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MICHAEL PHILLIPS, PAUL WILDES, AND REED SANDBERG

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SAN FRANCISCO**

9 MICHAEL PHILLIPS, PAUL WILDES, and
10 REED SANDBERG,

11 Plaintiffs,

12 v.

13 LONDON N. BREED, in her official
Capacity as Mayor of the City and County of
14 San Francisco,

15 JOSÉ CISNEROS, in his official capacity as
Treasurer of the City and County of San
16 Francisco,

17 JOHN DOE, in his official capacity as
Executive Director of the Office of
18 Transgender Initiatives of the City and
19 County of San Francisco,

20 and

21 CARMEN CHU, in her official capacity as
City Administrator of the City and County of
22 San Francisco,

23 Defendants.
24

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/29/2024
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

CGC-24-611915

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

26 **INTRODUCTION**

27 1. Plaintiffs MICHAEL PHILLIPS, PAUL WILDES, and REED SANDBERG,
28

1 taxpayers and residents of the City and County of San Francisco, California, challenge San
2 Francisco officials' expenditure of taxpayer funds and taxpayer-financed resources on monthly
3 payments to certain San Francisco residents based on these residents' race/ethnicity, sex, and
4 transgender status. As grounds therefor, Plaintiffs allege as follows:

5 **JURISDICTION AND VENUE**

6 2. Jurisdiction in this case is founded on California's common law taxpayer standing
7 doctrine and Code of Civil Procedure section 526a. Both the common law and Section 526a grant
8 California taxpayers the right to sue government officials to prevent the unlawful expenditure of
9 taxpayer funds and taxpayer-financed resources.

10 3. Venue in this Court is appropriate under Code of Civil Procedure section 393, as the
11 taxpayer funds and taxpayer-financed resources at issue are being expended or will be expended in
12 the City and County of San Francisco.

13 **PARTIES**

14 4. Plaintiff MICHAEL PHILLIPS is a citizen and taxpayer and has paid property and
15 other local taxes to the City and County of San Francisco during the one-year period prior to the
16 commencement of this action.

17 5. Plaintiff PAUL WILDES is a citizen and taxpayer and has paid property and other
18 local taxes to the City and County of San Francisco during the one-year period prior to the
19 commencement of this action.

20 6. REED SANDBERG is a citizen and taxpayer and has paid property and other local
21 taxes to the City and County of San Francisco during the one-year period prior to the
22 commencement of this action.

23 7. Defendant London N. Breed is the Mayor of the City and County of San Francisco.
24 As mayor, Defendant Breed is responsible for the general administration and oversight of all
25 departments and units in the executive branch of San Francisco's government, including overseeing
26 the Mayor's Office of Housing and Community Development ("MOHCD"). Defendant Breed is
27 being sued in her official capacity.

1 14. Participants are selected by the non-profit organizations in conjunction with
2 MOHCD, using criteria established by San Francisco officials. MOHCD then reviews the list of
3 selected participants and initiates and oversees issuance of the debit cards.

4 15. Applicants who do not identify as transgender, non-binary, gender non-conforming,
5 or intersex are not eligible to participate in the GIFT program.

6 16. Applicants are prioritized based on their biological sex and race/ethnicity.
7 Biological males identifying as female are given preference over biological females identifying as
8 male, and applicants identifying as Black or Latino are given preference over applicants identifying
9 as other races/ethnicities.

10 17. The monthly GIFT payments are expended from San Francisco's General Fund,
11 which includes taxpayer funds.

12 18. Taxpayer funds and taxpayer-financed resources also are expended on the
13 implementation of the GIFT program, including the salaries of the San Francisco officials and
14 employees who administer the program.

15 19. Applications for the first 18 months of the GIFT program opened on November 15,
16 2022 and closed on December 15, 2022. The GIFT program began disbursing funds to the selected
17 participants in January of 2023. GIFT payments to these participants will continue through June
18 2024.

19 20. The GIFT program has announced that another round of applications will open in
20 2024, if funding is extended beyond June 2024. On information and belief, funding will be
21 extended beyond June 2024. In addition, on information and belief, neither the officials and entities
22 administering and operating the GIFT program nor the program's selection criteria will change in
23 2024.

24 **FIRST CAUSE OF ACTION**

25 **(Violation of Cal. Const., art I, § 7 – Transgender Status Discrimination)**

26 21. Plaintiffs incorporate by reference and reallege all their prior allegations.
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1 22. An actual and justiciable controversy has arisen and now exists between Plaintiffs
2 and Defendants. Plaintiffs contend that they have paid or incurred property and other taxes to San
3 Francisco during the one-year period prior to the commencement of this action and that Defendants
4 are expending, intend to expend, or will expend taxpayer funds and taxpayer-financed resources
5 illegally on the GIFT program.

6 23. Specifically, Plaintiffs contend that any expenditure of taxpayer funds or taxpayer-
7 financed resources on the GIFT program is illegal under Article 1, section 7 of the California
8 Constitution because the requirement that eligible participants be transgender, non-binary, gender
9 nonconforming, or intersex is immediately suspect and presumptively invalid and cannot survive
10 strict scrutiny review. (See e.g., *Taking Offense v. State of California* (2021) 66 Cal. App. 5th 696,
11 71; *Koire v. Metro Car Wash* (1985) 40 Cal. 3d 24, 37; *Coral Construction, Inc. v. City and County*
12 *of San Francisco* (2010) 50 Cal. 4th 315, 337; *Connerly v. State Personnel Bd.* (2001) 92 Cal. App.
13 4th 16, 40-44; *Hiatt v. City of Berkeley* (1982) 130 Cal. App. 3d 298, 309.)

