayer funds and taxpayer-financed resources in furtherance of and to ensure compliance with Assembly Bill 979 (“AB 979”), which requires that boards of directors of California-based, publicly-held domestic or foreign corporations satisfy racial, ethnicity, sexual preference, and transgender quotas by the end of the 2021 calendar year, which quotas increase by the end of the 2022 calendar year.

**JURISDICTION AND VENUE**

2. Jurisdiction in this case is founded on California’s common law taxpayer standing doctrine and Code of Civil Procedure section 526a, which grants California taxpayers the right to sue government officials to prevent unlawful expenditures of taxpayer funds and taxpayer-financed resources. The mere expending of a paid, public official’s time performing illegal or unauthorized acts constitutes an unlawful use of funds that may be enjoined, and it is immaterial that the amount of

1 the expenditure is small or that enjoining the illegal expenditure will permit a savings of tax funds.  
2 *Blair v. Pitchess*, 5 Cal. 3d 258, 268 (1971). It has long been held that “state officers too may be sued  
3 under section 526a.” *Serrano v. Priest*, 5 Cal. 3d 584, 618 n.38 (1971).

4 3. Venue in this Court is appropriate under Code of Civil Procedure section 393, as the  
5 taxpayer funds and taxpayer-financed resources at issue are being expended or will be expended in the  
6 County of Los Angeles. *Regents of the University of California v. Karst*, 3 Cal. 3d 529, 542 (1970)  
7 (“[F]or the purpose of venue, the action arises in the county where the agency spends the tax money that  
8 causes the alleged injury[.]”).

### 9 **PARTIES**

10 4. Plaintiff ROBIN CREST is a taxpayer and citizen of the State of California and has paid  
11 income and other taxes to the State of California during the one-year period prior to the commencement  
12 of this action.

13 5. Plaintiff EARL DE VRIES is a taxpayer and citizen of the State of California and has  
14 paid income and other taxes to the State of California during the one-year period prior to the  
15 commencement of this action.

16 6. Plaintiff JUDY DE VRIES is a taxpayer and citizen of the State of California and has  
17 paid income and other taxes to the State of California during the one-year period prior to the  
18 commencement of this action.

19 7. Defendant ALEX PADILLA is the Secretary of State of the State of California and a  
20 constitutional officer of the State. Cal. Const. art. V, § 11. As Secretary of State, Defendant is charged  
21 with overseeing, administering, and enforcing AB 979. Defendant is sued in his official capacity only.

### 22 **STATEMENT OF FACTS**

23 8. On September 30, 2020, California Governor Gavin Newsom signed AB 979 into law.  
24 AB 979 adds two new provisions to the Corporations Code, section 301.4 and section 2115.6.

25 9. AB 979 requires that California-based, publicly held corporations, defined as “domestic  
26 or foreign corporation[s] whose principal executive offices, according to the corporation’s SEC 10-K  
27 form, are located in California,” have a minimum of one director from an underrepresented community  
28 on its board by the end of the 2021 calendar year. AB 979 also requires, by the end of the 2022 calendar

1 year, such corporations comply with the following:

- 2 • boards of nine or more directors must have a minimum of three directors from
- 3 underrepresented communities;
- 4 • boards of more than four but fewer than nine directors must have a minimum of
- 5 two directors from underrepresented communities; and
- 6 • boards of four or fewer directors must have a minimum of one director from an
- 7 underrepresented community.

8 10. For purposes of AB 979, “director from an underrepresented community” means “an  
9 individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander,  
10 Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or  
11 transgender.”

