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8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 ELECTION INTEGRITY PROJECT  
12 CALIFORNIA, INC., JAMES P.  
13 BRADLEY, AJA SMITH, ERIC  
14 EARLY, ALISON HAYDEN,  
15 JEFFREY GORMAN, MARK  
16 REED, BUZZ PATTERSON, MIKE  
17 CARGILE, KEVIN COOKINGHAM,  
18 GREG RATHS, CHRIS BISH,  
19 RONDA KENNEDY, JOHNNY  
20 NALBANDIAN,

21 Plaintiffs,

22 v.

23 SHIRLEY WEBER, CALIFORNIA  
24 SECRETARY OF STATE, XAVIER  
25 BECERRA, CALIFORNIA  
26 ATTORNEY GENERAL, GAVIN  
27 NEWSOM, GOVERNOR OF THE  
28 STATE OF CALIFORNIA,  
RIVERSIDE COUNTY  
REGISTRAR OF VOTERS  
REBECCA SPENCER, LOS  
ANGELES COUNTY REGISTRAR  
OF VOTERS DEAN LOGAN,  
VENTURA COUNTY REGISTRAR

Case No. 2:21-cv-32-AB-MAA

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

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1 OF VOTERS MARK A. LUNN,  
2 SAN BERNARDINO COUNTY  
3 REGISTRAR OF VOTERS BOB  
4 PAGE, MONTEREY COUNTY  
5 REGISTRAR OF VOTERS  
6 CLAUDIO VALENZUELA,  
7 SACRAMENTO COUNTY  
8 REGISTRAR OF VOTERS  
9 COURTNEY BAILEY-KANELO,  
10 ALAMEDA COUNTY REGISTRAR  
11 OF VOTERS TIM DUPUIS,  
12 CONTRA COSTA COUNTY  
13 REGISTRAR OF VOTERS  
14 DEBORAH R. COOPER, SANTA  
15 CLARA COUNTY REGISTRAR OF  
16 VOTERS SHANNON BUSHEY,  
17 SAN BENITO COUNTY  
18 REGISTRAR OF VOTERS JOE  
19 PAUL GONZALES, SANTA CRUZ  
20 COUNTY REGISTRAR OF  
21 VOTERS GAIL L. PELLERIN,  
22 FRESNO COUNTY REGISTRAR  
23 OF VOTERS JAMES A. KUS,  
24 ORANGE COUNTY REGISTRAR  
25 OF VOTERS NEAL KELLEY,

Defendants.

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1 Plaintiffs state for their First Amended Complaint against Defendants as  
2 follows:

3 **NATURE OF THE ACTION**

4 1. Election integrity and transparency are critical for the enfranchisement of  
5 every eligible voter, regardless of party or political view. While many recent election  
6 cases have focused solely on the outcome of the November 2020 election, this suit  
7 primarily challenges California’s unconstitutional election process for future elections.  
8 This process includes near-universal vote-by-mail (“VBM”) balloting, while  
9 eliminating chain-of-custody and signature verification protections, treating in-person  
10 voters differently from VBM voters, and sending ballots to large numbers of ineligible  
11 voters. This endangers many of California’s most vulnerable populations, including  
12 the young, the elderly, and non-citizens. It has also led to pervasive irregularities in  
13 the election process that threaten to disenfranchise California voters.

14 2. Our Constitutional Republic is founded on the sacred right of every eligible  
15 citizen to cast an equal vote to determine who will represent him or her in government.  
16 The Constitution of the United States guarantees this right through the Equal  
17 Protection and Due Process Clauses of the Fourteenth Amendment and, in the case of  
18 Federal congressional elections, through the Elections Clause (Art. I, § 4, cl. 1). It also  
19 “guarantee[s] to every State . . . a Republican Form of Government, and  
20 protect[ion] . . . against Invasion. (Art. IV, § 4.)

21 3. Over the past three decades in California, however, these rights have been  
22 intentionally eroded by an onslaught of unconstitutional statutes, regulations, executive  
23 orders, and voting practices which, taken together, are designed to create an  
24 environment in which elections could be manipulated and eligible voters of all political  
25 viewpoints disenfranchised.

26 4. This is not a partisan issue but a United States Constitutional one. Nor is it  
27 an issue that affects just one candidate or just one election. It is an issue that must be  
28 remedied to ensure the integrity of future elections for all citizens.

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1           5. Plaintiff EIPCa is a non-partisan organization, and defendants include both  
2 Democrats and Republicans. Each plaintiff has joined to ensure the constitutionality of  
3 California’s political process.

4           6. Among other things, statutes, regulations, executive orders and voting  
5 practices in California have:

- 6           A. Eliminated absentee ballots and massively expanded VBM balloting  
7 through which even voters who could vote in person receive less-  
8 secure VBM ballots;
- 9           B. Legalized unrestrained and unrestricted ballot harvesting/ballot  
10 trafficking by removing mandates of “chain of custody”, unleashing  
11 the exploitation of vulnerable populations such as non-citizens, college  
12 students, senior citizens and minority voters;
- 13           C. Eviscerated protections on in-person voting;
- 14           D. Caused VBM and in-person voters to be treated differently, causing  
15 disproportionate harm to in-person voters;
- 16           E. Implemented laws and procedures that automatically add non-citizens  
17 to voter rolls and protect against detection and prosecution of non-  
18 citizen voting; and
- 19           F. Failed to comply with federal laws requiring maintaining accurate  
20 voter rolls, allowing deceased persons, non-citizens, non-residents, and  
21 other ineligible voters to remain on rolls and receive ballots.

22           7. These efforts culminated in new “emergency” regulations and executive  
23 orders put into place without public comment or legislative authority of the State and  
24 many of its counties, often under the pretext that they were necessary due to COVID-  
25 19.

26           8. Under former Secretary of State Padilla’s “emergency” regulation 2 CCR §  
27 20991, virtually any piece of paper received in a VBM envelope could be counted as a  
28 ballot, multiple ballots could be stuffed into a single VBM envelope, and the

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1 information provided by the voter(s) on a VBM ballot envelope no longer needed to be  
2 provided under penalty of perjury. The passage of California Assembly Bill 860,  
3 meanwhile, provided for every active registered voter on California’s voter rolls to be  
4 mailed a VBM ballot, greatly expanding the effect of former Secretary of State  
5 Padilla’s “emergency” regulations and increasing opportunities for fraud.

6 9. In contradiction of statutory law, Counties across the state prevented citizen  
7 observers from meaningfully observing vote counting and ballot processing in the  
8 November 2020 election cycle. Observers were prevented from entering voting  
9 locations; kept 30, 40 or 50 feet back from vote counting operations, or even outside  
10 the counting rooms altogether; obstructed by having screens placed between observers  
11 and election workers so that observers could not see what election workers were doing;  
12 and many other instances of obstruction and concealment.

13 10. California’s use of voting machines supplied by several different companies  
14 provided opportunities for registrars, election workers and others to tamper with  
15 results. The proprietary nature of these systems prevent observers from effectively  
16 observing and challenging how votes are tallied and whether fraud or irregularities are  
17 taking place. Courts, state registrars, academic researchers and nonpartisan security  
18 experts have found vulnerabilities significant enough to change the results of elections  
19 throughout California. These include the ability of election officials to modify, add  
20 and delete votes, the inability to verify that votes recorded match ballot images without  
21 an audit, the ability to access and modify information on the system remotely through  
22 the internet or locally via a flash drive, and secrecy regarding the software processes  
23 used to process ballots and tabulate votes.

24 11. The potential for result-changing irregularities became actuality in  
25 November 2020. Plaintiffs have gathered evidence establishing that citizen observers  
26 were denied access to ballot processing facilities and barred from observing the  
27 remaking of military, damaged or defective ballots, and that validation of signatures on  
28 VBM ballots was either not done or done so quickly that it could not have been

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1 effective. They also show votes being changed, ballots being left unsecured, and in at  
2 least one instance, unsealed boxes of ballots being loaded into an election official's  
3 car.

4 12. In Ventura County, a voting machine company employee was observed  
5 inserting a flash drive into a voting machine while it was tallying votes, after which the  
6 voting machine system was rebooted. The employee then removed the drive from the  
7 voting machine, placed it into his own laptop, and performed operations on the laptop.  
8 He then removed the drive from the laptop and provided it to the Ventura County  
9 election official who was operating the voting machine system.

10 13. In another instance, election workers screened themselves off from  
11 observers while they "remade" ballots (i.e., filled in votes on blank ballots that  
12 purportedly cured defects in VBM ballots they had received), then ran these secretly  
13 marked ballots through vote machines. These election workers could have entered any  
14 candidates that they wished on these remade ballots while purposefully unobserved  
15 like this.

16 14. Los Angeles County -- the largest county in the nation (and larger than all  
17 but 5 states) -- contracted for a voting machine company to provide a "proprietary"  
18 computerized voting system used nowhere else in the country. California's taxpayers  
19 paid more than \$280 million in 2018 for these Los Angeles County machines, software  
20 and services pursuant to a contract overseen by defendant Dean Logan and former  
21 Secretary of State Alex Padilla.

22 15. In Contra Costa County, poll data tapes from voting machines show  
23 inconsistencies between votes as recorded by the machines, and later tabulation of  
24 those votes. In multiple cases, votes were consistently added to the tally for one  
25 candidate but not the other. Only an audit can show whether the same is true for other  
26 counties and other candidates.

27 16. EIPCa has collected hundreds of sworn affidavits from citizen observers  
28 and witnesses across the state attesting to irregularities. This is only the tip of the

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1 iceberg. Significant additional potential irregularities and fraud were hidden by  
2 preventing EIPCa and all citizen observers from exercising their observation rights  
3 under California law to effectively observe vote casting, processing and counting.

4 17. What is desperately needed now is an audit of the original and  
5 remade/duplicated paper VBM ballots (including Remote Access VBM (RAVBM)  
6 ballots used to allow persons with disabilities to use their assistance technology at  
7 home), the original damaged ballots that were electronically adjudicated with their  
8 adjudicated electronic copies, as well as the voting machines and software, to  
9 determine the extent to which the election was compromised.

10 18. Since this suit was first filed, certain county officials made commitments to  
11 preserve evidence that can be used for an audit. Disturbingly, however, other state and  
12 county officials have made no such commitment, and some have even indicated that  
13 they are moving quickly to deny access to or wipe stored information from these  
14 machines, software and materials, preventing such an audit.

15 19. Injunctive relief must be ordered to prevent the destruction of evidence and  
16 provide for an audit. In addition, the statutes, regulations, orders and practices that  
17 gave rise to the intentionally unlawful and chaotic situation in California and  
18 disenfranchised its voters must be declared unconstitutional, so that they do not cause  
19 similar disenfranchisement in future elections.

20 20. This case is unlike other recent election challenges. Although Defendants  
21 have disingenuously attempted to cast it as one of many cases related to the 2020  
22 Presidential election, it is not focused on a single candidate, a single political party or a  
23 single election. It is focused on remedying the destruction of election safeguards and  
24 disenfranchisement of citizen voters to restore fair and honest elections. In short, the  
25 goal is to ensure the integrity of future elections for citizens across the political  
26 spectrum.

27 21. None of the issues raised here are mooted because the political calendar has  
28 pressed forward. Already, new campaigns are beginning for future elections, including

1 by Plaintiff candidates. Absent audit and judicial review of the statutes challenged  
2 here, the problems identified with the November 2020 election will repeat.

