

1 DEANNA KITAMURA, SBN 162039
NICOLE GON OCHI, SBN 268678
2 ASIAN AMERICANS ADVANCING
JUSTICE – LOS ANGELES
3 1145 Wilshire Boulevard
Los Angeles, CA 90017
4 Telephone: (213) 977-7500
Facsimile: (213) 977-7595
5 Email: dkitamura@advancingjustice-la.org
nochi@advancingjustice-la.org

6 *Attorneys for Petitioner/Plaintiff*
7 *Asian Americans Advancing Justice –*
Los Angeles

8 JONATHAN T. STEIN, SBN 294313
9 WINIFRED V. KAO, SBN 241473
ASIAN AMERICANS ADVANCING
10 JUSTICE – ASIAN LAW CAUCUS
55 Columbus Avenue
11 San Francisco, CA 94111
Telephone: (415) 848-7736
12 Facsimile: (415) 896-1702
Email: jonathans@advancingjustice-alc.org
13 winifredk@advancingjustice-alc.org

14 *Attorneys for Petitioner/Plaintiff*
15 *Asian Americans Advancing Justice – Asian*
Law Caucus

LINDA LYE, SBN 215584
WILLIAM S. FREEMAN, SBN 82002
RAUL MACIAS, SBN 293208
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA
39 Drumm Street, 2nd Floor
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437
Email: llye@aclunc.org
wfreeman@aclunc.org
rmacias@acluca.org

Attorneys for Petitioner/Plaintiff
American Civil Liberties Union of Northern
California

16
17 [Additional Counsel Listed on Following Page]

18
19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF SAN FRANCISCO

21 ASIAN AMERICANS ADVANCING JUSTICE)
22 – LOS ANGELES;)
ASIAN AMERICANS ADVANCING JUSTICE)
23 – ASIAN LAW CAUCUS;)
AMERICAN CIVIL LIBERTIES UNION OF)
24 NORTHERN CALIFORNIA,)
25)
Petitioners/Plaintiffs,)
26)
v.)
27)
ALEX PADILLA, in his official capacity as)
Secretary of State of the State of California,)
28)
Respondent/Defendant.)

CASE NO.:

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

1 STEVEN M. SCHATZ, SBN 118356
DAVID J. BERGER, SBN 147645
2 DYLAN G. SAVAGE, SBN 310452
WILSON SONSINI GOODRICH & ROSATI
3 Professional Corporation
650 Page Mill Road
4 Palo Alto, CA 94304
Telephone: (650) 493-9300
5 Facsimile: (650) 493-6811
Email: sschatz@wsgr.com
6 dberger@wsgr.com
dsavage@wsgr.com
7

8 *Attorneys for Petitioners/Plaintiffs*
9 *Asian Americans Advancing Justice –*
10 *Los Angeles, Asian Americans Advancing*
Justice – Asian Law Caucus, and American
Civil Liberties Union of Northern California

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1 Petitioners/Plaintiffs allege as follows:

2 **INTRODUCTION**

3 1. This case seeks to protect the right of limited English proficient Californians to
4 language assistance when voting. Defendant Secretary of State (“Secretary”) recently issued a
5 directive to county elections officials that deprives eighty thousand limited English proficient
6 Californians of the language assistance to which they are entitled under state law. Voters who
7 speak thirty-four languages are adversely affected. Some of the most severely impacted
8 populations speak Spanish, Farsi, Arabic, Japanese, and Russian.

9 2. The Legislature intended that “non-English-speaking citizens, like all other
10 citizens, should be encouraged to vote.” Elec. Code § 14201(h). It therefore enacted California
11 Elections Code § 14201 (“Section 14201”) with the express purpose of requiring “appropriate
12 efforts [to] be made on a statewide basis to minimize obstacles to voting by citizens who lack
13 sufficient skill in English to vote without assistance.” *Id.*

14 3. In particular, Section 14201 imposes on the Secretary a mandatory duty to identify
15 each county or precinct in which “3 percent or more of the voting-age residents” “are members of
16 a single language minority, and . . . lack sufficient skills in English to vote without assistance.”
17 Elec. Code § 14201(b)(1). County elections officials, in turn, are required to provide specified
18 language assistance in all “affected polling places” in each such county or precinct identified by
19 the Secretary of State. *Id.*

