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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CALIFORNIA ALLIANCE FOR RETIRED AMERICANS, a California nonprofit corporation, JUAN PARRINO, an individual, and SAM SAIU, an individual, Plaintiffs and Petitioners, **v.** **SHIRLEY WEBER, in her official capacity as CALIFORNIA SECRETARY OF STATE,** Defendant and Respondent.	Case No. 24STCP02062 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER** Date: September 10, 2024 Time: 1:30 p.m. Dept: 86 Judge: The Honorable Curtis A. Kin Action Filed: June 26, 2024

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INTRODUCTION

For more than a century, California voters have been able to vote by mail. And for all of that time, local elections officials have been required to verify each voter's signature by comparing the signature on the vote-by-mail ballot with the voter's signature on file. Such a requirement ensures the orderly administration of elections, prevents fraud, and instills voter confidence in the electoral process.

Petitioners here challenge California's signature comparison law found in Elections Code section 3019,[1] claiming it violates article II, section 2.5 of the California Constitution, which provides that "[a] voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted." (Cal. Const. art. II, § 2.5.) No court has ever used this provision to invalidate a state election law, and for good reason: because article II, section 2.5 requires compliance with the "laws of this State" for a vote to be counted, a state election law (such as section 3019) cannot violate its requirements. Simply put, article II, section 2.5 does not contemplate a cause of action to nullify state election laws or exempt a voter from complying with them; to the contrary, it expressly provides that votes shall be counted only "in accordance" with such laws. This common-sense reading of article II, section 2.5 is reinforced by a review of the history that led to its enactment: the 2000 election in which Florida's election certification deadline prevented the state from counting some absentee votes. In other words, voters enacted article II, section 2.5 because of concerns that election deadlines might prevent counting votes, not to alter or override California's voting requirements. Moreover, petitioners' attempt to distinguish between "casting a vote" and counting a vote would nullify other state election laws.

However, even if this Court were to find that article II, section 2.5 can be used to challenge state election law, California's signature comparison law is still constitutional. In evaluating similar signature comparison laws, courts across the country have found that these laws impose only minimal burdens on voters while providing significant benefits. Indeed, California law goes further than many states in protecting the franchise—requiring local elections officials to

[1] All statutory references are to the Elections Code unless otherwise specified.

immediately notify voters whose signatures have been rejected, and specifying a process (and providing ample time) for these voters to cure any deficiency before election results are certified. To our knowledge, no court has ever invalidated a signature comparison law if the law included a reasonable opportunity for the voter to cure a rejected ballot before election results are certified.

In short, petitioners want this court to be the first in the state to use article II, section 2.5 to invalidate substantive law, and the first in the country to strike down a signature comparison law that contained a reasonable opportunity to cure a rejected ballot due to its signature. Neither is supported by precedent. This court should sustain the Secretary of State's demurrer.

FACTUAL AND PROCEDURAL BACKGROUND

I. VOTE BY MAIL IN CALIFORNIA

A. The Expansion of Voting by Mail in California

Californians have been allowed to vote by mail since 1922. (*Peterson v. City of San Diego* (1983) 34 Cal.3d 225, 228.) And since then, the Legislature has consistently expanded this right. Starting in 1978, the Legislature extended to every registered voter the right to vote by mail, regardless of the reason a voter could not come to the polls. (*Id.* at 229.) Most recently, in 2021, the Legislature passed Assembly Bill 37 (Stats. 2021, ch. 312), which implemented all-mailed ballot elections statewide on a permanent basis.

Under AB 37, elections officials must mail a ballot to each active registered voter in California in advance of each election. (§ 3000.5.) On or before election day, voters may then return completed vote-by-mail ballots by mail or in person to the elections official who issued the ballot, return it in person to a member of a precinct board at a polling place or vote center within the State, or return it to a vote-by-mail ballot drop-off location. (*Id.*, § 3017(a)(1).)[2]

B. Signature Comparison in California

For as long as Californians have been permitted to vote by mail, local elections officials have been required to verify the voter's signature by comparing it with the voter's registration documents and/or other voting material. (See former Pol. Code, § 1362 [enacted as Stats. 1923,

[2] Alternatively, voters may vote in person if they surrender their vote-by-mail ballot, or if the elections official verifies that the vote-by-mail ballot has not already been returned. (§ 3015).

ch. 283, § 1, pp. 591-592], former § 1015, current § 3019; see also *Scott v. Kenyon* (1940) 16 Cal.2d 197, 200 ["Section 1362 provides that . . . the legislative body shall take up the return envelopes . . . and compare the signature of the voter on each such envelope with that on the registration affidavit"]; *Beatie v. Davila* (1982) 132 Cal.App.3d 424, 431 ["Section 1015 provides that upon receipt of the absentee ballot the elections official shall compare the signature on the envelope with that appearing on the affidavit of registration"].) In the ensuing hundred years, the Legislature and the Secretary of State have refined the signature comparison process.

