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28 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

29 SENIOR AND DISABILITY ACTION;
30 ALICE CHIU; and AMERICAN CIVIL
31 LIBERTIES UNION OF NORTHERN
32 CALIFORNIA,

33 Petitioners/Plaintiffs,

34 v.

35 ALEX PADILLA, in his official capacity as
36 Secretary of State of the State of California,

37 Respondent/Defendant.

ENDORSED
FILED
San Francisco County Superior Court

JUL 24 2018

CLERK OF THE COURT
BY: KALENE APOLONIO
Deputy Clerk

No. **CPF-18-516265**

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

1 Petitioners/Plaintiffs allege as follows:

2 INTRODUCTION

3 1. This case seeks to expand voter registration opportunities for persons seeking
4 public assistance and individuals with disabilities. Voting is the primary means through which
5 United States citizens participate in our representative government and make their viewpoints
6 heard. Registration is the necessary prerequisite to exercising the right to vote. A well -
7 functioning democracy depends on wide voter participation. Both Congress and the State
8 Legislature have thus sought to remove barriers to voter participation by expanding access to
9 voter registration opportunities. To that end, the federal National Voter Registration Act
10 (“NVRA”) and the California Elections Code impose on Respondent and Defendant
11 (“Defendant”) Secretary of State (“the Secretary”) a mandatory duty to ensure that agencies
12 serving people seeking public assistance and individuals with disabilities are provided
13 opportunities to register to vote. Defendant Secretary has failed, however, to perform his
14 mandatory duty to designate five public offices that serve more than seven million people each
15 year. As a result of the Secretary’s inaction, the people served by these offices are being denied
16 the opportunity to register to vote to which they are entitled under federal and state law.

17 2. Section 7 of the NVRA requires all states to designate as Voter Registration
18 Agencies (1) “all offices in the State that provide public assistance” (hereinafter “public
19 assistance Voter Registration Agencies”) and (2) “all offices in the State that provide State-
20 funded programs primarily engaged in providing services to persons with disabilities” (hereinafter
21 “disability Voter Registration Agencies”). 52 U.S.C. § 20506(a)(2). Because states have a
22 mandatory duty to designate public assistance offices and disability offices as Voter Registration
23 Agencies, these agencies are often referred to as “mandatory Voter Registration Agencies.” *See*
24 52 U.S.C. § 20506(a)(2) (stating that “[e]ach State shall designate as voter registration agencies”
25 public assistance offices and disability offices). Once so designated, these offices then have an
26 obligation to make available voter registration services to the individuals who avail themselves of
27 the services that the office provides. *Id.* In California, the Secretary is the chief elections official
28 with a duty to implement the NVRA. *See* Cal. Elec. Code § 2402.

1 Plaintiff ACLU – NC has long been dedicated to protecting the rights of its members and of all
2 Californians, including their rights to participate fully in the electoral process.

3 9. Plaintiff Senior and Disability Action (“SDA”) founded in 1994 is a San Francisco
4 based non-profit, with approximately 150 members, many of whom pay California state income
5 taxes, and many of whom live and pay property taxes in the City and County of San Francisco.
6 SDA protects the rights of and advocates on behalf of seniors and non-seniors with disabilities,
7 including their rights to participate fully in the electoral process.

8 10. Plaintiff Alice Chiu is an individual with a disability who lives and works in the
9 City and County of San Francisco. Ms. Chiu pays state income taxes. Ms. Chiu is a longtime
10 advocate for people with disabilities. She is currently the Consumer Rights Program Director for
11 SDA.

12 11. Given their longstanding commitment to voting rights, ACLU-NC, Senior and
13 Disability Action, and Alice Chiu have a beneficial interest in ensuring that all Californians,
14 including those who avail themselves of public assistance or have a disability, are given the
15 opportunity to register to vote. The Plaintiffs seek to vindicate an important public interest in
16 enforcing the public duty of the Secretary of State to broadly designate Voter Registration
17 Agencies in order to reach populations that may otherwise have difficulty registering to vote.

18 12. Defendant Alex Padilla is the Secretary of State of the State of California. He is
19 the chief elections officer of the State. He is named in his official capacity only.

20 **FACTUAL AND LEGAL BACKGROUND**

21 13. The NVRA was enacted in 1993 to “establish procedures that will increase the
22 number of eligible citizens who register to vote in elections for Federal Office.” 52 U.S.C.
23 § 20501(b)(1). Section 7 of the NVRA requires all states to designate as Voter Registration
24 Agencies (1) “all offices in the State that provide public assistance” and (2) “all offices in the
25 State that provide State-funded programs primarily engaged in providing services to persons with
26 disabilities.” *Id.* § 20506(a)(2).

