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By Donnan Pharr

Michael Temple Risher (SBN 191627)
mrisher@aclunc.org
Micaela Davis (SBN 282195)
mdavis@aclunc.org
American Civil Liberties Union
Foundation of Northern California, Inc.
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437

Peter J. Eliasberg (SBN 189910)
peliasberg@aclusocal.org
American Civil Liberties Union
Foundation of Southern California
1313 West 8th Street
Los Angeles, CA 90017
Telephone: (213) 977-9500

Laura K. Oswell (SBN 241281)
oswelll@sullcrom.com
Christopher C. Morley (SBN 281895)
morleyc@sullcrom.com
Duncan C. Simpson (SBN 298776)
simpsond@sullcrom.com
Sullivan & Cromwell LLP
1870 Embarcadero Road
Palo Alto, California 94303
Telephone: (650) 461-5600
Facsimile: (650) 461-5700

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

STEPHANIE STIAVETTI, *et al.*, Plaintiffs, v. PAMELA AHLIN, *et al.*, Defendants.	CASE NO.: RG15779731 ASSIGNED FOR ALL PURPOSES TO JUDGE EVELIO GRILLO DEPARTMENT 14 **MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' DEMURRER TO THE COMPLAINT** Date: January 7, 2016 Time: 1:30 P.M. Dept.: 14 Trial Date: None Assigned Action Filed: July 29, 2015

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INTRODUCTION

The state and federal constitutions require that criminal defendants who have been found incompetent to stand trial and committed to state treatment facilities be transferred to those facilities in a timely manner. *See In re Mille*, 182 Cal. App. 4th 635, 650 (2010); *Or. Advocacy Ctr.* v. *Mink*, 322 F.3d 1101, 1119 (9th Cir. 2003); *Craft* v. *Superior Court* 140 Cal. App. 4th 1533, 1542-44 (2006). Plaintiffs' complaint alleges with specificity that criminal defendants who have been determined incompetent to stand trial ("IST defendants" or "incompetent defendants") in California wait up to several months before they are admitted to the Department of State Hospitals ("DSH") or the Department of Developmental Services ("DDS") following their commitment orders, and that these wait times are far in excess of the constitutional limits set by state and federal courts under the due-process and speedy-trial clauses. Plaintiffs bring this taxpayer and mandamus action to vindicate the constitutional rights of hundreds of IST defendants who languish in jail for months waiting to be transferred to Defendants' facilities for evaluation and treatment.

In demurring to these allegations, Defendants resort to a series of meritless procedural objections, all of which may be easily rejected. First, contrary to Defendants' assertions, Plaintiffs have properly alleged standing to bring all of their causes of action. Plaintiffs have sufficiently alleged they are taxpayers and that Defendants' actions are an unconstitutional expenditure of state funds. Defendants' focus on direct injury, or lack thereof, to individual Plaintiffs and their family members is irrelevant, given that Plaintiffs bring this suit as taxpayers and citizens, not as directly injured parties. Additionally, any argument that claims of individual Plaintiffs are time-barred or judicially estopped due to the circumstances underlying Plaintiffs' family members' individual cases or prior lawsuits on behalf of family members, similarly fails, because Plaintiffs request only prospective relief to stop these ongoing constitutional violations.

Second, Plaintiffs have stated claims under the state and federal constitutions. Defendants' argument that Plaintiffs' due-process and speedy-trial claims are precluded by other statutes is inconsistent with California law, as is their claim that IST defendants, who are uncontrovertibly left waiting for months, somehow have adequate means of enforcement to protect their rights through the availability of habeas petitions and orders to show cause. Additionally, Plaintiffs are not required to

bring a federal Section 1983 claim, because, in California, taxpayer and mandamus actions are appropriate vehicles to bring both state and federal constitutional claims. Whether the Directors Ahlin and Rogers, in their official capacities, or the State of California would be properly subject to suit in a federal Section 1983 action is irrelevant, as Plaintiffs are not bringing such action.

Third, Plaintiffs have properly alleged that Defendants' violations of the state and federal constitutions constitute an illegal expenditure of funds, entitling Plaintiffs to relief under Section 526a. Defendants' argument that their discretion over IST placements excuses their failure to admit IST defendants ignores the fact that this suit involves IST defendants who have been committed to Defendants care.

Finally, Defendants' litany of technical arguments are all equally unfounded. Plaintiffs have properly brought an action against Ahlin, Rogers and the State of California, and mandamus is an appropriate remedy because Defendants have a mandatory duty to comply with state and federal constitutions. That they have discretion as to how they will comply with the constitution does not mean they have the discretion to violate the constitution. Nor need any of the Plaintiffs show any individual beneficial right in compelling Defendants' actions, because Plaintiffs have citizen standing to obtain mandamus relief when, as in this case, the object of the suit is to enforce a public duty.

Defendants do not, because they cannot, refute Plaintiffs' central claim, which is that Defendants are violating the constitutional rights of IST defendants. Because their procedural arguments are meritless, the Court should deny Defendants' Demurrer in its entirety.

BACKGROUND

On July 29, 2015, Plaintiffs filed the Verified Petition For Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Complaint" or "Compl."). The Complaint alleges that Defendants systematically violate the due process clauses of the California and United States Constitutions, and violate the speedy trial clause of the California Constitution, by failing to accept in a timely manner transfer of criminal defendants who have been found incompetent to stand trial and committed to Defendants' care by a court under Sections 1370 and 1370.1 of the California Penal Code. (Compl. ¶¶ 55-65.)

Specifically, the Complaint alleges that documents provided by Defendants show that, as of February 2015, "366 incompetent defendants were awaiting admission" to DSH, some for more than five months, one for 258 days. (*Id.* ¶¶ 4, 42.) The average time between commitment and admission for the previous 25 persons admitted was more than 75 days. (*Id.*) Plaintiffs also allege that as of April 2015, there were 52 IST defendants awaiting admission to DDS — 11 of whom had been waiting more than nine months — and that two persons had been waiting for 384 days. (*Id.* ¶¶ 5, 43.) Additionally, the Complaint alleges that "[w]hile awaiting placement in State hospitals or developmental centers, incompetent defendants are held in county jails," which are "rarely, if ever, equipped to treat individuals with serious mental illnesses or to care for individuals with developmental disabilities." (*Id.* ¶ 7.) Plaintiffs allege that this "problem has persisted for years, even after California and federal appellate courts have held that these types of delays are unlawful and countless superior court judges have ordered Defendants to show cause why they should not be held in contempt for failing to admit incompetent defendants to an appropriate treatment facility in a timely manner." (*Id.* ¶ 3.)

The Complaint illustrates the delays and the problems they cause with examples of criminal defendants who were declared incompetent to stand trial and committed to Defendants' care but were not promptly admitted. For example, Plaintiff Leiva's son waited in jail for eight months after the court committed him to DDS because of his developmental disability. (*Id.* ¶ 29-33.) He was raped multiple times during this delay. (*Id.* ¶ 32.) Plaintiff Stiavetti's brother was committed to DSH after a court found him incompetent to stand trial, but was only admitted after his public defender requested, and the court granted, an order to show cause why DSH should not be sanctioned for failing to admit him. (*Id.* ¶ 34-35.) Even with this order, he waited more than a month to be transferred from jail to the state hospital system. (*Id.* at 34; *see also id.* ¶¶ 38-41 (giving example of IST defendant who experienced one-year delay after commitment to DDS); *id.* ¶¶ 50-53 (Rodney Bock and Brett Nye's experiences demonstrating dangers of IST defendants being housed in county jail).)

Plaintiffs assert four causes of action, alleging violations of due process rights under the California Constitution (*id.* ¶¶ 55-58), violations of the California constitutional right to a speedy trial (*id.* ¶¶ 59-62), violations of due process rights under the United States Constitution (*id.* ¶¶ 63-65), and a

taxpayer action under Section 526a of the California Code of Civil Procedure for illegal expenditure of public funds (*id.* ¶¶ 66-67).

On October 1, 2015, Defendants filed the Demurrer.

LEGAL STANDARD

The only issue the court may resolve on a demurrer is whether the complaint, standing alone, states a cause of action under any possible legal theory. *Gervase* v. *Superior Court*, 31 Cal. App. 4th 1218, 1224 (1995). "[T]he complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged." *C.A.* v. *William S. Hart Union High Sch. Dist.* 53 Cal. 4th 861, 872 (2012). "[A]ll material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded." *Rodas* v. *Spiegel*, 87 Cal. App. 4th 513, 517 (2001) (citations omitted).

A demurrer may only challenge an entire cause of action; it cannot be used to challenge some but not all of the theories upon which a cause of action is based. *Ellena* v. *Dep't of Ins.*, 230 Cal. App. 4th 198, 217-18 (2014). No extrinsic evidence may be considered on a demurrer, except matters that are properly the subject of judicial notice.[1] *Bach* v. *McNelis*, 207 Cal. App. 3d 852, 864 (1980).