Under current law, when elections officials process vote-by-mail ballots, officials must compare the signature on the envelope containing the ballot against the signatures in the voter's registration record, which includes the voter's affidavit of registration, previous registration, or any other official form. (§ 3019, subd. (a)(1).) The signature comparison process is governed by specific requirements to protect voters' rights, including: (1) the signature on an identification envelope is presumed to be the voter's signature, (*id*., subd. (a)(2)(A)); (2) an exact signature match is not required where it is determined that sufficient similar characteristics exist (*id*., subd. (a)(2)(B)); (3) elections officials may not review a voter's party preference, race, or ethnicity when comparing signatures, (*id*., subd. (a)(2)(D)); (4) the elections official shall consider explanations for discrepancies such as haste or variation in signature style over time (*id*., subd. (a)(2)(C)); and (5) two additional officials must agree beyond a reasonable doubt that a signature differs in multiple, significant, and obvious respects before rejecting a ballot, (*id*. subd. (c)(2)).

Additionally, the California Secretary of State has promulgated regulations relating to the signature-comparison process. (See § 3019, subd. (i).) California Code of Regulations section 20960 supplements section 3019 by providing a list of characteristics that elections officials must consider in comparing signatures. (See Cal. Code. Regs. tit. 2, § 20960, subd. (f).)[3] Moreover,

[3] These characteristics are "(1) Slant of the signature. (2) Signature is printed or in cursive. (3) Size, proportions, or scale. (4) Individual characteristics, such as how the "t's" are crossed, "i's" are dotted, or loops are made on the letters f, g, j, y, or z. (5) Spacing between the letters within the first and/or last name and between first and last name. (6) Line direction. (7) Letter formations. (8) Proportion or ratio of the letters in the signature. (9) Initial strokes and connecting strokes of the signature. (10) Similar endings such as an abrupt end, a long tail, or loop back around. (11) Speed of the writing. (12) Presence or absence of pen lifts. (13) Misspelled names." (Cal. Code. Regs. tit. 2, § 20960, subd. (f).)

elections officials are required to consider the following as explanations for discrepancies in signatures: "(1) Evidence of trembling or shaking in a signature could be health-related or the result of aging. (2) The voter may have used a variation of their full legal name . . . (3) The voter's signature style may have changed over time. (4) The signature may have been written in haste. (5) A signature in the voter's registration file may have been written with a stylus pen or other electronic signature tool that may result in a thick or fuzzy quality. (6) The surface of the location where the signature was made may have been hard, soft, uneven, or unstable." (*Id.*, subd. (g).) Ultimately, "[o]nly a signature possessing multiple, significant, and obvious differing characteristics with all signatures in the voter's registration record will be subject to additional review by the elections official." (*Id*., subd. (i).)

And even if a signature is initially rejected under this process, California provides voters an opportunity to cure. In 2018, the Legislature passed Senate Bill 759 (2018 Cal. Stat., ch. 446) to require elections officials to notify a voter if their signature on the identification envelope does not match the signature on file and to provide an opportunity for the voter to cure the ballot. (§ 3019, subd. (d).) Notification must be on or before the next business day, and the elections official must include a return envelope, with prepaid postage, for the voter to return a signature verification statement. (*Ibid.*) Elections officials must also call, text, or email the voter if they have a telephone number or email address on file. (*Id*., subd. (d)(1)(B).) The voter can then deliver "in person, by mail, by fax, by email, or by other means, a signature verification statement signed by the voter" which can be used to cure the initially rejected signature. (*Id*., subd. (d)(4).) Voters must be provided at least eight days to fix their signature but will typically have far more, as voters can fix signatures up to two days before certification of results (*id*., subd. (d)(1)(A)), which occurs 32 days after the election. (§ 15505.)

II. THIS CASE

Petitioners filed this case on June 27, 2024, claiming that California's signature comparison law violates article II, section 2.5 of the California Constitution. Notably, petitioners did not allege that their signatures had been rejected in the signature comparison process—let alone that they were not afforded an opportunity to cure a rejected signature. (Petition, pp. 7-9.)