20 4. Although California law clearly prescribes the counties and precincts in which
21 language assistance must be provided, past Secretaries of State have, for many years, used an
22 unauthorized and improper methodology to determine the counties and precincts in which
23 language assistance must be provided. Defendant Secretary repeated this error in a memorandum
24 issued by his office to all county clerks and registrars of voters on December 29, 2017, titled
25 “County Clerk/Registrar of Voters (CC/ROV) Memorandum #17148” (“CC/ROV 17148”). In
26 particular, in determining the counties and precincts that are required to provide state-law
27 mandated language assistance, the Secretary improperly confined the universe of languages
28 covered by *state* law to the small group of languages covered under a more restrictive and

1 inapplicable *federal* statute. In addition, the Secretary improperly required language assistance
2 only in the *precincts* where the three percent trigger was met, even though the statute requires
3 language assistance throughout each *county* where the three percent trigger is met.

4 5. The Secretary’s improper determination in CC/ROV 17148 has resulted in the
5 denial of language assistance to an estimated 80,141 Californians who are entitled to receive such
6 assistance under Elections Code § 14201. Expedited judicial intervention is required to compel
7 the Secretary to issue an amended CC/ROV to correct this manifest injustice and allow tens of
8 thousands of citizens the opportunity to meaningfully exercise their right to vote in the upcoming
9 elections.

10 **JURISDICTION AND VENUE**

11 6. This Court has jurisdiction over Plaintiffs’ request for a writ of mandate under
12 Code of Civil Procedure § 1085. The Court has jurisdiction over Plaintiffs’ claims for declaratory
13 and injunctive relief under Article VI § 10 of the California Constitution and Code of Civil
14 Procedure §§ 410.10, 526, 526a, and 1060.

15 7. Venue is proper in the City and County of San Francisco under Code of Civil
16 Procedure § 401(1) because the Secretary of State is an officer of the State of California and the
17 California Attorney General maintains an office in the City and County of San Francisco.

18 **PARTIES**

19 8. Plaintiff Asian Americans Advancing Justice – Los Angeles (“Advancing Justice –
20 LA”) is the largest civil rights organization in the nation working in the Asian American, Native
21 Hawaiian, and Pacific Islander (AANHPI) communities. Advancing Justice – LA has a voting
22 rights unit focused on access to the polls, including language access, and systems that dilute the
23 voting strength of the AANHPI communities. Advancing Justice – LA has historically conducted
24 poll monitoring focused on counties’ language assistance requirements.

25 9. Plaintiff Asian Americans Advancing Justice – Asian Law Caucus (“Advancing
26 Justice – ALC”) is the nation’s first legal and civil rights organization serving low-income Asian
27 Pacific American communities. Advancing Justice – ALC has long advocated for the expansion
28 and protection of voting rights for all immigrant communities, including on language access

1 issues, to ensure full participation of all eligible voters in the electoral process. Advancing Justice
2 – ALC’s voting rights advocacy has included legislative efforts and poll monitoring, as well as
3 litigation.

4 10. Plaintiff American Civil Liberties Union of Northern California (“ACLU – NC”),
5 founded in 1934 and based in San Francisco, California, is one of the largest ACLU affiliates, with
6 approximately 169,000 members, many of whom pay California state income taxes, and many of
7 whom live and pay property taxes in the City and County of San Francisco. Plaintiff ACLU – NC
8 has long been dedicated to protecting the rights of its members and of all Californians, including
9 their rights to participate fully in the electoral process.

10 11. Given their longstanding commitment to voting rights, all of the Plaintiffs have a
11 beneficial interest in ensuring that all Californians who are entitled to receive assistance in voting
12 are provided such assistance. All of the Plaintiffs seek to vindicate the important public interest in
13 enforcing the public duty of the Secretary of State to provide language assistance to those
14 Californians who are entitled by law to receive them.

15 12. Defendant Alex Padilla is the Secretary of State of the State of California. He is
16 named in his official capacity only.