### 3 PARTIES

#### 4 **I. Plaintiffs**

5 22. Plaintiff Election Integrity Project California, Inc. (“EIPCa”) is a California  
6 non-profit public benefit corporation committed to defending, through education,  
7 research, and advocacy the civil rights of U.S. citizens to fully participate in the  
8 election process under Federal and state law. EIPCa is a non-partisan organization  
9 qualified under § 501(c)(3) of the Internal Revenue Code. As a non-partisan  
10 organization, EIPCa does not participate in any political campaign, nor does it endorse  
11 any candidate for public office. EIPCa similarly does not endorse any effort to recall a  
12 public official. EIPCa focuses on the voting process, so that every lawfully cast vote is  
13 accurately counted. EIPCa believes that the electoral process is the cornerstone of  
14 self-governance and the preservation of our Constitutional Republic. EIPCa takes no  
15 position on which candidate should prevail in a fair and honest election. Candidates  
16 for public office, regardless of their political party affiliation, who seek genuine  
17 election integrity in our Constitutional Republic could cooperate with EIPCa in  
18 questioning and investigating election procedures. That cooperation does not  
19 constitute an endorsement by EIPCa of any particular candidate. Findings of defects  
20 or illegalities in election procedures have independent nonpartisan significance,  
21 whether or not any particular findings ultimately affect the outcome of an election.  
22 Volunteer citizen observers for EIPCa agree to exercise their civil rights to observe  
23 election procedures under the guidance and for the benefit of EIPCa. Volunteers  
24 generally undergo extensive training on California election procedures and issues.  
25 Volunteers then schedule their time to observe with their county coordinator.  
26 Volunteers agree that what they observe is confidential for the benefit of EIPCa, and  
27 may be used for legal procedures. Because of their commitment of time and attention,  
28 EIPCa does not require membership dues. Of course, many volunteers also donate



1 funds to EIPCa. Overall, these volunteers are dedicated to EIPCa, and anticipate that  
2 EIPCa will use their observations to advocate for greater election integrity. Their  
3 personal connection and commitment are far more profound than those of most  
4 “members” of nonprofit organizations, such as a recreational hiker who pays annual  
5 dues to become a “member” of the Sierra Club.

6 23. Plaintiff James P. Bradley (“Bradley”) is a resident and registered voter of  
7 the State of California. Bradley was one of the final two Congressional Candidates in  
8 the November 2020 election for California’s 33<sup>rd</sup> Congressional District, which is  
9 located in Los Angeles County. Plaintiff Bradley is running in the 2022 election for  
10 United States Senate. The primary election for that office is scheduled for June 2022.

11 24. Plaintiff Aja Smith (“Smith”) is a resident and registered voter of the State  
12 of California. Smith was one of the final two Congressional Candidates in the  
13 November 2020 election for California’s 41<sup>st</sup> Congressional District, located in  
14 Riverside County. Plaintiff Smith is running in the 2022 election for United States  
15 Congress. The primary election for that office is scheduled for June 2022.

16 25. Plaintiff Eric Early (“Early”) is a resident and registered voter of the State  
17 of California. Early was one of the final two Congressional Candidates in the  
18 November 2020 election for California’s 28<sup>th</sup> Congressional District, located in Los  
19 Angeles County. Plaintiff Early is running in the 2022 election. The primary election  
20 is scheduled for June 2022.

21 26. Plaintiff Alison Hayden (“Hayden”) is a resident and registered voter of the  
22 State of California. Hayden was one of the final two Congressional Candidates in the  
23 November 2020 election for California’s 15<sup>th</sup> Congressional District, which is located  
24 in Alameda and Contra Costa Counties. Plaintiff Hayden is running in the 2022  
25 election for United States Congress. The primary election for that office is scheduled  
26 for June 2022.

27 27. Plaintiff Jeffrey Gorman (“Gorman”) is a resident and registered voter of  
28 the State of California. Gorman was one of the final two Congressional Candidates in

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1 the November 2020 election for California’s 20<sup>th</sup> Congressional District, which is  
2 located in San Benito, Santa Cruz, Monterey and Santa Clara Counties. Plaintiff  
3 Gorman is running in the 2022 election for United States Congress. The primary  
4 election for that office is scheduled for June 2022.

5 28. Plaintiff Mark Reed (“Reed”) is a resident and registered voter of the State  
6 of California. Reed was one of the final two Congressional Candidates in the  
7 November 2020 election for California’s 30<sup>th</sup> Congressional District, which is located  
8 in Los Angeles and Ventura Counties. Plaintiff Reed is running in the 2022 election.  
9 The primary election is scheduled for June 2022.

10 29. Plaintiff Buzz Patterson (“Patterson”) is a resident and registered voter of  
11 the State of California. Patterson was one of the final two Congressional Candidates in  
12 the November 2020 election for California’s 7<sup>th</sup> Congressional District, which is  
13 located in Sacramento County. Plaintiff Patterson is running in the 2022 election for  
14 United States Congress. The primary election for that office is scheduled for June  
15 2022.

16 30. Plaintiff Michael Cargile (“Cargile”) is a resident and registered voter of  
17 the State of California. Cargile was one of the final two Congressional Candidates in  
18 the November 2020 election for California’s 35<sup>th</sup> Congressional District, which is  
19 located in San Bernardino and Los Angeles Counties. Plaintiff Cargile is running in  
20 the 2022 election for United States Congress. The primary election for that office is  
21 scheduled for June 2022.

22 31. Plaintiff Kevin Cookingham (“Cookingham”) is a resident and registered  
23 voter of the State of California. Cookingham was one of the final two Congressional  
24 Candidates in the November 2020 election for California’s 16<sup>th</sup> Congressional District,  
25 located in Fresno, Merced and Madera Counties. Plaintiff Cookingham is running in  
26 the 2022 election. The primary election is scheduled for June 2022.

27 32. Plaintiff Greg Rath (“Rath”) is a resident and registered voter of the State  
28 of California. Rath was one of the final two Congressional Candidates in the

1 November 2020 election for California’s 45<sup>th</sup> Congressional District, located in Orange  
2 County.

3 33. Plaintiff Chris Bish (“Bish”) is a resident and registered voter of the State  
4 of California. Bish was one of the final two Congressional Candidates in the  
5 November 2020 election for California’s 6<sup>th</sup> Congressional District, located in  
6 Sacramento and Yolo Counties. Plaintiff Bish is running in the 2022 election for  
7 United States Congress. The primary election for that office is scheduled for June  
8 2022.

9 34. Plaintiff Ronda Kennedy (“Kennedy”) is a resident and registered voter of  
10 the State of California. Kennedy was one of the final two Congressional Candidates in  
11 the November 2020 election for California’s 26<sup>th</sup> Congressional District, located in  
12 Ventura and Los Angeles Counties. Plaintiff Kennedy is running in the 2022 election  
13 for United States Congress. The primary election for that office is scheduled for June  
14 2022.

15 35. Plaintiff Johnny Nalbandian (“Nalbandian”) is a resident and registered  
16 voter of the State of California. Nalbandian was one of the final two Congressional  
17 Candidates in the November 2020 election for California’s 27<sup>th</sup> Congressional District,  
18 located in Los Angeles and San Bernardino Counties. Plaintiff Nalbandian is running  
19 in the 2022 election for United States Congress. The primary election for that office is  
20 scheduled for June 2022.

21 **II. Defendants**

22 36. Defendant Shirley Weber, Ph.D. (“Weber”) is the Secretary of State of the  
23 State of California. Defendant Weber is named in her official capacity. During many  
24 of the events alleged herein, Alex Padilla was serving as California’s Secretary of  
25 State. However, on or about January 18, 2021, he resigned his position as Secretary of  
26 State to take up an appointment to the U.S. Senate. Defendant Weber replaced former  
27 Secretary of State Padilla as California Secretary of State. The Secretary of State of  
28 the State of California is the Chief Election Officer of California.

1 37. Defendant Xavier Becerra (“Becerra”) is the Attorney General of the State  
2 of California. Defendant Becerra is named in his official capacity.

3 38. Defendant Gavin Newsom (“Newsom”) is the Governor of the State of  
4 California. Governor Newsom is named in his official capacity.

5 39. Defendant Rebecca Spencer (“Spencer”) is the Registrar of Voters for  
6 Riverside County, California. Defendant Spencer is named in her official capacity.

7 40. Defendant Dean Logan (“Logan”) is the Registrar of Voters for Los  
8 Angeles County, California. Defendant Logan is named in his official capacity.

9 41. Defendant Mark A. Lunn (“Lunn”) is the Registrar of Voters for Ventura  
10 County, California. Defendant Lunn is named in his official capacity.

11 42. Defendant Bob Page (“Page”) is the Registrar of Voters for San Bernardino  
12 County, California. Defendant Page is named in his official capacity.

13 43. Defendant Claudio Valenzuela (“Valenzuela”) is the Registrar of Voters for  
14 Monterey County, California. Defendant Valenzuela is named in his official capacity.

15 44. Defendant Courtney Bailey-Kanelos (“Bailey-Kanelos”) is the Registrar of  
16 Voters for Sacramento County, California. Defendant Bailey-Kanelos is named in her  
17 official capacity.

18 45. Defendant Tim Dupuis (“Dupuis”) is the Registrar of Voters for Alameda  
19 County, California. Defendant Dupuis is named in his official capacity.

20 46. Defendant Deborah R. Cooper (“Cooper”) is the Registrar of Voters for  
21 Contra Costa County, California. Defendant Cooper is named in her official capacity.

22 47. Defendant Shannon Bushey (“Bushey”) is the Registrar of Voters for Santa  
23 Clara County, California. Defendant Bushey is named in her official capacity.

24 48. Defendant Joe Paul Gonzalez (“Gonzalez”) is the Registrar of Voters for  
25 San Benito County, California. Defendant Gonzalez is named in his official capacity.

26 49. Defendant Gail L. Pellerin (“Pellerin”) is the Registrar of Voters for Santa  
27 Cruz County, California. Defendant Pellerin is named in her official capacity.

28 50. Defendant James A. Kus (“Kus”) is the Registrar of Voters for Fresno

1 County, California. Defendant Kus is named in his official capacity. During many of  
2 the events alleged herein, Brandi Orth was serving as Registrar of Voters for Fresno  
3 County, California. However, on or about February 28, 2021, she resigned her  
4 position. Defendant Kus replaced former Registrar Orth as Registrar of Voters for  
5 Fresno County, California.

6 51. Defendant Neal Kelley (“Kelley”) is the Registrar of Voters for Orange  
7 County, California. Defendant Kelley is named in his official capacity.

8 **JURISDICTION AND VENUE**

9 52. This Court has subject matter jurisdiction under 28 U.S.C. 1331, which  
10 provides, “[t]he district courts shall have original jurisdiction of all civil actions arising  
11 under the Constitution, laws, or treaties of the United States.”

12 53. This Court also has subject matter jurisdiction under 28 U.S.C. 1343  
13 because this action involves a federal election for President of the United States and  
14 the United States Congress. See *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist,  
15 C.J., concurring); *Smiley v. Holm*, 285 U.S. 355, 365 (1932).

16 54. Jurisdiction to grant declaratory relief is conferred by 28 U.S.C. 2201 and  
17 2202 and by Rule 57 and 65, Fed. R. Civ. P. 7.

18 55. Jurisdiction to grant injunctive relief is conferred by 28 U.S.C. § 1343(a).

19 56. This Court has jurisdiction over the related California Constitutional claims  
20 and state law claims under 28 U.S.C. 1367.