STANDARD OF REVIEW

Code of Civil Procedure section 430.10, subdivision (e), provides that a demurrer is appropriate where "[t]he pleading does not state facts sufficient to constitute a cause of action." Although for purposes of a demurrer all material facts properly pleaded are treated as admitted by the court, the court does not assume the truth of contentions, deductions or conclusions of law (*Aubry v. Tri City Hospital Dist*. (1992) 2 Cal.4th 962, 966-967), and the court does not consider opinions, speculation, or allegations contrary to either law or judicially noticed facts. (*McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 289.)

ARGUMENT

I. ARTICLE II, SECTION 2.5 DOES NOT APPLY HERE

Petitioners principally contend that section 3019 violates article II, section 2.5 because it might result in some vote-by-mail ballots being provisionally rejected by county election officials. But as the text, ballot materials, and legislative history of article II, section 2.5 show, that provision did not abrogate existing state law, including the longstanding signature comparison requirement for vote-by-mail ballots. Rather, Proposition 43—the ballot initiative that enacted article II, section 2.5—merely reaffirmed existing law and expressly required compliance with it for votes to be counted. At most, Proposition 43 explicitly ensured vote counting could not be cut short due to election-related deadlines, like those that plagued the 2000 presidential election in the state of Florida. No court has ever invalidated a law due to a purported conflict with article II, section 2.5—let alone a longstanding Elections Code requirement like section 3019.

A. Article II, Section 2.5 Was Enacted in Response to the 2000 Election

Article II, section 2.5 was enacted by voters in the 2002 primary election when it appeared on the ballot as Proposition 43. Proposition 43 was placed on the ballot by the Legislature when it passed Assembly Constitutional Amendment 9 ("ACA 9") during the 2001-2002 Legislative Session. (RJN, Ex. 2.) As the Voter Information Guide explains, Proposition 43 stemmed from Florida's failure to timely count all votes cast in the 2000 election. (RJN, Ex. 1, p. 20; *People v. Morales* (2016) 63 Cal.4th 399, 406 [explaining that "the analyses and arguments contained in the

official ballot pamphlet" are "indicia of the voters' intent"].) Specifically, Florida election officials were unable to complete the hand counts of ballots before that state's deadline to certify the state's vote, even though the deadline fell more than a month before the President was to take office. (RJN, Ex. 1, p. 20.) Citing Florida's election certification deadline, the United States Supreme Court and the Florida Secretary of State effectively stopped hand counting and certified election results using incomplete vote totals. (*Id.*) As a result, thousands of voters did not have their votes counted, even though they had cast those votes in accordance with Florida law. (*Id.*)

After reciting the history of the 2000 presidential election in Florida, the proponents of Proposition 43 explained that a "yes" vote "ensure[s] that your vote will not be discarded because someone thought there wasn't enough time to count your vote," but it did not "change laws regarding recounting ballots or determining voter intent." (*Id.*) Although Proposition 43 was "not a referendum on the 2000 presidential election," it was "an effort to declare, before an election controversy arises, the principles that should guide the counting of validly cast votes in an election" to "help ensure that what happened in Florida doesn't happen here." (*Id.*)

B. Article II, Section 2.5 Requires Compliance with All State Election Laws—Including Signature Comparison

The plain text, ballot and legislative materials, and companion measure to article II, section 2.5 all support the Secretary's interpretation that section 2.5 did not abrogate section 3019's signature comparison requirement. (See *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900–901 ["In interpreting a voter initiative . . . , [courts] apply the same principles that govern statutory construction."].)

1. The plain text requires that votes cast "in accordance with the laws of this State" shall be counted

The constitution provides that "[a] voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted." (Cal. Const. art. II, § 2.5.) This provision only requires counting votes that were cast in accordance with state law. One requirement for a vote to be cast in accordance with state law is that it must satisfy the signature comparison requirement under section 3019. Under that requirement, a vote-by-mail ballot is not cast in accordance with section 3019, and must be rejected, when it is "beyond a reasonable doubt" that

the signature on the vote-by-mail ballot "differs in multiple, significant, and obvious respects from all signatures in the voter's registration record." (§ 3019, subd. (c)(1).) Because article II, section 2.5 only requires counting votes cast in accordance with state law, and section 3019 is a state law that must be followed when voting, section 3019 does not (and cannot) violate article II, section 2.5.[4] Thus, section 3019 is constitutional under the plain text of article II, section 2.5.