17 **FACTUAL AND LEGAL BACKGROUND**

18 13. Voting language assistance must be provided under both federal and California
19 law. However, there are critical differences between the two statutory schemes. Specifically, the
20 federal Voting Rights Act of 1965, 52 U.S.C. § 10301 *et seq.* (“VRA”), and Section 14201 require
21 different types of language assistance, and use parallel, but not identical, sets of criteria for
22 determining the jurisdictions in which such assistance must be provided.

23 14. In general terms, the criteria for determining those jurisdictions that are covered
24 (“covered jurisdictions”) by the VRA’s language assistance requirements are more stringent than
25 the criteria for determining covered jurisdictions under Section 14201; but once these more
26 stringent criteria are met, the language assistance required by the VRA is more robust and
27 comprehensive than the assistance required under California law.
28

1 *The State Framework Under Elections Code § 14201*

2 15. State law requires the Secretary to make determinations every four years as to the
3 jurisdictions that must provide language assistance. *See* Elec. Code § 14201(f). County elections
4 officials are required to comply with the Secretary's determination. *See id.* § 14201(a).

5 16. California law imposes a *mandatory* duty on the Secretary to direct county
6 elections officials to provide the language assistance in "affected polling places" whenever the
7 number of residents of voting age in any county or precinct who are members of any "single
8 language minority, and who lack sufficient skills in English to vote without assistance . . . equals 3
9 percent or more of the voting-age residents" of the county or precinct. Elec. Code. § 14201(b).

10 17. State law also grants the Secretary *discretion* to order county elections officials to
11 provide language assistance in additional counties and precincts if he finds "a significant and
12 substantial need." Elec. Code § 14201(a).

13 18. A jurisdiction need not provide state law language assistance in any language for
14 which it is required to provide assistance under the federal VRA. Elec. Code § 14201(g).

15 19. County elections officials directed by the Secretary to provide language assistance
16 must:

- 17 (a) provide at polling places facsimile ballots, which are translated copies of the ballot
18 in the voter's preferred language that the voter may use as a reference when voting
19 on an English-language ballot (Elec. Code § 14201(b)(1));
- 20 (b) provide a facsimile ballot to a vote by mail voter who is registered in a covered
21 precinct and has requested a facsimile ballot (*id.* § 13400(a));
- 22 (c) train precinct board members to properly use facsimile ballots and to inform voters
23 of the existence of facsimile ballots (*id.* § 14201(c)(1));
- 24 (d) post in the polling place signage (in English and in the language of the facsimile
25 ballots available at the polling place) informing voters of the existence of facsimile
26 ballots (*id.* § 14201(c)(3));
- 27 (e) post on the county elections official's internet website (in English and in all
28 languages in which the county provides facsimile ballots) information identifying

1 all polling places in the county and the languages of facsimile ballots that will be
2 available to voters at each polling place (*id.* § 14201(d)); and

3 (f) include in the text of the county voter information guide (in English and in all
4 languages in which the county provides facsimile ballots) text referring voters to
5 the portion of the county elections official’s internet website containing
6 information set forth in (e) above (*id.* § 14201(e)).

7 20. The need for this assistance is real. For example, a general election exit survey of
8 Los Angeles County voters in 2008 found that 30 percent of Chinese voters, 33 percent of Filipino
9 voters, 60 percent of Korean voters, and 50 percent of Vietnamese voters used bilingual voting
10 assistance.¹ Similarly, another survey of Los Angeles County voters in 2015 found that 46 percent
11 of Chinese voters and 50 percent of Korean voters use bilingual voting assistance.²

12 21. Language assistance has dramatic impacts on voter participation. For example,
13 after a settlement with the federal government required San Diego County to improve its language
14 access efforts, voter registration rates among Latinos and Filipino Americans increased by more
15 than 20 percent and the voter registration rate among Vietnamese Americans registration increased
16 by 40 percent.³ Academic research has also found that language assistance increases turnout for
17 limited English proficient voters.⁴

18 *The Federal Framework Under Section 203 of the Voting Rights Act*

19 22. Under § 203 of the VRA, language assistance must be provided in “covered
20 jurisdictions,” which are defined as *states or counties* in which, *inter alia*, more than *five percent*,

21 _____
22 ¹ Asian Americans at the Ballot Box: The 2008 General Election in Los Angeles County,
https://advancingjustice-la.org/sites/default/files/APALC_BallotBox_LA2008_FINAL.pdf.

