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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

ROBIN CREST, EARL DE VRIES, and  
JUDY DE VRIES,

Plaintiffs,

v.

ALEX PADILLA,<sup>1</sup> in his official capacity as  
Secretary of State of the State of California.

Defendants.

Case No. 20STCV37513

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

**Reservation No. 076254255509**

Hearing: February 25, 2022  
Time: 1:30 p.m.  
Place: Dept. 14  
Judge: Hon. Terry Green

Action Filed: September 30, 2020  
Trial Date: March 28, 2022

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<sup>1</sup> Dr. Shirley N. Weber is the current Secretary of State.

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## INTRODUCTION

Plaintiff taxpayers sue to enjoin Defendant from spending public funds on California’s race, ethnicity, sexual preference, and transgender quotas for boards of directors of publicly-traded corporations with their headquarters in California. They also seek a judgment declaring the State’s quota system to be unlawful. Plaintiffs demonstrate herein that the quota system violates article I, sections 7 and 31 of the California constitution.

## ARGUMENT

### **I. STANDARDS GOVERNING SUMMARY JUDGMENT.**

The standards governing summary judgment are well-established. “A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding.” (Code Civ. Proc. § 437c(a).) “The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc. § 437c(c).) “A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action.” (Code Civ. Proc. § 437c(p)(1).) “Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto.” (*Id.*) “The defendant or cross-defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.” (*Id.*) “A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment.” (Code Civ. Proc. § 437c(f)(2).)

1 **II. PLAINTIFFS ARE TAXPAYERS UNDER SECTION 526a.**

2 To succeed on a claim under section 526a, a plaintiff first must demonstrate that he or she was  
3 assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a  
4 tax that funds the state. (Code Civ. Proc. § 526a.) It is undisputed that Plaintiffs paid income taxes to  
5 the State of California in the one-year period before they filed this action on September 30, 2020, or  
6 were assessed for and liable to pay such taxes. (Plaintiffs’ Separate Statement of Undisputed Material  
7 Facts in Support of Motion for Summary Judgment (“SOF”) at ¶ 1.)

8 **III. DEFENDANT IS EXPENDING TAXPAYER FUNDS.**

9 To succeed on a claim under section 526a, a plaintiff also must demonstrate that the defendant is  
10 a public official or agent of a public entity and is expending taxpayer funds illegally. (*Herzberg v.*  
11 *County of Plumas*, (2005) 133 Cal. App. 4th 1, 23-24 (quoting *National Organization for Reform of*  
12 *Marijuana Laws v. Gain*, (1979) 100 Cal. App. 3d 586, 598–599.) The use of government funds to  
13 implement or carry out an unconstitutional law is an “illegal expenditure” for purposes of section 526a.  
14 (*Ames v. Hermosa Beach*, (1971) 16 Cal. App. 3d 146, 150-151; *Blair v. Pitchess*, (1971) 5 Cal. 3d 258,  
15 268-69.) An expenditure may be actual or threatened. (*Humane Society of the United States v. State Bd.*  
16 *of Equalization*, (2007) 152 Cal. App. 4th 349, 355; *Connerly v. Schwarzenegger*, (2007) 146 Cal. App.  
17 4th 739, 749; *Waste Management of Alameda County, Inc. v. County of Alameda*, (2000) 79 Cal. App.  
18 4th 1223, 1240.) The size of the expenditure is immaterial. (*Blair*, 5 Cal. 3d at 268; *Wirin v. Parker*,  
19 (1957) 48 Cal. 2d 890, 894.) Section 526a is satisfied where paid employees of a public entity are  
20 spending time implementing or carrying out the illegal law, policy, procedure, or action. (*Blair*, 5 Cal.  
21 3d at 269; *Wirin v. Horrall*, (1948) 85 Cal. App. 2d 497, 504-05; *Citizens for Uniform Laws v. County of*  
22 *Contra Costa*, (1991) 233 Cal. App. 3d 1468, 1472-73.)