2. The ballot materials and legislative history support the Secretary's plain text interpretation of article II, section 2.5

In addition to the plain text, the circumstances of article II, section 2.5's enactment makes clear that the Secretary's reading of the law is correct. As discussed above in section II.A, Proposition 43 was enacted in response to the 2000 Florida presidential election. (RJN, Ex. 1, p. 20.) The core problem there was that the deadline to certify the election was the reason vote counting was stopped. (*Ibid.*) To preemptively address this potential concern, Proposition 43 "explicitly place[d] in state law the existing authority of county elections officials to petition the Superior Court for an extension of any post-election deadline to permit the tabulation or recounting of ballots and the authority of the court to grant such a petition." (*Id.*, p. 19.)[5] The legislative history for ACA 9 also shows that extending election-related deadlines was the driving intent and purpose behind article II, section 2.5. (RJN, Ex. 4, p. 1 ["Absent an express constitutional guarantee that a properly cast ballot will be tabulated . . . statutory deadlines may lead to voter confusion, particularly when write-in or absentee votes are announced after earlier semiofficial canvases."].) At the same time, Proposition 43 was only making explicit the power to move election-related deadlines; it was understood by voters and the Legislature that such power already existed:

- The Voter Information Guide stated that Proposition 43 would "explicitly" state, and

[4] This is true even though section 3019 is administered at the *counting* stage of a vote-by-mail ballot. Section 3019 also prohibits the *casting* of a ballot with a signature that cannot satisfy its comparison requirement because "[i]t would make no sense to authorize the voters to cast votes that cannot be counted." (*Field v. Bowen* (2011) 199 Cal.App.4th 346, 367.) In other words, section 3019 precludes the casting of vote-by-mail ballots without matching signatures because it prohibits the counting of those votes. (*Ibid.*)

[5] Specifically, as discussed in the following section, Proposition 43 had this effect via a companion measure, Assembly Bill 733, which passed the Legislature but only went into effect if voters passed Proposition 43.

"affirm," the right to have all lawfully cast votes counted. (RJN, Ex. 1, p. 19.) And proponents of the measure stated that "Proposition 43 *works within the framework of existing laws and guidelines* to ensure that ballots are counted properly, without providing a basis for additional lawsuits." (*Id*., p. 21 [emphasis added].)

- Bill analyses stated, for instance, that ACA 9 "reaffirm[ed] the right of voters to have their vote counted *within the framework of existing law*." (RJN, Ex. 4, pp. 1-2 [emphasis added] [explaining that ACA 9 "would not require counties to count votes that are prohibited from being counted under existing law"]; see also RJN, Ex. 5, p. 1 [ACA 9 "provide[d] for a constitutional *reaffirmation* of the right of the voter to have their ballot counted *within the framework of existing law*," emphasis added].)
- Bill analyses also quoted the then-Secretary of State who said, "although . . . [I am] unaware of any circumstances to the contrary, in the aftermath of the Florida election and a persistent false perception in California that some absentee ballots were not counted, it may be appropriate to reaffirm definitively that votes cast according to California law will be counted, even if it is declaratory of existing law." (RJN, Ex. 5, p. 1.)

This evidence shows that the right to have one's vote counted already existed in California and that fact was explicitly contemplated by the Voter Information Guide and the legislative history.

Accordingly, the history behind Proposition 43 demonstrates that the initiative was not intended to disturb the framework of existing law (which included section 3019), but merely clarify that lawful absentee votes must be counted.

3. AB 733—a companion measure given effect by Proposition 43—also supports the Secretary's interpretation of article II, section 2.5

When the Legislature enacted ACA 9 it also passed Assembly Bill 733 ("AB 733"), which only went into effect if voters enacted Proposition 43. The Voter Information Guide directly referenced AB 733, explaining that it "explicitly place[d] in state law the existing authority of county elections officials to petition the Superior Court for an extension of any post-election deadline to permit the tabulation or recounting of ballots and the authority of the court to grant such a petition." (RJN, Ex. 1, p. 19.) Thus, when voters enacted Proposition 43 they codified

article II, section 2.5 as well as AB 733, which added sections 15700-15702. (AB 733, § 2 at RJN, Ex. 3.)