ARGUMENT

I. PLAINTIFFS ADEQUATELY ALLEGE STANDING TO BRING ALL OF THEIR CAUSES OF ACTION

Because standing is a threshold issue, Plaintiffs address it first. Defendants' Demurrer fundamentally misrepresents the basis for Plaintiffs' Complaint, asserting that "[t]he individual plaintiffs

[1] Defendants have requested that the Court take judicial notice of nine documents that purportedly support their Demurrer. (Defendants' Request for Judicial Notice in Support of Demurrer to Complaint.) As explained in Plaintiffs' Consolidated Opposition to Defendants Request for Judicial Notice, the documents Defendants purport to introduce are not properly subject to judicial notice, nor are they appropriately considered on a demurrer. *Unruh-Haxton* v. *Regents of Univ. of Cal.*, 162 Cal. App. 4th 343, 364 (2008) ("Although the existence of a document may be judicially noticeable, the truth of statements contained in the document and its proper interpretation are not subject to judicial notice if those matters are reasonably disputable.").

bring this complaint on the basis of a relative who was an IST defendant committed to DSH or DDS for competency training." (Dem. at 8.) In fact, as has been common practice in California for over a century, Plaintiffs bring this civil-rights lawsuit as a taxpayer action under Code of Civil Procedure Section 526a. Defendants challenge Plaintiffs' standing to bring a taxpayer cause of action, to bring constitutional claims, and to seek a writ of mandamus. But Plaintiffs allege that they are California taxpayers and that Defendants' unconstitutional actions constitute an unlawful expenditure of state funds. (Compl. ¶¶ 12-15, 55-67.) Plaintiffs also have citizen standing to obtain mandamus relief as they seek to enforce a public duty. Plaintiffs therefore adequately allege standing to bring all of their causes of action and Defendants' Demurrer on these grounds should be denied. *Gervase*, 31 Cal. App. 4th at 1224; *Rodas*, 87 Cal. App. 4th at 517.

A. Plaintiffs Adequately Allege Taxpayer Standing Under California Code of Civil Procedure Section 526a

In their fourth cause of action, Plaintiffs allege that all Defendants are "illegally expending public funds by performing their duties in violation of the constitutional provisions described above," citing Code of Civil Procedure Section 526a. This statute gives taxpayers standing to sue state and local government officials in state court for injunctive, declaratory, and mandamus relief to prevent them from violating the law. *See Van Atta* v. *Scott*, 27 Cal. 3d 424, 447 (1980). Thus, this cause of action asks the Court to put a stop to the due-process and speedy-trial constitutional violations identified in the first three causes of action.

The primary purpose of Section 526a "is to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirement." *Blair* v. *Pitchess*, 5 Cal. 3d 258, 267-68 (1971) (internal quotation marks, citation omitted). California courts "have consistently construed section 526a liberally to achieve this remedial purpose." *Id.* at 268. In particular, "[a]lthough by its terms [§ 526a] applies to local governments, it has been judicially extended to all state and local agencies and officials." *Vasquez* v. *State of California*, 105 Cal. App. 4th 849, 854 (2003) (citations omitted); *see Farley* v. *Cory*, 78 Cal. App. 3d 583, 589 (1978) ("In California . . . a state taxpayer has standing to maintain an injunction suit against a state official to prevent illegal expenditures of state money."); *Blair* v. *Pitchess*, 5 Cal. 3d at

268 (taxpayer suits under Section 526a may be brought against the state); *Serrano* v. *Priest*, 5 Cal. 3d 584, 618 n. 38 (1971)(same).

a. Individual Plaintiffs Sufficiently Allege They Are Taxpayers Under Section 526a

Defendants argue that the individual Plaintiffs' "alleged payment of 'income and other state and local taxes' is vague as to their payment of assessed (property) taxes imposed by the State of California." (Dem. at 19.) But courts regularly have held that allegations similar to Plaintiffs Stiavetti, Bock, and Randle's allegations that they "pay[] income and other state and local taxes" (Compl. ¶¶ 12-14) are sufficient to create taxpayer standing. *See Cal. Ass'n for Safety Educ.* v. *Brown*, 30 Cal. App. 4th 1264, 1268 n.1 (1994) (taxpayer plaintiff is "assessed for and is liable to pay state sales tax, income taxes, gasoline taxes, penalty assessments," and "has paid state sales tax, income and gasoline taxes"); *see also Tobe* v. *City of Santa Ana*, 9 Cal. 4th 1069, 1081, 1086 (1995) (taxpayers had standing to challenge future expenditures of city funds); *Arrieta* v. *Mahon*, 31 Cal. 3d 381, 387 (1982) (taxpayer, a residential tenant, satisfied requirements of Section 526a); *Harman* v. *City & County of San Francisco*, 7 Cal. 3d 150, 159 (1972) (when plaintiff's standing was at issue, upholding standing simply by identifying plaintiff as a municipal taxpayer and without identifying the precise tax paid).

Moreover, Plaintiffs need not allege that they pay California property taxes, because it is sufficient to allege that they pay California income taxes, which are assessed by, and paid to, the state. *See* Cal. Rev. & Tax. Code §§ 17041, 17041.5, 19032; *Mudd* v. *McColgan*, 30 Cal. 2d 463, 464-65 (1947). Income taxes are the current "substitute for the ad valorem tax formerly imposed" by the state that Defendants agree would support taxpayer standing. *Weber* v. *Santa Barbara County*, 15 Cal. 2d 82, 85 (1940). The cases Defendants cite for the proposition that Plaintiffs must allege payment of taxes on property in particular (Dem. at 18), hold nothing of the sort. Instead, these cases hold only that individuals who have merely purchased goods in a county do not thereby have taxpayer standing to sue that city or county because "a sales tax is a levy imposed on the retailer, not the consumer." *Torres* v. *City of Yorba Linda*, 13 Cal. App. 4th 1035, 1047 (1993); *accord Reynolds* v. *City of Calistoga*, 223 Cal. App. 4th 865, 872 (2014) (plaintiff's "payment of sales tax, as a consumer buying retail products in Napa County," was insufficient to establish standing to bring suit against locality, "because sales tax is

imposed on the retailer, not the consumer"); *Cornelius* v. *Los Angeles Cnty. Metro. Transp. Auth.*, 49 Cal. App. 4th 1761, 1777-78 (1996).[2] In contrast, a plaintiff who actually pays sales taxes does have standing under Section 526a. *Santa Barbara Cnty. Coal. Against Auto. Subsidies* v. *Santa Barbara Cnty. Ass'n of Gov'ts*, 167 Cal. App. 4th 1229, 1236 (2008) (nonprofit organization that paid county sales tax on its sales of T-shirts had taxpayer standing to sue county). Thus, it is the payment of taxes to the Defendant that confers taxpayer standing, which Plaintiffs here sufficiently allege. (Compl. ¶¶ 12-15.)

Lastly, even if it were true that a plaintiff need pay local property taxes to challenge *local* government action, the same is not true for a suit against the state and state agencies. *Cornelius* denied taxpayer standing because "[s]tate income taxes constitute[d] only a *partial and indirect* source of funding for the" local agency so that plaintiff's payment of state income taxes created only a "tangential relationship between the taxes paid and the policy being contested." 49 Cal. App. 4th at 1778. Here, Plaintiffs challenge practices of the state and state agencies, which are funded entirely by the state's general fund, which is funded in large part by state income tax. *Cornelius* simply does not apply in suits against the state. *Connerly* v. *State Pers. Bd.*, 92 Cal. App. 4th 16, 30, 31 (2001) (dismissing as inapposite the ruling in *Cornelius* in upholding taxpayer standing in suit against state). None of the cases cited by Defendants involves suits against the state or state agencies. *See Blair*, 5 Cal. 3d at 265 (taxpayer suit against county and sheriffs); *Reynolds*, 223 Cal. App. 4th at 867-68 (taxpayer suit against City of Calistoga and a Napa County agency); *Torres*, 13 Cal. App. 4th at 1039 (taxpayer suit against City of Yorba Linda); *Cornelius*, 49 Cal. App. 4th at 1764 (taxpayer suit against Los Angeles County Metropolitan Transportation Authority); *County of Fresno* v. *Shelton*, 66 Cal. App. 4th 996, 1000 (taxpayer suit against County of Fresno). The Complaint therefore adequately pleads that the individual Plaintiffs pay California taxes.