21 57. Venue is proper under 28 U.S.C. 1391 because “a substantial part of the  
22 events or omissions giving rise to the claim occurred” within the Central District of  
23 California, where multiple plaintiffs and defendants reside. In addition, EIPCa’s  
24 volunteer citizen observers include citizens who reside and vote within the Central  
25 District of California.

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**FACTUAL ALLEGATIONS**

**III. California’s Voting Practices Are Systematically Undermined Through Decades of Unconstitutional Laws and Regulations.**

58. For the past three decades, California’s election integrity laws and regulations have been under systematic attack under the guise of increasing voter participation. In truth, changes have been made to allow opportunities for widespread fraud and election interference to proceed unchecked. These changes have massively expanded VBM, legalized unrestrained and unrestricted ballot harvesting/ballot trafficking and exploitation of vulnerable populations and undermined protections on in-person voting. Cumulatively, these changes in the law and other administrative neglect have allowed voter rolls to encompass large numbers of deceased persons, non-citizens, non-residents, and other ineligible voters who, nonetheless, receive VBM ballots and who state elections data show have often voted in elections.

59. The expansion of VBM ballots and the changes in the law to send VBM ballots to all registered voters created a process where known ineligible voters (including deceased persons, non-citizens, and non-residents) were sent live ballots. As past elections have shown, deceased persons, non-citizens and non-residents are often recorded as having voted in elections, and that appears to have taken place in the November 2020 election as well, impacting Plaintiffs Bradley, Smith, Early, Hayden, Gorman, Reed, Patterson, Cargile, Cookingham, Raths, Bish, Kennedy and Nalbandian, and all of the citizens in each of the Congressional Districts at issue, including EIPCa’s citizen observers.

60. In 1993, Congress enacted the National Voter Registration Act (“NVRA”) 52 U.S.C. § 20501, et seq. with the stated purposes of: (1) “increase[ing] the number of eligible citizens who register to vote”; (2) “enhance[ing]” their “participation ... as voters in elections for Federal office”; (3) “protect[ing] the integrity of the electoral process”; and (4) “ensur[ing] that accurate and current voter registration rolls are maintained.” *Id.*, § 20501(b). Goals 1 and 2 were to be realized, in part, by allowing

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1 voter registration through state departments of motor vehicles (“DMVs”). Goals 3 and  
2 4 were embodied in Section 8, which requires each state to “conduct a general program  
3 that makes a reasonable effort to remove the names of ineligible voters from the  
4 official lists of eligible voters by reason of” death or a change in the residence of the  
5 registrant, and specifies a procedure for doing so.

6 61. California, however, has failed to comply with Section 8 of the NVRA,  
7 interpreting its requirement to remove ineligible voters from voter rolls as permissive,  
8 rather than mandatory. In other words, California massively expanded its voter rolls  
9 through DMV registration, but failed to remove ineligible voters.<sup>1</sup>

10 62. In 1998, California exacerbated the problems created by ineligible voters on  
11 its rolls by eliminating the absentee ballot, converting what at the time was a one-time  
12 VBM ballot that had to be applied for prior to each election, to a permanent VBM  
13 ballot that would be sent to voters prior to every election, without further action on  
14 their part, and without verification that the voters were eligible to vote, still residents  
15 of California, or even still living. As a result, approximately 75% of voters in  
16 California regularly received permanent VBM ballots even before the most recent  
17 “emergency” orders. In many cases this was not the voter’s choice. Two Presidential  
18 Election Commissions (2001 and 2005) have determined that VBM ballots do not  
19 satisfy five requirements for fair and honest elections, and facilitate election  
20 manipulation and fraud.

21 63. In 2002, the Federal government passed the Help America Vote Act  
22 (HAVA), which required the establishment of a statewide voter database. California  
23 was one of the last states to come into compliance with this mandate, only doing so in  
24 2016. Even then, there were issues with California’s compliance with HAVA,  
25 including the manner in which the contract was awarded (no-bid, non-competitive

26 \_\_\_\_\_  
27 <sup>1</sup> In 2018, EIPCa entered into a settlement with Los Angeles County Registrar Dean C.  
28 Logan and former Secretary of State Padilla that, among other things, required removal  
of 1.5 million ineligible persons from the voter list due to their failure to comply with  
Section 8 of the NVRA. That settlement is not at issue in this case.

1 award), the poor reputation of the company awarded the contract, the lack of public  
2 transparency with regard to the database certification, and EIPCa’s revelations of  
3 serious and potentially disqualifying defects in the database (which continue even  
4 now).

5 64. In 2012, SB 397 (Stats. 2011, Chap. 561) was passed in California,  
6 allowing online voter registration without effective controls against ineligible  
7 registrations. In its first month, 6,080 duplicate registrations were recorded.

8 65. In 2012, California Proposition 14 established a top-two primary system in  
9 California. In a top-two primary, the top two vote-getters, regardless of their partisan  
10 affiliations, advance to the general election. Under this system, voters affiliated with  
11 political parties other than the two major parties are effectively prevented from having  
12 a candidate reflective of their values on the general election ballot.

13 66. In 2013, California passed AB 817 (Stats. 2013, Chap. 162), which allowed  
14 up to five non-citizen residents of California to work as a member of any single  
15 precinct board (i.e., poll worker). AB 817 was flawed because: a) though it required  
16 specific qualifications for non-citizen workers, it provided no method other than self-  
17 affirmation to enforce those requirements; and b) non-citizens cannot legally take the  
18 poll worker oath because they have not relinquished allegiance to their native  
19 countries, relinquished allegiance to their foreign leaders and sworn allegiance to the  
20 United States. In essence, AB 817 facilitates foreign intervention in California’s  
21 election process.

22 67. In 2014, California began issuing driver licenses to undocumented  
23 immigrants pursuant to AB 60 (Stats. 2013, Chap. 524), thereby providing a direct path  
24 to voter registration for them. In 2015, California exacerbated this issue further with  
25 the passage of AB 1461 (Stats. 2015, Chap. 729), pursuant to which voter registration  
26 became automatic through the DMV unless the driver (be they citizen or non-citizen)  
27 proactively requests not to be registered. The difficulty presented by confusing  
28 computer software and, in many cases, language barriers continue to cause many



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1 individuals to effect unwanted (and illegal) registrations or registration changes such as  
2 party affiliation and preferred method of voting. Through AB 1461, non-citizens  
3 would become registered with or without their knowledge. Moreover, there is no way  
4 to ascertain citizenship status of a registrant other than self-identification because  
5 California election officials are barred from accessing DMV and DHS information  
6 regarding non-citizens. (EC § 2263(d).) In fact, the law specifically states that the  
7 DMV is not required or expected to determine eligibility for voter registration and  
8 voting. (EC § 2262(b).) EIPCa has also documented thousands of instances in which  
9 California’s online and DMV voter registration systems change registrants’ reported  
10 place of birth, including many foreign-born registrants, to “California” or “United  
11 States.” These changes may conceal foreign-born non-citizens who are registered to  
12 vote, and exacerbate the state's inability to maintain accurate lists since the changes  
13 can create mismatches in critical databases such as death and felon records.

14 68. In addition, AB 1461 allows pre-registration of 16 and 17-year-olds with  
15 the promise they will not be activated until their 18th birthday. EIPCa analysis  
16 indicates that minors are showing up on the active voter rolls.

17 69. In 2016, California passed SB 450 (Stats. 2016, Chap. 832), the “Voter’s  
18 Choice Act,” which eliminated neighborhood precinct voting and sent VBM ballots to  
19 every registered voter in participating counties. The bill also did away with the  
20 requirement that a voter who had received a VBM ballot but wished to vote in person  
21 was required to surrender that ballot at the voter’s home precinct, to be clearly marked  
22 “surrendered.” Instead, an electronic system was put in place keeping track of  
23 invalidated VBM ballots belonging to in-person voters. In 2020, this caused many  
24 election workers to tell in-person voters to simply throw their VBM ballots and  
25 envelopes into trash cans with no invalidating markings. This produced distrust among  
26 voters, causing potential voter suppression. It is also unclear whether any of these  
27 discarded ballots could have been subsequently removed from the trash, filled out and  
28 counted in the vote totals. The possibility that this happened is heightened by

1 intermittent power outages at certain election locations that appears to have affected  
2 the electronic tracking system for surrendered ballots.

3 70. Also in 2016, California passed AB 1921 (Stats. 2016, Chap. 820),  
4 allowing an unlimited number of VBM ballots to be turned in by anyone, regardless of  
5 relationship to the voter. This bill eliminated chain of custody and legalized wholesale  
6 ballot harvesting/ballot trafficking, by which one person can collect an unlimited  
7 number of ballots and turn them in, and even be paid to do so. Because of the extreme  
8 potential for fraud, this practice is restricted or prohibited in most other states, and  
9 considered a felony in many. In states where ballot harvesting is allowed, massive  
10 voter fraud operations have been uncovered, including cash payments for votes and  
11 ballot harvesters preying upon and deceiving vulnerable populations like the elderly,  
12 indigents, non-citizens, young voters and minority voters.

13 71. In 2017, California further eroded election integrity by passing SB 286  
14 (Stats. 2017, Chap. 806), under which voters are no longer required to state their name  
15 and address aloud and have it repeated when voting in person as was previously  
16 required under California Elections Code § 14216, further facilitating voter  
17 impersonation.

18 72. In 2018, California passed SB 759 (Stats. 2018, Chap. 446) as urgency  
19 legislation (*i.e.*, effective immediately), requiring counties to contact all voters whose  
20 VBM ballots are considered for rejection so they can “cure” their signatures. This law  
21 has significant unintended consequences. For example, verification by a voter is done  
22 by downloading a form online or responding with a form sent in the mail; a voter may  
23 therefore never see the original ballot envelope and may “verify” a fraudulent  
24 signature. Although the law requires the curing notice to be sent no later than 8 days  
25 prior to certification and be returned no later than 2 days before certification, former  
26 Secretary of State Padilla violated California law and issued an advisory in November  
27 2018 that the practice can and should continue up to the date of certification. These  
28 extensions could cause fraudulent ballots to be counted while the voters’ responses are

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1 pending.

2 73. AB 216 (Stats. 2018, Chap. 120) required VBM envelopes to be postage  
3 paid. This provides an incentive for voters to use USPS to return their ballots, rather  
4 than returning them to a precinct or drop box, or using another shipping provider.  
5 USPS is one of the least secure ways to submit a VBM ballot.

6 74. AB 306 (Stats. 2018, Chap. 203) further facilitated ballot harvesting/ballot  
7 trafficking by prohibiting disqualification of a ballot solely because the person  
8 returning it does not provide their name, relationship to the voter or signature.

9 75. In 2019, California passed a raft of new voting legislation, including: AB  
10 963 (Stats. 2019, Chap. 559), which instituted complex and expensive programs on  
11 high school and college campuses with the goal of increasing registration and voting  
12 by students, whether eligible to vote or not; SB 72 (Stats. 2019, Chap. 565) instituting  
13 same-day voter registration at all polling places, placing undertrained, under-  
14 supervised and at times overwhelmed election workers in the position of determining  
15 voter eligibility; and SB 523 (Stats. 2019, Chap. 568), extending the “curing” process  
16 for missing or challenged VBM ballot envelope signatures from 8 days after election  
17 day to two days before certification, which, in conjunction with the processing of  
18 VBM and provisional ballots, could cause fraudulent ballots to be counted while the  
19 voters’ responses are pending.