To determine the scope and purpose of the provision a court is interpreting, it must look to the entire substance of the voter-enacted measure, that is, the court construes the words in question in context, keeping in mind the nature and purpose of the measure. (*Cal. Privacy Protection Agency v. Super. Ct.* (2024) 99 Cal.App.5th 705, 723.) Courts must harmonize the various parts of a voter's enactment "by considering the particular clause or section in the context of the statutory framework as a whole." (*Ibid.*) Here, the court must consider sections 15700-15702 as part of the entire framework that was enacted when voters passed Proposition 43.

While article II, section 2.5 codified an overarching legal principle, section 15700-15702 provided specific guidance and explicit authority regarding what was intended by that principle. (See § 15700 ["It is the intent of the Legislature in enacting this chapter to provide guidance in interpreting Section 2.5 of Article II of the California Constitution."].) Specifically, section 15702 provides that the word "vote" in article II, section 2.5 "includes all action necessary to make a vote effective . . . including, . . . any other act prerequisite to voting, casting a ballot, and having the ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public office and ballot measures." (§ 15702.) Under this definition, article II, section 2.5 does not distinguish between acts prerequisite to vote (e.g., registering to vote), casting a vote, or counting a vote because "vote" encompasses the entire process "necessary to make a vote effective." This further confirms the Secretary's interpretation of the plain text above—i.e., it is the entire process of voting that must be done "in accordance with the laws of this State" for a vote to be counted. And a critical part of the voting process necessary to making a vote-by-mail ballot effective is California's long-standing signature comparison requirement.

Sections 15700-15702 also show that Proposition 43 was intended to prevent election-related deadlines from stopping vote counting. For instance, those statutes appear in a standalone chapter titled, "Extension of Deadlines." (*Robert L*, *supra*, 30 Cal.4th at p. 901 ["The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate's intent]."].) And section 15701 allows for exactly that: if a

postelection deadline "prevents the proper tabulation or recounting of ballots," then county elections officials may petition the superior court for an extension of time. (§ 15701.) It further provides that "[t]he court may grant the petition if it finds that the time limitation would prevent the counting of all votes as required by Section 2.5 of Article II of the California Constitution." (*Ibid.*) Thus, the remaining statutory scheme enacted by Proposition 43 further confirms the Secretary's interpretation of article II, section 2.5.

C. Petitioners Cannot Overcome the Presumption That Article II, Section 2.5 Did Not Impliedly Repeal Section 3019

Finally, petitioners effectively allege that voters impliedly repealed section 3019—which was in effect during the 2002 primary election—when they enacted Proposition 43. But there is a presumption against such implied repeals, and petitioners cannot overcome it.

"Notwithstanding the 'presumption against repeals by implication,' repeal may be found where (1) 'the two acts are so inconsistent that there is no possibility of concurrent operation,' or (2) 'the later provision gives undebatable evidence of an intent to supersede the earlier' provision." (*Prof. Engineers in Cal. Government v. Kempton* (2007) 40 Cal.4th 1016, 1038.)

To begin with, article II, section 2.5 and section 3019 are not inconsistent provisions. As explained above in section II.B.1, article II, section 2.5 expressly requires that for a vote to be counted under that provision, it must be cast in accordance with state law, and one such law is section 3019's signature comparison requirement. Were the court to adopt a narrower reading of article II, section 2.5—for example, one where casting a vote is entirely divorced from counting a vote—it would run counter to *Field v. Bowen* (2011) 199 Cal.App.4th 346, 367, which stated it would make no sense to authorize the voters to cast votes that cannot be counted. And it would create a conflict between article II, section 2.5 and section 3019 where one does not exist. (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 410 ["Courts are required to try to harmonize constitutional language with that of existing statutes if possible."].) And there is no indication that article II, section 2.5 constituted "a revision of the entire subject" of signature comparison. (*Kempton*, *supra*, 40 Cal.4th at p. 1038.) Indeed, there is no mention of signatures at all in the text, ballot materials, or legislative history. (See Section II.B.) For that same reason, petitioners

cannot demonstrate that there is any evidence of article II, section 2.5's intent to supersede section 3019. Thus, petitioners cannot overcome the strong presumption against implied repeals.

II. EVEN IF ARTICLE II, SECTION 2.5 APPLIED, SIGNATURE COMPARISON IS CONSTITUTIONAL

As discussed above, because article II, section 2.5 is solely concerned with ensuring election deadlines do not prevent the counting of lawful votes, it does not apply here. However, even if article II, section 2.5 could be used to challenge a state election law, section 3019 would still be constitutional.