23 ² Poll of Asian American registered voters in Los Angeles County, Asian Americans
24 Advancing Justice – Los Angeles and the Pat Brown Institute at California State University, Los
Angeles, 2016.

25 ³ Alberto R. Gonzales, U.S. Attorney General, “Prepared Remarks at the Anniversary of the
26 Voting Rights Act, Lyndon B. Johnson Presidential Library, Austin, Texas,” Aug. 2, 2005,
<https://www.justice.gov/archive/ag/speeches/2005/080205agvotingrights.htm>.

27 ⁴ *See, e.g.*, Daniel J. Hopkins, Translating into Votes: The Electoral Impacts of Spanish-
28 Language Ballots, *American Journal of Political Science*, 813-829 (2011),
<https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1540-5907.2011.00534.x>.

1 or more than 10,000 in the case of a county, of the *citizens* of voting age “are members of a single
2 language minority and are limited-English proficient” and “the illiteracy rate of the citizens in the
3 language minority as a group is higher than the national illiteracy rate.” 52 U.S.C. §
4 10503(b)(2)(A)(i)-(ii); 28 C.F.R. § 55.1. Even if a state is a “covered jurisdiction” under the
5 VRA, language assistance is not required to be provided within counties having less than five
6 percent or 10,000 citizens of voting age who are limited English proficient. 52 U.S.C. §
7 10503(b)(2)(B)).

8 23. In contrast, California law requires language assistance to be more broadly
9 provided than federal law, as the coverage requirements under Section 14201 are triggered if *three*
10 *percent* of the *residents* of voting age in a *county or precinct* “lack sufficient skills in English to
11 vote without assistance.”

12 24. In addition, § 203(e) of the VRA, 52 U.S.C. § 10503(e), employs a restrictive
13 definition of “language minority” that is based on ethnicity, and that is not employed in Section
14 14201. Section § 203(e) provides: “For purposes of this section, the term ‘language minorities’ or
15 ‘language minority group’ means persons who are American Indian, Asian American, Alaskan
16 Natives, or of Spanish heritage.” Section 14201 is not so confined and does not contain or refer to
17 a definition of the term “language minority.”

18 25. While the coverage thresholds in the federal statute lead to fewer language
19 communities being covered than under the California statute, the assistance required under the
20 VRA when its provisions are triggered is more robust than what is required under California law.
21 For example, jurisdictions required to provide coverage under the VRA must translate *all* election
22 related materials and provide voter assistance in the relevant language(s). *See* 52 U.S.C. §
23 10503(c); *see also* 28 C.F.R. § 55.19 (must translate “all materials distributed to or provided for
24 the use of the electorate generally”). This includes sample ballots, votable ballots (the ballots on
25 which the voter actually votes), notices, signs, voter registration cards, and so on. In contrast,
26 California law only requires the provision of a nonvotable “facsimile ballot” and the translation of
27 certain posted notices.

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1 31. In CC/ROV 17148, the Secretary made two fundamental errors in determining
2 what language minority groups must receive language assistance under Section 14201.

3 32. *First*, the Secretary focused his coverage determinations exclusively at the *precinct*
4 level even though Section 14201 requires the Secretary to determine that coverage is necessary in
5 “affected polling places” “in *each county* and precinct” in which the number of voting age
6 residents who lack sufficient skills in English to vote without assistance equals three percent or
7 more. Elec. Code § 14201 (emphasis added).