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[2] Nor does *Blair* add to Defendants' argument (Dem. at 18), as that opinion suggested only that payment of property taxes was sufficient to state taxpayer standing, not that it was a necessary. 5 Cal. 3d at 269, n.2 (stating that plaintiffs in that case had provided affidavits showing they were assessed and paid a real property tax to the county they were suing).

b. The Organizational Plaintiffs Have Taxpayer Standing Because Their Members Pay Taxes

Defendants argue that Plaintiffs' allegations that the ACLU-NC's and ACLU-SC's "members are assessed and pay California taxes every year" (Compl. ¶ 15) "do[] not indicate that at least one member qualifies as a taxpayer by paying assessed (property) taxes" (Dem. at 20).[3] As Defendants recognize, organizational Plaintiffs ACLU-NC and ACLU-SC have standing if any of their members has standing to bring a taxpayer case, whether or not the organization itself pays taxes of any type. (Dem. at 20); *Taxpayers for Accountable Sch. Bond Spending* v. *San Diego Unified Sch. Dist.*, 215 Cal. App. 4th 1013, 1032 (2013); *accord Gilbane Bldg. Co.* v. *Superior Court*, 223 Cal. App. 4th 1527, 1531 (2014) ("[A] representative organization or association may have [taxpayer] standing to bring an action if its members would have had [taxpayer] standing to bring that action as individuals."). Defendants' argument that the organizational Plaintiffs must allege the payment of property taxes fails for the same reasons noted above — property taxes are not required to have standing under Section 526a. (S*upra* Section I.A.a.) Plaintiffs' allegation that many of the ACLU-NC's and ACLU-SC's "members are assessed and pay California taxes each year" therefore gives them standing. (Compl. ¶ 15.) On a demurrer, Defendants are deemed to have admitted that at least some of the ACLU-NC's 40,000 members or the ACLU-SC's 25,000 members pay California income and property taxes. (*Id.*) *See Rodas*, 87 Cal. App. 4th at 517 ("[A]ll material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded." (citations omitted)). The ACLU-NC and ACLU-SC adequately allege taxpayer status.

[3] After reviewing Defendants' Demurrer, Plaintiffs discovered that although the ACLU-NC pays personal property taxes relating to property located in its office space in Sacramento County, the ACLU-NC has filed for exemptions based on its tax-exempt status and received partial refunds. Plaintiffs have also discovered that the ACLU-SC does not itself pay California taxes. Plaintiffs therefore withdraw their allegation that the ACLU-NC and ACLU-SC directly pay state and local taxes. However, none of this changes the fact that the ACLU-NC and ACLU-SC have standing due to their taxpaying members.

c. Defendants' Focus on Direct Injury to Plaintiffs and Their Family Members is Irrelevant Given Plaintiffs' Status as California Taxpayers and Citizens and the Nature of Taxpayer and Citizen Suits

Defendants argue that Plaintiffs Nancy Leiva, Kellie Bock, and Kimberly Bock's claims are untimely, and that Plaintiffs Kellie and Kimberly Bock are estopped from bringing this suit because they previously brought a wrongful death action on behalf of their father. (Dem. at 24, 26.) Contrary to Defendants' characterization, none of these Plaintiffs brings their legal claims on the basis of any legal injury suffered by their relatives; the allegations about those relatives simply illustrate the ongoing delays and the problems they cause. Instead, Plaintiffs bring this action as taxpayers and citizens of the State of California asking for equitable relief to stop ongoing government conduct. Therefore, any statute of limitations that would be relevant to a suit brought on the basis of an individual personal injury is irrelevant. (Dem. at 25); s*ee generally Howard Jarvis Taxpayers Ass'n* v. *City of La Habra*, 25 Cal. 4th 809, 821-22 (2001) (request for mandamus relief is timely if plaintiff alleges an "ongoing violation").

Nor are the Bock sisters prevented from bringing a taxpayer action simply because they previously brought a wrongful death action against the parties responsible for their father's tragic death. Mr. Bock's experience in county jail shows the horrors of confining IST defendants in that system for any length of time. But his short stay there is no bar to his daughters' efforts to prevent Defendants from causing other IST defendants to experience more lengthy delays. Plaintiffs adequately have alleged that Kimberly and Kellie Bock "pay income and other state and local taxes" (Compl. ¶ 13), which is all that is required to establish taxpayer standing under Code of Civil Procedure Section 526a. *Santa Barbara County Coalition*, 167 Cal. App. 4th at 1236. Defendants have pointed to no exception to Code of Civil Procedure Section 526a that would preclude a plaintiff from bringing a cause of action under that Section solely because they may be able to assert some other claim in another case on another set of specific facts. (Dem. at 25-27.) Plaintiffs therefore have standing to bring their taxpayer action under Section 526a, and Defendants' Demurrer on this ground should be denied.

B. Plaintiffs Adequately Allege Standing to Bring Their Constitutional Causes of Action

Defendants argue that Plaintiffs lack standing to bring challenges "regarding the right to due process and the right to a speedy trial," because no Plaintiff has shown that he or she "'has or will suffer particularized injury as a result of the enforcement' of the challenged law." (Dem. at 8-9.)

However, Plaintiffs bring this suit as taxpayers and citizens, not as parties who are directly affected by Defendants' unconstitutional conduct. (*See supra*, section I.A.c.) Courts have long made clear that "under section 526a no showing of special damage to the particular taxpayer is necessary." *White* v. *Davis*, 13 Cal. 3d 757, 764 (1975) (internal quotations and alterations omitted). Similarly, "[c]itizen suits may be brought without the necessity of showing a legal or special interest in the result where the issue is one of public right and the object is to procure the enforcement of a public duty." *Connerly* v. *State Pers. Bd.*, 92 Cal. App. 4th 16, 29 (2001); *see Save the Plastic Bag Coal.* v. *City of Manhattan Beach*, 52 Cal. 4th 155, 166 (2011). Plaintiffs therefore meet the standing requirements to bring their constitutional cause of action, and Defendants' Demurrer on this ground should be denied.

C. Plaintiffs Adequately Allege Taxpayer and Citizen Standing To Seek a Writ of Mandate

Plaintiffs have also adequately pleaded standing to seek a writ of mandate. Plaintiffs may assert causes of action directly under the constitution in their petition for a writ of mandate, and it is proper to join a petition for a writ of mandate with a complaint for injunctive and declaratory relief. *Bullock* v. *City and County of San Francisco*, 221 Cal. App. 3d 1072, 1086 (1990) (holding that it "was clearly permissible" that "plaintiff's mandamus claim had been joined in plaintiff's first amended complaint with causes of action for declaratory and injunctive relief"). Additionally, in suits against public entities, mandate is proper regardless of whether declaratory and injunctive relief are also available. *See Timmons* v. *McMahon,* 235 Cal. App. 3d 512, 518 (1991) ("when relief is sought against a public entity, the availability of declaratory or injunctive relief does not necessarily defeat an action in mandate"). Plaintiffs may seek a writ of mandate to enforce their taxpayer cause of action. *Van Atta* v. *Scott*, 27 Cal. 3d 424, 449-50 (1980) (taxpayers may seek mandamus relief under Section 526a). Apart from their taxpayer standing (*supra*, Section I.A), all of the Plaintiffs additionally have standing as citizens to petition for a writ of mandate. *See Save the Plastic Bag Coal.*, 52 Cal. 4th at 166; *Common Cause* v. *Bd. of Supervisors*, 49 Cal. 3d 432, 439-40 (1989) (nonprofit voting rights organizations had standing to seek writ of mandate compelling county to carry out state law voter outreach obligations); *Connerly* v. *State Pers. Bd.*, 92 Cal. App. 4th 16, 29 (2001) (citing *Common Cause*, 49 Cal. 3d at 439). Plaintiffs therefore adequately allege standing to seek a writ of mandate under both theories. *Connerly*,

92 Cal. App. 4th at 29 ("Where standing appears under either rule, the action may proceed regardless of the label applied by the plaintiff.") (citing *Common Cause*, 49 Cal. 3d at 439).

II. PLAINTIFFS PROPERLY ALLEGE CONSTITUTIONAL VIOLATIONS OF THE STATE AND FEDERAL RIGHT TO DUE PROCESS AND THE STATE RIGHT TO A SPEEDY TRIAL

Defendants argue that Plaintiffs "fail to state facts sufficient to constitute a cause of action" under the California and United States Constitutions. (Dem. at 2.) But Plaintiffs allege facts concerning Defendants' systematic delays in admitting IST defendants that multiple California Courts of Appeal have held to be constitutional violations. Defendants further argue, against well-established California law, that Plaintiffs' due process claim under the California Constitution is "foreclose[d]" by the availability of habeas corpus and order to show cause proceedings to individual incompetent defendants. (*Id.* at 1.) Defendants rely on *federal law* to argue that Plaintiffs may not bring an action directly under the 14th Amendment of the United States Constitution, all the while ignoring *California* law that allows precisely such an action. Lastly, Defendants ask this Court to impermissibly extend a limited ruling related to animal cruelty laws to Plaintiffs' constitutional speedy trial claims. None of these arguments is sufficient to stifle Plaintiffs' constitutional causes of action, which rest on well-established California and federal law. Because Plaintiffs bring constitutional causes of action that have been repeatedly upheld by Courts of Appeal across the state, Defendants' Demurrer on these grounds should be denied.

A. Plaintiffs Adequately Allege That Defendants' Actions Violate the State and Federal Constitutional Right to Due Process

Plaintiffs allege that as of February 2015, "366 incompetent defendants were awaiting admission" to DSH, some for over five months, one for 258 days. (Compl. ¶¶ 4, 42.) The average time between commitment and admission for the previous 25 persons admitted was more than 75 days. (*Id.*) Plaintiffs also allege that as of April 2015, there were 52 IST defendants awaiting admission to DDS — 11 of whom had been waiting more than nine months — and that two persons had been waiting for 384 days. (*Id.* ¶¶ 5, 43.) These delays are well over the constitutional limits indicated by multiple California and federal courts and are therefore sufficient to state due-process violations under the state and federal constitutions.

