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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

PETER LA FOLLETTE; and THE
AMERICAN CIVIL LIBERTIES UNION OF
NORTHERN CALIFORNIA,

Plaintiffs,

v.

ALEX PADILLA, in his official capacity as
Secretary of State of the State of California;
and WILLIAM F. ROUSSEAU, in his official
capacity as Clerk-Recorder-Assessor-
Registrar of Voters for the County of Sonoma,

Defendants.

ENDORSED
FILED
Superior Court of California
County of San Francisco

NOV 13 2017

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

No. **CPF-17-515931**

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

I.

1 Plaintiffs allege as follows:

2 **INTRODUCTION**

3 1. The right to vote and have that vote counted is the cornerstone of democracy. Yet
4 by statutory mandate, tens of thousands of California voters, including Plaintiffs, are
5 disenfranchised each election without even knowing their fundamental right to vote has been
6 usurped. A mandate from this Court is needed to stop this undemocratic practice.

7 2. California Elections Code Section 3019(c)(2) requires elections officials to reject
8 vote-by-mail ballots if they think a signature on a ballot envelope does not match a signature on
9 file for the voter. The Code does not prescribe how elections officials should make this
10 determination or require officials to have training in handwriting identification or comparison. And
11 elections officials need not, and generally do not, notify voters that their ballots were rejected. Nor
12 does the Code permit voters to cure the perceived signature non-match so their votes can count.

13 3. As a result, tens of thousands of eligible voters' ballots are discarded each election
14 cycle, including in the November 2016 election. Over half of California voters already participate
15 in California's comprehensive vote-by-mail system; this number is set to increase substantially in
16 forthcoming elections in light of the 2016 California Voter's Choice Act. This wholesale
17 disenfranchisement of California voters without providing voters notice and an opportunity to show
18 that their ballots are proper violates the guarantees of due process, equal protection, and the
19 California constitutional right to have a properly cast vote counted.

20 Plaintiffs therefore ask this Court to:

- 21 (i) declare that Section 3019(c)(2) is facially unconstitutional and that no ballot may be
22 rejected based on a mismatched signature without providing the notice and
23 opportunity to cure within eight days of the election, and
24 (ii) issue an injunction and writ of mandate prohibiting Defendants from rejecting
25 ballots for purportedly mismatched signatures without providing the voter with
26 notice and an opportunity to show that the ballot is proper.

1 **JURISDICTION AND VENUE**

2 4. Venue in this Court is appropriate because an action against the Secretary of State
3 is properly brought in any county in which the Attorney General maintains an office, including this
4 one. *See id.* § 401(a); *State Bd. of Equalization v. Superior Court*, 138 Cal. App. 4th 951, 957
5 (2006).

6 **PARTIES**

7 5. Plaintiff Peter La Follette is a California citizen who applied online to vote by mail
8 and cast a vote-by-mail ballot in the November 2016 election in compliance with all elections laws,
9 but his vote was not counted. Mr. La Follette was not notified that his signature was deemed
10 mismatched or given an opportunity to cure before vote counting closed.

11 6. Mr. La Follette is an eligible, registered voter who resides in Sonoma County. Mr.
12 La Follette studied chemistry at the University of California, Davis and is 25 years old.

13 7. Mr. La Follette has voted in every presidential election since he turned 18. Voting
14 is important to him because he appreciates that his vote can have a real effect on local elections and
15 is a way to be involved in the political process.

16 8. Mr. La Follette voted by mail in the November 2016 election, as he has done in the
17 past. In casting his vote, Mr. La Follette signed the ballot envelope and otherwise complied with
18 all requirements to have his vote counted. He was never notified that his vote was not, in fact,
19 counted.

20 9. In 2017, Mr. La Follette learned from the Secretary of State’s website that his vote
21 had been discarded.

22 10. In July 2017, Mr. La Follette sent an email to his county’s chief elections official,
23 Defendant Rousseau, asking why his vote was discarded. On July 26, 2017, the Chief Deputy
24 Registrar of Voters for Sonoma County sent a response stating that “[b]y law, we must compare a
25 voter’s signature on file with the signature on the vote by mail ballot envelope”; and for Mr. La
26 Follette’s ballot, “the signature on the envelope is significantly different from what we have on
27 file,” “[t]herefore, we were unable to count your ballot.”
28

1 11. If Mr. La Follette had been notified before the 2016 election results were certified
2 that his vote was rejected and given an opportunity to cure the signature mismatch—by mail or by
3 going to an elections office in person—he would have done so.

4 12. Plaintiff La Follette has standing and a beneficial interest in this proceeding because
5 he has had a ballot rejected in the past, without notice or an opportunity to show that the ballot was
6 proper, and wants to ensure that this does not happen again. In addition, Mr. La Follette has
7 standing as a citizen to petition for mandamus to require elections officials to comply with the law.
8 *See Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432, 439 (1989).