Election law issues arising under the California Constitution are analyzed under a balancing test. Both federal and state courts have recognized that a "flexible standard [of review] applies" when analyzing state election laws that may burden the right to vote. (*Burdick v. Takushi* (1992) 504 U.S. 428, 433; *Field*, *supra*, 199 Cal.App.4th at p. 356 ["Federal constitutional challenges to election laws are resolved with a balancing test," which is "[t]he same balancing test [] employed to decide election law issues arising under the California Constitution."]; *Edelstein v. City of San Francisco* (2002) 29 Cal.4th 164, 179 [same].)

This balancing test is premised on the fact "that the right to vote in any manner . . . [is not] absolute." (*Burdick*, *supra*, 504 U.S. at p. 433.) As the Supreme Court has observed, "[c]ommon sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." (*Burdick*, *supra*, 504 U.S. at p. 433, quotation omitted.)

Under the balancing test,

> A court considering a challenge to a state election law must weigh the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate against the precise interests put forward by the State as justifications for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights.

(*Ibid*.) Laws that impose "severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable,

nondiscriminatory restrictions." (*Field*, *supra*, 199 Cal.App.4th at p. 356 [cleaned up].)

As an initial matter, courts reviewing challenges to signature comparison laws like California's have uniformly upheld them under the *Anderson-Burdick* balancing test. Importantly, two district courts recently upheld section 3019 and California's signature comparison process. (*Election Integrity Project California, Inc. v. Weber* (C.D. Cal. July 18, 2023) No. 2:21-CV-00032-AB-MAA, 2023 WL 5357722, at *6 [applying the balancing test and finding that the signature comparison process, "as well as procedures for curing signatures do not burden the right to vote"]; *Fugazi v. Padilla* (E.D. Cal. May 22, 2020) No. 2:20-CV-00970-KJM-AC, 2020 WL 2615742, at *7–9 [rejecting due process challenge].) The Fifth Circuit also applied the balancing test and upheld Texas' signature comparison law, which is far more stringent than California's and contained no opportunity to cure. (*Richardson v. Texas Sec'y of State* (5th Cir. 2020) 978 F.3d 220, 241.) And the Ninth Circuit upheld Oregon's law requiring signature comparison on initiative petitions even though voters were not provided an opportunity to cure rejected signatures. (*Lemons v. Bradbury* (9th Cir. 2008) 538 F.3d 1098, 1105.) While petitioners may point to cases in which signature comparison laws were invalidated in due process challenges because there was no opportunity for a voter to cure,[6] such cases are inapposite because California law requires counties to notify voters when their signatures are rejected with plenty of time to cure the rejection. (§ 3019, subd. (d).) Petitioners do not identify any case in which a signature comparison law was found unconstitutional if the law included a reasonable opportunity for the voter to cure a rejected ballot before elections results were certified (and Respondent is unaware of any such case). These signature comparison laws are consistently upheld because they present a minimal burden on voting rights while serving important state interests.

A. Section 3019's Burden on Voting Rights Is Minimal

Requiring that a voter's signature on a vote-by-mail ballot be comparable to their signature

[6] (See, e.g., *La Follette v. Padilla* (Cal.Super. Mar. 05, 2018) No. CPF-17-515931, 2018 WL 3953766, at *1 [prior version of section 3019 rejects signatures "without notice to the voter or opportunity to cure"]; *Zessar v. Helander* (N.D. Ill. 2006, No. 05-C-1917) 2006 WL 642646; *Raetzel v. Parks/Bellemont Absentee Elections Board* (D. Ariz. 1990) 762 F. Supp. 1354.)

on file with an elections official is not a "severe restriction" on a voter's rights. California merely requires that the signature on the envelope be compared to signatures on file with the county. (§ 3019.) "Substantively, that's really it: [voters] must provide a signature and suffer it to be compared with a former signature." (*Memphis A. Phillip Randolph Inst. v. Hargett* (M.D. Tenn. 2020) 482 F.Supp.3d 673, 699.) "An across-the-board requirement that every would-be absentee voter sign his or her absentee ballot and have it submitted for comparison with a signature" is a "reasonable nondiscriminatory restriction[] on the right to vote." (*Id.* at pp. 699-700.)