1 14. Each Voter Registration Agency must make available certain voter registration
2 services, including (1) distribution of voter registration application forms; (2) assistance to
3 applicants in completing voter registration application forms, unless the applicants refuse such
4 assistance; and (3) acceptance of completed voter registration application forms for transmittal to
5 the appropriate State election official. *Id.* § 20506(a)(4)(A). Voter Registration Agencies
6 providing services to persons with disabilities in their homes must likewise provide voter
7 registration services at the person’s home. *Id.* § 20506(a)(4)(B).

8 15. California Elections Code section 2402(a) provides that “[t]he Secretary of State is
9 the chief state elections official responsible for coordination of the state’s responsibilities under the
10 federal National Voter Registration Act of 1993 (52 U.S.C. Sec. 20501 et seq.)” Accordingly,
11 the Secretary is the state official responsible for ensuring that all offices that qualify as Voter
12 Registration Agencies under either of the definitions set forth above are so designated. *See* 52
13 U.S.C. § 20509.

14 16. Pursuant to this responsibility, the Secretary has designated some, but not all, of
15 the Voter Registration Agencies required under the NVRA.

16 17. The Secretary has failed, however, to designate many offices that fall into one or
17 both of the categories of mandatory Voter Registration Agencies, as is required by both state and
18 federal law. As a result, the individuals served by these required-but-as-of-yet-undesignated
19 offices are being denied a critical opportunity to register to vote.

20 18. In 2013, in response to advocacy and encouragement from a number of groups,
21 former Secretary of State Debra Bowen made California the first state in the country to designate
22 its Health Benefit Exchange (“Covered California”) as a Voter Registration Agency. Covered
23 California, however, did not immediately implement the NVRA requirements. After some
24 additional pressure from the ACLU and other groups regarding continuing non-compliance,
25 Covered California began implementing the NVRA in early 2014. Over the next three years
26 more than 120,000 consumers registered to vote through Covered California.

1 **PUBLIC ASSISTANCE VOTER REGISTRATION AGENCIES**

2 19. Plaintiffs now seek to have the following offices designated as public assistance
3 Voter Registration Agencies as required by the NVRA:

4 ***County offices that administer General Assistance/General Relief Programs***

5 20. The Secretary has a mandatory duty to designate county offices that administer
6 General Assistance/General Relief Programs—described under California Welfare and Institution
7 Code section 17000—as public assistance Voter Registration Agencies.

8 21. Section 17000, located in Chapter 1 of the portion of the California Welfare and
9 Institutions Code entitled “County Aid and Relief to Indigents,” states “[e]very county and every
10 city and county shall relieve and support all incompetent, poor, indigent persons, and those
11 incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not
12 supported and relieved by their relatives or friends, by their own means, or by state hospitals or
13 other state or private institutions.”

14 22. Administered at the county level, benefits under this program are generally
15 available to people who have little to no income and resources, and who are not eligible for
16 CalWORKs, Supplemental Security Income (“SSI”), or any other income maintenance program.

17 23. The Secretary’s failure to designate offices that administer General
18 Assistance/General Relief Programs as Voter Registration Agencies is unlawful and has an
19 enormous adverse impact. General Assistance/General Relief Programs serve hundreds of
20 thousands of indigent and homeless individuals every year. In Fiscal Year 2016-17 alone, these
21 offices served nearly 290,000 individuals.

22 ***Offices that administer California Student Aid Commission Financial Aid Programs***

23 24. The Secretary has a mandatory duty to designate offices that administer California
24 Student Aid Commission financial aid programs as public assistance Voter Registration
25 Agencies.

26 25. Pursuant to the California Education Code, the Student Aid Commission is
27 responsible for offering and administering several financial aid programs. *See* Cal. Educ. Code
28 §§ 69510 - 69515.5. Those programs include:

- 1 a) The Cal Grant Program, Cal. Educ. Code § 69430, *et seq.*;
- 2 b) The California Chafee Grant for Foster Youth, Cal. Educ. Code § 69519;
- 3 c) The Middle Class Scholarship, Cal. Educ. Code §§ 70020 - 70023;
- 4 d) The California National Guard Education Assistance Award Program, Cal. Educ.
5 Code §§ 69999.10 - 69999.30; and
- 6 e) The Law Enforcement Personnel Dependents Grant Program, Cal. Labor Code
7 § 4709.

8 26. Each of these programs provides eligible recipients with financial aid for higher
9 education.

10 27. While the qualification requirements of each one varies, these programs are
11 generally designed to provide aid to those with financial need.

12 28. The Secretary's failure to designate offices that administer California Student Aid
13 Commission financial aid programs as Voter Registration Agencies is unlawful and has an
14 enormous adverse impact. In the 2016-2017 fiscal year, 1,280,000 students applied for the Cal
15 Grants program alone.