9 13. Plaintiff American Civil Liberties Union of Northern California (ACLU-NC) is a
10 nonpartisan civil-liberties organization, incorporated as a nonprofit under § 501(c)(4) of the Internal
11 Revenue Code, and dedicated to the principles of liberty and equality embodied in both the United
12 States and California Constitutions. Founded in 1934 and based in San Francisco, the ACLU-NC
13 has more than 150,000 members who live in California from Tulare and Fresno Counties north to
14 the Oregon border. Many of those members are assessed and pay California state and local taxes
15 every year, including income and property taxes. Many of them also vote by mail and are directly
16 subject to the disenfranchising provisions of § 3019.

17 14. The ACLU-NC has a beneficial interest in protecting the voting rights of its
18 members and in advancing its organizational mission of protecting the voting rights of all
19 Californians. The ACLU-NC brings this suit to further those interests, to prevent the misuse of
20 taxpayer funds, and to “procure the enforcement of a public duty.” *See Common Cause*, 49 Cal.
21 3d at 439. It also brings suit to protect the right of its members to vote and to have their votes
22 counted.

23 15. Defendants are responsible for the administration of California elections laws,
24 including in Sonoma County.

25 16. Defendant Alex Padilla is sued in his official capacity as Secretary of State of the
26 State of California. The Secretary of State is a proper defendant to a petition for writ of mandate
27 that challenges the constitutionality of a state voting statute. *Young v. Gness*, 7 Cal. 3d 18, 21 n.5
28 (1972). As the State’s chief elections official, the Secretary is responsible for administering

1 California’s election laws. Cal. Gov. Code § 12172.5(a). The Secretary is further responsible for
2 “promulgat[ing] regulations establishing guidelines for county elections officials relating to the
3 processing of vote by mail ballots.” Cal. Elec. Code § 3026.¹

4 17. In addition, the Secretary of State provides written advisories to county elections
5 officials via “CCROVs” (named as such because they are delivered to County Clerks & Registrars
6 of Voters).² The Secretary also issues the California Uniform Vote Counting Standards, which
7 includes standards for counting vote-by-mail ballots, including comparing signatures.³

8 18. Defendant William Rousseau is sued in his official capacity as Clerk-Recorder-
9 Assessor-Registrar of Voters for the County of Sonoma. He is responsible for conducting all
10 federal, state, and local elections in Sonoma County, and for administering California’s election
11 laws, including Section 3019(c)(2). §§ 320, 3019.

12 **FACTUAL AND LEGAL BACKGROUND**

13 **A. MORE THAN HALF OF CALIFORNIA VOTERS VOTE BY MAIL, BY CHOICE OR** 14 **NECESSITY.**

15 19. California permits any qualified voter to vote by mail—either on a permanent or
16 one-time basis. §§ 3001, 3003, 3200-3206.

17 20. Well over half of California voters avail themselves of this process. For example,
18 in 2016, 58.92% of California voters voted by mail in the primary election and 57.79% in the
19 general election. Thus in the November 2016 general election, over 8.4 million Californians voted
20 by mail.⁴

21 21. In some precincts, voters have no other option. For example, counties may require
22 all votes to be cast by mail when there are 250 or fewer registered voters. § 3005. California
23 counties such as Alpine, Sierra, and Plumas Counties offer voting exclusively by mail under § 3005.

24 _____
25 ¹ Statutory references are to the California Elections Code unless otherwise specified.

26 ² CAL. SEC’Y OF STATE, 2016 Advisories to County Elections Officials, [http://www.sos.ca.gov/elections/advisories-county-elections-officials/](http://www.sos.ca.gov/elections/advisories-county-elections-officials/2016-advisories-county-elections-officials/) (last visited August 18, 2017).

27 ³ CAL. SEC’Y OF STATE, UNIFORM VOTE COUNTING STANDARDS 6-8 (2012), *available at*
<http://elections.cdn.sos.ca.gov/pdfs/uniform-vote-count-52312.pdf>.

28 ⁴ CAL. SEC’Y OF STATE, Historical Vote-By-Mail (Absentee) Ballot Use in California, <http://www.sos.ca.gov/elections/historical-absentee/> (last visited August 18, 2017).

1 California law also permits counties to require voting by mail in a number of other circumstances.
2 *See* §§ 4000-4002.

3 22. Voting by mail is set to increase substantially in the coming elections in light of the
4 California Voter’s Choice Act, which was passed in 2016 to authorize widespread all-mailed-ballot
5 elections. As a result, fourteen counties may conduct all-mailed elections in 2018; and all counties
6 may do so in 2020. §§ 4005(a), 4007. At least five counties are indeed planning to conduct all-
7 mailed elections in 2018, including Sacramento, San Mateo, Napa, Nevada, and Madera Counties.