The United States Supreme Court has held, under the Due Process Clause of the 14th Amendment, "that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." *Jackson* v. *Indiana*, 406 U.S. 715, 738 (1972). Similarly, the California Supreme Court has held that our state constitution's due process clause "demands that the duration of commitments to state hospitals must bear some reasonable relation to the purpose which originally justified the commitment." *In re Davis*, 8 Cal. 3d 798, 805 (1973).

The Court of Appeal has held that these "[c]onstitutional principles prohibit [an IST] defendant from being held 'more than the reasonable' period of time necessary to determine whether there is a substantial probability that he will attain that capacity [to stand trial] in the foreseeable future," and that "[t]herefore, when the court orders a defendant committed to a state mental hospital for treatment that will promote a defendant's 'speedy restoration to mental competence' . . . the court must also ensure that the defendant is actually transferred to the state hospital within a reasonable period of time." *In re Mille*, 182 Cal. App. 4th 635, 650 (2010) (citing *Jackson*, 406 U.S. at 738 and *Davis*, 8 Cal. 3d at 801). More specifically, the *Mille* court held that the Superior Court had erred in failing to order that Mille be transferred to the state hospital when the delay was first brought to its attention, "30 days after the commitment order" and that "instead of denying Mille's initial petition for writ of habeas corpus . . . the trial court should have ordered the sheriff to deliver Mille promptly to Patton [State Hospital] for evaluation and treatment." *Id.* at 639; *see id.* at 649 (Superior Court erred in denying habeas petition 49 days after commitment order, and Court of Appeal also erred in denying petition before being ordered to grant order to show cause by Supreme Court).[4]

[4] The Court of Appeal had initially denied Mille's petition, but the California Supreme Court granted review and directed the lower court to issue the following order: "The Director of the Department of Mental Health is to be ordered to show cause, when the matter is placed on calendar, why petitioner's prolonged detention in the Los Angeles County Jail after the superior court ordered his commitment to Patton State Hospital did not deny him due process of law." *Mille*, 182 Cal. App. 4th at 641.

The Third Appellate District has recently affirmed that it "remains firm in the stance that the Legislature and due process require delivery of [IST] committees, within a reasonable time frame as noted in *In re Mille*." *People* v. *Brewer*, 235 Cal. App. 4th 122, 135 (2015) (citations omitted). *Brewer* involved a Superior Court's standing order that every IST defendant in Sacramento be transferred to the state hospital within 14 days. *Id.* at 134-35. Although the Court of Appeal remanded the case for the superior court to determine whether a 14-day limit was appropriate in light of recent changes to the statute, it specifically noted that this type of order "fulfills the mandate of *Mille* that the trial court 'ensure that the defendant is actually transferred to the state hospital within a reasonable period of time.'" *Id.* at 139 (citing *Mille*, 182 Cal. App. 4th at 650); *see also In re Williams*, 228 Cal. App. 4th 989, 1014 (2014) (two-year delay in admitting developmentally disabled IST defendant to DDS violated due process).

Federal courts have also issued injunctions requiring state hospitals to admit IST defendants within reasonable and specific time frames. The leading case is *Oregon Advocacy Center* v. *Mink*, 322 F.3d 1101 (9th Cir. 2003). In *Mink*, the court upheld an injunction requiring transportation to the state hospital within seven days of the order of commitment. *See id.* at 1122-23 ("[Oregon State Hospital's] significant, ongoing violations of substantive and procedural due process are sufficient to support the district court's injunction," and upholding "the district court's injunction requiring OSH to admit mentally incapacitated criminal defendants within seven days of a judicial finding of incapacitation"). Several federal district courts have similarly concluded that these delays violate due process. *See Trueblood* v. *Wash. State Dep't of Soc. & Health Servs.*, No. C14-1178 MJP, 2015 WL 1526548, at *13 (W.D. Wash. Apr. 2, 2015) (holding that "[i]ncarcerating Plaintiffs and class members for more than seven days while they wait for Defendants to provide competency services, without an individualized determination by a court of good cause to continue incarcerating that person, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution"); *Advocacy Ctr. for Elderly & Disabled* v. *La. Dep't of Health & Hosps.*, 731 F. Supp. 2d 603, 627 (E.D. La. 2010) (ordering transfer of IST defendants within 21 days); *Terry ex rel. Terry* v. *Hill*, 232 F. Supp. 2d 934, 944-45 (E.D. Ark. 2002) (holding that "Plaintiffs' Constitutional rights to due process have been

violated" by the state's delay in transferring IST defendants to state hospital following commitment order).

Given that the delays alleged in the Complaint are well in excess of the constitutional limits indicated by these decisions, Plaintiffs have sufficiently alleged Defendants' persistent violations of the constitutional right to due process under both the United States and California Constitutions.

a. Plaintiffs' Due Process Cause of Action Under the California Constitution is Not Precluded by Penal Code Enforcement Avenues

Defendants argue that Plaintiffs' due-process claims under the California Constitution must be dismissed because IST defendants may obtain relief *after* their constitutional rights have been violated, through a habeas petition or through order to show cause proceedings in the trial court. (Dem. at 9-10.) The possibility of post-deprivation relief to IST defendants does not, however, permit Defendants to persist in a systematic violation of due-process rights. Defendants' claim that IST defendants must have their constitutional rights violated before they can obtain any relief is wrong for two reasons.[5] First, the right at issue here is one of substantive as well as procedural due process. *See Mink*, 322 F.3d at 1121-22 ("We conclude that [Oregon State Hospital] violates the substantive due process rights of incapacitated criminal defendants when it refuses to admit them in a timely manner."). Thus, that individual IST defendants may have access to habeas corpus *procedures* is irrelevant to the question of whether the state hospital is violating their substantive rights by failing to admit them for months after a judge commits them.

Second, California courts have routinely allowed "mandamus *or* habeas corpus [to be] utilized to correct prior conditions or to declare the rights of unnamed and future petitioners by decisions designed to affect the prospective administration of the criminal justice system." *In re Brindle*, 91 Cal. App. 3d 660, 670 (1979) (emphasis added). And, our Supreme Court has specifically held that

[5] Defendants cite several cases for general propositions like "[d]ue process is a 'flexible concept'" (Dem. at 9-10 (citing *Ryan* v. *Cal. Interscholastic Federation-San Diego Section*, 94 Cal. App. 4th 1048, 1072 (2001))), and "[t]he habeas writ provides due process to review the 'lawfulness of a person's imprisonment or other restraint on . . . liberty'" (Dem. at 10 (citing *In re Paul W.*, 151 Cal. App. 4th 37, 53 (2001))). But none of these cases supports their argument that the availability of habeas corpus petitions and order to show cause proceedings forecloses Plaintiffs' due process cause of action.

taxpayers may sue to correct due-process violations in the criminal justice system, regardless of whether individual criminal defendants could request relief. *See Van Atta* v. *Scott*, 27 Cal. 3d 424, 447-49 (1980) (taxpayer suit challenging pretrial release procedure as violating due process) (discussed in Section [X], *infra*). The facts of this case show why such cases are allowed—the Complaint alleges that Defendants systematically violate IST defendants' due-process rights, and that the:

> problem has persisted for years, even after California and federal appellate courts have held that these types of delays are unlawful and countless superior court judges have ordered Defendants to show cause why they should not be held in contempt for failing to admit incompetent defendants to an appropriate treatment facility in a timely manner.

(Compl. ¶¶ 3, 57.) The availability of post-deprivation relief in individual cases is irrelevant to Plaintiffs' due-process claims, and Defendants' Demurrer on this ground should therefore be denied.

Defendants further argue that "Plaintiffs Stiavetti and Bock cannot state a due process violation" because their family members were admitted to Defendants' facilities "within a constitutionally adequate timeframe." (Dem. at 10.) This argument again misconstrues Plaintiffs' claims. The experiences of Plaintiffs' IST-defendant family members provide examples of the harm suffered by all IST defendants. But, like those of the other Plaintiffs to this action, Plaintiffs Stiavetti and Bock's claims are based on Defendants' statewide and continuing unlawful expenditure of public funds, not specifically on the circumstances of their family members' pre-admission delays.

b. Plaintiffs are Not Foreclosed From Alleging Direct Violations of the Fourteenth Amendment

Defendants further argue that a "litigant complaining of a violation of a constitutional right" may not "assert a cause of action directly under the Fourteenth Amendment," but rather "must seek relief under 42 U.S.C. section 1983." (Dem. at 14.) Although this contention may be true in federal court,[6] "state courts need not impose the same . . . remedial requirements that govern federal court proceedings" under Section 1983. *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 113 (1983). And, in

[6] The only authority Defendants cite for this proposition is a cursory federal court order, in which the Ninth Circuit held that the plaintiff in that federal court case had no cause of action for damages directly under the United States Constitution and must utilize 42 U.S.C. § 1983. (Dem. at 14 (citing *Azul-Pacifico, Inc.* v. *City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992).)