8 33. The decision to not make coverage determinations at the county level has an
9 enormous impact on the number of voters who will get language assistance, as shown in
10 Appendix A. For example, Spanish speakers accounted for at least three percent of voting age
11 residents in 18 counties,⁶ but the Secretary only required coverage in Spanish in *particular*
12 *precincts* within those counties that also hit the three percent threshold. Similarly, Punjabi
13 speakers accounted for at least three percent of voting age residents in 1 county (Sutter County),
14 but the Secretary only required coverage in Punjabi in the particular precincts within that county
15 that also hit the three percent threshold. Spanish or Punjabi speakers who live in these counties
16 and who require assistance to vote in English but who live in precincts that failed to meet the three
17 percent threshold at the precinct level are therefore left uncovered. But under the plain language
18 of Section 14201, language assistance should have been provided to them because they live in a
19 county in which the three percent threshold was met. The Secretary’s failure to properly discharge
20 his mandatory duty to require coverage at all affected polling places in counties that meet the three
21 percent threshold will deprive nearly 6,400 Spanish- and Punjabi-speaking Californians of the
22 language assistance to which they are entitled under state law.

23 34. *Second*, in making his mandatory coverage determinations (as opposed to his
24 discretionary coverage determinations), the Secretary limited his analysis to include *only* the
25 “language minority groups expressly identified in the most recent 2016 [VRA] Section 203
26 language access determinations.” CC/ROV 17148, Section 14201 Data Methodology at 3. In

27 ⁶ The 18 counties are Del Norte, Inyo, Lake, Lassen, Marin, Mendocino, Modoc, Mono,
28 Napa, San Luis Obispo, Santa Cruz, Sierra, Solano, Sonoma, Sutter, Tehama, Yolo, and Yuba.

1 other words, the Secretary limited the universe of languages in his mandatory coverage
2 determinations to only the languages spoken by the seven ethnicities that the Census Bureau
3 determined in 2016 should be covered somewhere in California under the ethnicity based
4 definition of “language minority” in § 203 of the VRA. He thus extended mandatory coverage
5 only to Spanish, Chinese, Mandarin, Cantonese, Tagalog, Ilocano, Korean, Khmer, and
6 Vietnamese, i.e., the languages spoken by the seven ethnicities designated by the Census Bureau
7 in 2016 as requiring Section 203 mandated language assistance, while failing to provide coverage
8 to speakers of numerous additional languages who should have been covered under
9 Section 14201, as shown in Appendix B.

10 35. The Secretary’s determination to limit language assistance to the languages spoken
11 by the seven ethnicities covered in California under the federal VRA was wholly improper and
12 lacks any basis in the statute’s text or purpose. Nothing in Section 14201 suggests or requires the
13 language limitation that the Secretary has applied. Further, the diversity of California’s population
14 means that many citizens speak languages other than those spoken by the seven ethnicities covered
15 in California under the federal VRA. The Secretary’s improper determination means that
16 Californians who speak such languages—which include Arabic, Farsi, Russian, Ukrainian, Syriac,
17 and Amharic—have been automatically and improperly excluded from the Secretary’s mandatory
18 coverage determination under Section 14201.

19 36. Attempting to apply the federal definition of “language minority” to California
20 makes no sense, as it is both over- and under-inclusive. For example, the federal definition, which
21 focuses on certain ethnicities, excludes many groups of limited English proficient persons who
22 live in California, including persons of African, Middle Eastern and Eastern European descent. At
23 the same time, the federal definition includes groups of non-English speaking persons with (at
24 best) a minimal presence in California, such as Alaskan Natives. The Secretary’s decision to
25 apply the federal definition to California was illogical, arbitrary and contrary to the language and
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1 legislative intent of Section 14201, which explicitly does not adopt the federal definition of
2 “language minority.”⁷

3 37. The Secretary’s decision was also erroneous because coverage under the federal
4 VRA is calculated under the more restrictive criteria of *five percent* or *10,000 citizens* of voting
5 age in a *state or county*, as opposed to *three percent of residents* of voting age in a *county or*
6 *precinct*, as provided under Section 14201. In addition to excluding limited English proficient
7 persons who speak languages outside of the federal definition of “language minority,” as
8 discussed above, the Secretary’s reliance on the federal coverage formula excluded many groups
9 of limited English proficient persons who fall within the “language minorities” covered under
10 federal law but who do not meet the more restrictive federal coverage criteria. Thus, the Secretary
11 failed to include in his mandatory coverage determinations Asian languages such as Japanese and
12 Hindi.

