

1 William M. Simpich SB #106672
2 Attorney at Law
3 1736 Franklin Street, 10th Floor
4 Oakland, CA 94612
5 Telephone (415) 542-6809
6 E-mail: bsimpich@gmail.com

7 Stephen R. Jaffe SB #49539
8 The Jaffe Law Firm
9 101 California, Suite 2710
10 San Francisco, CA 94110
11 Telephone: (415) 618-0100
12 E-mail: stephen.r.jaffe@jaffetriallaw.com

13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 VOTING RIGHTS DEFENSE PROJECT,
17 AMERICAN INDEPENDENCE PARTY,
18 CLARA DAIMS, and SUZANNE
19 BUSHNELL,

20 Plaintiffs,

21 v.

22 TIM DEPUIS, in his official capacity as chief
23 of the Alameda County Registrar of Voters,
24 JOHN ARNTZ, in his official capacity as
25 Director of the San Francisco Board of
26 Elections, ALEX PADILLA, in his official
27 capacity as Secretary of State and an
28 indispensable party, AND DOES I-X,

Defendants.

Case No.

COMPLAINT FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF, AND
MANDAMUS

1. Voting Rights Act, 52 USC 10101
2. US Const., 1st/14th Amendments
3. Cal. Elections Code § 3000 *et seq.*

1 Plaintiffs, by and through their undersigned counsel, hereby complain of the Defendants
2 and allege as follows:

3 **NATURE OF THE ACTION**

4 1. This action is brought pursuant to 42 U.S.C. § 1983 to secure equitable relief from
5 Defendants' unlawful deprivation of Plaintiffs' rights, privileges and immunities guaranteed by
6 the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
7 Section 2 of the Voting Rights Act of 1965, 52 U.S.C. 10101(a)(2)(A) and (B); and other laws of
8 the United States and the state of California. This action is also brought pursuant to 28 U.S.C. §
9 1361 to seek a writ of mandamus. Jurisdiction is conferred pursuant to 28 U.S.C. § 1331 and §
10 1343. Declaratory relief can be sought pursuant to 28 U.S.C. § 2201 and § 2202.

11 2. "No right is more precious in a free country than that of having a voice in the
12 election of those who make the laws..." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Plaintiffs
13 bring the instant lawsuit to protect the right to vote by mail, early voting, registration, and
14 informational voting rights of millions of California voters. Nearly 70% of ballots cast in the
15 2014 California special election were by mail, and over 65% of the ballots cast in the 2012
16 presidential preference primary were by mail. [http://www.sos.ca.gov/elections/historical-](http://www.sos.ca.gov/elections/historical-absentee/)
17 [absentee/](http://www.sos.ca.gov/elections/historical-absentee/)

18 3. The impact of failure to inform NPP voters (no party preference voters) of their
19 right to obtain a "crossover ballot" and to vote in the Presidential primary is significant, as is the
20 failure to inform party-affiliated voters of their right to re-register as no party preference voters
21 and still receive the Presidential primary ballots of the Democratic, American Independent, and
22 Libertarian parties. All Californians' voting rights have been and will continue to be denied or
23 unreasonably infringed upon due to the lack of oversight of the California Secretary of State and
24 county Boards of Elections.
25
26
27
28

1 4. This action seeks declaratory and injunctive relief to redress the widespread and
2 ongoing failure to provide information regarding the protected voting rights of “no party
3 preference” voters to receive a Democratic, American Independent or Libertarian presidential
4 ballot. Inadequate information has also been provided regarding the right of “no party
5 preference voters” to personally deliver their application to vote by mail to the county board of
6 elections office by May 31, 2016 in order to mail their ballot in by the last day of the primary on
7 June 7.
8

9 5. This failure to provide adequate information is in violation of the Voting Rights Act of
10 1965, 52 U.S.C.A. § 10101 *et seq.*, California Elections Code Section 3000 *et seq.*, and the U.S.
11 Constitution’s guarantee of Equal Protection, applied to states pursuant to the Fourteenth
12 Amendment. Plaintiffs are eligible California voters (one Democratic and one no party
13 preference); Voting Rights Defense Project (an organization campaigning to heighten voter
14 education and voter turnout for their candidate Bernie Sanders); and the American Independent
15 Party itself. These Plaintiffs and their associational members have been deprived of voting
16 rights, as have the many similarly situated voters who have complained to their local Boards of
17 Elections regarding applications to vote by mail, early voting, registration, and informational
18 voting rights. Thousands of Californians are in imminent danger of being disenfranchised in the
19 2016 presidential primary election ending on June 7, 2016, and will continue to be shut out of the
20 democratic process unless and until Defendants reform their voting by mail practices.
21
22

