

1 ROBERT PATRICK STICHT (SBN 138586)  
MICHAEL BEKESHA\*  
2 JUDICIAL WATCH, INC.

3  
4 *\*Pro Hac Vice Application Forthcoming*

5 Attorneys for Plaintiffs,  
Robin Crest, Earl De Vries, and Judy De Vries

6  
7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES**

10  
11 ROBIN CREST, EARL DE VRIES, and  
12 JUDY DE VRIES,

13 Plaintiffs,

14 v.

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

16 Defendants.

Case No.

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

17  
18 **INTRODUCTION**

19 1. Plaintiffs ROBIN CREST, EARL DE VRIES, and JUDY DE VRIES, taxpayers and  
20 citizens of the State of California, seek to enjoin Defendant ALEX PADILLA from expending taxpayer  
21 funds and taxpayer-financed resources enforcing or carrying out the provisions of Senate Bill 826 (“SB  
22 826”), which requires California-based, publicly-held domestic or foreign corporations to have at least  
23 one female director by December 31, 2019, and, depending on board size, up to three female directors  
24 by December 31, 2021.

25 **JURISDICTION AND VENUE**

26 2. Jurisdiction in this case is founded on California’s common law taxpayer standing  
27 doctrine and Code of Civil Procedure section 526a, which grants California taxpayers the right to sue  
28 government officials to prevent unlawful expenditures of taxpayer funds and taxpayer-financed

1 resources. The mere expending of a paid, public official's time performing illegal or unauthorized acts  
2 constitutes an unlawful use of funds that may be enjoined, and it is immaterial that the amount of the  
3 expenditure is small or that enjoining the illegal expenditure will permit a savings of tax funds. *Blair*  
4 *Pitchess*, 5 Cal. 3d 258, 268 (1971). It has long been held that "state officers too may be sued under  
5 section 526a." *Serrano v. Priest*, 5 Cal. 3d 584, 618 n.38 (1971).

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

### 11 PARTIES

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

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

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

21 7. Defendant ALEX PADILLA is the Secretary of State of the State of California and a  
22 constitutional officer of the State. Cal. Const. art. V, § 11. As Secretary of State, Defendant is charged  
23 with overseeing, administering, and enforcing SB 826. Defendant is sued in his official capacity only.

### 24 STATEMENT OF FACTS

25 8. On September 30, 2018, California Governor Jerry Brown signed SB 826 into law. That  
26 same day, the legislation was chaptered by the Secretary of State at Chapter 954, Statutes of 2018. SB  
27 826 adds two new provisions to the Corporations Code, section 301.3 and section 2115.5.

28 9. SB 826 requires California-based, publicly-held corporations, defined as "a domestic or

1 foreign corporation whose principal executive offices, according to the corporation’s SEC 10-K form,  
2 are located in California,” have at least one female director on its board by the end of the 2019 calendar  
3 year. SB 826 also requires, by the end of the 2021 calendar year, such corporations comply with the  
4 following:

- 5 • boards of six or more directors must include at least three female directors;
- 6 • boards of five directors must include at least two female directors; and
- 7 • boards of four or fewer members must include at least one female director.

8 10. SB 826 also directs the Secretary of State to prepare and publish a report, no later than  
9 July 1, 2019, documenting the number of publicly-held, domestic and foreign corporations with  
10 principal executive offices in California that have at least one female director on their boards. The  
11 Secretary of State published its report on July 1, 2019.

12 11. For purposes of SB 826, “female” means an individual who self-identifies her gender as a  
13 woman, without regard to the individual’s designated sex at birth.

14 12. According to the Senate Floor Analysis of SB 826, there are currently 761 publicly-  
15 traded corporations headquartered in California, the vast majority of which are subject to the  
16 legislation’s provisions. In its July 1, 2019 report, the Secretary of State identified 537 corporations that  
17 must comply with SB 826.

18 13. In addition, SB 826 directs the Secretary of State to prepare and publish an annual report,  
19 starting on March 1, 2020, documenting the number of corporations that are in compliance with SB 826,  
20 the number of corporations that moved their headquarters out of California, and the number of  
21 corporations that are no longer publicly traded.

22 14. According to the Assembly Appropriations Committee, SB 826 will have ongoing  
23 General Fund costs of approximately \$500,000 each year for the Secretary of State to develop  
24 regulations, investigate claims, and enforce violations of the statute’s provisions and unknown additional  
25 costs to produce a required annual report.

26 15. The Assembly Floor Analysis identified a “significant risk of legal challenges” to SB  
27 826. It characterized the legislation as creating a “quota-like system” and noted, “[T]his bill, if enacted  
28 into law, would likely be challenged on equal protection grounds . . . The use of a quota-like system, as

1 proposed by this bill, to remedy past discrimination and differences in opportunity may be difficult to  
2 defend.”

3 16. In signing SB 826, then-Governor Brown noted that “serious legal concerns have been  
4 raised” to the legislation. “I don’t minimize the potential flaws that indeed may prove fatal to its  
5 ultimate implementation,” he wrote.

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

8 17. Plaintiffs incorporate by reference and reallege all their prior allegations.

9 18. An actual and justiciable controversy has arisen and now exists between Plaintiffs and  
10 Defendant. Plaintiffs contend they have paid income and other taxes to the State of California during  
11 the one-year period prior to the commencement of this action and that Defendant is expending, intend to  
12 expend, or will expend taxpayer funds and taxpayer-financed resources illegally by enforcing and  
13 otherwise carrying out the provisions of SB 826.

14 19. Specifically, Plaintiffs contend that any expenditure of taxpayer funds or taxpayer-  
15 financed resources on SB 826 is illegal under the California Constitution. The legislation’s quota  
16 system for female representation on corporate boards employs express gender classifications. As a  
17 result, SB 826 is immediately suspect and presumptively invalid and triggers strict scrutiny review. *See*  
18 *e.g., Connerly v. State Personnel Bd.*, 92 Cal. App. 4th 16, 40-44 (2001); Cal. Const., art. I, § 31.  
19 Because gender classifications are necessary to SB 826’s quota system, the legislation can only be  
20 justified by a compelling governmental interest, and its use of gender classifications must be narrowly  
21 tailored to serve that compelling interest. *Connerly*, 92 Cal. App. 4th at 44. As Defendant cannot make  
22 these difficult showings and SB 826 cannot be interpreted to preserve the legislation’s quota system’s  
23 validity, it is unconstitutional and any expenditure of taxpayer funds or taxpayer-financed resources  
24 enforcing or otherwise carrying out the quota system is illegal.

25 20. On information and belief, Defendant contends SB 826 does not violate the California  
26 Constitution and that therefore he is not expending taxpayer funds and taxpayer-financed resources  
27 illegally and does not intend to expend or will not expend taxpayer funds and taxpayer-financed  
28 resources illegally in the future.