20 **IV. In the Run-up to the 2020 Election, Unconstitutional Urgency Legislation**  
21 **and Emergency Orders and Regulations Bypass Normal Legislative**  
22 **Processes and Introduce Massive New Problems with VBM Ballots.**

23 76. Efforts to unlawfully compromise California elections accelerated in the  
24 run-up to the 2020 election. On May 8 and June 3, 2020, Defendant Newsom issued  
25 Executive Orders N-64-20 and N-67-20, directing that “every Californian who is  
26 eligible to vote in the November 3, 2020 General Election shall receive a vote-by-mail  
27 ballot.” On June 18, 2020, California passed AB 860 (Stats. 2020, Chap. 4),  
28 incorporating this requirement into California law for all voters in active status.

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1 77. As a result, every active registered voter on California’s voter rolls was  
2 mailed a VBM ballot. Millions of VBM ballots for the 2020 general election were  
3 placed in the U.S. Mail with no means to ensure that a particular ballot was actually  
4 received by the intended recipient, or that the intended recipient was still living in  
5 California and eligible to vote. EIPCa data research shows that hundreds of thousands  
6 or ballots were sent to the last known address of individuals showing no electoral  
7 activity for 12-40 years, some never, and who are therefore likely deceased or moved  
8 out of state.

9 78. Emergency regulations issued by former Secretary of State Padilla for the  
10 2020 general election further eviscerated the standards for the vetting of VBM ballots.

11 79. On September 28, 2020, after an unpublicized public comment period of  
12 only 5 days, former Secretary of State Padilla adopted new “emergency” regulations.  
13 *See CC/ROV 20226* (Sept. 29, 2020). These regulations include 2 *California Code of*  
14 *Regulations (“CCR”)* §§ 20910, 20960-20962, 20980-20985, and 20990-20993. These  
15 emergency regulations are in effect through July 28, 2021, and may be renewed.

16 80. These emergency regulations not only gut the signature verification process  
17 required by statute [EC §§ 3009, 3019], they also directly contradict a number of state  
18 statutes intended to ensure that VBM ballots are legally cast.

19 81. The new regulations virtually eliminate the possibility of meaningful  
20 standards being applied in the verification of signatures on VBM ballot return  
21 envelopes. This begins with subsection (b) of 2 *CCR* § 20960, which provides that the  
22 "comparison of a signature shall begin with the basic presumption that the signature on  
23 the petition or ballot envelope is the voter’s signature." Since the filing of the original  
24 complaint in this case, the legislature is considering legislation to codify subsection (b)  
25 into law as SB 503.

26 82. Subsection (g) of 2 *CCR* § 20960 also dictates criteria for evaluation of  
27 signature matches that would justify finding a match of two signatures that clearly do  
28 not match. Particularly egregious is the justification that the voter’s signature style

1 might have changed over time. 2 CCR § 20960 subsection (g)(4). This provision  
2 legitimizes acceptance of virtually any signature without subjecting clear mis-matching  
3 signatures to the safeguard of the curing process.

4 83. The effect of the foregoing provisions in nullifying any possibility of  
5 meaningful signature verification is compounded by subsection (j) of 2 CCR § 20960,  
6 which requires that a signature match “shall only be rejected if two different elections  
7 officials unanimously find beyond a reasonable doubt that the signature differs in  
8 multiple, significant, and obvious respects from all signatures in the voter’s registration  
9 record.” This standard cannot be justified by reference to the provision of the  
10 *California Elections Code* requiring signature verification for VBM ballots. EC §§  
11 3009, 3019. When combined with the standards of 2 CCR § 20960(g) set forth above,  
12 the beyond a reasonable doubt standard of § 20960(j) justifies the acceptance of  
13 virtually any signature on a VBM ballot return envelope, again without subjecting  
14 clearly mis-matching signatures to the safeguard of the curing process.

15 84. The adjustment of standards for signature matching of VBM ballot return  
16 envelopes is patently gratuitous given that the *California Elections Code* § 3019(d)  
17 provides a meaningful opportunity for a voter to cure the rejection of a signature match  
18 by requiring notice to the affected voter and the opportunity to submit verification of  
19 the rejected signature match.

20 85. The newly enacted emergency regulations also nullify rejections based on  
21 computer signature recognition technology, requiring that any rejection based on such  
22 technology be evaluated manually under the virtually nonexistent standards of 2 CCR  
23 §20960. 2 CCR §20961.

24 86. The newly enacted emergency regulations also promote fraud by allowing  
25 the submission of multiple ballots in a single VBM ballot return envelope.  
26 Subsections (b)(11) and (b)(12) of 2 CCR § 20991 allow multiple ballots to be stuffed  
27 into a single VBM return envelope, provided there is an equal number of signatures on  
28 that envelope. This conflicts with the requirement that the signature and other

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1 information included by the voter on the outside of a VBM envelope be confirmed by a  
2 declaration under penalty of perjury. § 3011.

3 87. The acceptance of multiple ballots in a single VBM return envelope  
4 authorized by 2 CCR § 20991(b)(11) and (12) also eliminates the protection provided  
5 by the barcode on the envelope, which is used to track whether a particular voter has  
6 submitted a VBM ballot. Moreover, without the barcode to scan for the extra  
7 signatures, the already harried reviewers have no reasonable means of summoning  
8 each voter registration affidavit signature for purposes of comparison.

9 88. Even if it were practicable to conduct signature comparisons for multiple  
10 signatures on a single VBM return envelope -- which for the reasons set forth above it  
11 is not -- the signature reviewer has no means of knowing if there is a signature for each  
12 ballot included in the envelope. Signatures are verified before the envelope is opened.

13 89. The acceptance of multiple ballots in a single VBM return envelope also  
14 creates intractable practical problems for determining which votes have been legally  
15 cast. If after opening a VBM ballot return envelope there are more ballots in the  
16 envelope than signatures on the envelope, there is no means of determining which of  
17 the multiple ballots is to be rejected, assuming any effort were made to make this  
18 comparison. The same would hold true if one or more signatures on the VBM  
19 envelope were rejected (which for the reasons set forth above, would never occur  
20 under the standards set forth in 2 CCR §§ 20960 and 20961); there would be no way to  
21 determine which ballot should not be counted.

22 90. The emergency regulations also dispose of state law requirements for what  
23 may be considered a valid ballot. Subsection (b)(9) of 2 CCR § 20991 allows the voter  
24 to submit virtually any piece of paper as a VBM ballot. Subsection (b)(10) of 2 CCR §  
25 20991 allows the voter to submit votes for a VBM ballot on a sample ballot. These  
26 regulations contravene EC § 13200, which provides that ballots not printed according  
27 to statutory specifications cannot be cast or counted and EC § 13002, which requires  
28 watermarking of printed ballots. The required use of official ballots is further

1 reinforced by EC § 14299, which requires strict procedures to be followed for  
2 alternative ballots when a polling place exhausts its supply of ballots.

3 91. The fundamental dishonesty of the foregoing regulations and the clear  
4 intent of the State to allow the counting of illegal votes is demonstrated by statements  
5 made by former Secretary of State Padilla to assure voters that the mass mailing of  
6 VBM ballots would not lead to voter fraud. On August 18, 2020, former Secretary of  
7 State Padilla published an opinion piece on the editorial pages of the San Francisco  
8 Chronicle. It stated that, “vote-by-mail ballots use specific paper types and  
9 watermarks to prevent forgery and fabrication,” and that “Each vote-by-mail ballot  
10 return envelope has a unique barcode that elections officials utilize to ensure a voter  
11 has not already cast a ballot.” [https://www.sfchronicle.com/opinion/article/Vote-by-  
12 mail-Yes-we-can-do-it-securely-in-15485395.php](https://www.sfchronicle.com/opinion/article/Vote-by-mail-Yes-we-can-do-it-securely-in-15485395.php). These safeguards are intentionally  
13 discarded by subsections (b)(9) and (b)(10) of 2 CCR § 20991.

14 92. The emergency regulations also require the acceptance of VBM ballot  
15 envelopes with no reliable indication that the ballot was cast on or before election day.  
16 This is reflected in subsection (b)(8) of 2 CCR § 20991, which provides that a VBM  
17 ballot must be accepted when a “vote-by-mail ballot identification envelope has no  
18 dated postmark, the postmark is illegible, and there is no date stamp for receipt from a  
19 bona fide private mail delivery service, but the voter has dated the vote-by-mail ballot  
20 identification envelope or the envelope otherwise indicates that the ballot was executed  
21 on or before Election Day.”

22 93. Moreover, the legislature amended EC § 3020 to provide that, "for the  
23 statewide general election to be held on November 3, 2020, any vote by mail ballot  
24 cast under this division shall be timely cast if it is received by the voter’s elections  
25 official via the United States Postal Service or a bona fide private mail delivery  
26 company by the 17th day after election day . . ."

27 94. Thus, under the *California Elections Code* and the emergency regulations,  
28 VBM ballots that cannot reliably be determined to have been cast on or before election

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1 day are nevertheless required to be accepted up to 17 days after election day. This  
2 creates an open invitation to submit illegal ballots after election day to overturn  
3 reported election results, especially election contests decided by margins of very few  
4 votes.

5 **V. Evidence Suggests Required Audits in Sacramento Never Took Place and**  
6 **Cyber Security Practices were Lacking**

7 95. In 2010, hackers hijacked San Mateo’s Registrar of Voters Election website  
8 and in 2016 cyberthieves successfully breached several employee email accounts using  
9 phishing techniques. A 2018-19 San Mateo County Grand Jury (“SMCGJ”) report,  
10 “Security of Election Announcements,” focused on the vulnerabilities of their county’s  
11 email and online communication platforms to hijacking and propagating  
12 disinformation in the guise of election instructions and/or announcements, and  
13 included a series of recommendations which proposed short-term fixes to address the  
14 immediate risk to upcoming elections and longer term changes to assess the broader  
15 cybersecurity threats to election information.

16 96. In 2019, the Sacramento County Grand Jury (“SCGJ”) received a citizen  
17 inquiry regarding whether Sacramento’s Voter Registration System could benefit from  
18 the recommendations adopted in San Mateo. The SCGJ forwarded this report to the  
19 Sacramento County Registrar of Voters (“SCRV”) to ask if these recommendations  
20 applied to Sacramento and, if so, whether they were being implemented. In reviewing  
21 the recommendations, the SCGJ also determined that the Sacramento Department of  
22 Technology was not regularly performing vulnerability scans and penetration testing of  
23 Sacramento County information technology systems.

24 97. Specifically, according to a report revealed via a public records request, the  
25 SCGJ was “unable to determine when the last external audit was done to evaluate the  
26 security of Sacramento County Election systems.”  
27  
28

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**VI. EIPCa Warns Secretary of State about Serious Irregularities with Voter Rolls Prior to the 2020 Election, but They Go Unremedied.**

98. On March 1, 2020, prior to the primary election, EIPCa sent a letter to former Secretary of State Padilla warning him that “[w]e have identified in the [State of California’s voter registration] file over 22,000 Californians that appear to be registered twice, some registered three or four times. Of these, we estimate that almost 5,000 duplicated registrants have been mailed two or more VBM ballots this election.” EIPCa noted that duplicate voting was likely to result.