California courts, "mandate proceedings may be utilized to enforce [federal] constitutional rights." *San Dieguito Union High Sch. Dist.* v. *Rosander*, 171 Cal. App. 3d 968, 973 (1985); *see Wenke* v. *Hitchcock*, 6 Cal. 3d 746, 751 (1972) ("Mandamus is also appropriate for challenging the constitutionality or validity of statutes or official acts."). Mandamus is available to enforce federal rights regardless of whether a Section 1983 suit would lie. *See, e.g.*, *Mission Hosp. Reg'l Med. Ctr.* v. *Shewry*, 168 Cal. App. 4th 460, 479-80 (2008). Defendants' argument that Plaintiffs have not properly pleaded a Section 1983 action is therefore meritless.

Furthermore, since Plaintiffs have not alleged a cause of action under Section 1983, Defendants' arguments that "plaintiffs cannot assert Ahlin and Rogers are proper defendants in the Section 1983 claim" (Dem. at 16), and that they "are entitled to qualified immunity to the Section 1983 claim" (*id.*) are irrelevant, as is their argument that "plaintiffs cannot plead a viable Section 1983 claim against the State of California" (*id.* at 23).

B. Plaintiffs Adequately Allege That Defendants' Actions Violate the State Constitutional Right to a Speedy Trial

Defendants demur to Plaintiffs' second cause of action for violation of the right to a speedy trial under the California Constitution on the grounds that "[t]he question of whether the IST process in Penal Code Section 1368 et seq. impinges on the state constitutional right to a speedy trial has been repeatedly answered in the negative," and the Complaint "lacks necessary facts concerning any IST defendant's timely assertion of their right to a speedy trial." (*Id.* at 13-14.) But Plaintiffs' Complaint again follows well-established case law in alleging rampant speedy trial violations. Defendants' Demurrer on this ground should be denied.

a. <u>Defendants' Continued Delays in Admitting IST Defendants Violate the State Constitutional Right to a Speedy Trial</u>

Defendants claim that Plaintiffs have failed to adequately allege speedy-trial violations under the California Constitution because "it is 'well established' that ongoing criminal prosecution of an incompetent defendant violates the Due Process Clause of the Fourteenth Amendment." (*Id.* at 12.) Plaintiffs agree that "IST defendants have a right, under the federal due process clause and under state law, not to be tried while they are incompetent" (*id.*), but Defendants argue that IST defendants lose all

speedy trial rights once criminal proceedings are suspended (*id.*). To the contrary, IST defendants have a right to a speedy trial under the California Constitution that protects them even when proceedings are suspended. The Court of Appeals explicitly has held that:

> Because commitment and treatment are the intertwined rationales for suspending criminal proceedings against a mentally incompetent defendant . . . it follows that where there is no commitment and no treatment, *the time an incompetent defendant spends in jail is unnecessary and implicates not only due process, but also counts towards a finding of prolonged incarceration under the state constitutional speedy trial guarantee.*

Craft v. *Superior Court* 140 Cal. App. 4th at 1545 (emphasis added).

In reaching this conclusion, the *Craft* court employed the usual balancing test to determine whether a delay violates a criminal defendant's right to a speedy trial under the California Constitution, under which "prejudice to the defendant resulting from the delay must be weighed against justification for the delay." *Id.* at 1540 (quoting *Scherling* v. *Superior Court*, 22 Cal. 3d 493, 505 (1978). The court used the Penal Code's 60-day statutory speedy-trial right as a benchmark to measure whether a delay was unreasonable. *Id.* at 1544. Defendants' argument that "delays in criminal proceedings due to competency and other mental health proceedings are justified" is irrelevant. (Dem. at 13.) Although the time spent evaluating and treating IST defendants may be justified, the time spent languishing in jail without evaluation or treatment clearly is not. *Craft*, 140 Cal. App. 4th at 1544-45.

Defendants further argue that IST defendants are not prejudiced when they remain in jail as a result of Defendants' delays because, in *Craft*, "the appellate court stated that 'delay alone, even delay that is "uncommonly long," is not enough to demonstrate prejudice' sufficient to implicate the right to a speedy trial." (Dem. at 13 (citing 140 Cal. App. 4th at 1542.) Defendants misrepresent the Court of Appeal's opinion in *Craft*, in which the Court held that:

> While it is true that delay alone, even delay that is 'uncommonly long,' is not enough to demonstrate prejudice, Craft showed prejudice in two ways that went beyond merely pointing to the 17 months between his court appearances. First, he spent those 17 months in jail. Second, those 17 months of incarceration were unaccompanied by the course of treatment that served as the basis for the trial court's suspension of proceedings.

140 Cal. App. 4th at 1542-43 (internal citation omitted).[7]

When it is not misleadingly edited, the opinion in *Craft* is entirely consistent with Plaintiffs' speedy-trial claim. Plaintiffs here allege that "[w]hile awaiting placement in State hospitals or developmental centers, incompetent defendants *are held in county jails. Those jails are rarely, if ever, equipped to treat individuals* with serious mental illnesses or to care for individuals with developmental disabilities." (Compl. ¶ 7 (emphasis added).) The Complaint therefore alleges exactly the sources of prejudice which the court in *Craft* held were sufficient to allege a speedy-trial violation: delay while the IST defendant is confined in jail, and delay unaccompanied by the treatment that serves as the basis for the trial court's suspension of proceedings. Thus, even assuming the Plaintiffs are required to show prejudice, they have done so.[8] Taking Plaintiffs' well-pleaded allegations as true, Plaintiffs adequately have alleged that Defendants' delays in admitting IST defendants violate their state constitutional right to a speedy trial. Defendants' Demurrer on this ground therefore should be denied.

b. Plaintiffs' Allegation that Defendants' Actions Violate the California Constitutional Right to a Speedy Trial is Not Precluded by the Penal Code

Defendants rely on the Court of Appeal's limited holding in *Animal Legal Defense Fund* v. *Mendes* that the "broad and somewhat unusual scheme for enforcement in the criminal system of laws for the protection of animals, including direct participation of both concerned residents and registered humane officers demonstrates a legislative intent that these laws not be enforceable through a private

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[7] None of the cases Defendants cite is to the contrary. In *People* v. *McGill*, the court simply held that "[a] delay caused by a proceeding to determine a defendant's present sanity provides good cause." 257 Cal. App. 2d 759, 761 (1968). And, in *In re Davis*, the California Supreme Court held "that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed to trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain that capacity in the foreseeable future." 8 Cal. 3d 798, 804 (1973).

[8] Our Supreme Court has indicated that, under the California Constitution's speedy-trial clause, only Defendants who are requesting post-trial relief need show prejudice, and that "a defendant seeking pretrial relief for a speedy trial violation is not required to make an affirmative showing of prejudice." *People* v. *Lomax*, 49 Cal. 4th 530, 557 (2010) (citation omitted). In addition, even if a defendant must show prejudice to obtain dismissal of his case, that does not mean that a suit seeking systematic reform must also show prejudice. *See Luckey* v. *Harris*, 860 F.2d 1012, 1017 (11th Cir. 1988) ("Whether an accused has been prejudiced by the denial of a right is an issue that relates to relief—whether the defendant is entitled to have his or her conviction overturned—rather than to the question of whether such a right exists and can be protected prospectively.").

right of action in civil court," and urge the Court to "extend the legislative analysis . . . and find the overall Penal Code scheme for ensuring a criminal defendant's constitutional right to a speedy trial does not indicate any private cause of action." (2008) 160 Cal. App. 4th 136, 144; (Dem. at 11). Defendants' argument is not well-founded, because there is no reason to think that the Legislature has intended to prohibit taxpayer suit to enforce constitutional rights. Moreover, none of the "enforcement mechanisms," cited by Defendants—moving for dismissal, filing a peremptory writ of mandate, or filing a habeas petition—is remotely similar to the extensive statutory scheme for private enforcement by interested parties which underlay the decision in *Mendes*. (Dem. at 12.)

Because Plaintiffs' Complaint is entirely consistent with the general and established rule that taxpayer plaintiffs may bring a cause of action to challenge the unlawful expenditure of public funds in violation of the state and federal constitutions, even when individual relief is available to incarcerated defendants, Defendants' Demurrer on this ground should be denied. *See Van Atta*, 27 Cal. 3d at 447-48; *see also Gervase*, 31 Cal. App. 4th at 1224; *Rodas*, 87 Cal. App. 4th at 517.

c. Defendants' Reliance on the Requirements of Statutory Speedy Trial Claims is Misplaced

Defendants' final argument, that the Complaint fails to state a speedy-trial cause of action under the California Constitution because, to state a *statutory* speedy-trial cause of action, a criminal defendant "must timely object to any pertinent delay and follow the objection with a motion to dismiss the criminal charges," and the Complaint "lacks necessary facts concerning any IST defendant's timely assertion of their right to a speedy trial in the criminal court," also fails. (Dem. at 13-14 (citing *People* v. *Wright* 52 Cal. 3d 367, 389 (1990)).) "[T]he state constitutional speedy trial right is self-executing and broader than its statutory implementation" and "a defendant may claim a violation of the state Constitution's speedy trial right based on delay not covered by any statutory speedy trial provision." *People* v. *Martinez*, 22 Cal. 4th 750, 766 (2000). Furthermore, as discussed below, Plaintiffs do not purport to raise the speedy-trial rights of individual IST defendants; they instead have brought a taxpayer action seeking to stop the state from violating the state and federal Constitutions. Because the Complaint adequately alleges a cause of action under the California Constitution, Defendants' Demurrer on this ground should be denied.