23 6. Congress enacted section 2 of the Voting Rights Act of 1965 to prevent certain
24 types of situations. One situation is where some voters in a county are being treated in a
25 different manner from other voters in the county. 52 U.S.C. § 10101(a)(2)(A). The other
26 situation is where individuals are denied the right to vote “because of an error or omission on any
27
28

1 record or paper” which is “not material in determining whether such individual is qualified under
2 State law to vote.” 52 U.S.C. § 10101(a)(2)(B)

3 7. Defendant Tim Depuis, the chief of the Alameda County Registrar of Voters, has
4 engaged in a pattern and practice that will disenfranchise thousands of Alameda County voters.
5 During the last two weeks, this Defendant distributed a series of notices to Alameda County
6 voters that did not provide information that is required to be given to California voters pursuant
7 to Elections Code Section 3000 et seq. Because of this failure to provide proper notice, these
8 voters will be unable to vote for the candidate of their choice unless there is prompt and effective
9 intervention by this court.
10

11 8. Specifically, both the Defendants Tim Depuis and John Arntz (chief of the San
12 Francisco Department of Elections) distributed to the voters an electronic application to vote for
13 mail on Depuis’ Oakland [website](#) and Arntz’s San Francisco [website](#) that violated Elections
14 Code § 3006(c) and 3007.7(e). Both of these applications failed to provide the mandatory notice
15 to all voters of their right to state no party preference; and, further, that a no party preference
16 voter shall be provided with a Democratic, American Independent Party or a Libertarian Party
17 Presidential primary ballot.
18

19 9. Furthermore, Defendant Arntz (and on information and belief, Defendant Depuis)
20 violated Elections Code Section 3006 by preparing the Voter Information Pamphlet and Sample
21 Ballot in a non-uniform manner. This time, the aforementioned mandatory notice was properly
22 provided at the back page of the pamphlet to all the no party preference voters. However, the
23 mandatory notice was not provided to the voters that were members of political parties. It was
24 mandatory to provide this information by law to all voters, not just the no party preference
25 voters.
26

27 10. The failure to provide this information meant that Bay Area citizens who were
28

1 members of political parties were not provided with choices that reasonably could have led them
2 to select no party preference and request a Presidential primary ballot. This same error was
3 committed in Santa Barbara County and other counties throughout the state of California. This
4 statewide error occurred even after the Secretary of State created a uniform vote by mail
5 application that conformed with Elections Code 3007.5 and included the proper language that
6 was missing as described above. For reasons of their own, the Defendants and many of their
7 colleagues throughout the state elected not to use the Secretary of State's uniform vote by mail
8 application, but instead omitted essential terms in their applications.

10 11. Another essential term that was missing in certain applications created by the
11 Defendants was the mandatory notice contained in Elections Code 3006(b)(3) that applicants to
12 vote by mail have the "legal right" to personally "deliver" the application to the County
13 Elections Office by May 31 rather than rely on mail or fax. These particular application forms
14 would mention the May 31 date, but did not mention the "personal delivery" option or that the
15 applicant had the "legal right" to deliver the application in this fashion.

17 12. It is reasonable to assume that this omission will result in more late applications
18 and less early voting, as applicants who deliver the application could receive the proper
19 Presidential primary ballot and vote right there on the spot. In turn, it is reasonable to assume
20 that late applications will result in many more citizens failing to obtain a Presidential primary
21 ballot.

23 **PARTIES TO THE ACTION**

24 13. Both Defendants Tim Depuis and John Arntz, as part of their official duties, are
25 responsible for conducting Federal, State, County, special and local elections. Thus, they are
26 sued in their official capacities. Pursuant to the leadership of these Defendants, the Alameda
27 County Registrar of Voters and the San Francisco Department of Elections prepare the published
28

1 notices of elections and lists of offices for which candidates are to be nominated. It is the duty of
2 these agencies to prepare and print official and sample ballots; mail sample ballots to registered
3 voters; recruit election officers and polling places; and provide the roster and street index and
4 other supplies for use by the election officers at the polls. These agencies are also required to
5 establish and revise voting precincts, provide for the tabulation of returns on election night, and
6 conduct the official canvass of votes cast.
7

8 14. Furthermore, these agencies had the duty to prepare applications to vote by mail that
9 complied with the mandatory notices contained in the uniform vote by mail application prepared
10 by the Secretary of State. As described above, the defendants and similar agencies throughout
11 the state failed in providing these mandatory notices.
12

13 15. The Secretary of State Alex Padilla is named as an indispensable party. The
14 Secretary of State created the regulations that the Elections Code rely on. On information and
15 belief, the Secretary of State failed to properly advise the other Defendants, despite the enormous
16 autonomy that the Defendants enjoy in running their own affairs free of interference from the
17 Secretary.
18