13 38. Instead of restricting the analysis for purposes of his mandatory coverage
14 determinations to only the languages spoken by the seven ethnicities that the Census Bureau
15 determined in 2016 should be covered somewhere in California under § 203 of the VRA, the
16 Secretary should have defined a member of a “language minority” for purposes of Section 14201
17 to be anyone who speaks a language other than English at home. This population is readily
18 identifiable based on Census data already within the possession of, or available to, the Secretary.

19 39. The Secretary should also have defined a person who “lack[s] sufficient skills in
20 English to vote without assistance” as anyone who speaks English other than “[v]ery well.” This
21 population is readily identifiable based on Census data already within the possession of, or
22 available to, the Secretary.

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24
25 ⁷ The failure of the Legislature to refer to or incorporate the definition of “language
26 minority” from the federal VRA into Section 14201 is clearly deliberate, as the Legislature knew
27 how to refer to the VRA when it wanted to. *Compare* Elections Code § 14026(d), part of a
28 chapter of that Code that prohibits the use of at-large elections to dilute the voting rights of
members of protected classes, which states that “[a]s used in this chapter . . . ‘protected class’
means a class of voters who are members of a race, color, or *language minority group*, as *this*
class is referenced and defined in the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10301 et
seq.)” (Emphasis added).

1 40. The Secretary has stated that his approach “followed the previous practice” of his
2 predecessors (CC/ROV 17148 at 2), but has offered no other explanation for restricting the
3 languages included in his mandatory coverage determinations under Section 14201 to those
4 included in the Census Bureau Section 203 VRA determinations for California.

5 41. Through the exercise of his discretionary authority, the Secretary in CC/ROV
6 17148 also determined that county elections officials should provide language assistance in
7 additional precincts and in additional languages. CC/ROV 17148 states that the Secretary’s
8 discretionary coverage determinations were based on consideration of “whether a sufficient
9 number of precincts within a county included limited English proficient populations compared to
10 the total number of precincts in the county.” CC/ROV 17148, Section 14201 Data Methodology
11 at 3.

12 42. The Secretary’s discretionary coverage determinations, however, still leave
13 uncovered many precincts and languages that were required to be covered under his mandatory
14 determinations. *See* Appendix B. His discretionary coverage determinations do not cure or
15 excuse the Secretary’s failure to properly discharge his mandatory duties under Section 14201.

16 43. The Secretary’s failure to properly discharge his mandatory duties to require
17 coverage in all precincts in which three percent of the voting age residents are members of a
18 language minority and lack sufficient skills in English to vote without assistance adversely
19 deprives tens of thousands of voters the language assistance to which they are entitled under state
20 law.

21 44. Based upon the data relied upon by the Secretary in making his coverage
22 determinations under the CC/ROV, as shown in Appendix C, it is evident that:

- 23 (a) On 3,349 occasions, the Secretary declined to cover a precinct for a language in
24 which at least three percent of the residents of voting age belong to a language
25 minority and lack sufficient skills in English to vote without assistance;
- 26 (b) 73,767 limited-English proficient, voting-age Californians live in a precinct that the
27 Secretary declined to cover, even though at least three percent of the residents of
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1 voting age in that precinct belong to a language minority and lack sufficient skills
2 in English to vote without assistance; and

3 (c) There were 34 languages that met the three percent threshold in at least one
4 precinct that the Secretary declined to cover, including Russian (1,120 precincts);
5 Portuguese (224); Arabic (195 precincts); Laotian (65); Syriac (105 precincts);
6 Hebrew (105 precincts); and Farsi (94 precincts).

7 **FIRST CAUSE OF ACTION:**
8 **VIOLATION OF CALIFORNIA ELECTIONS CODE § 14201**
9 **(All Plaintiffs Against Defendant Secretary)**

10 45. Plaintiffs repeat and reallege each of the preceding paragraphs as though set forth
11 fully herein.

12 46. Under Section 14201, the Secretary has a mandatory duty to require county
13 elections officials to provide language assistance in all affected polling places in each county or
14 precinct in which more than three percent of the residents of voting age are members of any one
15 language minority and lack sufficient skills in English to vote without assistance.