III. PLAINTIFFS ADEQUATELY STATE FACTS SUFFICIENT TO BRING A TAXPAYER CAUSE OF ACTION UNDER SECTION 526A

Beyond arguing that Plaintiffs lack standing as taxpayers to bring a cause of action under Section 526a, Defendants argue that Plaintiffs fail adequately to allege the substantive elements of a taxpayer cause of action. Defendants first argue that "[a] Section 526a claim cannot be stated where other enforcement mechanisms are available." (Dem. at 17.) But California courts have repeatedly held that the kind of systematic relief Plaintiffs seek is appropriate under Section 526a. Second, Defendants argue that Plaintiffs "failed to allege specific facts of illegal spending." (Dem. at 20.) Not so. Plaintiffs alleged throughout their Complaint that Defendants—which are funded by California taxpayers—have engaged in systematic constitutional violations. (Compl. ¶¶ 4-5, 42-43, 54, 57-58, 61-62, 65.) Third, Defendants argue that Plaintiffs may not bring a taxpayer claim that would interfere with "defendants' statutory discretion[] over admissions of IST defendants." (Dem. at 21.) But Defendants' statutory discretion is subordinate to their constitutional duty, which is not discretionary. *See Kilgore* v. *Younger*, 30 Cal. 3d 770, 790 (1982) ("The public has an overriding interest in the effective functioning of its government. However, it invests no discretion in its officials to violate the law.") Plaintiffs therefore adequately allege facts sufficient to bring their taxpayer cause of action, and Defendants' Demurrer on these grounds should be denied. *Gervase*, 31 Cal. App. 4th at 1224; *Rodas*, 87 Cal. App. 4th at 517.

A. Section 526a Relief is Available Independent of Any Other Alleged Avenues of Relief

Defendants' argument that the taxpayer action is "precluded" by the availability of "penal code enforcement avenues" is meritless. (Dem. at 17.) As an initial matter, Plaintiffs bring a constitutional challenge to a systemic problem of admission delays for IST defendants. The fact that individual IST defendants may petition their unlawful detention on a case-by-case basis does not provide the broad injunctive relief necessary to remedy Defendants' systemic constitutional violations. *Van Atta* v. *Scott*, 27 Cal. 3d 424, 447 (1980). As our Supreme Court observed in upholding the right of taxpayers to sue to challenge the state's pretrial detention procedures, even though individual defendants could have raised that same challenge on a case-by-case basis, "Numerous decisions have affirmed a taxpayer's standing to sue despite the existence of potential plaintiffs who might also have had standing to challenge the subject actions or statutes." *Id.* at 447-48. In any event, Defendants' unconstitutional

practices persist, even though individual IST defendants continue to attempt to avail themselves of the above-cited avenues of relief, and despite all the orders to show cause that judges have issued in individual IST cases. It is precisely because individual avenues of relief have not been successful in remedying constitutional violations that a taxpayer suit is necessary.

Furthermore, Defendants' argument that Plaintiffs' taxpayer claims are precluded because "[t]he appropriate tribunal for the enforcement of the criminal law is the court in an appropriate criminal proceeding" does not apply to this case. (Dem. at 18 (citing *Nathan H. Schur, Inc.* v. *City of Santa Monica*, 47 Cal. 2d 11 (1956)).) Plaintiffs do not bring this action to enforce criminal laws; rather Plaintiffs, through this action, seek to enforce the state and federal constitutions, as has been done in countless taxpayer and citizen suits. *Cf. Nathan H. Schur, Inc.*, 47 Cal. 2d 11, 18-19 (1956) (holding that taxpayer action to enjoin the commission of a crime was improper). Defendants' attempt to equate the availability of "habeas petitions, Orders to Show Cause, and motions to dismiss," with a "carefully crafted legislative mechanism" for enforcing a law that is meant to supplant taxpayer suits is wrong. (Dem. at 17-18.) These procedures are a general means for a person to request judicial relief from unlawful detention, not a "comprehensive legislative scheme" to challenge delays in admitting IST defendants to state hospitals. *Animal Legal Def. Fund* v. *Cal. Exposition & State Fairs*, 239 Cal. App. 4th 1286, 1297 (2015), *review denied* (Nov. 1, 2015). Thus, *California Exposition* is irrelevant. *See* 239 Cal. App. 4th at 1295-98, 1301 (holding that extensive and specific enforcement provisions for violations of criminal animal cruelty laws — including the vesting of power in humane societies to aid local authorities in the enforcement of anticruelty laws and enabling the filing of complaints to a magistrate authorized to issue warrants in criminal cases — supplanted general taxpayer right of action because the "Legislature intended the enforcement mechanisms it established—and the entities in whom it entrusted such enforcement—to be the exclusive mechanisms for" enforcement of those laws).[2]

[2] The court in *California Exposition* also found a "dearth of authority recognizing a Section 526a taxpayer action predicated on an alleged criminal violation." *Id.* at 1298. The court specifically distinguished that case from the claims brought in *Mendoza* v. *County of Tulare*, 128 Cal. App. 3d 403 (1982), which, like the claims at issue here, did not "proscribe[] conduct that would subject defendants to criminal prosecution." 239 Cal. App. 4th at 1299.

B. Plaintiffs Sufficiently Allege Defendants' Illegal Expenditure of State Funds

Defendants' argument that there is no illegal or wasteful expenditure alleged in the Complaint (Dem. at 20-21) fails because Plaintiffs' allegation that Defendants are "illegally expending public funds by performing their duties in violation of [] constitutional provisions" (Compl. ¶ 67; *see also id.* ¶¶ 3-5, 26-28, 55-67) is sufficient to allege that element of a taxpayer claim.

It is well established that "the mere expending of the time of" government officials "in performing illegal" acts "constitute[s] an unlawful use of funds which [can] be enjoined under section 526a." *Blair*, 5 Cal. 3d at 268 (citing *Wirin* v. *Horrall*, 85 Cal. App. 2d 497, 504-05 (1948) (expending of time of paid police officers in performing illegal acts constituted an unlawful use of funds which could be enjoined under Section 526a)); *see Vogel* v. *Los Angeles County*, 68 Cal. 2d 18, 19 (1967) (upholding summary judgment for plaintiff in taxpayer action enjoining the county from administering a constitutionally invalid oath to public employees)). "It is immaterial that the amount of the illegal expenditures is small or that the illegal procedures actually permit a saving of tax funds." *Wirin* v. *Parker*, 48 Cal. 2d 890, 894 (1957); *see also Blair*, 5 Cal. 3d at 269 ("county officials may be enjoined from spending their time carrying out" an unconstitutional statute, even though unconstitutional conduct "actually effect[s] a saving of tax funds"). Because Plaintiffs properly allege that Defendants' actions have subjected IST defendants to lengthy delays (Compl. ¶¶ 4-5; 30, 35, 39-40; 42-43), and allege such delays violate the state and federal constitutions (Compl. ¶¶ 26-28; 55-67), Plaintiffs properly state a claim under Section 526a.[10]

[10] Neither *Waste Mgmt. of Alameda Cnty., Inc.* v. *County of Alameda*, 79 Cal. App. 4th 1223 (2000) nor *Imagistics Int'l, Inc.* v. *Dep't of Gen. Servs.*, 150 Cal. App. 4th 581 (2007), contributes to the analysis here, as both of those opinions simply cited the relevant legal standard and offered cursory conclusions that plaintiffs in those cases had not alleged illegal expenditure of funds sufficient to state a taxpayer claim. In contrast, Plaintiffs here have sufficiently alleged unconstitutional admission delays, which constitute the illegal expenditure of funds. *Sundance* v. *Mun. Court*, 42 Cal. 3d 1101, 1138-39 (1986) is similarly inapposite, as it involved a claim by plaintiffs that a drunk-in-public statute constituted a waste of public funds because, plaintiffs argued, civil detoxification was cheaper than prosecution of public inebriates. Here, Plaintiffs make no argument about the cost-effectiveness of the state's expenditures. Instead, Plaintiffs seek to put a stop to Defendants' unconstitutional behavior.