8 **B. CALIFORNIA LAW PROVIDES PROCEDURES FOR VOTING BY MAIL AND**
9 **PROCESSING VOTE-BY-MAIL APPLICATIONS AND BALLOTS.**

10 23. To vote by mail in a single election, voters must submit applications in hard-copy,
11 electronically, or by telephone. §§ 3006-3008. The applications request, among other things, the
12 voter’s name and address as listed on the affidavit of registration, as well as the voter’s current
13 mailing address. §§ 3006(a)(2), 3007.5(b)(2). For hard-copy applications, elections officials
14 compare the application signature to the affidavit-of-registration signature. § 3009(a), (c). If the
15 application is approved, the elections official will send the voter a ballot. § 3009(b). If, on the
16 other hand, the official determines the application is defective and “is able to ascertain the voter’s
17 address,” the official must, within one working day, mail the applicant a notice of defect along with
18 the vote-by-mail ballot. § 3009(c). This “notice shall specifically inform the voter of . . . the reason
19 for the defects in the application, and shall state the procedure necessary to remedy the defective
20 application.” *Id.* “If the voter substantially complies with the requirements contained in the
21 elections official’s notice, the voter’s ballot shall be counted.” *Id.*

22 24. California also permits voters to become permanent vote-by-mail voters. § 3200.
23 In fact, California requires voter registration cards to include an option to apply for permanent vote-
24 by-mail status. § 2150(e). And California also offers a process for military voters to vote by mail.
25 § 3102.

26 25. Vote-by-mail ballots are processed and counted in a similar manner. § 3205. First,
27 elections officials send voters ballots and supplies for returning the ballots, including identification
28 envelopes. §§ 3010, 3011. Before returning their ballots, voters must sign the identification

1 envelopes in their own handwriting, but need not sign in any particular manner. § 3011(a)(2), (7).
2 Voters must then mail their ballots by the close of election day, and the ballots must arrive at the
3 elections official’s office within three days after election day. § 3020(b).

4 26. When the elections officials receive the ballots, they must compare the signatures
5 on the identification envelopes with the voters’ signatures on their affidavits of registration or other
6 official forms in their registration records. § 3019(a), (b). Elections officials begin this process
7 twenty-nine days before election day. *See* § 15101. The only statutory guidance for this process
8 is that officials must not invalidate ballots when voters substitute their initials for their first or
9 middle names. § 3019(d).

10 27. While elections officials may use automated signature-verification technology to
11 determine whether the signatures compare, most do not. § 3019(e). Instead, they rely solely on
12 subjective visual assessments by elections officials. Sonoma County, where Plaintiff La Follette
13 casts ballots, does not use signature-verification technology. In any event, an elections official
14 must always visually examine the signatures before rejecting the ballot. § 3019(e). Elections
15 officials are not, however, required to have handwriting-analysis education or training. In addition,
16 the automated systems that elections officials use are purchased from different vendors and use
17 different software, which results in varying threshold settings for signature-verification match and
18 prohibits threshold standardization.

19 28. This signature comparison results in one of two outcomes:

20 (i) If the official determines that the signatures match, the ballot, still in the
21 identification envelope, is placed in a container to be counted. § 3019(c)(1).

22 (ii) If, however, “the elections official determines that the signatures do not compare,
23 the identification envelope shall not be opened and *the ballot shall not be counted.*” § 3019(c)(2)
24 (emphasis added). The Elections Code does not provide for notice to the voter or any opportunity
25 to cure the perceived mismatch. *See id.* To the contrary, the use of “shall” requires that these
26 ballots be discarded. *See* § 354 (“shall” is mandatory).⁵

27 _____
28 ⁵ It appears that, despite § 3019(c)(2)’s mandatory language, elections officials in some counties
do try to provide notice and permit voters to cure their signature mismatch. However, any such

1 29. The State’s automatic invalidation of mismatch-signature ballots contrasts with its
2 treatment of ballots that lack a signature altogether. Voters who completely fail to sign the ballot
3 envelope are not automatically disenfranchised; instead, they have until eight days after the election
4 to cure the violation. § 3019(f). Unsigned ballots must be accepted and counted if the voter (i)
5 signs the envelope at the official’s office within eight days of the election, (ii) submits an “unsigned
6 ballot statement” affidavit within eight days of the election, (iii) submits an affidavit to a polling
7 place or ballot dropoff box on election day, or (iv) otherwise provides a signature. § 3019(f)(1)(A),
8 (C). Similarly, in counties that conduct all-mailed elections pursuant to the Voter’s Choice Act,
9 elections officials are required to “make a reasonable effort to inform a voter of either . . . if the
10 voter’s vote by mail ballot envelope is missing a signature [and h]ow the voter can correct the
11 missing signature.” § 4006.