23 There is no genuine dispute of material fact that Defendant is expending taxpayer money  
24 implementing AB 979. There is no dispute that Defendant has expended taxpayer dollars revising the  
25 Corporate Disclosure Statement form that domestic and foreign publicly traded corporations  
26 headquartered in California are required to file with Defendant annually. (SOF at ¶ 8.) The revised  
27 form requires subject corporations to report their compliance with AB 979. (*Ibid.*) Defendant also has  
28 expended taxpayer dollars preparing and mailing, in December 2020, form letters informing subject

1 corporations of their AB 979 obligations and the new system she devised for subject corporations to  
2 report their compliance with AB 979. (*Id.* at ¶ 9.) Defendant also has expended and continues to  
3 expend yet more taxpayer dollars by creating and maintaining a website entitled “Underrepresented  
4 Communities on Boards” that advises corporations about their AB 979 obligations, as well as reporting  
5 corporations’ compliance or noncompliance with AB 979. (*Id.* at ¶ 10.) Defendant also admits that she  
6 intends to expend taxpayer dollars by preparing and publishing a report on March 1, 2022, and annually  
7 thereafter, identifying the number of corporations that have complied with AB 979. (*Id.* at ¶¶ 5-7 and  
8 11.) Clearly, there is no dispute that taxpayer funds have been spent and will be spent in the future  
9 implementing and enforcing AB 979.

10 **IV. AB 979 VIOLATES ARTICLE I, SECTION 7 OF CALIFORNIA’S CONSTITUTION.**

11 **A. AB 979 Is Presumptively Invalid.**

12 The California Constitution requires that “persons who are similarly situated with respect to a  
13 law’s legitimate purposes must be treated equally.” (*Law School Admission Council, Inc. v. State of*  
14 *California*, (2014) 222 Cal. App. 4th 1265, 1281 (*quoting People v. Brown*, (2012) 54 Cal. 4th 314,  
15 328.); Cal. Const., art. I, § 7(a).) A classification based on race, ethnicity, sexual preference, or  
16 transgender status is immediately suspect for equal protection purposes where the persons subject to the  
17 classification are similarly situated. (*Connerly v. State Personnel Bd.*, (2001) 92 Cal. App. 4th 16, 34,  
18 40-44 [race, ethnicity, and gender are suspect classifications]; *Strauss v. Horton*, (2009) 46 Cal. 4th 364,  
19 412 [sexual orientation is suspect classification]; *Taking Offense v. State of California*, (2021) 66 Cal.  
20 App. 5th 696, 723 [transgender status is a suspect classification].)

21 AB 979 requires that subject corporations have a specific number of directors based upon race,  
22 ethnicity, sexual preference, and transgender status. (SOF at ¶¶ 3-4.) Specifically, subject corporations  
23 must have a specific number of “directors from underrepresented communities.” (*Id.*) For purposes of  
24 AB 979, a “director from an underrepresented community” is “an individual who self-identifies as  
25 Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian,  
26 or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.” (*Id.* at ¶ 7.)  
27 Therefore, it is indisputable that AB 979 employs the suspect classifications of race, ethnicity, sexual  
28 preference, and transgender status to differentiate between similarly situated persons – current and

1 prospective members of a subject corporation’s board, all of whom are subject to the same process for  
2 selecting board members.

3 Because it indisputably employs express suspect classifications that trigger strict scrutiny review,  
4 AB 979 is presumptively unconstitutional. (*Woods*, 167 Cal. App. 4th at 674.) Plaintiffs satisfy their  
5 burden of establishing AB 979’s unconstitutionality based on the text of the statute itself. (*Id.*;  
6 *Connerly*, 92 Cal. App. 4th at 36, 43; *D’Amico*, 11 Cal. 3d at 17.) “When the challenged statutory  
7 scheme employs express gender classifications, a plaintiff meets his or her burden [of establishing  
8 unconstitutionality] by pointing that out.” (*Woods*, 167 Cal.App.4th at 674; *Connerly*, 92 Cal.App.4th at  
9 43 [“To the extent the statutory schemes challenged by plaintiff employ express racial and gender  
10 classifications, he has met his initial burden by pointing that out.”].) As *Connerly* also says, “Laws that  
11 explicitly distinguish between individuals on racial [or ethnic, sexual preference, and transgender status]  
12 grounds fall within the core of the prohibition of the equal protection clause and ‘no inquiry into  
13 legislative purpose is necessary when the racial [or ethnic, sexual preference, and transgender status]  
14 classification appears on the face of the statute.’” (*Connerly*, 92 Cal.App.4th at 43 (citation omitted).)  
15 “Express racial, [ethnic, sexual preference, and transgender status] classifications are immediately  
16 suspect, are presumptively invalid, and, without more, trigger strict scrutiny review.” (*Ibid.*)<sup>2</sup>