99. On April 28, 2020, EIPCa sent former Secretary of State Padilla statutory notice pursuant to 52 U.S.C. § 20510(b) of violations of Section 8 of the NVRA, 52 U.S.C. § 20507. The notice highlighted over 458,000 likely ineligible registrants who would be mailed ballots for the November election and an additional 24,000 duplicated registrants who would each be mailed two or more ballots unless corrected. The notice included supporting evidence that the state has over 1 million more registered voters than eligible citizens, per official government data.

100. On July 11, 2020, EIPCa warned former Secretary of State Padilla that EIPCa had identified large numbers of ineligible voters on California’s voter rolls, including “13,456 California registrants who match a California Department of Public Health (CDPH) Death Index record” (327 of whom were 105+ years old), and 106,315 other voters who appear to be ineligible for a variety of reasons, such as having moved out of the state or being below the minimum age to vote. California’s failure to comply with the NVRA’s requirement to cancel registrations of ineligible voters is a major contributor to these issues.

101. EIPCa’s estimates of ineligible voters are conservative and significantly underestimate the full extent of the problem. For example, if a name and birthdate appearing on the voter roll is shared by both a deceased and a living person, EIPCa assumes the name belongs to the living person and does not include that name within its count of deceased voters, even though it is possible that the name on the voter roll

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1 refers to the deceased person. Further, EIPCa does not include in its analysis names  
2 that are particularly common within the population (e.g., John Smith, Jose Gonzalez).  
3 An audit would likely find many times more ineligible voters than EIPCa is able to  
4 estimate with the information available to it.

5 102. EIPCa received responses to its letters downplaying EIPCa’s concerns and  
6 refusing to remedy the identified problems.

7 103. EIPCa’s concerns, however, would prove to be well-founded when massive  
8 irregularities and opportunities for fraud occurred during the November 2020 election.

9 **VII. The Conduct of the 2020 Election Eviscerates Citizen Oversight, Causes**  
10 **Mass Irregularities and Opportunities for Fraud, and Violates the Rights of**  
11 **Lawful Voters, Citizen Observers and Candidates.**

12 **A. Citizen Observers Were Obstructed from Meaningfully Observing**  
13 **Vote Collection and Tabulation**

14 104. California citizens have the right to observe the entire election process,  
15 including vote collection, signature verification, the remaking of “damaged” and  
16 military ballots, and tabulation. These rights are codified in California Elections Code  
17 §§ 2300 ((a) (9)(A)(B), (a)(10) and 15100 – 15105.

18 105. However, for observer rights to be effectuated, observers need to be close  
19 enough to ballot processing and vote tabulation activities to see what is actually taking  
20 place. AB 1573 (Stats. 2009, Chap. 548) explicitly authorizes observers to see the  
21 voter’s signature on each ballot that is processed, and the legislative history of the code  
22 notes that observers must receive “sufficiently close access” to examine ballots, as well  
23 as signatures on VBM ballot envelopes and ballots being remade (duplicated).

24 106. EIPCa provides non-partisan training to citizen observers across the State  
25 of California regarding how to observe the election process at polling locations and  
26 vote centers, as well as ballot processing and vote tabulation consistent with their  
27 rights under California law. These citizen election process observers provide Incident  
28 Reports to EIPCa, signed under penalty of perjury, regarding any irregularities they

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1 witness. Other citizens also report irregularities to EIPCa.

2 107. In relation to the November 2020 election, EIPCa received hundreds of  
3 Incident Reports signed under penalty of perjury establishing that EIPCa observers  
4 were not allowed sufficiently close access to see the signatures on VBM ballots with  
5 sufficient clarity to determine if established procedures were being followed.  
6 Observation distances were too great. Observers were limited, at times, to a few  
7 minutes of observing. In some cases, observation was provided through remote video  
8 access which precluded the ability of observers to challenge whether established  
9 procedures were being followed. In some counties, observers were not allowed to  
10 observe the remaking of military, damaged or defective ballots. In others, they were  
11 denied effective viewing of voting machines. In many cases, COVID-19 was used as  
12 cover for these unreasonable and unlawful restrictions, yet county employees and  
13 contractors, as well as employees of the companies that supplied and operated the  
14 voting machines, were generally not subjected to these same restrictions. Defendant  
15 county registrars implemented different election rules and practices, thereby causing  
16 voters in one county to be treated differently from those in another, disadvantaging  
17 voters and diminishing the value of votes legally cast by and for the Plaintiffs in  
18 certain counties in comparison to those legally cast in other counties. Most of the  
19 Congressional districts in which the candidate Plaintiffs ran crossed county lines,  
20 causing them to be disadvantaged in certain counties over others.

21 108. Defendants' obstruction of citizen observers in general, and EIPCa  
22 volunteers in particular, was pervasive and well beyond the obstruction experienced in  
23 previous elections, forcing EIPCa to expend significant additional resources to  
24 facilitate observation of voting practices and document obstruction and irregularities.  
25 Because the same or substantially similar laws, regulations, orders and practices are  
26 governing and will govern upcoming elections, the same situation will repeat in these  
27 elections absent Court intervention.

28 109. Below is a sampling of the ways in which observation was obstructed on a

1 county-by-county basis:

2 **110. Alameda County:**

3 G. An EIPCa citizen observer was informed by multiple county  
4 employees that no observers were allowed to observe vote processing  
5 and counting at all due to COVID-19.

6 **111. Fresno County:**

7 H. Throughout Fresno County, citizen observers were kept in confined  
8 areas too far from vote processing and counting activities to effectively  
9 observe them. Former Fresno County Registrar of Voters Brandi Orth  
10 told citizen observers at the Orange Cove Library that they “needed to  
11 stay in [their] area and Observe!” It was her interpretation that  
12 observers did not need to be close enough to hear what was going on,  
13 as she informed the observer.

14 I. At Reedley Precinct 13, citizen observers were forced to remain in an  
15 observer area which was approximately 35 feet back from check-in  
16 and in the back of the room. It was difficult to see and hear. A vote  
17 center supervisor would stare at observers if they moved from the  
18 designated observation area.

19 J. At Orange Cove Precinct 14, citizen observers were required to stay in  
20 a confined area behind tables approximately 50 feet from vote  
21 processing and counting activities. It was difficult to see or hear.

22 **112. Los Angeles County:**

23 K. A citizen observer was told by a head poll worker at Vasquez High  
24 School that “it was illegal for [her] to be [there]” as a poll observer  
25 after the polls closed. Because of this the citizen observer was forced  
26 to leave five minutes before the doors to the voting center closed.

27 **113. Monterey County:**

28 L. Citizen observers were separated from election officials processing

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1 ballots by thick glass, making it impossible to hear the process, and  
2 more than ten feet away from the election officials’ desks, making it  
3 virtually impossible to see what they were doing.

4 **114. Orange County:**

5 M. In Orange County, citizen observers were provided with computer  
6 “observation screens” on which to view ballot processing activities.  
7 However, observers were kept far away from these screens, making  
8 observation of details like signatures impossible to verify. One citizen  
9 observer resorted to viewing the screens with binoculars, but was still  
10 too far away to see signatures clearly.

11 N. Observation screens were also turned off with varying or no  
12 explanation while the count continued. Citizens were unable to view or  
13 object to signature matches and the processing of conditional ballots  
14 because these screens were off.

15 O. The Registrar of Voters informed citizen observers that it had halted  
16 “first pass” ballot counting at 5:00 p.m. However, counting took place  
17 again later in the evening without the knowledge or observation of  
18 citizen observers. This would never have been discovered but for a  
19 citizen observer who logged into the Remote Observing System at  
20 6:30 p.m. and was “stunned” to see the video “was an active and live  
21 viewing of ‘first pass’ signatures” going on.

22 **115. Riverside County:**

23 P. Citizen observers were prevented from seeing ballots being remade in  
24 Riverside County. When an observer raised this with an election  
25 official, he told the observer there would be no changes to the process  
26 to enable observers to see ballots being remade. A temporary  
27 Elections Assistant in Riverside who took part in the remaking of  
28 ballots reported that she observed no method of accountability for the

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remaking of ballots that would ensure the voter’s original choice was accurately marked on the new ballot. The employees sat across from each other without view of what the other was doing and this occurred in the back of the room, far from where citizen observers could see because tall carts obstructed the view.

**116. Sacramento County:**

Q. A citizen observer in Sacramento County was positioned more than 6 feet from the counting desks which were also surrounded by plexiglass, making it nearly impossible to see ballot marks.

**117. Santa Clara County:**

R. A citizen observer in Santa Clara reported “Observers were not allowed into the tabulation room to observe counting. Observers watched from conference room over zoom link, but camera was filming from the doorway/outside the room.” As such, observers had limited view on the operation and could not readily object.

**118. Ventura County:**

S. Ventura County allowed only a limited number of citizen observers to observe ballot processing and vote tabulation in person, and they were directed to stand outside the vote tabulation center in the hall and observe through the window, approximately 20 feet away from the process. Ventura County also set up a limited number of streaming cameras to allow citizen observers to observe remotely, but they provided limited view of the facility and did not show the activity on computer screens.

**B. EIPCa Observes Widespread Irregularities and Evidence of Opportunities for Fraud in Hundreds of Sworn Declarations, Despite Obstruction of Election Observers**

119. Even with all of the measures put in place by Defendant County Registrars

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1 to disrupt citizen observers, citizens still observed a vast number of pervasive  
2 irregularities, which are documented in hundreds of sworn affidavits collected by  
3 EIPCa.

4 120. These affidavits demonstrate that signature verifications for VBM ballots  
5 for the November 2020 election were not meaningfully conducted statewide. As  
6 massive numbers of VBM ballots flooded vote counting centers, their signatures were  
7 visually checked at the rate of one signature pair every one to four seconds. In some  
8 cases, four signature comparisons were conducted simultaneously using images  
9 projected on computer monitors, at the rate of one to four seconds per screen. This  
10 cursory review is patently inadequate to ensure that the VBM ballots were properly  
11 vetted as legal votes as required by EC § 3019. Defendant county registrars  
12 implemented different election rules and practices, thereby causing voters in one  
13 county to be treated differently from those in another, disadvantaging voters and  
14 diminishing the value of votes legally cast by and for the Plaintiffs in certain counties  
15 beyond those legally cast in other counties.

16 121. The sheer number and variety of irregularities caused EIPCa to expend  
17 significant additional resources to facilitate observation of voting practices and  
18 document obstruction and irregularities. Because the same or substantially similar  
19 laws, regulations, orders and practices are governing and will govern upcoming  
20 elections, the same situation will repeat in these elections absent Court intervention.

21 122. Observers noted widespread additional irregularities and potential for fraud  
22 across many counties:

23 **123. Contra Costa County:**

24 In Contra Costa County, poll data tapes from voting machines show  
25 inconsistencies between votes as recorded by the machines, and later  
26 tabulation of those votes in the vote for President. In multiple cases,  
27 votes were added to the tally for Biden but not for Trump. The data  
28 tape from one poll center tabulator shows 95 votes for Biden and 147

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for Trump, but the report released by the County shows 96 (an additional vote) for Biden and the same 147 for Trump. The same thing happened in at least three other cases. In each instance, Trump’s votes remained constant while votes were added for Biden. Only an audit can show whether the same irregularities hold true for other counties and other candidates.

T. A voter had his ballot envelope signed by another person with a different name, and the County accepted the signature because no signature matching was taking place.

U. A citizen who was voting observed a poll worker who instructed another voter how to vote on certain ballot items that voter had left blank because the voter knew nothing about them, per her own admission. The poll worker provided her this guidance without solicitation.