12 30. The automatic rejection of mismatch-signature ballots also contrasts with the State’s
13 treatment of ballots cast at the polls on election day. Those ballots generally are not subject to a
14 signature comparison at all; the voters simply go to their assigned polling site and say and write
15 their name and address, and once elections officials confirm the voters are on the voter index for
16 that polling site, they are given a ballot to vote. *See* §§ 14216, 14278. Voters return the voted
17 ballots to the elections officials, who place the ballots in a ballot container for counting. §§ 14277,
18 14293.

19 31. County elections officials have thirty days after the election to count and certify the
20 election results. § 15372.

21 32. After all votes—including vote-by-mail votes—have been tallied, local elections
22 officials and the Secretary of State make it possible for vote-by-mail voters to find out on the
23 Internet whether their ballots were rejected. *See* § 3019.5.⁶ There is no requirement, however, that
24 voters whose ballots were rejected for mismatched signatures receive individualized notice.

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27 notice and opportunity to cure is the exception and is arbitrary both across counties and in its
28 application within the county, as there are no standards for when voters are afforded notice and
opportunity to cure.

⁶ CAL. SEC’Y OF STATE, Ballot Status, <http://www.sos.ca.gov/elections/ballot-status/> (last visited August 18, 2017).

1 **C. VOTING OFFICIALS ERRONEOUSLY REJECT TENS OF THOUSANDS OF PROPERLY**
2 **CAST BALLOTS EACH ELECTION BASED ON SUPPOSEDLY MISMATCHED**
3 **SIGNATURES.**

4 33. Tens of thousands of ballots are rejected at each statewide election because officials
5 determine the ballot-envelope signatures do not match those on file. For example, a statewide
6 survey found that in the 2012 general election, approximately 23% of rejected vote-by-mail ballots,
7 or some 15,870 ballots, were uncounted due to signature mismatch.⁷ The author of a 2013 bill
8 seeking to address the problem (described below) estimated the total to be higher, finding
9 approximately 20,000 ballots rejected in the 2012 election due to mismatched signatures.⁸

10 34. In 2013, as the number of Californians who vote by mail continued to increase, the
11 Legislature recognized that wide swaths of vote-by-mail ballots were being wrongly rejected due
12 to signature mismatch, and revised Section 3019 to “permit”—but not require—local elections
13 officials to compare signatures to those on file beyond the current affidavit of registration.⁹

14 35. In any event, the problem has not diminished. To the contrary, some studies find
15 that as many as 45,000 ballots—or 0.54% of all ballots cast—were rejected in the 2016 general
16 election due to perceived signature mismatch. Although other studies have found the numbers to
17 be closer to 35,000, there is no dispute that tens of thousands of ballots were rejected for signature
18 mismatch.

19 36. A leading voter-file company that manages a system to track California voter data
20 on behalf of clients that include both the state Republican and Democratic Parties analyzed data
21 from the 2016 general election in 29 California counties that use the necessary data platform. These
22 29 counties span the range of urban and rural, coastal and inland, big and small, and provide enough
23 quality data to allow for detailed evaluation of ballots rejected for signature non-match.

24 ⁷ CALIFORNIA’S UNCOUNTED VOTE-BY-MAIL BALLOTS: IDENTIFYING VARIATION IN COUNTY
25 PROCESSING, UC DAVIS CTR. FOR REG’L CHANGE (Sept. 2014) *available at*
26 [https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-](https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/UCDavisVotebyMailBrief2.pdf)
27 [files/UCDavisVotebyMailBrief2.pdf](https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/UCDavisVotebyMailBrief2.pdf).

28 ⁸ July 2, 2013 S. Comm. on Elections & Constitutional Amendments, Analysis for AB-1135 2013
Leg., Reg. Sess. (Cal. 2013), *available at* [https://leginfo.legislature.ca.gov/faces/
billAnalysisClient.xhtml?bill_id=201320140AB1135](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1135).

⁹ *Id.*; AB-1135, 2013 Leg., Reg. Sess. (Cal. 2013), *available at* [https://leginfo.legislature.ca.gov/
faces/billNavClient.xhtml?bill_id=201320140AB1135](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1135).

1 37. The analysis of this data showed that officials in those counties rejected 0.54% of
2 vote-by-mail ballots for signature mismatch in the November 2016 election. The Secretary of State
3 reports that there were 8,511,992 ballots cast by mail in that election. Applying that rate statewide
4 suggests that California elections officials rejected some 45,590 vote-by-mail ballots in the 2016
5 general election for signature mismatch.