19 16. Plaintiff Voting Rights Defense Project is an unincorporated association based in
20 Oakland, California. The organizational plaintiff was created to campaign for the success of
21 Bernie Sanders in his quest for votes in the California Presidential primary. It has no formal
22 relationship with the Sanders campaign. This Plaintiff is engaged in taking action of various
23 kinds with like-minded voters to ensure that the turnout for their preferred candidate is as large
24 as possible. As voting in this primary began on May 9 and will continue until June 7, the
25 primary election has officially begun and the campaigning activity is ongoing.
26
27
28

1 17. Plaintiff American Independent Party is a political party that has obtained ballot
2 space in California. The rules governing its ballot access are contained within Elections Code
3 6500 *et seq.*

4 18. Plaintiff Suzanne Bushnell is a registered Democratic voter in the City and County
5 of San Francisco. As a Democratic voter in San Francisco and the state of California, she has
6 been injured due to the failure of the Defendants to comply with the mandatory notice provisions
7 set forth above. She has “informational standing” due to these omissions by the Defendants, and
8 she is entitled to relief designed to restore her to the situation she would have been in if this
9 information was not denied to her. She is uncertain whether she will be able to obtain a
10 Presidential party ballot for Bernie Sanders if she becomes a no party preference voter. Her
11 rights as a voter have been chilled as a result.

12 19. Plaintiff Clara Daims is a registered no party preference voter in the City and
13 County of San Francisco. As a no party preference voter in San Francisco and the state of
14 California, she has been injured due to the failure of the Defendants to comply with the
15 mandatory notice provisions set forth above. She has “informational standing” due to these
16 omissions by the Defendants, and she is entitled to relief designed to restore her to the situation
17 she would have been in if this information was not denied to her. She is uncertain whether she
18 will be able to obtain a Presidential party ballot for Bernie Sanders if she remains a no party
19 preference voter. Her rights as a voter have been chilled as a result.

20
21
22
23
24 **FIRST CAUSE OF ACTION (52 USC 10101(a)(2)(A) and 42 USC 1983)**

25 20. Paragraphs 1-19 are incorporated by reference.

26 21. Defendants’ actions violate 52 USC 10101(a)(2), generally known as “Section 2”
27 of the Voting Rights Act of 1965.

1 22. 52 U.S.C. § 10301(a) grants rights to voters by providing, in relevant part:

2 (2) No person acting under color of law shall –

3 (A) in determining whether any individual is qualified under State
4 law or laws to vote in any election, apply any standard, practice, or
5 procedure difference from the standards, practices or procedures
6 applied under such law or laws to other individuals within the same
7 county, parish, or similar political subdivision who have been found
8 by State officials to be qualified to vote. . .

9
10 23. Private litigants may enforce their rights under 52 U.S.C. § 10101(a) by bringing
11 a suit under 42 U.S.C. § 1983. Defendants, acting under color of state law,
12 applied different standards, practices, or procedures in determining whether party
13 voters would be given voter informational rights than were applied to no party
14 preference voters.
15

16 24. Plaintiffs will continue to suffer the violation of their rights as alleged in the
17 Complaint absent relief granted by the Court.

18 **SECOND CAUSE OF ACTION (52 USC 10101(a)(2)(B) and 42 USC 1983)**

19 25. Paragraphs 1-24 are incorporated by reference.

20
21 26. 52 USC 10101(a)(2)(B) grants rights to voters by providing, in relevant part: "No
22 person acting under color of state law shall ... deny the right of any individual to
23 vote in any election because of an error or omission on any record or paper relating
24 to any application, registration, or other act requisite to voting, if such error or
25 omission is not material in determining whether such individual is qualified under
26 State law to vote in such election." See [Schwier v. Cox, 412 F. Supp. 2d 1266](#)
27 [\(N.D. Ga. 2005\)](#) (finding a Georgia requirement that voting registrants disclose
28

1 Social Security number before voting violated materiality provision of Voting
2 Rights Act), aff'd, [439 F.3d 1285 \(11th Cir. 2006\)](#).

3 27. Certain Plaintiffs – or the individuals that they represent - are in imminent danger
4 of being denied the right to vote in the Presidential primary election because of the
5 errors and omissions contained in the mandatory notices containing crucial
6 information necessary in order to obtain the ballot. These errors or omissions are
7 not material in determining whether these individuals are qualified under State law
8 to vote in the June 2016 Presidential primary election.
9

10 **THIRD CAUSE OF ACTION (First and Fourteenth Amendments, and 42 USC 1983)**

11 28. Paragraphs 1-27 are incorporated by reference.