**124. Fresno County:**

V. At Fresno County’s Clovis Center, a supervisor informed a citizen observer that the ballots for the first day of early voting (10/31/2020) had been left inside a vote tallying machine “unattended in a locked room overnight,” and that it was his understanding this practice would continue every night until the final closing of the voting center.

**125. Los Angeles County:**

W. A citizen at Los Angeles County’s Pasadena Victory Park center witnessed a machine change a voter’s vote.

X. Multiple observers at voting centers saw “many workers with open bags, big purses and other stuff around desks” in violation of security procedures, noting that “[b]allots could easily have been taken.”

Y. An observer at Los Angeles County’s Claremont center witnessed two different women drop off multiple ballots without voter signatures.



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Nevertheless, the ballots were counted by election officials.

Z. Even where signature matching was done, it was not done effectively. One observer watched a worker matching signatures four at a time (as in other counties) and spending five seconds or less per each set of four. The observer saw over 40 signatures that did not match, and three with no reference signature to match whatsoever, but only one was flagged. Another observed 95 signatures that should have been challenged but were not. Including “[m]any [that] had no signature or a total mismatch.” (Emphasis added.)

**126. Monterey County:**

AA. Voters in Salinas who voted in person were advised that a provisional ballot must be used. A mail carrier in the Salinas Post Office informed a voter that his superiors had instructed him to “cram all the ballots into a mailbox” even if he knew many of the voters at the address did not live there.

**127. Orange County:**

BB. Election officials did not perform meaningful signature matching of signatures on VBM ballot envelopes with those on record. Signatures were displayed four at a time on computer screens and remained on the screen for only a few seconds, leaving no actual time for signature matching to occur or for observers to object. Ballots with signatures that did not appear to match were allowed to be counted. Incredibly, an election official informed a citizen observer that “they do not verify signatures for provisional ballots” at all. Another election official informed a citizen observer that Defendant Kelley had modified a ballot processing rule that previously required signature pairs to be examined for 12 seconds each.

CC. The status of VBM envelope signatures that were challenged by

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1 citizen observers was changed from “challenged” to “good” without  
2 meaningful review by election officials. During ballot processing, an  
3 election official announced over the public address system that citizen  
4 observers were challenging too many signatures and that the election  
5 officials would not have time to get to all of them.

6 DD. At the meeting of the League of Women Voters of Central Orange  
7 County on November 16, Defendant Kelley expressed surprise about  
8 the changes regarding signature verification because the new  
9 instruction essentially amounted to a directive that “basically all  
10 ballots were to be considered valid unless there was substantial proof  
11 otherwise.” He elaborated the Registrars were notified of the changes  
12 to the CCRs on September 28 in relation to the Emergency Regulation  
13 passed down by former Secretary of State Padilla.

14 **128. Riverside County:**

15 EE. An observer witnessed ballots put into boxes that were never sealed,  
16 and were put into an election official’s car in which another  
17 unidentified individual was riding.

18 FF. A temporary assistant at the Registrar of Voters was assigned to accept  
19 drive-in VBM ballots curbside. She “observed temp. employees taking  
20 ballots without checking for signatures or if the person was dropping  
21 off for others. NO effort was made to check for their signature and  
22 their relationship to the person.”

23 **129. Sacramento County:**

24 GG. A citizen observer reported that he saw on multiple occasions a ballot  
25 marked for both Biden and Trump, but with the Trump indicator  
26 having an “x” through it. The observer mentioned this to the  
27 adjudicators, who refused to elevate the issue to supervisors,  
28 concluding, without evidence, the voter had just changed his or her

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1 mind. On another date, the same citizen observer again saw a ballot  
2 marked for both Trump and Biden, with the Trump indicator having an  
3 “x” through it, and the ballot being counted for Biden.

4 **130. San Bernardino County:**

5 HH. An election official at the San Bernardino Registrar of Voters  
6 informed a citizen, “not all of the ballots will be counted, because  
7 California is such a Democrat state,” in response to the citizen’s  
8 inquiry as to why her in-person ballot had not already been counted.

9 II. A citizen observer observed that there were 400+ more registered  
10 voters on the rolls than there had been the night before (after polls had  
11 closed). No explanation was found for this increase.

12 JJ. A citizen observer witnessed voters being registered to vote  
13 provisionally without providing ID.

14 **131. Santa Clara County:**

15 KK. On November 2, a citizen observer arrived at the Santa Clara Registrar  
16 of Voters at 7:02 a.m. and found the double entrance doors and side  
17 doors leading to ballot processing area open and unattended. An  
18 employee arrived at 7:08 a.m. and said that the area was not supposed  
19 to be open. No supervisor or other employee was found in the area  
20 and the unopened doors were not explained.

21 **132. Ventura:**

22 LL. In Ventura County, a voting machine company employee was  
23 observed inserting a flash drive into a voting machine while it was  
24 tallying votes, after which the system was rebooted. The employee  
25 then removed the drive from the machine, placed it into his own  
26 laptop, and performed operations on the laptop. He then removed the  
27 drive from the laptop and provided it to the Ventura County election  
28 official who was operating the voting system.

**C. Voting Machines Used to Collect and Tabulate Votes Contain Known Vulnerabilities Allowing Miscounting and Vote Manipulation**

133. Most California counties processed ballots and tabulated votes in the November 2020 election using computerized voting machines.

134. The voting machine companies consider their software proprietary and refuse to share the full source code with the public. This means that the system used to process ballots and tabulate votes is secret.

135. Even with this secrecy, there are well-established vulnerabilities in the voting machine systems.

136. These systems classify ballots into two categories, 1) normal ballots and 2) adjudicated ballots. Ballots sent to adjudication can be altered by election officials, and adjudication files can be moved between different Results Tally and Reporting (RTR) terminals with no audit trail of which election official actually adjudicates (i.e., votes) the ballot batch. This demonstrates a significant and fatal error in security and election integrity because it provides no meaningful observation of the adjudication process or auditable trail of which election official actually adjudicates a ballot.

Without an audit to show how many ballots are “adjudicated,” it is impossible to tell how many votes election officials are given access to manipulate. In an audit of votes in Michigan Central Lake Township in Antrim County, there were 1,222 ballots reversed out of 1,491 total ballots cast, resulting in an 81.96% rejection rate, meaning the vast majority of all ballots cast were sent to adjudication for a decision by election officials. Even a much smaller percentage of adjudicated ballots would allow election officials to modify votes to change the outcome of nearly any race in the State of California.

137. Voting machines also allow election officials to generate reports as vote counting is ongoing. Such reports could be used by a malicious party to determine how many votes would need to be changed in order to manipulate the outcome of an election. These reports, however, are deleted after they are run and are not available to

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1 the public, concealing any such misuse of the software.

2 138. Ballot images, ballot totals and ballot envelopes processed by voting  
3 machine systems are not available to the public, so the accuracy of the systems' vote  
4 processing cannot be validated without an audit.

5 139. Ballots and envelopes are separated during VBM ballot processing, leaving  
6 no audit trail. If a signature on a VBM envelope is later determined to have been  
7 invalid, the ballot or ballots from that envelope cannot be identified and removed from  
8 the vote count.

9 140. Voting machine systems can be connected to the internet while processing  
10 ballots and tabulating votes. This creates the opportunity for unlawful remote  
11 manipulation of election results.

12 141. Information can also be moved to and from systems locally using flash  
13 drives, as was apparently done in Ventura County (*supra* ¶ 130). This too creates the  
14 opportunity for unlawful manipulation of election results.

15 **D. Concerns Regarding Voting Machine Systems Have Been Raised by**  
16 **Many Other Credible Entities, Including Federal and State Courts,**  
17 **State Registrars, Security Experts and Academic Publications**

18 142. There is widespread concern across institutions at the State and Federal  
19 levels, as well as in academia and the security industry, regarding the systemic  
20 problems and vulnerabilities with computerized voting systems.

21 143. An industry expert, Dr. Andrew Appel, Princeton Professor of Computer  
22 Science and Election Security Expert has recently observed, with reference to  
23 computerized machines, "I figured out how to make a slightly different computer  
24 program that just before the polls were closed, it switches some votes around from one  
25 candidate to another. I wrote that computer program into a memory chip and now to  
26 hack a voting machine you just need 7 minutes alone with it and a screwdriver." *See*  
27 Andrew W. Appel, et al., "Ballot Marking Devices (BMDs) Cannot Assure the Will of  
28 the Voters" at (Dec. 27, 2019) ("Appel Study").

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1 144. A Penn Wharton Study from 2016 concluded that “Voters and their  
2 representatives in government, often prompted by news of high-profile voting  
3 problems, also have raised concerns about the reliability and integrity of the voting  
4 process, and have increasingly called for the use of modern technology such as laptops  
5 and tablets to improve convenience.” *See* Matt Caufield, *The Business of Voting*, July  
6 2018.

7 145. In 2018, Jill Stein was in litigation with Dominion Voting Systems  
8 (“DVS”) after her 2016 recount request pursuant to WISCONSIN STAT. § 5.905(4)  
9 wherein DVS obtained a Court Order requiring confidentiality on information  
10 including vote counting source code, which Dominion claims is proprietary – and must  
11 be kept secret from the public. (*See* unpublished decision, Wisconsin Court of  
12 Appeals, No. 2019AP272 issued April 30, 2020). Rather than engaging in an open and  
13 transparent process to give credibility to Wisconsin's Dominion-Democracy Suite  
14 voting system, the processes were hidden during the receipt, review, opening, and  
15 tabulation of those votes in direct contravention of Wisconsin's Election Code and  
16 Federal law.

17 146. The same Dominion Democracy Suite was denied certification in Texas by  
18 the Secretary of State on January 24, 2020, specifically because the “examiner reports  
19 raise concerns about whether Democracy Suite 5.5-A system ... is safe from fraudulent  
20 or unauthorized manipulation.” *See* State of Texas Secretary of State, Elections  
21 Division, Report of Review of Dominion Voting Systems Democracy Suite 5.5-A at 2  
22 (Jan. 24, 2020).

23 147. Substantial evidence of this vulnerability was discussed in Judge Amy  
24 Totenberg's October 11, 2020 Order in the USDC N.D. Ga. case of *Curling, et al. v.*  
25 *Kemp, et. al*, Case No. 1:17-cv-02989 Doc. No. 964. *See*, p. 22-23 (“This array of  
26 experts and subject matter specialists provided a huge volume of significant evidence  
27 regarding the security risks and deficits in the system as implemented in both witness  
28 declarations and live testimony at the preliminary injunction hearing.”); p. 25 (“In

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1 particular, Dr. Halderman's testing indicated the practical feasibility through a of  
2 causing the swapping or deletion of specific votes cast and the compromise of the  
3 system through different strategies, including through access to and alteration or  
4 manipulation of the QR barcode.”)

5 148. Similarly, a District Judge in Georgia found that Dominion's ballots are not  
6 voter verifiable, and they cannot be audited in a software independent way. The  
7 credibility of a ballot can be no greater than the credibility of Dominion's systems,  
8 which copious expert analysis has shown is deeply compromised. Similar to the issues  
9 in Wisconsin, Judge Totenberg of the District Court of Georgia Northern District held:

10 Georgia's Election Code mandates the use of the [ballot marking  
11 device] BMD system as the uniform mode of voting for all in-person  
12 voters in federal and statewide elections. O.C.G.A. § 21-2-300(a)(2).  
13 The statutory provisions mandate voting on “electronic ballot  
14 markers” that: (1) use “electronic technology to independently and  
15 privately mark a paper ballot at the direction of an elector, interpret  
16 ballot selections, . . . communicate such interpretation for elector  
17 verification, and print an elector verifiable paper ballot;” and (2)  
18 “produce paper ballots which are marked with the elector's choices in  
19 a format readable by the elector” O.C.G.A. § 21-2-2(7 1); O.C.G.A. §  
20 21-2-300(a)(2). Plaintiffs and other voters who wish to vote in-person  
21 are required to vote on a system that does none of those things.  
22 Rather, the evidence shows that the Dominion BMD system does not  
23 produce a voter-verifiable paper ballot or a paper ballot marked with  
24 the voter's choices in a format readable by the voter because the votes  
25 are tabulated solely from the unreadable QR code.