17 **B. It Is Defendant’s Burden To Satisfy Strict Scrutiny.**

18 Defendant has the burden of demonstrating that strict scrutiny is satisfied. (*D’Amico v. Board of*  
19 *Medical Examiners* (1974) 11 Cal.3d 1, 17 [“Under the strict standard applied in such cases, *the state*  
20 bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that  
21 the distinctions drawn by the law are *necessary* to further its purpose.” (emphasis original) (citation  
22 omitted)].) If use of a suspect gender classification is necessary to serve a compelling state interest, the  
23 use of the classification must be narrowly tailored to serve that interest as well. (*Woods*, 167  
24 Cal.App.4th at 674-75 *citing Connerly*, 92 Cal.App.4th at 36.) “If the government succeeds in

25 <sup>2</sup> Because suspect classifications are so pernicious, they are given strict judicial scrutiny.  
26 (*Connerly*, 92 Cal. App. 4th at 33.) The use of suspect classifications may be upheld only if they are  
27 necessary to further a compelling state interest and address that interest through the least restrictive  
28 means available. (*Id.* at 36-37.) Put differently, if the use of a suspect classification is necessary to  
serve a compelling state interest, the use of the classification must be narrowly tailored to serve that  
interest. (*Id.*)



1 establishing justification for the use of a suspect classification, the burden shifts back to the complaining  
2 party to show that the statutory scheme or its application is nevertheless unconstitutional.” (*Connerly*,  
3 92 Cal.App.4th at 43.) Because Defendant has not, and cannot, satisfy strict scrutiny, judgment should  
4 be entered in Plaintiffs’ favor as a matter of law.

5 **V. AB 979 VIOLATES ARTICLE I, SECTION 31 OF CALIFORNIA’S CONSTITUTION.**

6 “Unlike the equal protection clause, section 31 categorically prohibits discrimination and  
7 preferential treatment. Its literal language admits no ‘compelling state interest’ exception[.]” (*Hi-*  
8 *Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal. 4th 537, 567.) According to Defendant’s  
9 2021 report, 107 corporations are subject to AB 979’s requirements. (SOF at ¶ 13.) In addition, records  
10 from the State Contract & Procurement Registration System that track contracting dollars and contracts  
11 procured by the State of California show that each of these 107 corporations has entered into and  
12 continues to maintain contracts with the state. (SOF at ¶ 14.) AB 979 violates section 31 because it  
13 requires California-based publicly-held or traded public contractors to grant preferential treatment to  
14 certain races, ethnicities, sexual preferences, or transgender statuses on their boards. AB 979 therefore  
15 cannot survive with respect to corporations under public contracts with the state or bidding for public  
16 contracts with the state.

17 **VI. CONCLUSION.**

18 Plaintiffs respectfully request that summary judgment be granted in their favor, that AB 979 be  
19 declared unconstitutional under article I, sections 7 and 31 of the California constitution, and that  
20 Defendant be permanently enjoined from expending taxpayer funds or using taxpayer-financed  
21 resources on AB 979.

22 Dated: December 9, 2021

JUDICIAL WATCH, INC.

23  
24 By: /s/ Robert Patrick Sticht.  
ROBERT PATRICK STICHT

25 Attorneys for Plaintiffs,  
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