12 29. Defendants' actions violated the 1st Amendment to the United States Constitution
13 and the equal protection clause of the 14th Amendment to the United States
14 Constitution, as the acts of the defendants towards the no party preference voters
15 constituted arbitrary discrimination of these plaintiffs as well as the associational
16 classes that Voting Rights Defense Project and American Independent Party
17 represent.
18

19 30. The First and Fourteenth Amendments of the Constitution require that courts
20 closely scrutinize challenged election regulations, weighing “the character and
21 magnitude of the asserted injury . . . against the precise interests put forward by the
22 State as justifications for the burden imposed by its rule.” *Burdick v. Takushi*, 504
23 U.S. 428, 434 (1992).
24

25 31. Even when voters are only modestly burdened by State action, the State's “precise
26 interests” must be able to justify the regulation, which must in turn be both
27 “reasonable” and “nondiscriminatory,” *id.*; *see also U.S. Taxpayers Party of*
28

1 *Florida v. Smith*, 871 F. Supp. 426, 435 (N.D. Fla. 1993) (citing *New Alliance*
2 *Party v. Hand*, 933 F.2d 1568 (11th Cir. 1991), as holding that “although the
3 burden imposed on minor parties was not insurmountable, the interests put forth by
4 the state were inadequate to justify the restriction imposed.”).

5
6 32. When the burden is more severe, the regulation in question must be able to survive
7 strict scrutiny. *Burdick*, 504 U.S. at 434. When the law applies differently to pre-
8 existing classes of similarly situated citizens seeking to exercise their fundamental
9 rights, the distinction is analyzed under strict scrutiny. *See, e.g., Wexler v.*
10 *Anderson*, 452 F.3d 1226, 1231-32 (11th Cir. 2006) (indicating heightened
11 scrutiny if the plaintiffs had pled that voters in touchscreen counties were less
12 likely to cast an effective vote than voters in optical scan counties, and citing *Dunn*
13 *v. Blumstein*, 405 U.S. 330, 336 (1972) (“[A] citizen has a constitutionally
14 protected right to participate in elections on an equal basis with other citizens in
15 the jurisdiction.”) .

16
17
18 **FOURTH CAUSE OF ACTION (Mandamus)**

19 33. Paragraphs 1-32 are incorporated by reference.

20 34. Defendants’ actions violated existing state law pursuant to Elections Code Section
21 3000 et seq. Because these actions violated state law, Plaintiffs seek mandamus
22 pursuant to 28 USC 1361 to ensure that the voters’ informational rights are
23 protected; that the voters are able to register either with a political party or without
24 a political party as they see fit; that the voters are able to obtain the proper ballots
25 at the Board of Elections and are able to vote before the last day of elections; and
26 that the ballots are properly accepted and counted by the Board of Elections.

27
28 ///

1 **PRAYER**

2 For good cause, Plaintiffs seek injunctive relief, declaratory relief, and a writ of
3 mandamus.

- 4 1. Plaintiffs seek a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202
5 declaring that Defendants' challenge and removal procedures (a) violate Section 2 of
6 the Voting Rights Act of 1965, 52 U.S.C. § 10301, (b) were made with a arbitrarily
7 discriminatory purpose in violation of Section 2 of the Voting Rights Act, 52 U.S.C. §
8 10301, and the Fourteenth Amendment to the United States Constitution; (c) violate
9 the Equal Protection Clause under the Fourteenth Amendment. Furthermore, grant
10 Plaintiffs the specific relief sought without regard as to label:
11
12 2. Wide distribution of this information via radio, TV, newspaper, internet social media
13 platforms in Alameda County and throughout the state of California;
14
15 3. Ensuring that sufficient ballot forms for all of the Presidential primary candidates are
16 at all of the polling places on June 7;
17
18 4. That no party preference voters are not refused a Presidential primary ballot if they
19 personally appear at their proper polling place;
20
21 5. Changing the applications at the Board of Elections websites in Alameda County, San
22 Francisco, and throughout the state of California to conform with the essential terms
23 set forth in the uniform application created by the Secretary of State;
24
25 6. An order permitting the write-in of the Democratic, American Independent Party, and
26 Libertarian candidates, or, in the alternative, segregation of the ballots that have
27 already been cast by those with no party preference registration in order to permit
28 voters to re-vote for the candidate of their choice by June 7;
29
30 7. An order extending the registration deadline to June 7, in order to ensure that no party

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

preference voters are properly informed of the option to either re-register with a party or request a Democratic, American Independent Party or Libertarian Party Presidential primary ballot;

- 8. An order, as well, stating that party voters are properly informed of the option to re-register as no party preference and request a Democratic, American Independent Party or Libertarian Party Presidential primary ballot if that is their preference;
- 9. Reasonable attorneys' fees pursuant to CC Section 1988 and CCP Section 1021.5;
- 10. Reasonable costs;
- 11. Such other relief as the court may deem proper.

DATED: May 20, 2016

By: _____/s/_____
William M. Simpich
Stephen R. Jaffe
Attorneys for Plaintiffs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28