26 *See Order*, pp. 81-82.

27 149. This case was later affirmed in a related case, in the Eleventh Circuit in  
28 2018 related to Georgia's voting system in *Common Cause Georgia v. Kemp*, 347 F.

1 Supp. 3d 1270 (11th Cir. 2018). The Court found:

2 In summary, while further evidence will be necessary in the future,  
3 the Court finds that the combination of the statistical evidence and  
4 witness declarations in the record here (and the expert witness  
5 evidence in the related Curling case which the Court takes notice of)  
6 persuasively demonstrates the likelihood of Plaintiff succeeding on its  
7 claims. Plaintiff has shown a substantial likelihood of proving that the  
8 Secretary's failure to properly maintain a reliable and secure voter  
9 registration system has and will continue to result in the infringement  
10 of the rights of the voters to cast their vote and have their votes  
11 counted.

12 *Id.* at 1294-1295.

13 150. The expert witness in the above litigation in the United States District Court  
14 of Georgia, Case 1:17-cv-02989-AT, Harri Hursti, specifically testified to the acute  
15 security vulnerabilities, see Ex. 107, wherein he testified or found:

16 A. “The scanner and tabulation software settings being employed to  
17 determine which votes to count on hand marked paper ballots are  
18 likely causing clearly intentioned votes not to be counted” “The  
19 voting system is being operated in Fulton County in a manner that  
20 escalates the security risk to an extreme level.” “Votes are not  
21 reviewing their BMD printed ballots, which causes BMD generated  
22 results to be un-auditable due to the untrustworthy audit trail.” 50% or  
23 more of voter selections in some counties were visible to election  
24 workers. Dominion employees maintain near exclusive control over  
25 the EMS servers. “In my professional opinion, the role played by  
26 Dominion personnel in Fulton County, and other counties with similar  
27 arrangements, should be considered an elevated risk factor when  
28 evaluating the security risks of Georgia's voting system.” *Id.* ¶26.



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1 B. A video game download was found on one Georgia Dominion  
2 system laptop, suggesting that multiple Windows updates have been  
3 made on that respective computer.

4 C. There is evidence of remote access and remote troubleshooting  
5 which presents a grave security implication.

6 D. Certified identified vulnerabilities should be considered an  
7 “extreme security risk.”

8 E. There is evidence of transfer of control the systems out of the  
9 physical perimeters and place control with a third party off site.

10 F. USB drives with vote tally information were observed to be  
11 removed from the presence of poll watchers during a recent election.

12 G. “The security risks outlined above – operating system risks, the  
13 failure to harden the computers, performing operations directly on the  
14 operating systems, lax control of memory cards, lack of procedures,  
15 and potential remote access, are extreme and destroy the credibility of  
16 the tabulations and output of the reports coming from a voting  
17 system.” *Id.* ¶49.

18 151. A forensic audit of Antrim County, Michigan vote tabulation found that the  
19 computerized system had an astonishing error rate of 68%. *See* Ramsland Jr., Russell.  
20 “Antrim Michigan Forensics Report.” *William Bailey v. Antrim County, Michigan*,  
21 December 13, 2020.

22 [https://depernolaw.com/uploads/2/7/0/2/27029178/antrim\\_michigan\\_forensics\\_report](https://depernolaw.com/uploads/2/7/0/2/27029178/antrim_michigan_forensics_report)  
23 [\[121320\] v2 \[redacted\].pdf](#)

24 152. By way of comparison, the Federal Election Committee requires that  
25 election systems must have an error rate no larger than 0.0008%. *See* “Excerpts from  
26 the 2002 FEC Voting System Standards – 3.2.1 Accuracy Requirements.” Michigan  
27 Secretary of State. <https://www.michigan.gov/sos/0,4670,7-127-1583-130621->  
28 [-,00.html](#)

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1 153. Also, in Michigan Central Lake Township County, there were 1,222 ballots  
2 reversed out of 1,491 total ballots cast, resulting in an 81.96% rejection rate. All  
3 reversed ballots are sent to adjudication for a decision by election personnel, a process  
4 that invites human error and fraud into the voting process.

5 **E. In-Person Voters Were Subject to Unequal Treatment Compared to**  
6 **VBM Voters, Disproportionately Burdening People, Including**  
7 **Vulnerable Populations, Who Prefer to Vote in Person**

8 154. Under California law, in person voters can only vote if they are in line at  
9 the time the polls close, which was 8 p.m. during the November 2020 election.

10 155. Under former Secretary of State Padilla’s guidance, VBM voters could  
11 legally vote by dropping off ballots in drop boxes until 11:59 p.m. and still have their  
12 ballots postmarked on election day and therefore counted.

13 156. Further, because ballots were not picked up from drop boxes until well into  
14 the day after the election and because the drop boxes were unmonitored, nothing  
15 prevented VBM voters from voting the day after election day by dropping ballots in  
16 such boxes. Reports of such late voting and ballot pickups have been documented.

17 157. This difference in timing, which allots at least four additional hours for  
18 VBM voters to vote, allows VBM voters to vote even after poll results are being  
19 announced, whereas in-person voters cannot. Such unequal treatment  
20 disproportionately burdens people who prefer to vote in person. It also  
21 disproportionately burdens the ability of Black and other minority voters to cast their  
22 votes, because data shows these communities have historically relied on in-person  
23 voting to a greater degree than other groups.

24 158. Similar issues have been found unconstitutional in multiple recent  
25 challenges to election law. *See League of Women Voters of North Carolina v. North*  
26 *Carolina*, 769 F.3d 224 (2014); *North Carolina State Conference of NAACP v.*  
27 *McCrorry*, 831 F.3d 204 (2016). In *League of Women Voters* and *McCrorry*, plaintiffs  
28 successfully argued that curtailing in-person voting disproportionately burdens the

1 ability of Black and other minority voters to cast their votes. Defendants in those cases  
2 argued unsuccessfully that VBM was still available to these voters, but these  
3 arguments were unavailing.

4 **VIII. An Audit and Special Master Are Needed to Identify the Full Extent of the**  
5 **Irregularities and Potential Fraud and the Effects of the California’s**  
6 **Unconstitutional, Laws, Regulations, Orders and Voting Practices, and to**  
7 **Ensure the Fair and Honest Conduct of Future Elections.**

8 159. In spite of an election marred by lack of citizen oversight, and policies and  
9 procedures that created massive opportunities for both error and fraud, California has  
10 provided no meaningful access to the VBM ballots and envelopes, the voting machines  
11 used to record, tabulate and report votes, or additional infrastructure that was  
12 implicated in election irregularities, including laptops and flash drives used by those  
13 who had access to voting machines. The entire process of receiving, tabulating and  
14 reporting votes remains effectively hidden from citizens.

15 160. This situation is intolerable in light of evidence of vote irregularities that  
16 are widespread enough that they could have changed the outcome of the November  
17 2020 election for the candidate Plaintiffs, as well as others, disenfranchising citizens  
18 throughout the state. These irregularities stand to be repeated if the unconstitutional  
19 laws, orders, regulations and voting practices are allowed to govern the conduct of  
20 upcoming elections.

21 161. Evidence must be preserved and made available to qualified experts, so that  
22 an audit can be conducted to determine the extent and effect of the irregularities and  
23 potential fraud reported. Such an audit should include, among other things, a review of  
24 the signatures on VBM ballots against the signatures on file, given the historically low  
25 rejection rate for signatures in the November 2020 election. It should include all  
26 ballots for which election officials selected the voter’s choices, including all “remade”  
27 and “adjudicated” ballots. It should also include voting machine access logs,  
28 tabulations, ballot images, and other information.

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1 162. Further, one or more special masters should be appointed to oversee the  
 2 audit, as well as the conduct of the upcoming elections. Local and special elections  
 3 have begun on March 2, 2021, and are scheduled to take place throughout this year and  
 4 next, including potential recall elections in 2021, and primary and general elections in  
 5 2022. They will be similarly affected. Indeed, former Secretary of State Padilla’s  
 6 emergency regulations will still be in effect when these elections start, and they are  
 7 likely to be extended. The legislature has already taken steps to codify some such  
 8 regulations into law as described above. Enactment of SB 29, Stats. 2021 Chap. 3, for  
 9 example, provides that ballots will again be mailed to all “active” registered voters  
 10 throughout 2021. As such, the violations described herein are capable of repetition.

11 163. By providing this transparency and oversight, all eligible voters can be  
 12 given assurance that they will be fully enfranchised in California’s forthcoming  
 13 elections.

#### **FIRST CAUSE OF ACTION**

#### **Violation of Elections Clause: Art. I, § 4, cl. 1 of U.S. Constitution; 42 USC 1983**

16 164. Plaintiffs repeat and incorporate by reference the allegations set forth in  
 17 Paragraphs 1 through 163 of this Complaint as if fully set forth herein.

18 165. The Elections Clause of the U.S. Constitution states that “[t]he Times,  
 19 Places, and Manner of holding Elections for Senators and Representatives, shall be  
 20 prescribed in each State by the Legislature thereof.” Art. I, § 4, cl. 1 (emphasis added).

21 166. The Legislature is ““the representative body which ma[kes] the laws of the  
 22 people.”” *Smiley v. Holm*, 285 U.S. 355, 365 (1932). Regulations of congressional and  
 23 presidential elections, thus, “must be in accordance with the method which the state  
 24 has prescribed for legislative enactments.” *Id.* at 367; *see also Ariz. State Legislature v.*  
 25 *Ariz. Indep. Redistricting Comm’n.*, 135 S. Ct. 2652, 2668 (2015).

26 167. Defendants have violated, and are engaged in the continued violation of, the  
 27 Elections Clause by usurping the California State Legislature’s constitutional authority  
 28 to set the manner of elections.

1 168. Plaintiffs have suffered, and will continue to suffer, damage that is actual,  
2 as well as imminent and certainly impending, by reason of defendants’ violation of the  
3 Elections Clause.

4 169. The damage Plaintiffs have suffered is capable of repetition, yet evading  
5 review, including because there are forthcoming elections that will be conducted.

6 170. Plaintiffs have no adequate remedy at law and will suffer irreparable harm  
7 unless the court enjoins defendants’ violation of the Elections Clause.

8 171. Plaintiffs are entitled to declaratory relief and temporary, preliminary and  
9 permanent injunctive relief invalidating or restraining the defendants’ violations of the  
10 Elections Clause.

11 **SECOND CAUSE OF ACTION**

12 **Denial of Equal Protection: 14th Amendment of U.S. Constitution; 42 USC 1983**

13 172. Plaintiffs repeat and incorporate by reference the allegations set forth in  
14 Paragraphs 1 through 171 of this Complaint as if fully set forth herein.