16 ***Offices that administer California Department of Education Nutrition Programs***

17 29. The Secretary must designate offices that administer Department of Education
18 nutrition programs as public assistance Voter Registration Agencies.

19 30. The California Department of Education is responsible for offering and
20 administering a number of nutrition programs. Those programs include:

- 21 a) National School Lunch Program, 7 C.F.R. pt. 210;
- 22 b) School Breakfast Program, 7 C.F.R. pt. 220;
- 23 c) Summer Food Service Program, 7 C.F.R. pt. 225;
- 24 d) Special Milk Program for Children, 7 C.F.R. pt. 215; and
- 25 e) State Meal Program, Cal Educ. Code §§ 49550, 49430.5, and 49531; 5 Cal. Code
26 Regs. §15510.
- 27
- 28

1 39. Local Education special education offices are “offices in the State that provide
2 State-funded programs primarily engaged in providing services to persons with disabilities”
3 under 52 U.S.C. section 20506(a)(2).

4 40. The Secretary’s failure to designate Local Education special education offices as
5 Voter Registration Agencies is unlawful and has an enormous adverse impact. Individuals can
6 pre-register to vote at the age of 16. There are currently more than 140,000 students between 16
7 and 22 years of age that receive special education services.

8 41. Pennsylvania local special education offices are now providing voter registration
9 to the students they serve. This was achieved as part of an NVRA settlement with the
10 Department of Justice.

11 ***Area Agencies on Aging and other offices under contract to provide services or benefits on
12 behalf of the California Department of Aging***

13 42. The Secretary must designate Area Agencies on Aging (“AAA”) and other offices
14 under contract to provide services or benefits on behalf of the California Department of Aging as
15 disability Voter Registration Agencies.

16 43. California is currently divided geographically into 33 planning and service areas
17 for aging, each of which is managed by an AAA.

18 44. AAAs include any “identifiable private nonprofit or public agency designated by
19 the Department of Aging to work for the interests of older Californians within a [planning and
20 service area].” 22 Cal. Code Regs. § 7105. Each agency “engages in community planning,
21 coordination and program development, and, through contractual arrangements, provides a broad
22 array of social and nutritional services to its constituents.” *Id.*

23 45. AAAs receive funding from the State of California.

24 46. AAAs generally serve individuals who are 60 years of age or older, with a focus
25 on particular demographics. 42 U.S.C. § 3002(40); 22 Cal. Code. Regs. § 7105.

26 47. AAAs administer several programs that serve tens of thousands of Californians.
27 Many of those programs are available only to seniors and people with disabilities who are eligible
28 for nursing home level care, who are homebound, or who are at risk of needing nursing home
level care.

1 48. The precise programs offered by each of the 33 AAAs can vary. There are,
2 however, some programs that are offered by each and every one of the 33 AAAs across
3 California.

4 49. All AAAs administer Elderly Nutrition Programs, which provide meals either at
5 congregate meal sites or at eligible individuals' homes. 22 Cal. Code Regs. §§ 7634.5, 7638.1 -.3.

6 50. Individuals receiving services through the Elderly Nutrition Program are primarily
7 persons with disabilities. For example, individuals eligible to receive a home-delivered meal are
8 older individuals who are frail¹ and homebound by reason of illness, disability, or isolation; a
9 spouse of such an individual if it is in the best interest of the homebound individual; and
10 individuals with a disability who reside at home with older individuals. 22 Cal. Code Regs.
11 § 7638.7(c).

12 51. Area Agencies on Aging are “offices in the State that provide State-funded
13 programs primarily engaged in providing services to persons with disabilities” under 52 U.S.C.
14 section 20506(a)(2).

15 52. The Secretary’s failure to designate AAAs as Voter Registration Agencies is
16 unlawful and has an enormous adverse impact. These offices served nearly 1.6 million
17 consumers in 2015-16.

18 53. Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Nevada, New
19 York, Oregon, Pennsylvania, Texas, Virginia, and Washington have all designated their aging
20 services offices as Voter Registration Agencies.

21 **VOTER REGISTRATION AGENCY CONTRACTORS**

22 54. Several of the offices and agencies named above, and those that have already been
23 designated as Voter Registration Agencies, work or contract with private offices to help
24

25 ¹ As defined in 22 CAL. CODE REGS. § 7119, “Frail” means that an older individual is determined to be
26 functionally impaired because the individual either:

- 27 a) Is unable to perform at least two activities of daily living, including bathing, toileting, dressing,
28 feeding, breathing, transferring and mobility and associated tasks, without substantial human
 assistance, including verbal reminding, physical cueing or supervision.
- b) Due to a cognitive or other mental impairment, requires substantial supervision because the older
 individual behaves in a manner that poses a serious health or safety hazard to the individual or to
 others.