12 11. According to the Senate Floor Analysis of AB 979, AB 979 is “based very closely on SB  
13 826,” which created a gender-based quota for publicly held, domestic or foreign corporations based in  
14 California. Specifically, SB 826 requires these corporations to have at least one female director on their  
15 boards by December 31, 2019, and, depending on the size of the board, up to three female directors by  
16 December 31, 2021. SB 826 also directs the Secretary of State to prepare and publish an annual report,  
17 starting on March 1, 2020, documenting the number of corporations that are in compliance with SB 826,  
18 the number of corporations that moved their headquarters out of California, and the number of  
19 corporations that are no longer publicly held. On August 6, 2019, Plaintiffs filed a lawsuit in Los  
20 Angeles County Superior Court challenging the Secretary of State’s expenditure of taxpayer funds and  
21 taxpayer-financed resources in furtherance of and to ensure compliance with SB 826’s gender-based  
22 quota. *See Crest et al. v. Padilla*, LASC Case No. 19-27561. The SB 826 lawsuit is ongoing.

23 12. To ensure compliance with SB 826, prior to March 1, 2020, the Secretary of State revised  
24 the Corporate Disclosure Statement that publicly held domestic or foreign corporations headquartered in  
25 California are required to file each year to include questions about the number of female directors on  
26 their boards. The Secretary of State also mailed letters to these corporations advising them of their  
27 annual filing obligation (the Corporate Disclosure Statement) and SB 826’s requirements. He then  
28 created a spreadsheet to track which corporations complied or did not comply with SB 826’s

1 requirements.

2 13. According to the Secretary of State’s March 1, 2020 report, there are currently 625  
3 corporations that must comply with SB 826. Those corporations must now comply with AB 979 as  
4 well.

5 14. Like SB 826, AB 979 directs the Secretary of State to prepare and publish an annual  
6 report documenting the number of corporations that are in compliance with AB 979, the number of  
7 corporations that moved their headquarters to California or out of California, and the number of  
8 corporations that are no longer publicly held. AB 979 directs the Secretary of State to begin publishing  
9 annual compliance reports on March 1, 2022. It requires these reports to be included with the reports  
10 required by SB 826. Like SB 826, these reports are an important, integral part of ensuring compliance  
11 with AB 979.

12 15. According to the Assembly Appropriations Committee, AB 979 “will result in ongoing  
13 costs in the hundreds of thousands of dollars to gather demographic information and compile a report on  
14 this data on its internet website.”

15 16. The Senate Floor Analysis identified “potential constitutional issues posed by” AB 979.  
16 It described AB 979 as “requiring certain corporations to appoint a certain number of directors who self-  
17 identify as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native  
18 Hawaiian or Alaskan Native” and noted that, under the California Constitution, “a statute that draws a  
19 distinction based upon race or ethnicity in this fashion – whether remedial or punitive in intent – is  
20 suspect and only passes constitutional muster if it can meet the strict scrutiny test: that the statute is  
21 narrowly drawn to meet a compelling government interest.” The analysis also stated, “the existence of  
22 general societal discrimination will not ordinarily satisfy the courts.”

23 17. Based on the Secretary of State’s efforts to ensure compliance with SB 826, the Secretary  
24 of State has likely begun or will soon begin gathering demographic information and compiling a report  
25 to comply with AB 979’s March 1, 2022 deadline.

26 18. Also based on the Secretary of State’s efforts to ensure compliance with SB 826, the  
27 Secretary of State has likely begun or will soon begin revising the Corporate Disclosure Statement to  
28 include questions about the race, ethnicity, sexual preferences, and transgender status of directors on

1 corporate boards. The Secretary of State also will likely mail letters to corporations advising them of  
2 their annual filing obligation (the Corporate Disclosure Statement) and AB 979's requirements and  
3 create spreadsheets to track which corporations comply or do not comply with AB 979's requirements.

4 19. The Secretary of State undoubtedly will expend taxpayer funds or taxpayer-financed  
5 resources performing the above-referenced tasks in furtherance of and to ensure compliance with the  
6 racial, ethnicity, sexual preference, transgender quotas required by AB 979. At a minimum, salaried  
7 personnel will perform these tasks.

8 **FIRST CAUSE OF ACTION**  
9 **(Violation of Cal. Const., art I, §§ 7 and 31)**

10 20. Plaintiffs incorporate by reference and reallege all their prior allegations.