6 38. The civil rights group Asian Americans Advancing Justice recently issued a report
7 that also shows that tens of thousands of vote-by-mail ballots were rejected for signature mismatch
8 in the last election.¹⁰ The organization examined data from four counties: Contra Costa, Los
9 Angeles, San Francisco, and Santa Clara. It found that elections officials rejected 0.89% of all
10 vote-by-mail ballots, and that 44% of those rejections were for allegedly mismatched signatures.
11 This means that elections officials in these four counties rejected 0.39% of mailed-in ballots for
12 signature mismatch. If these figures reflect the statewide rate, this suggests that California elections
13 officials rejected approximately 33,330 vote-by-mail ballots in the 2016 general election for
14 signature mismatch, out of the total of 8,511,992 ballots cast.

15 39. It is likely that this report significantly understates the number of ballots rejected for
16 signature mismatch because two of the four counties it studied have rejection rates that are
17 significantly lower than the 29-county average of 0.54% discussed above: Contra Costa County
18 rejected only 0.19% of vote-by-mail ballots for signature mismatch, and Santa Clara County
19 rejected only 0.46% on those grounds. The Asian Americans Advancing Justice report nevertheless
20 confirms that tens of thousands of ballots were rejected in the 2016 general election for alleged
21 signature mismatch.

22 40. As discussed below, in some counties the percentage of ballots discarded due to
23 signature mismatch is much higher, for example: 1.67% in Yuba County, 1.18% in Fresno County,
24 and 1.15% in Riverside County. *See infra* at Section D. These percentages are greater than the
25 margin of victory in some close races. For example, in November 2016, a widely watched race
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27 ¹⁰ *Asian Americans Face Higher Than Average Vote-by-Mail Rejection Rates in California*, ASIAN
28 AMS. ADVANCING JUSTICE, available at https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1_0.pdf.

1 between Congressman Darrell Issa and Doug Applegate in U.S. Representative District 49 was
2 decided by just 0.6%, while the 29th State Senate District race was decided by a margin of 0.8%.¹¹

3 41. There is no evidence to suggest that a significant number of rejected vote-by-mail
4 ballots are the result of attempted voter fraud. Rather, ballots generally are rejected because an
5 official erroneously determined a voter's envelope signature did not compare to the signature on
6 file.¹²

7 42. Indeed, individuals with no handwriting-identification training are likely to make
8 mistakes when trying to determine whether a signature is genuine. Laypersons wrongly determine
9 that authentic signatures are not genuine at much higher rates than trained examiners, likely because
10 they perceive variations in a single individual's signatures to be differences between multiple
11 individuals' signatures. In fact, a 2001 study in which participants compared six genuine signatures
12 with six non-genuine signatures found that laypersons incorrectly determined that signatures made
13 by the same person did not match in 26.1% of the cases. And they are much more likely to wrongly
14 believe that a genuine signature does not match than they are to wrongly believe that a forged
15 signature is in fact genuine.

16 43. Before experts can even be trained in handwriting identification, they must pass a
17 form-blindness test, which assesses individuals' ability to see minute differences in form, including
18 shapes, curves, angles, and size; but the Elections Code does not require that elections officials
19 undertake this test, let alone obtain subsequent training. *See* § 3019. And even a trained analyst
20 cannot promise complete accuracy by comparing one handwriting sample to one other sample: only
21 when compared to at least 10 samples can a completely accurate assessment be made. Moreover,
22 comparing individuals' signatures is even more vulnerable to error, as signatures can be "stylized,"
23 or inherently unidentifiable and variable.

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27 ¹¹ CAL. SEC'Y OF STATE, STATEMENT OF VOTE: NOVEMBER 8, 2016 GENERAL ELECTION 8 (2016),
available at <http://elections.cdn.sos.ca.gov/sov/2016-general/sov/2016-complete-sov.pdf>.

28 ¹² Some county elections officials, however, will count ballots if they are received in two envelopes
from the same household with signatures that have been switched.

1 44. Elections officials may also mistake signatures as mismatched for a number of
2 reasons related to the signatures.¹³ For example, a voter’s signature may simply have changed since
3 signing the document on file. This is particularly likely when the comparison signature is from a
4 document signed many years prior, perhaps when the voter was still a teenager, such as driver’s
5 licenses and old voter registration affidavits. In some instances, particularly with DMV documents,
6 the signatures on file are low-quality scans. Signatures also may differ based on the medium on
7 which the voter signed. For example, voters who register online or at the DMV usually sign on an
8 electronic touch-screen, rather than on paper. A signature made on a touch-screen device may be
9 quite different than one made on paper.

10 45. Additionally, a voter’s condition or background may lead to signature mismatch.
11 For example, physical disabilities, injuries, or medication may result in changed signatures, while
12 the signatures of individuals whose primary languages do not use Roman characters may vary
13 signature-to-signature. Furthermore, voters who are less educated and/or infrequently write tend
14 to have variable signatures. Even the type of pen used may cause a signature discrepancy.