C. Defendants Have No Discretion to Violate the State and Federal Constitutions

Defendants argue that Plaintiffs have failed to state a valid taxpayer action "in light of defendants' statutory discretion[] over admissions of IST defendants." (Dem. at 21.) But Defendants have no discretion to violate the state and federal constitutions, and taxpayer challenges are a proper vehicle for challenging unconstitutional governmental conduct. *Parker*, 48 Cal. 2d at 894 (allowing taxpayer suit to stop constitutional violations because "public officials must themselves obey the law"); *see also Cent. Valley Chap. 7th Step Found.* v. *Younger*, 95 Cal. App. 3d 212, 232 (1979) (taxpayer suit proper in constitutional challenge to state attorney general's policy regarding dissemination of arrest records); *Lundberg* v. *County of Alameda*, 46 Cal. 2d 644, 647-48 (1956) (constitutional challenge to tax exemption only for religious or nonprofit schools). Notably, in *Van Atta* v. *Scott*, a challenge to the constitutionality of San Francisco's pretrial release and detention practices, the California Supreme Court held that the taxpayer challenge was an appropriate cause of action. 27 Cal. 3d 424, 443, 449-50 (1980).[11] This was so even though the underlying practices involved "the exercise of . . . discretion" by "judges charged with setting bail and deciding motions for own recognizance release." *Id.* at 451.[12]

Defendants' attempts to compare DSH and DDS's "discretion" over IST admissions, to "'political' issues involving the exercise of the discretion of either the legislative or executive branches of government" that have been found not proper of adjudication via taxpayer claim in other contexts falls short. (Dem. at 21.) A taxpayer suit that challenges governmental "conduct that can be tested against legal standards" does not improperly intrude into legislative or executive discretion. *Harman* v.

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[11] *Van Atta*'s statements regarding permissible pretrial release conditions were based on language in the former bail provision of the California Constitution, which has been superseded by the current language of that constitutional provision. *In re York*, 9 Cal. 4th 1133, 1143 n. 7 (1995). No intervening law supersedes its analysis of the taxpayer statute.

[12] *Humane Society of United States* v. *State Board of Equalization*, 152 Cal. App. 4th 349 (2007), cited by Defendants, apparently as an example of a case in which a claim "exceed[ed] the 'limits' of Section 526a" (Dem. at 21), involved a strained effort to use the taxpayer action statute to challenge private conduct, based on the theory that the State Board of Equalization should not grant a particular sales tax exemption to farm equipment that was allegedly used on animals in a cruel fashion. 152 Cal. App. 4th at 351-53. The court found Section 526a not to apply because "even a cursory examination of appellants' complaint makes clear that it is not 'government conduct' that is at issue here but, rather, the conduct of *some* . . . poultry and egg producers." *Id.* at 361. The court found this too "removed from *governmental action*, which is what section 526a is clearly directed at." *Id.* at 362. Here, by contrast, governmental, not private, action is clearly at issue.

City and County of San Francisco, 7 Cal. 3d 150, 161 (1972); *see Vasquez* v. *State of California*, 105 Cal. App. 4th 849, 854-55 (2003). Here, the state and federal constitutions provide those legal standards. Unlike *California Ass'n for Safety Education* v. *Brown*, 30 Cal. App. 4th 1264 (1994), in which the court's determination that a taxpayer action was improper had to do with the Legislature's discretion over appropriation of budgetary funds, the Defendants here have a mandatory duty to comply with the due-process and speedy-trial provisions in the state and federal constitutions.[13] Simply because Defendants have some discretion over the administration of DSH and DDS does not relieve Defendants of their duty to comply with constitutional mandates.

IV. NONE OF DEFENDANTS' OTHER PROCEDURAL ARGUMENTS HAS MERIT

Beyond challenging Plaintiffs' standing and constitutional claims, Defendants also make a variety of baseless procedural arguments. None of these arguments has any merit, and Defendants' Demurrer on these grounds should therefore be denied.

A. Plaintiffs Have Adequately Alleged a Claim Against Defendants Ahlin and Rogers

Given that Plaintiffs have not brought, nor are they required to bring, a Section 1983 suit (*see supra*, Section II.A.b), Defendants' argument that Directors Ahlin and Rogers are improper defendants in such a suit (Dem. at 15) is irrelevant. *See San Dieguito Union High Sch. Dist.*, 171 Cal. App. 3d at 973 (1985); *Wenke*, 6 Cal. 3d at 751; *Mission Hosp. Reg'l Med. Ctr.*, 168 Cal. App. 4th at 479-80. However, even if this were a Section 1983 suit, Defendants are incorrect on the law. Under *Ex Parte Young*, parties can sue state officials in their official capacity to enforce federal laws, so long as the parties are seeking prospective and injunctive relief rather than damages. 209 U.S. 123 (1907). Likewise, Defendants' argument that Directors Ahlin and Rogers would be entitled to qualified immunity to the hypothetical Section 1983 claim (Dem. at 16-17) does not stand, as "[q]ualified

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[13] *Sagaser* v. *McCarthy*, 176 Cal. App. 3d 288, 310-11 (1986), similarly cited by Defendants for the proposition that a court should not apply Section 526a to "political issues" involving legislative or executive discretion (Dem. at 21), simply found that where plaintiffs had not specifically alleged how the state's decision about where to site a prison constituted a waste of public funds, it would not be appropriate to make a ruling on waste of funds since "[w]ithout more facts than found in this record, courts could risk trespassing into the domain of legislative or executive discretion."

immunity is only an immunity from a suit for money damages, and does not provide immunity from a suit seeking declaratory or injunctive relief." *See Hydrick* v. *Hunter*, 669 F.3d 937, 939-40 (9th Cir. 2012) (citing *Ctr. for Bio-Ethical Reform, Inc.* v. *Los Angeles Cnty. Sheriff Dep't*, 533 F.3d 780, 794-95 (9th Cir. 2008); *Los Angeles Police Protective League* v. *Gates*, 995 F.2d 1469, 1472 (9th Cir. 1993)). Finally, qualified immunity applies only to suits brought under Section 1983, not to cases brought under state law to enforce federal constitutional rights. *Venegas* v. *County of Los Angeles*, 153 Cal. App. 4th 1230, 1240 (2007) (declining to extend qualified immunity to state law claim enforcing federal constitutional rights).

B. Plaintiffs Adequately Allege a Claim Against The State Of California

Defendants' blanket suggestion that "claims for writ or injunctive relief cannot proceed against the State of California, as distinct from an agency or officer" (Dem. at 22), is false. Courts have upheld injunctive relief against the state itself, both in taxpayer actions and otherwise. *See Vasquez* v. *State of California*, 105 Cal. App. 4th 849, 856-57 (2003) (plaintiff "stated a taxpayer cause of action under section 526a against the State" as well as against the Assistant Director as "taxpayer action under section 526a may be brought *against the government* or 'any officer thereof'") (emphasis added); *see also Butt* v. *State of California*, 4 Cal. 4th 668, 673-74 (1992) (upholding grant of preliminary injunction against State of California that compelled state to take action to prevent the early closing of a school district).

Defendants rely on a single case for their argument, which simply found that the petition at issue contained "no allegations establishing any right to declaratory relief against the state (as distinguished from the Commission acting as its agent) or against the Commission employees in this regard." *See State of California* v. *Superior Court*, 12 Cal. 3d 237, 255 (1974). Here, in contrast, the basis for relief is that "Defendant State of California has the ultimate responsibility to ensure that the constitutional and statutory rights of defendants, including incompetent defendants, in its criminal justice system are protected and upheld." (Compl. ¶ 18.)

Aside from their arguments concerning injunctive relief, Defendants also argue that mandamus relief is not available against the State of California. (Dem. at 21.) However, even if

Defendants are correct that the writ cannot issue against the State, the petition naming the State should be construed as "seeking a writ against the appropriate *officers or agents* of the state." *County of San Diego* v. *State*, 164 Cal. App. 4th 580, 593 n.12 (2008) (emphasis added).[14]

C. Plaintiffs Adequately Allege Causes Of Action For Which Mandamus Relief is an Appropriate Remedy

Defendants argue that Plaintiffs' prayer for mandamus "fails to comport with pleading standards" and that even if "broadly construed to allege a cause of action for mandamus plaintiffs have not alleged the elements for the mandamus cause of action." (Dem. at 23.) This argument misunderstands the standard to seek a writ of mandate, and furthermore fails to demonstrate that Plaintiffs have not met that standard. Defendants' arguments that mandamus relief is not proper are therefore without merit.

a. Defendants' Procedural Arguments Are Nonsensical

Defendants' first argument, that Plaintiffs fail to "separately state a mandamus cause of action," and that the "mandamus claim" is therefore subject to demurrer for failure to comport with pleading standards is wrong for two reasons. (Dem. at 23.) First, it misconstrues the nature of the pleadings. A writ of mandate may issue "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station . . . ." Cal. Code Civ. Proc. § 1085. A petition for a writ of mandate is a request for certain type of relief, not a cause of action itself. *See Timmons* v. *McMahon*, 235 Cal. App. 3d 512, 518 (1991) (mandamus is a form of remedy). In this case, in addition to declaratory and injunctive relief, Plaintiffs have requested that the court "[i]ssue a writ of mandate directing Defendants to admit persons found incompetent to stand trial within a constitutionally permissible time following the order of commitment." (Compl. at 15.) Plaintiffs' request for a writ of mandate is amply justified by their well-pleaded causes of action for violations of the state and federal constitution. (Compl. ¶¶ 55-67 (alleging violations of due-process rights under the state and federal constitutions and speedy-trial rights under the state constitution).) The California Supreme Court has

[14] If the court sustains the demurrer as to the petition for writ of mandate against the State of California, Plaintiffs' petition for writ of mandate against the other Defendants would be unaffected.

specifically held that Section 526a gives taxpayers standing to sue state and local government officials in state court for injunctive, declaratory, *and mandamus relief* to prevent them from violating the law. *See Van Atta* v. *Scott*, 27 Cal. 3d 424, 449-50 (1980). Second, at the demurrer stage, it is the facts alleged, not the type of relief requested, that matters. *See Maxwell* v. *City of Santa Rosa*, 53 Cal. 2d 274, 279 (1959). Defendants' argument that Plaintiffs have not met the technical standards for seeking mandamus is therefore wrong and also irrelevant at this stage of the proceedings.

b. Defendants' Argument That Plaintiffs Have Not Alleged Facts Sufficient to Seek Mandamus is Contrary to California Law

Defendants' next argument, that Plaintiffs "have not alleged the elements for the mandamus cause of action," as Plaintiffs have not established "'a clear, present and usually ministerial duty' on the part of defendants," also fails. (Dem. at 23.) Defendants argue that under the *statutory* scheme to admit incompetent defendants, they are not required to "always admit IST defendants," that Defendants Ahlin and Rogers have "discretion over the admission and placement of IST defendants" and that Plaintiffs do not have a "beneficial right" to seek mandamus. (*Id.*) None of these arguments has merit as applied to Plaintiffs' right to seek a writ of mandate to enforce the *constitutional* rights of IST defendants.