Moreover, prior to voting by mail, voters are provided ample notice about the importance of their signature to verify their ability to vote. (§ 3011, subd. (a) [identification envelope requires "A warning plainly stamped or printed on it that the voter must sign the envelope in his or her own handwriting in order for the ballot to be counted"]; see also *Lemons*, *supra*, 538 F.3d at p. 1104 [finding injury is "minimal" when voters are instructed to "[s]ign your full name, as you did when you registered to vote"]; *Richardson*, *supra*, 978 F.3d at 237 [finding the burden on the voter is mitigated as "the Secretary has issued notice of the signature-comparison process"].)

Even once counting begins, California provides detailed and uniform standards for county elections officials to use when doing signature comparison. (See § 3019, subd. (a); Cal. Code. Regs. tit. 2, § 20960, subd. (1); *Lemons*, *supra*, 538 F.3d at 1102 [finding signature comparison "minimal" burden as standards are "uniform"].) Moreover, both the county and state maintain free tracking systems to determine if the vote-by-mail ballot was counted. (§§ 3019.5, 3019.7.)

And even according to petitioners, only a small fraction (approximately 0.33%) of the more than 6.9 million votes cast in the 2024 primary were rejected because of signature mismatch. (Petition, p. 20; see *League of Women Voters of Ark. v. Thurston* (W.D. Ark. Sept. 29, 2023) No. 5:20-CV-05174, 2023 WL 6446015, at *13 [signature comparison burden minimal because "only a small fraction of one percent of absentee ballots are rejected"].) Although petitioners offer no evidence of the number of erroneous signature determinations, that number would certainly be significantly lower because each review begins with a presumption that the signature is legitimate, election officials are specifically trained in signature comparison and are provided with uniform criteria to consider over multiple rounds of review. (See § 3019, subd. (a)(2)(a)

[presumption exists that it is the voter's signature]; *id*., subd. (c)(2) [requiring multiple officials to "find beyond a reasonable doubt that the signature differs in multiple, significant, and obvious respects"]; Cal. Code. Regs. tit. 2, § 20962 [requiring signature comparison training for election officials]; *Lemons*, *supra*, 538 F.3d at p. 1105 [rejecting claim, in part, because the "process is already weighted in favor of accepting questionable signatures"]; *Richardson*, *supra*, 978 F.3d at p. 236 ["[t]o deem ordinary and widespread burdens like these severe" based solely on their impact on a small number of voters, we "would subject virtually every electoral regulation to strict scrutiny [and] hamper the ability of States to run efficient and equitable elections"] quoting *Clingman v. Beaver* (2005) 544 U.S. 581, 593.)

The Fifth Circuit has recognized that signature comparison is less burdensome than other laws found to be constitutional. "'Signature-verification requirements . . . help to ensure the veracity of a ballot by 'identifying eligible voters.'" (*Richardson*, *supra*, 978 F.3d 220, 236–37, quoting *Crawford v. Marion County Election Bd.* (2008) 553 U.S. 181, 199.) "Signature-verification requirements are even less burdensome than photo-ID requirements, as they do not require a voter 'to secure ... or to assemble' any documentation." (*Id*., quoting *Crawford*, 553 U.S. at 199.) And "[e]ven if some voters have trouble duplicating their signatures, that problem is 'neither so serious nor so frequent as to raise any question about the constitutionality'" of signature verification. (*Id*., quoting *Crawford*, 553 U.S. at 197–98.)

Perhaps most importantly, section 3019 provides significant opportunities to correct a rejected signature. As the Sixth Circuit stated in upholding a denial of a preliminary injunction against a similar Tennessee law, "even if an individual's ballot is erroneously rejected as part of the signature verification process . . . . officials are required to notify individuals 'immediately' if their ballot is rejected due to an improper signature, and officials go to great lengths to promptly notify affected voters." (*Memphis A. Philip Randolph Inst. v. Hargett* (6th Cir. 2020) 978 F.3d 378, 388.) The same is true in California, in which local officials are required to notify the voter on or before the next business day (and include a return envelope, with prepaid postage, for the voter to return a signature verification statement), as well as to call, text, or email the voter if they have a telephone number or email address on file for a voter whose signature does not compare.

(§ 3019, subd. (d).) This cure process strongly mitigates any burden created by section 3019. (See *Fugazi*, *supra*, 2020 WL 2615742, at *6–8 [rejecting challenge to signature comparison process when registrar "provided 1,585 voters with notice of the opportunity to cure defects in their signatures in accordance with California Elections Code section 3019(d)(1)"].)