16 47. In issuing CC/ROV 17148, the Secretary has failed to comply with that mandatory
17 duty in two ways.

18 48. First, he improperly limited his analysis to the precinct level and failed to require
19 coverage at all polling places throughout *counties* in which three percent of the residents of voting
20 age are members of any one language minority and lack sufficient skills in English to vote without
21 assistance.

22 49. Second, he improperly limited his analysis of the language minorities covered by
23 state law to the languages spoken by the seven ethnicities that the Census Bureau determined in
24 2016 should be covered in California under Section 203 of the federal VRA.

25 50. Plaintiffs seek a writ of mandate pursuant to Code of Civil Procedure § 1085 from
26 this Court directing the Secretary to reissue his coverage determinations consistent with his
27 mandatory duties under Section 14201.
28

**SECOND CAUSE OF ACTION:
TAXPAYER ACTION (CAL. CIV. PROC. CODE § 526a)
(All Plaintiffs Against Defendant Secretary)**

51. Plaintiffs repeat and reallege each of the preceding paragraphs as though set forth fully herein.

52. Defendant is illegally expending public funds by performing his duties in violation of the statutory provision described above in violation of Code of Civil Procedure § 526a.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Issue a writ of mandate directing the Secretary to issue a corrected CC/ROV consistent with his mandatory duties under Section 14201, and in particular, to require facsimile ballots and associated language assistance:

- 1. in every polling place in each county in which three percent or more of the voting age residents of the county speak a language other than English at home and lack sufficient skills in English to vote without assistance; and
- 2. in all precincts in which three percent or more of the voting age residents speak any language other than English at home and lack sufficient skills in English to vote without assistance.

B. Issue a declaration that, under Section 14201, the Secretary must determine that facsimile ballots and associated language assistance is required:

- 1. in every polling place in each county in which three percent or more of the voting age residents of the county speak a language other than English at home and lack sufficient skills in English to vote without assistance; and
- 2. in all precincts in which three percent or more of the voting age residents speak any language other than English at home and lack sufficient skills in English to vote without assistance.

C. Issue a preliminary and permanent injunction directing the Secretary to issue a corrected CC/ROV consistent with his mandatory duties under Section 14201, as set forth above.

- 1 D. Order the Secretary to pay Plaintiffs' costs and attorney's fees pursuant to Code of
2 Civil Procedure § 1021.5 and other applicable statutes; and
3 E. For such other and further relief as the Court deems just and proper.
4

5 Dated: April 23, 2018

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

7
8 Steven M. Schatz
9 David J. Berger
10 Dylan G. Savage
11 650 Page Mill Road
12 Palo Alto, CA 94304
13 Telephone: (650) 493-9300
14 Facsimile: (650) 493-6811

*Attorneys for Petitioners/Plaintiffs American
Civil Liberties Union of Northern California,
Asian Americans Advancing Justice – Los
Angeles, and Asian Americans Advancing
Justice – Asian Law Caucus*

15 ASIAN AMERICANS ADVANCING
16 JUSTICE – LOS ANGELES
17 Deanna Kitamura
18 Nicole Gon Ochi
19 1145 Wilshire Boulevard
20 Los Angeles, CA 90017
21 Telephone: (213) 977-7500
22 Facsimile: (213) 977-7595

*Attorneys for Petitioner/Plaintiff Asian
Americans Advancing Justice – Los Angeles*

23 ASIAN AMERICANS ADVANCING
24 JUSTICE – ASIAN LAW CAUCUS
25 Jonathan T. Stein
26 Winifred V. Kao
27 55 Columbus Avenue
28 San Francisco, CA 94111
Telephone: (415) 848-7736
Facsimile: (415) 896-1702

*Attorneys for Petitioner/Plaintiff Asian
Americans Advancing Justice – Asian Law
Caucus*

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AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA

Linda Lye
William S. Freeman
Raul Macias
39 Drumm Street, 2nd Floor
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437

*Attorneys for Petitioner/Plaintiff American Civil
Liberties Union of Northern California*