1 disseminate and administer their services. These private offices qualify as both public assistance
2 Voter Registration Agencies and disability Voter Registration Agencies under the language of the
3 NVRA and the California Elections Code.

4 55. Accordingly, to fully comply with NVRA's requirements, the Secretary must
5 include among the designations in his NVRA declaration all "private entit[ies] under contract
6 with designated voter registration agenc[ies] to provide services or assistance on behalf of the
7 designated voter registration agency." *See* Cal. Elec. Code § 2401(b)(2).

8
9 **FIRST CAUSE OF ACTION:
WRIT OF MANDATE (CAL. CODE CIV. PROC § 1085) FOR VIOLATION OF
NATIONAL VOTER REGISTRATION ACT, 52 U.S.C. § 20506(a)(2)**

10 **(All Plaintiffs Against Defendant Secretary)**

11 56. Plaintiffs repeat and re-allege each of the preceding paragraphs as though set forth
12 fully herein.

13 57. Under the NVRA, the Secretary as the state's chief elections official has a
14 mandatory duty to designate (1) "all offices in the State that provide public assistance" and (2)
15 "all offices in the State that provide State-funded programs primarily engaged in providing
16 services to persons with disabilities" as Voter Registration Agencies.

17 58. In failing to designate the offices and programs named above, the Secretary has
18 failed to comply with that mandatory and ministerial duty.

19 59. Plaintiffs seek a writ of mandate pursuant to Code of Civil Procedure section 1085
20 from this Court directing the Secretary to designate the following offices as Voter Registration
21 Agencies, as described more fully in the preceding paragraphs: County offices that administer
22 General Assistance/General Relief Programs; Offices that administer California Student Aid
23 Commission Financial Aid Programs; Offices that administer California Department of Education
24 Nutrition Programs; Local Education Agency Special Education Offices; Area Agencies on
25 Aging and other offices under contract to provide services or benefits on behalf of the California
26 Department of Aging; and all private entities under contract to provide services or benefits on
27 behalf of a Voter Registration Agency.

28

1 **SECOND CAUSE OF ACTION:**
2 **WRIT OF MANDATE (CAL. CODE CIV. PROC § 1085) FOR VIOLATION OF CAL.**
3 **ELEC. CODE § 2402**

4 **(All Plaintiffs Against Defendant Secretary)**

5 60. Plaintiffs repeat and re-allege each of the preceding paragraphs as though set forth
6 fully herein.

7 61. Elections Code section 2402(a) makes the Secretary of State responsible for “the
8 state’s responsibilities under the federal National Voter Registration Act of 1993” and the NVRA
9 imposes a mandatory duty to designate public assistance offices and disability offices as Voter
10 Registration Agencies. Elections Code section 2402, therefore, imposes on the Secretary a
11 mandatory duty to designate all Voter Registration Agencies required by the NVRA.

12 62. In failing to designate the offices and programs named above, the Secretary has
13 failed to comply with that mandatory and ministerial duty.

14 63. Plaintiffs seek a writ of mandate pursuant to Code of Civil Procedure section 1085
15 from this Court directing the Secretary to designate the following offices as Voter Registration
16 Agencies, as described more fully in the preceding paragraphs: County offices that administer
17 General Assistance/General Relief Programs; Offices that administer California Student Aid
18 Commission Financial Aid Programs; Offices that administer California Department of Education
19 Nutrition Programs; Local Education Agency Special Education Offices; Area Agencies on
20 Aging and other offices under contract to provide services or benefits on behalf of the California
21 Department of Aging; and all private entities under contract to provide services or benefits on
22 behalf of a Voter Registration Agency.

23 **THIRD CAUSE OF ACTION:**
24 **TAXPAYER ACTION (CAL. CIV. PROC. CODE § 526a)**

25 **(All Plaintiffs Against Defendant Secretary)**

26 64. Plaintiffs repeat and re-allege each of the preceding paragraphs as though set forth
27 fully herein.

28 65. Defendant is illegally expending public funds by performing his duties in violation
of the NVRA and California Elections Code section 2402(a), in violation of Code of Civil
Procedure § 526a.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Issue a writ of mandate directing the Secretary to designate additional Voter Registration Agencies as set forth above.

B. Issue a declaration that, under the NVRA and the California Elections Code, the Secretary must designate the offices listed and described above as Voter Registration Agencies as specified above.


C. Issue a permanent injunction directing the Secretary to designate additional Voter Registration Agencies as set forth above.

D. Order the Secretary to pay Plaintiffs' costs and attorney's fees pursuant to Code of Civil Procedure section 1021.5 and other applicable statutes; and

E. For such other and further relief as the Court deems just and proper.


Dated: July 24, 2018

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