15 46. The California Senate Committee on Elections and Constitutional Amendments has
16 found that signature mismatch is most commonly due to signatures changing over time or
17 technology rendering signatures unreadable.¹⁴ Young voters who have not yet developed
18 permanent signatures and older voters whose signatures have changed with age are particularly
19 affected. In addition, the technologies used for online registration may, for example, truncate a
20 signature; while registering online may mean the signature on file is not updated, but instead
21 incorporates the DMV signature on file as the registration signature.

22 47. In most instances, voters do not have access to their registration signature and will
23 not know that their signatures have changed from those on file. Accordingly, without notice the

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25 ¹³ Although signatures deemed mismatched by signature verification technology are always subject
26 to ultimate visual verification by elections officials, § 3019(e), such technology is unregulated,
27 uncertified, and can use different standards with variable levels of reliability.

28 ¹⁴ July 2, 2013 S. Comm. on Elections & Constitutional Amendments, Analysis for AB-1135 2013
Leg., Reg. Sess. (Cal. 2013), *available at* [https://leginfo.legislature.ca.gov/faces/
billAnalysisClient.xhtml?bill_id=201320140AB1135](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1135); Aug. 19, 2013, 2013 Concurrence in S.
Amendments for AB-1135 2013 Leg., Reg. Sess. (Cal. 2013) (Assembly Floor Analysis), *available
at* [https://leginfo.legislature.ca.gov/faces/
billAnalysisClient.xhtml?bill_id=201320140AB1135](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1135).

1 ballots were rejected based on discrepant signatures, voters generally have no idea their ballots
2 were rejected or that they must take steps to prevent future rejection.

3 **D. REJECTION RATES VARY WIDELY FROM COUNTY TO COUNTY AND BY VOTER**
4 **DEMOGRAPHICS.**

5 48. The percentage of ballots discarded for perceived mismatched signatures varies
6 widely from county to county. Data from the 2016 general election for 29 counties that together
7 comprise approximately one third of California voters show that the percentage of vote-by-mail
8 ballots rejected ranged from a low of 0.15% in Mariposa County to a high of 1.67% in Yuba County.
9 Other counties with high rejection rates include Fresno County (1.18%), Sutter County (1.08%),
10 and Riverside County (1.15%). Sonoma County, where Plaintiff La Follette resides, had a rejection
11 rate of 0.34%. (*Id.*) The average among the 29 counties was 0.54%.

12 49. In addition, Latino and Asian voters' ballots are consistently rejected for signature
13 mismatch at rates higher than those cast by other voters. In the 2016 general election, the statewide
14 average rejection rates were 0.88% for Latino voters and 0.61% for Asian-American voters, versus
15 the 0.45% statewide rejection rate for non-Latino, non-Asian votes. And again, these numbers
16 varied widely across counties. Thus, for example, Latino voters' ballots were rejected at over twice
17 the rate of non-Latino, non-Asian voters in 11 of the 29 counties, while Asian-Americans' ballots
18 were rejected at over twice the rate of non-Latino, non-Asian voters in 6 counties.

19 50. A recent issue brief by the Asian Americans Advancing Justice-California
20 concluded that (i) Asian Americans' ballot rejection rate is 15% higher than the rate for all voters
21 and (ii) signature-mismatch rejection is both higher than the rate for all voters and the most common
22 reason for rejection of Asian Americans' ballots.¹⁵ These numbers are even worse for foreign-born
23 Asian Americans.

24 51. Non-English-language ballots also face higher rejection rates of ballots generally.
25 In the 2012 general election, non-English-language ballots comprised just over 2.5% of votes cast,
26

27 ¹⁵ *Asian Americans Face Higher Than Average Vote-by-Mail Rejection Rates in California*, ASIAN
28 AMS. ADVANCING JUSTICE, available at https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1_0.pdf.

1 but accounted for 3.3% of all rejected ballots. And 25% of rejected non-English-language ballots
2 were rejected due to mismatched signatures.¹⁶

3 52. Finally, 2016 data from four California counties—Santa Cruz, Sacramento, Orange,
4 and Shasta—”suggest that a substantial percentage of voters who are notified of a ballot signature
5 deficiency and given the opportunity to cure the deficiency will do so to have their ballot counted.”
6 In fact, as many as 64% of voters (in the Orange County 2016 general election) who were contacted
7 because they have completely failed to sign their ballot envelopes cured the deficiency.