15 173. The Fourteenth Amendment of the United States Constitution provides “nor  
16 shall any state deprive any person of life, liberty, or property, without due process of  
17 law; nor deny to any person within its jurisdiction the equal protection of the laws.”  
18 *See also Bush v. Gore*, 531 U.S. 98, 104 (2000) (having once granted the right to vote  
19 on equal terms, the State may not, by later arbitrary and disparate treatment, value one  
20 person’s vote over the value of another’s); *Harper v. Virginia Board of Elections*, 383  
21 U.S. 663, 665 (1966) (“Once the franchise is granted to the electorate, lines may not be  
22 drawn which are inconsistent with the Equal Protection Clause of the Fourteenth  
23 Amendment.”).

24 174. Defendants have violated, and are engaged in the continued violation of, the  
25 Equal Protection Clause, including by diminishing the value of votes legally cast by  
26 and for the individual Plaintiffs and EIPCa’s citizen observers by the application and  
27 enforcement of the laws, statutes, regulations, orders and practices described herein.

28 175. Defendants have violated, and are engaged in the continued violation of, the

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1 Equal Protection Clause, including by intentionally failing to ensure that only legally  
2 cast VBM ballots were included in the canvass for the 2020 general election in  
3 California.

4 176. Defendants have violated, and are engaged in the continued violation of, the  
5 Equal Protection Clause by applying disparate rules in different counties, causing the  
6 votes of some California citizens, including individual Plaintiffs and their supporters,  
7 and EIPCa’s citizen observers, to be treated differently from those of others.

8 177. Defendants have violated, and are engaged in the continued violation of, the  
9 Equal Protection Clause by treating VBM voters differently from in-person voters,  
10 disproportionately burdening people who prefer to vote in person, including Black and  
11 other minority voters, including individual Plaintiffs and their supporters, and EIPCa’s  
12 citizen observers.

13 178. Defendants have violated, and are engaged in the continued violation of, the  
14 Equal Protection Clause by applying laws, regulations, orders and voting practices the  
15 disproportionately burden certain classes of voters, including individual Plaintiffs and  
16 their supporters, and EIPCa’s citizen observers.

17 179. Plaintiffs have suffered, and will continue to suffer, damage that is actual,  
18 as well as imminent and certainly impending, by reason of Defendants’ violation of the  
19 Equal Protection Clause.

20 180. Plaintiffs have no adequate remedy at law and will suffer irreparable harm  
21 unless the court enjoins defendants’ violation of the Equal Protection Clause.

22 181. Plaintiffs are entitled to declaratory relief and temporary, preliminary and  
23 permanent injunctive relief invalidating or restraining the defendants’ violations of the  
24 Equal Protection Clause.

25 **THIRD CAUSE OF ACTION**

26 **Denial of Due Process: 14th Amendment of U.S. Constitution; 42 USC 1983**

27 182. Plaintiffs repeat and incorporate by reference the allegations set forth in  
28 Paragraphs 1 through 181 of this Complaint as if fully set forth herein.

1 183. The right of qualified citizens to vote in a state election involving federal  
2 candidates is recognized as a fundamental right under the Fourteenth Amendment of  
3 the United States Constitution. *Harper*, 383 U.S. at 663. *See also Reynolds v. Sims*,  
4 377 U.S. 533, 554 (1964) (The Fourteenth Amendment protects the “the right of all  
5 qualified citizens to vote, in state as well as in federal elections.”). Indeed, ever since  
6 the *Slaughter-House Cases*, 83 U.S. 36 (1873), the United States Supreme Court has  
7 held that the Privileges or Immunities Clause of the Fourteenth Amendment protects  
8 certain rights of federal citizenship from state interference, including the right of  
9 citizens to directly elect members of Congress. *See Twining v. New Jersey*, 211 U.S.  
10 78, 97 (1908) (citing *Ex parte Yarbrough*, 110 U.S. 651, 663-64 (1884)); *See also*  
11 *Oregon v. Mitchell*, 400 U.S. 112, 148-49 (1970) (Douglas, J., concurring) (collecting  
12 cases).

13 184. The fundamental right to vote protected by the Fourteenth Amendment is  
14 cherished in our nation because it “is preservative of other basic civil and political  
15 rights.” *Reynolds*, 377 U.S. at 562. Voters have a “right to cast a ballot in an election  
16 free from the taint of intimidation and fraud,” *Burson v. Freeman*, 504 U.S. 191, 211  
17 (1992), and “[c]onfidence in the integrity of our electoral processes is essential to the  
18 functioning of our participatory democracy.” *Purcell v. Gonzalez*, 549 U.S. 1, 4  
19 (2006) (per curiam).

20 185. “Obviously included within the right to [vote], secured by the Constitution,  
21 is the right of qualified voters within a state to cast their ballots and have them  
22 counted” if they are validly cast. *United States v. Classic*, 313 U.S. 299, 315 (1941).  
23 “[T]he right to have the vote counted” means counted “at full value without dilution or  
24 discount.” *Reynolds*, 377 U.S. at 555, n.29 (quoting *South v. Peters*, 339 U.S. 276, 279  
25 (1950) (Douglas, J., dissenting)).

26 186. “Every voter in a federal . . . election, whether he votes for a candidate  
27 with little chance of winning or for one with little chance of losing, has a right under  
28 the Constitution to have his vote fairly counted, without its being distorted by

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1 fraudulently cast votes.” *Anderson v. United States*, 417 U.S. 211, 227 (1974); *see*  
2 *also Baker v. Carr*, 369 U.S. 186, 208 (1962). Invalid or fraudulent votes “debase[]”  
3 and “dilute” the weight of each validly cast vote. *See Anderson*, 417 U.S. at 227.

4 187. The right to an honest [count] is a right possessed by each voting elector,  
5 and to the extent that the importance of his vote is nullified, wholly or in part, he has  
6 been injured in the free exercise of a right or privilege secured to him by the laws and  
7 Constitution of the United States.” *Anderson*, 417 U.S. at 226 (*quoting Prichard v.*  
8 *United States*, 181 F.2d 326, 331 (6th Cir.), *aff’d* due to absence of quorum, 339 U.S.  
9 974 (1950)).

10 188. Practices that promote the casting of illegal or unreliable ballots or fail to  
11 contain basic minimum guarantees against such conduct, can violate the Fourteenth  
12 Amendment by leading to the diminution in value of validly cast ballots. *See Reynolds*,  
13 377 U.S. at 555 (“[T]he right of suffrage can be denied by a debasement or dilution of  
14 the weight of a citizen’s vote just as effectively as by wholly prohibiting the free  
15 exercise of the franchise.”).

16 189. Defendants have violated, and are engaged in the continued violation of, the  
17 Due Process Clause, including by diminishing the value of votes legally cast by and for  
18 the individual Plaintiffs and EIPCa’s citizen observers by the application and  
19 enforcement of the laws, statutes, regulations, orders and practices described herein.

20 190. Defendants have violated, and are engaged in the continued violation of, the  
21 Due Process Clause, including by intentionally failing to ensure that only legally cast  
22 VBM ballots were included in the canvass for the 2020 general election in California.

23 191. Plaintiffs have suffered, and will continue to suffer, damage that is actual,  
24 as well as imminent and certainly impending, by reason of Defendants’ violation of the  
25 Due Process Clause.

26 192. Plaintiffs have no adequate remedy at law and will suffer irreparable harm  
27 unless the court enjoins defendants’ violation of the Due Process Clause.

28 193. Plaintiffs are entitled to declaratory relief and temporary, preliminary and



1 permanent injunctive relief invalidating or restraining the defendants’ violations of the  
2 Due Process Clause.

3 **FOURTH CAUSE OF ACTION**

4 **Violation of Guarantee Clause: Art. IV, § 4 of U.S. Constitution; 42 USC 1983**

5 194. Plaintiffs repeat and incorporate by reference the allegations set forth in  
6 Paragraphs 1 through 193 of this Complaint as if fully set forth herein.

7 195. The Guarantee Clause of the U.S. Constitution states that “[t]he United  
8 States shall guarantee to every State in this Union a Republican Form of Government,  
9 and shall protect each of them against Invasion. . . .” (Art. IV, § 4.)

10 196. Defendants have violated, and are engaged in the continued violation of, the  
11 Guarantee Clause by implementing laws, regulations, orders and voting practices, and  
12 conducting elections, so as to deny California and its citizens, including Plaintiffs, a  
13 republican form of government.

14 197. Defendants have further violated, and are engaged in the continued  
15 violation of, the Guarantee Clause by implementing laws, regulations, orders and  
16 voting practices, and conducting elections, so as to allow foreign interference in  
17 California elections, denying California and its citizens, including Plaintiffs, from  
18 protection against invasion.

19 198. Plaintiffs have suffered, and will continue to suffer, damage that is actual,  
20 as well as imminent and certainly impending, by reason of defendants’ violation of the  
21 Guarantee Clause.

22 199. Plaintiffs have no adequate remedy at law and will suffer irreparable harm  
23 unless the court enjoins defendants’ violation of the Guarantee Clause.

24 200. Plaintiffs are entitled to declaratory relief and temporary, preliminary and  
25 permanent injunctive relief invalidating or restraining the defendants’ violations of the  
26 Guarantee Clause.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

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- 1           A.     An order directing Defendants to preserve all voting machines, software,  
2                     peripherals (including flash drives and other memory storage), computers,  
3                     reports generated, and other data and equipment used to cast, examine,  
4                     count, tabulate, modify, store or transmit votes or voting data in the  
5                     November 2020 elections in California for inspection and audit by  
6                     experts;
- 7           B.     An order directing Defendants to preserve all VBM ballots, VBM ballot  
8                     envelopes, RAVBM ballots, remade or duplicated ballots, adjudicated  
9                     ballots and other documents used to cast votes in the November 2020  
10                    elections in California for inspection and audit by experts;
- 11          C.     The appointment of one or more special masters to oversee the evidence  
12                    preservation and audit process;
- 13          D.     The appointment of one or more special masters to oversee and monitor  
14                    the accuracy of vote counting in California’s upcoming elections;
- 15          E.     A declaratory judgment that the following are unconstitutional on their  
16                    face and as applied:
  - 17                  a.     California Assembly Bills 60 (Stats. 2013, Chap. 524), 306 (Stats.  
18                          2018, Chap. 203), 860 (Stats. 2020, Chap. 4), 1461 (Stats. 2015,  
19                          Chap. 729) and 1921 (Stats. 2016, Chap. 820);
  - 20                  b.     California Senate Bills 29 (Stats. 2021, Chap. 3), 397 (Stats. 2011,  
21                          Chap. 561), 450 (Stats. 2016, Chap. 832), 503 (not yet codified –  
22                          introduced 2/17/21) and 523 (Stats. 2019, Chap. 568);
  - 23                  c.     Governor Newsom’s Executive Orders numbers N-64-20 and 67-  
24                          20;
  - 25                  d.     California Code of Regulations §§ 20910, 20960, 20961, 20962,  
26                          20980, 20981, 20982, 20983, 20984, 20985, 20990, 20991, 20992,  
27                          and 20993;
  - 28                  e.     California Elections Code § 3020;

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f. The restrictions imposed on citizen observers by Defendant County Registrars during and after the November 2020 election;

F. Plaintiffs’ costs of suit;

G. Reasonable attorneys’ fees; and

H. Such other relief as is just and proper.

DATED: March 8, 2021

PRIMARY LAW GROUP, P.C.

/s/ Joshua Kroot  
By: Joshua Kroot  
Attorneys for Plaintiffs

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