The fact that the relevant "statutory schemes do not require Ahlin or Rogers to admit IST defendants in a prescribed, quantitative timeframe" does not relieve defendants of their duty to comply with the state and federal constitutions. (*Id.* at 24.) "Because actions to enforce statutory and constitutional rights of prisoners are brought to 'compel the performance of an act which the law specifically enjoins, as a duty resulting from an office,' there is no question but that mandamus lies." *In re Head*, 42 Cal. 3d 223, 231 n.7 (1986) (citation omitted); *see Jenkins* v. *Knight*, 46 Cal. 2d 220, 222 (1956) (mandamus proper to compel the governor to comply with the constitution).

Nor does the fact that Defendants exercise some discretion in implementing mandatory constitutional duties alter this conclusion. In *Horn* v. *County of Ventura*, 24 Cal. 3d 605, 610 (1979), the plaintiff filed a petition for writ of mandate challenging the constitutionality of the county's procedures for notifying landowners of governmental conduct affecting their property interests. The court held that the plaintiff stated a claim for writ relief, *id.* at 620, even though the challenged conduct "involve[d] the

exercise of judgment" and the court expressly "reject[ed] the concept that [the defendant's actions were] purely 'ministerial' acts." *Id.* at 615. Similarly, in *Molar* v. *Gates,* 98 Cal. App. 3d 1, 25 (1979), the court held that because "defendants have a clear duty to respect" the constitution, "mandamus is an appropriate remedy" for constitutional violations. There, the plaintiff filed a petition for writ of mandate challenging the county defendants' practices and policies denying female inmates access to minimum security jail facilities. *Id.* at 6. The court's acknowledgement that county officials retained discretion in this area, *id.* at 20, 25, did not preclude it from granting mandamus relief to remedy a constitutional violation. *Id.* at 19, 25-26. Because Defendants have a mandatory duty to comply with state and federal constitutional due process and speedy-trial rights, mandamus is an appropriate remedy.[15]

Defendants' further argument that "[t]here is no ministerial duty because . . . the statutory schemes do not require DSH and DDS to *always* admit IST defendants" (Dem. at 23 (emphasis added)), misconstrues both the nature of Plaintiffs' claims and Defendants' responsibilities under the state and federal constitutions. Plaintiffs allege both that Defendants have the responsibility to accept and treat IST defendants and that Defendants' failure to timely accept transfer of IST defendants *who have been committed to the custody of DSH and DDS* violates the constitutional rights of those IST defendants.[16] Defendants note that *other* IST defendants are sometimes committed to *other* forms of care. (Dem. at 3-

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[15] The cases Defendants cite in support of their arguments, Dem. at 23-24, are inapposite, as none of those cases involved an alleged violation of a constitutional provision.

[16] *See* Compl. ¶ 42 (explaining that "as of February 9, 2015, there were 366 people who had been committed to DSH but had yet to be admitted," and the "average time between commitment and admission for the previous 25 persons admitted before February 9 was more than 75 days"); *id.* ¶ 43 (explaining that "as of April 2, 2015 there were 52 incompetent defendants on the waiting list to be transferred to a DDS hospital following their commitment"); *see also id.* ¶ 2 (discussing state official's failure to obey courts' commitment orders — not a failure to admit *all* defendants declared incompetent); *id.* ¶ 4 (citing a waiting list of over 300 IST defendants who were waiting admission to DSH — not those waiting for admission to any other entity; citing an average wait time *between commitment date and admission date* of more than 75 days); ¶ 5 (citing a waiting list of 52 IST defendants who were waiting admission to DDS — not those waiting for admission to any other entity; citing wait times of more than nine months *following commitment*); ¶ 30 (explaining that it was eight months between when the "court ordered that [Plaintiff Leiva's son] A be committed to DDS," and when he was finally admitted to the DDS facility at Porterville; ¶ 35 (explaining that Plaintiff Stiavetti's brother N waited over a month after "N was committed to DSH" before he was transferred to state hospital); ¶¶ 39-40 (explaining that Plaintiff Randle's son L waited in jail for almost a year after he was committed to Porterville by the court).

4.) While true, that does not remove Defendants' constitutional obligations to the IST defendants whom the courts commit to Defendants' facilities.

Defendants' final argument, that Plaintiffs have not established "a clear, present and beneficial right" in the performance of Defendants' duty, is likewise unavailing. (Dem. at 23.) California courts, including the Supreme Court, have long acknowledged the broad availability of citizen standing to obtain mandamus relief, where, as here, the object of the suit is to enforce a public duty. *See Green* v. *Obledo*, 29 Cal. 3d 126, 144 (1981) ("[W]here the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced."). This public-interest standing has been recognized in a wide variety of contexts. *See Save the Plastic Bag Coal.* v. *City of Manhattan Beach*, 52 Cal. 4th 155, 166, 169-70 (2011) (group of corporations could invoke public interest standing to bring claims under California Environmental Quality Act); *Common Cause* v. *Bd. of Supervisors*, 49 Cal. 3d 432, 439-40 (1989) (nonprofit voting rights organizations had standing to seek writ of mandate compelling county to carry out state law voter outreach obligations); *Driving Sch. Ass'n of Cal.* v. *San Mateo Union High Sch. Dist.*, 11 Cal. App. 4th 1513, 1516-19 (1992) (driving schools had standing to seek writ compelling school district to stop charging high school students tuition for driver training classes offered at adult school). And, as discussed above, the Defendants have a ministerial duty to comply with the state and federal constitutions that supports mandamus relief. *See In re Head*, 42 Cal. 3d 223, 231 n.7 (1986); *infra* Section III.C. Finally, as discussed fully above, Plaintiffs have sufficiently alleged a taxpayer cause of action under Section 526a, for which writ relief is a proper remedy. *See Van Atta*, 27 Cal. 3d at 449-50.[17]

Because Plaintiffs clearly have alleged the requisite facts to seek a writ of mandamus, Defendants' Demurrer on this ground should be denied.

[17] Even if this Court were to sustain the demurrer to the writ petition, Plaintiffs' taxpayer suit enforcing the same substantive rights would be unaffected.

CONCLUSION

Plaintiffs have brought an action under well-established caselaw to stop Defendants from continuing to violate the constitutional rights of hundreds of mentally incompetent criminal defendants. Since none of these substantive or procedural grounds for demurrer has any merit, Defendants' Demurrer should be denied in its entirety.

DATED: November 13, 2015.

Laura K. Oswell /ccm

Laura K. Oswell
Christopher C. Morley
Duncan C. Simpson
SULLIVAN & CROMWELL LLP
1870 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 461-5600
Facsimile: (650) 461-5700

Michael Temple Risher
Micaela Davis
ACLU OF NORTHERN CALIFORNIA
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437

Attorneys for Plaintiffs

PROOF OF SERVICE

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action. My business address is Sullivan & Cromwell LLP, 1870 Embarcadero Road, Palo Alto, CA 94303.

On November 13, 2015 I served the following document(s):

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' DEMURRER TO THE COMPLAINT

on the interested parties in the subject action by serving a true copy thereof as indicated below:

Lisa Tillman
Deputy Attorney General
State of California
Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 327-7872
Facsimile: (916) 324-5567
Lisa.Tillman@doj.ca.gov

Julia Clayton
Deputy Attorney General
State of California
Department of Justice
455 Golden Gate Avenue, Ste. 1100
San Francisco, CA 94102
Telephone: (415) 703-5619
Julia.Clayton@doj.ca.gov

Attorneys for Defendants Pamela Ahlin as Director of the California Department of State Hospitals, Santi J. Rogers as Director of the California Department of Developmental Services and State of California

☑ EMAIL: The foregoing document was served this date via electronic mail on all parties listed. An electronic message or other indication that the transmission was unsuccessful was not received within a reasonable amount of time after the transmission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 13, 2015 at Palo Alto, California.

Jodi L. Carr