Thus, section 3019's signature comparison requirement with its opportunity to cure a rejected ballot constitutes a minimal burden on a California voter's right to vote.[7]

B. The State's Important Interests Justify Section 3019

When restrictions on the rights of voters are reasonable and not a severe burden, as they are here, the State's important regulatory interests are generally sufficient to justify the restriction. (*Burdick*, *supra*, 504 U.S. at p. 434.) Here, the signature comparison law promotes California's interest in preserving the integrity of its election process, maintaining an orderly election process, and preventing the dilution of votes by ineligible voters. (*Eu v. San Francisco County Democratic Central Comm*. (1989) 489 U.S. 214, 231 [California "indisputably has a compelling interest in preserving the integrity of its election process."]; see also *Purcell v. Gonzalez* (2006) 549 U.S. 1, 4 [acknowledging "the State's compelling interest in preventing voter fraud"].)

Indeed, many courts have recognized governmental interests in assuring the validity of mail ballots. (See, e.g., *Peterson*, *supra*, 34 Cal.3d at p. 231 ["mail balloting may provide a greater opportunity for fraud than voting booth elections"]; *Feldman v. Arizona Sec'y of State's Off.* (9th Cir. 2016) 843 F.3d 366, 390 ["absentee voting may be particularly susceptible to fraud, or at least perceptions of it"]; *Griffin v. Roupas* (7th Cir. 2004) 385 F.3d 1128, 1131 ["Voting fraud . . . is facilitated by absentee voting."].) The signature comparison law at issue advances the State's interest by ensuring that only eligible voters cast vote-by-mail ballots. Moreover, ensuring that all California voters are properly qualified to be electors is important "because of the axiomatic reality that permitting an unqualified elector has much the same effect as prohibiting a qualified

[7] Finally, it is also worth noting that although petitioners allege that the signature comparison process is too burdensome, the Secretary is currently defending a lawsuit claiming that the signature comparison process is not demanding enough to weed out fraud. (See *Election Integrity Project California*, *supra*, 2023 WL 5357722, at *6 [upholding section 3019 and signature comparison process].) Obviously, both things cannot be true, and perhaps California has "f[ound] the Goldilocks solution—not too large, not too small, but just right." (*Arizona Free Enter. Club's Freedom Club PAC v. Bennet*t (2011) 564 U.S. 721, 760 (dis. opn. of Kagan, J.).

one. Each of these outcomes disenfranchises the genuine vote of someone who is qualified to vote." (*League of Women Voters of Kansas v. Schwab* (Kan. 2024) 549 P.3d 363, 381 [finding signature comparison did not violate state constitution]; *Memphis A. Phillip Randolph Inst.*, *supra*, 82 F.Supp.3d at p. 699-700 [upholding signature comparison law as "the State has a legitimate interest in ensuring that a lawful vote is not canceled out by a countervailing fraudulent vote"].)[8]

Finally, signature comparison also protects public confidence in the election system. "The electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters." (*Crawford*, *supra*, 553 U.S. at p. 194.) Indeed, signature comparison is essential to ensuring public confidence in the vote-by-mail system. To give just one example, when California's previous Secretary of State was asked before Congress whether vote-by-mail "opens the door to more fraud," current Senator Padilla testified to its reliability emphasizing "[t]he all-important signature verification." (RJN, Ex. 6, p. 58.) Thus, given the minimal burden of the signature comparison process and its important benefits, section 3019 is constitutional.

CONCLUSION

This Court should sustain the Secretary of State's demurrer. [9]

[8] While petitioners state there is "no evidence" of attempted voter fraud in California (Petition, ¶ 120), California does not have to wait for voter fraud to happen before enacting laws to protect against it. States may "respond to potential deficiencies in the electoral process with foresight rather than reactively." (*Munro v. Socialist Workers Party* (1986) 479 US 189, 195-96; *Feldman*, *supra*, 843 F.3d at p. 390 ["The district court did not err in crediting Arizona's important interest in preventing fraud even in the absence of evidence that voter fraud had been a significant problem in the past"].)

[9] Because petitioners' second claim hinges on their first, it fails for the same reasons. Section 3019 does not violate article II, section 2.5, and therefore the Secretary's administration of it is not an illegal expenditure of public funds.

Dated: August 9, 2024

Respectfully submitted,

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **California Alliance for Retired Americans, et al. v. Shirley Weber**
No.: **24STCP02062**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On August 9, 2024, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER** by transmitting a true copy via electronic mail, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 9, 2024, at Sacramento, California.

Jessica Munoz	Jessica Munoz
Declarant	Signature

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