14 24. On information and belief, Defendants contend the GIFT program does not violate
15 the California Constitution and, therefore, they are not expending taxpayer funds and taxpayer-
16 financed resources illegally and do not intend to expend or will not expend taxpayer funds and
17 taxpayer-financed resources illegally in the future.

18 25. A judicial declaration pursuant to Code of Civil Procedure section 1060 is necessary
19 and appropriate so that the parties may ascertain their respective legal rights and duties with respect
20 to Defendants' illegal expenditure of taxpayer funds and taxpayer-financed resources on the GIFT
21 program.

22 26. Plaintiffs are being and will be irreparably harmed by Defendants' illegal
23 expenditure of taxpayer funds and taxpayer-financed resources on the GIFT program, unless and
24 until Defendants' illegal expenditures are enjoined.

25 27. Plaintiffs have no adequate remedy at law.

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1 **SECOND CAUSE OF ACTION**

2 **(Violation of Cal. Const., art I, § 7 – Sex Discrimination)**

3 28. Plaintiffs incorporate by reference and reallege all their prior allegations.

4 29. An actual and justiciable controversy has arisen and now exists between Plaintiffs
5 and Defendants. Plaintiffs contend that they have paid or incurred property and other taxes to San
6 Francisco during the one-year period prior to the commencement of this action and that Defendants
7 are expending, intend to expend, or will expend taxpayer funds and taxpayer-financed resources
8 illegally on the GIFT program.

9 30. Specifically, Plaintiffs contend that any expenditure of taxpayer funds or taxpayer-
10 financed resources on the GIFT program is illegal under Article 1, section 7 of the California
11 Constitution because the program’s grant of preferential treatment to biological males who identify
12 as females is immediately suspect and presumptively invalid and cannot survive strict scrutiny
13 review. (See e.g., *Coral Construction, Inc.*, 50 Cal. 4th at 337; *Koire*, 40 Cal. 3d at 37; *Connerly*,
14 92 Cal. App. 4th 16, 40-44; *Hiatt*, 130 Cal. App. 3d at 309.)

15 31. On information and belief, Defendants contend the GIFT program does not violate
16 the California Constitution and, therefore, they are not expending taxpayer funds and taxpayer-
17 financed resources illegally and do not intend to expend or will not expend taxpayer funds and
18 taxpayer-financed resources illegally in the future.

19 32. A judicial declaration pursuant to Code of Civil Procedure section 1060 is necessary
20 and appropriate so that the parties may ascertain their respective legal rights and duties with respect
21 to Defendants’ illegal expenditure of taxpayer funds and taxpayer-financed resources on the GIFT
22 program.

23 33. Plaintiffs are being and will be irreparably harmed by Defendants’ illegal
24 expenditure of taxpayer funds and taxpayer-financed resources on the GIFT program unless and
25 until Defendants’ illegal expenditures are enjoined.

26 34. Plaintiffs have no adequate remedy at law.

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1 **THIRD CAUSE OF ACTION**

2 **(Violation of Cal. Const., art I, § 7– Race/Ethnicity Discrimination)**

3 35. Plaintiffs incorporate by reference and reallege all their prior allegations.

4 36. An actual and justiciable controversy has arisen and now exists between Plaintiffs
5 and Defendants. Plaintiffs contend that they have paid or incurred property and other taxes to San
6 Francisco during the one-year period prior to the commencement of this action and that Defendants
7 are expending, intend to expend, or will expend taxpayer funds and taxpayer-financed resources
8 illegally on the GIFT program.

9 37. Specifically, Plaintiffs contend that any expenditure of taxpayer funds or taxpayer-
10 financed resources on the GIFT program is illegal under Article 1, section 7 of the California
11 Constitution because the program’s grant of preferential treatment to persons who identify as Black
12 or Latino is immediately suspect and presumptively invalid and cannot survive strict scrutiny
13 review. (See e.g., *Coral Construction, Inc.*, 50 Cal. 4th at 337; *Connerly*, 92 Cal. App. 4th 16, 40-
14 44; *Hiatt*, 130 Cal. App. 3d at 309.)

15 38. On information and belief, Defendants contend the GIFT program does not violate
16 the California Constitution and, therefore, they are not expending taxpayer funds and taxpayer-
17 financed resources illegally and do not intend to expend or will not expend taxpayer funds and
18 taxpayer-financed resources illegally in the future.

19 39. A judicial declaration pursuant to Code of Civil Procedure section 1060 is necessary
20 and appropriate so that the parties may ascertain their respective legal rights and duties with respect
21 to Defendants’ illegal expenditure of taxpayer funds and taxpayer-financed resources on the GIFT
22 program.

23 40. Plaintiffs are being and will be irreparably harmed by Defendants’ illegal
24 expenditure of taxpayer funds and taxpayer-financed resources on the GIFT program unless and
25 until Defendants’ illegal expenditures are enjoined.

26 41. Plaintiffs have no adequate remedy at law.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for the following relief against Defendants:

- 3 1. A judgment declaring any and all expenditures of taxpayer funds and taxpayer-
- 4 financed resources on the GIFT program to be illegal;
- 5 2. An injunction permanently prohibiting Defendants from expending or causing the
- 6 expenditure of taxpayer funds and taxpayer-financed resources on the GIFT program;
- 7 3. Costs of suit herein;
- 8 4. Reasonable attorneys’ fees under the Private Attorney General Statute, Code of Civil
- 9 Procedure section 1021.5, the Common Defense Fund, and the Substantial Benefit Doctrine; and
- 10 5. Such other relief as this Court deems just and proper.

11 Dated: January 29, 2024

JUDICIAL WATCH, INC.

12 By: /s/ Kathryn Blankenberg
 13 KATHRYN BLANKENBERG
 14 Counsel for Plaintiff