8 **E. OTHER STATES PROVIDE MISMATCH-SIGNATURE VOTE-BY-MAIL VOTERS WITH**
9 **NOTICE AND AN OPPORTUNITY TO CURE.**

10 53. Other states with signature-match requirements for mailed-in ballots provide voters
11 notice and an opportunity to cure mismatch determinations. For example, in Washington State,
12 elections officials must compare vote-by-mail voters’ signatures on their ballot declarations to the
13 signatures in their registration files. RCW 29A.40.110(3). If an official determines the signatures
14 do not match, the official must:

15 notify the voter by first-class mail, enclosing a copy of the
16 declaration, and advise the voter of the correct procedures for
17 updating his or her signature on the voter registration file. If the
18 ballot is received within three business days of the final meeting of
19 the canvassing board, or the voter has been notified by first-class
20 mail and has not responded at least three business days before the
21 final meeting of the canvassing board, then the [official] shall attempt
22 to notify the voter by telephone, using the voter registration record
23 information.

24 RCW 29A.60.165(2)(a).

25 54. In Oregon, an all vote-by-mail election state, elections officials must verify
26 identification-envelope signatures on mailed-in ballots with the voters’ registration-record
27 signatures and only count ballots once verified. ORS 254.470(8), (9). If the signatures are deemed
28 not to match, however, the official “shall mail to the elector a notice that describes the nature of the
challenge.” 216 (ORS 254.431(1). The voter then has until “the 14th calendar day after the date

16 DISPARITIES IN CALIFORNIA’S UNCOUNTED VOTE-BY-MAIL BALLOTS: YOUTH, LANGUAGE
PREFERENCE AND MILITARY STATUS, UC DAVIS CTR. FOR REG’L CHANGE (Oct. 2014) *available at*
[https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-
files/UCDavisVotebyMailBrief3.pdf](https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/UCDavisVotebyMailBrief3.pdf).

1 of the election” to “provide evidence sufficient to disprove” the mismatch determination. ORS
2 254.431(2)(a).

3 55. Similarly, Montana law requires elections officials to compare absentee ballots’
4 envelope signatures with signatures on the absentee ballot request or voter registration forms.
5 M.C.A. 13-13-241(1)(a). If there is a mismatch, the official must give notice “by the most
6 expedient method available” of the mismatch and how the voter may cure. M.C.A. 13-13-241(5);
7 M.C.A. 13-13-245. Specifically, “prior to 8 p.m. on election day,” voters may:

8 (a) . . . verify the . . . signature . . . , after proof of identification, by
9 affirming that the signature is in fact the elector’s, by completing a
10 new registration card containing the elector’s current signature, or
11 by providing a new agent designation form; or

12 (b) if necessary, request and receive a replacement ballot

13 *Id.*

14 56. Massachusetts law also requires voting officials to compare voters’ signatures on
15 the inner envelopes of absentee ballots to the signatures on their absentee ballot applications, and
16 to reject any ballots with mismatched signatures. M.G.L.A. 54 § 94. But Massachusetts law also
17 provides that the officials “shall notify, as soon as possible, each voter whose ballot was rejected
18 that such ballot was rejected,” and “[u]nless the [official] determines that there is clearly
19 insufficient time for the voter to return another ballot, the [official] shall then proceed as if the voter
20 had requested a substitute ballot.” *Id.* For ballots received by mail, this means sending the voter a
21 substitute ballot (and other required papers). *Id.* If the substitute ballot is returned and deemed
22 proper, the vote will count. *Id.*

23 57. In Arizona, elections officials also must compare mailed-in ballot signatures with
24 those on the registration forms. A.R.S. 16-550A. Arizona elections procedures then require
25 officials, if the signatures do not compare, to “make a reasonable and meaningful attempt to contact
26 the voter” to “ascertain whether the voter actually voted the early ballot and any reasons why the
27 signatures may not match”; and if the official “receives and accepts an explanation . . . why the
28 signatures do not match,” the vote may count. ARIZ. SEC’Y OF STATE, STATE OF ARIZONA

1 ELECTIONS PROCEDURES MANUAL 60, 166-67, *available at*
2 https://www.azsos.gov/sites/azsos.gov/files/election_procedure_manual_2014.pdf.

3 58. These examples are representative only. Other states also provide notice and
4 opportunity to cure to signature-mismatch voters, and there is no reason that California officials
5 cannot do the same.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of Due Process, U.S. CONST., amend. XIV, § 1 and CAL. CONST., art. 1, § 7)**

8 (All Plaintiffs against All Defendants)

9 59. Plaintiffs herein incorporate by reference paragraphs 1 through 58 above, as if set
10 forth in full.

11 60. Due process requires, at a minimum, that votes not be discarded without providing
12 voters individualized notice of the alleged problem with the ballot and an opportunity to cure.

13 61. Defendants violate the rights of Plaintiffs—and tens of thousands of California
14 voters—to due process under the federal and state Constitutions by discarding their ballots without
15 providing them with individualized notice and a meaningful opportunity to cure the signature-
16 mismatch determinations.