11 21. An actual and justiciable controversy has arisen and now exists between Plaintiffs and  
12 Defendant. Plaintiffs contend that they have paid or incurred income and other taxes to the State of  
13 California during the one-year period prior to the commencement of this action and that Defendant is  
14 expending, intends to expend, or will expend taxpayer funds and taxpayer-financed resources illegally in  
15 furtherance of, ensuring compliance with, and otherwise effectuating the racial, ethnicity, sexual  
16 preference, and transgender quotas required by AB 979.

17 22. Specifically, Plaintiffs contend that any expenditure of taxpayer funds or taxpayer-  
18 financed resources on AB 979 is illegal under the California Constitution. The legislation's requirement  
19 that certain corporations appoint a specific number of directors based upon race, ethnicity, sexual  
20 preference, and transgender status is immediately suspect and presumptively invalid and triggers strict  
21 scrutiny review. Cal. Const., art. I, §§ 7 and 31; *see e.g., Coral Construction, Inc. v. City and County of*  
22 *San Francisco*, 50 Cal. 4th 315, 337 (2010); *Strauss v. Horton*, 46 Cal. 4th 364, 412 (2009); *Connerly v.*  
23 *State Personnel Bd.*, 92 Cal. App. 4th 16, 40-44 (2001); *Hiatt v. City of Berkeley*, 130 Cal. App. 3d 298,  
24 309 (1982). Because it classifies directors by virtue of their race, ethnicity, sexual preference, or  
25 transgender status, AB 979 can only be justified by a compelling governmental interest, and its use of  
26 race and ethnicity must be narrowly tailored to serve that compelling interest. *See Coral Construction*,  
27 50 Cal. 4th at 337; *Strauss*, 46 Cal. 4th at 412; *Connerly*, 92 Cal. App. 4th at 44; *Hiatt*, 130 Cal. App. 3d  
28 at 309. As Defendant cannot make these difficult showings, AB 979 is unconstitutional and any

1 expenditure of taxpayer funds or taxpayer-financed resources in furtherance of, ensuring compliance  
2 with, or otherwise effectuating the racial, ethnicity, sexual preference, and transgender quotas required  
3 by AB 979 is illegal.

4 23. On information and belief, Defendant contends AB 979 does not violate the California  
5 Constitution and that therefore he is not expending taxpayer funds and taxpayer-financed resources  
6 illegally and does not intend to expend or will not expend taxpayer funds and taxpayer-financed  
7 resources illegally in the future.

8 24. A judicial declaration pursuant to Code of Civil Procedure section 1060 is necessary and  
9 appropriate so that the parties may ascertain their respective legal rights and duties with respect to  
10 Defendant's illegal expenditure of taxpayer funds and taxpayer-financed resources on AB 979.

11 25. Plaintiffs are being and will be irreparably harmed by Defendant's illegal expenditure of  
12 taxpayer funds and taxpayer-financed resources on AB 979 unless and until Defendant's illegal  
13 expenditures are enjoined.

14 26. Plaintiffs have no adequate remedy at law.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for the following relief against Defendant:

17 1. A judgment declaring any and all expenditures of taxpayer funds and taxpayer-financed  
18 resources in furtherance of, ensuring compliance with, or otherwise effectuating the racial, ethnicity,  
19 sexual preference, and transgender quotas required by AB 979 to be illegal;

20 2. An injunction permanently prohibiting Defendant from expending or causing the  
21 expenditure of taxpayer funds and taxpayer-financed resources in furtherance of, ensuring compliance  
22 with, or otherwise effectuating the racial, ethnicity, sexual preference, and transgender quotas required  
23 by AB 979.

24 3. Costs of suit herein;

25 4. Reasonable attorney's fees under the Private Attorney General Statute, Code of Civil  
26 Procedure section 1021.5, the Common Defense Fund, and the Substantial Benefit Doctrine; and  
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1           5.       Such other relief as this Court deems just and proper.

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3       Dated: September 30, 2020

JUDICIAL WATCH, INC.

4                               By: /s/ Robert Patrick Sticht.  
5   ROBERT PATRICK STICHT

6   *Attorneys for Plaintiffs*

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