17 **SECOND CAUSE OF ACTION**

18 **(Violation of Equal Protection, U.S. CONST., amend. XIV, § 1 and CAL. CONST., art. 1, § 7)**

19 (All Plaintiffs against All Defendants)

20 62. Plaintiffs herein incorporate by reference paragraphs 1 through 58 above, as if set
21 forth in full.

22 63. Equal protection requires laws and policies that deny some eligible voters the right
23 to vote and to have their vote counted to be invalidated, unless the laws and policies are necessary
24 to achieve a compelling government interest and are narrowly tailored to do so.

25 64. Defendants violate the rights of Plaintiffs—and tens of thousands of California
26 voters—to equal protection under the federal and state Constitutions by depriving them of their
27 rights to vote and to have their votes counted without providing meaningful notice and opportunity
28

1 to cure, but by permitting similarly situated vote-by-mail voters who did not sign their identification
2 envelopes with the opportunity to cure the missing signature prior to deprivation.

3 65. Defendants also violate equal protection by selectively disenfranchising voters
4 whose signatures they deemed not to match the signatures they have on file, without notice or an
5 opportunity to cure.

6 66. These deprivations of Plaintiffs’ and other California voters’ right to vote and to
7 have their vote counted are not necessary to achieve a compelling government interest; nor are they
8 narrowly tailored to any such interest.

9 **THIRD CAUSE OF ACTION**

10 **(Violation of CAL. CONST., art. II, § 2.5)**

11 (All Plaintiffs against All Defendants)

12 67. Plaintiffs herein incorporate by reference paragraphs 1 through 58 above, as if set
13 forth in full.

14 68. Article II, section 2.5 of the California Constitution states that “[a] voter who casts
15 a vote in an election in accordance with the laws of this State shall have that vote counted.”

16 69. Defendants violate the rights of Plaintiffs—and tens of thousands of California
17 voters—to have their votes count under Article II, section 2.5 of the California Constitution by
18 discarding properly cast votes without providing meaningful notice and opportunity to cure.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of CAL. CODE CIV. PROC. § 526a)**

21 (Plaintiff ACLU-NC against All Defendants)

22 70. Plaintiffs incorporate by reference all of the above allegations as though fully set
23 forth herein.

24 71. Defendants are illegally expending public funds by performing their duties in
25 violation of the constitutional provisions described above in violation of Code of Civil Procedure
26 § 526a.

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1 **PRAYER FOR RELIEF**

2 Plaintiffs respectfully request that this Court:

3 72. Declare California Elections Code § 3019(c)(2) facially unconstitutional to the
4 extent it permits or requires Defendants to reject voters’ ballots based on perceived signature
5 mismatches without providing voters with notice and opportunity to cure, in violation of state and
6 federal due process and equal protection guarantees and Article II, section 2.5 of the California
7 Constitution (*see* 42 U.S.C. § 1983; Code Civ. Proc. § 1060);

8 73. Declare that no ballot constitutionally may be rejected based on a perceived
9 signature mismatch without providing the voter notice of the mismatch determination and
10 opportunity to cure within eight days of the election (*see* 42 U.S.C. § 1983; Code Civ. Proc. § 1060);

11 74. Issue a writ of mandate and an injunction commanding (a) Defendant Secretary of
12 State to inform county clerks and elections officials of the above holdings (*see, e.g., League of*
13 *Women Voters of Cal. v. McPherson*, 145 Cal. App. 4th 1469, 1486 (2006)); and (b) prohibiting all
14 Defendants, their agents, employees, officers, representatives, and all other persons acting on their
15 behalf, from, in the case of, rejecting vote-by-mail ballots because of a perceived signature
16 mismatch without providing voters timely notice of the mismatch determination and an opportunity
17 to cure up until eight days after the election, or whatever time the Court deems constitutionally
18 appropriate (*see* 42 U.S.C. § 1983; Cal. Code Civ. Proc. §§ 526, 526a, 1085);

19 75. Award Plaintiffs their costs, including attorneys’ fees under 42 U.S.C. § 1988, Code
20 of Civil Procedure § 1021.5, and any other available statutes; and

21 76. For such other and further relief as the Court deems just and proper.
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Dated: November 13, 2017

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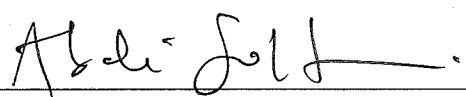
⁺To Be Admitted Pro Hac Vice

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**VERIFICATION OF
AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA**

I, Abdi Soltani, am the Executive Director of the ACLU of Northern California. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”) in *La Follette v. Padilla* and am informed, and do believe, it to be true. On those grounds, I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on November 13, 2017.



ABDI SOLTANI