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8

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
11  
12

13 **ELECTION INTEGRITY PROJECT**  
14 **CALIFORNIA, INC., et al.,**

15 Plaintiffs,

16 v.

17 **SHIRLEY WEBER, California**  
18 **Secretary of State, et al.,**

19 Defendants.  
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2:21-cv-00032-AB-MAA

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF STATE DEFENDANTS'  
MOTION TO DISMISS THE  
SECOND AMENDED  
COMPLAINT**

Date: May 12, 2023  
Time: 10:00 a.m.  
Courtroom: 7B  
Judge: The Hon. André Birotte Jr.  
Action Filed: January 4, 2021

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## INTRODUCTION

Although Plaintiffs—five individual California registered voters and the nonprofit Election Integrity Project California, Inc. (“EIPCa”)—cloak themselves in the language of “election integrity,” their baseless lawsuit actually threatens to erode public confidence in elections. Through this case, they seek to roll back a decade of voting reforms that have had the impact of expanding and securing the right to vote for all Californians. Amongst the laws and regulations that Plaintiffs seek to invalidate are those allowing for online voter registration, implementing universal vote-by-mail (“VBM”) balloting, and ensuring the consistent and evenhanded administration of election procedures statewide. Their attempt fails on the merits, as a matter of law, and should be dismissed with prejudice.

Plaintiffs raise their claims against two state officials, named in their official capacities—Secretary of State Dr. Shirley Weber and Attorney General Rob Bonta (collectively, “State Defendants”)—and fifteen County Registrars of Voters (collectively, “County Defendants”). Against both State and County Defendants, Plaintiffs allege injuries of vote dilution under two provisions of the United States Constitution—the Equal Protection Clause and the Due Process Clause. And they seek sweeping relief, including audits of the election results and materials from November 2020 onward, the appointment of special masters to oversee both these audits and the vote counting in California’s upcoming elections, a declaratory judgment that numerous statutory and regulatory provisions of California election law are unconstitutional, and a preservation order covering numerous election materials, including both ballots and election equipment.

All of Plaintiffs’ claims against the State Defendants fail as a matter of law. First, none of the individual voter Plaintiffs have Article III standing for the claims they raise or the relief they seek. These Plaintiffs’ alleged injuries are neither concrete and particularized nor actual and imminent, and they are not supported by

1 the requisite showings of causation and redressability. Second, the statutes and  
2 regulations that Plaintiffs challenge do not violate the Fourteenth Amendment as a  
3 matter of law. Under the applicable *Anderson-Burdick* balancing test, these  
4 provisions are not subject to strict scrutiny because they do not create a severe  
5 burden on voting rights. In fact, they expand upon and protect voting rights.  
6 Plaintiffs’ attempt at arguing that the challenged provisions operate collectively to  
7 dilute their votes also fails, because the claim as pleaded is not cognizable and is in  
8 no way caused by the statutes and regulations at issue. Having established that  
9 strict scrutiny shall not apply, the State’s enumerated interests in increasing  
10 voluntary participation in the democratic process and ensuring public confidence in  
11 the integrity of California’s elections are more than sufficient to outweigh the slight  
12 (or nonexistent) burdens that the challenged provisions may create.

13 For these reasons, and as explained further below, both claims against the  
14 State Defendants should be dismissed, and they should be dismissed with prejudice.

## 15 BACKGROUND

### 16 I. FACTS ALLEGED IN THE SECOND AMENDED COMPLAINT

17 Plaintiffs in this matter are five individual California registered voters and  
18 EIPCa, a California non-profit organization. *See* ECF No. 132 (“SAC”) at  
19 ¶¶ 11–22. Relevant to State Defendants, Plaintiffs allege that over the last three  
20 decades, California officials and legislators have “passed election laws, orders, and  
21 regulations under the guise of increasing voter participation” that instead “have  
22 systematically undermined election integrity and enabled pervasive irregularities.”  
23 *Id.* at ¶ 48. Starting with the United States Congress’s passage of the National  
24 Voter Registration Act in 1993, Plaintiffs recount the enactment of a bevy of  
25 election laws and regulations, culminating in the California Secretary of State’s  
26 promulgation of emergency regulations in the lead-up to the November 2020  
27 election. *See id.* at ¶¶ 51–84. The provisions that Plaintiffs discuss enacted reforms  
28 expanding access to voting rights—for instance, by allowing for online voter

1 registration, permitting voters to “cure” ballots being considered for rejection, and  
2 increasing voter registration outreach on high school and college campuses. *See id.*  
3 at ¶¶ 55, 60, 62. Plaintiffs challenge some, but not all, of these laws as violating  
4 their equal protection and due process rights under the Fourteenth Amendment. *See*  
5 *id.* at 39–40, ¶ 5.

6 Plaintiffs allege disparate treatment on the basis of two different  
7 classifications: voting method (with in-person voters being disadvantaged) and  
8 county of residence. *See id.* at ¶¶ 130–142, 151–152, 164. The injury they claim as  
9 a result is a diminution in the value of their votes. *Id.* at ¶¶ 151, 153, 163, 165. The  
10 theory of their case against State Defendants is that because of policies such as  
11 universal VBM and the alleged lack of reliable standards governing processes like  
12 signature verification, the votes of in-person voters were diluted by ineligible VBM  
13 votes counted in their respective counties of residence. *See id.* at ¶¶ 138–40,  
14 151–53, 162–65.

## 15 **II. PROCEDURAL HISTORY**

16 The action was filed on January 4, 2021. *See* ECF Nos. 1, 21. The Court  
17 denied Plaintiffs’ TRO application without a hearing, and Defendants filed an  
18 initial round of motions to dismiss. ECF Nos. 31, 35, 43, 45. Rather than oppose  
19 the motions, Plaintiffs filed a First Amended Complaint (“FAC”), in response to  
20 which Defendants again filed motions to dismiss. ECF Nos. 68, 84,  
21 85-1. The FAC raised four constitutional claims, under the Equal Protection  
22 Clause, Due Process Clause, Elections Clause, and Guarantee Clause. *See id.*

23 On June 14, 2021, after hearing oral argument on the motions, the Court  
24 issued its order granting Defendants’ motions to dismiss, with prejudice, for lack of  
25 subject matter jurisdiction. ECF No. 111. In its order, the Court found that “[t]his  
26 case begins and ends with Article III standing.” *Id.* at 5. Specifically, the Court  
27 held that Plaintiffs “have not alleged a concrete and particularized injury that is  
28 both actual and imminent, and thus, have not adequately alleged an injury-in-fact

1 sufficient for standing.” *Id.* at 10. On the issue of particularity, the Court “agree[d]  
2 with Defendants that at base, Plaintiffs’ allegations amount to an incremental  
3 undermining of confidence in the election results, past and future.” *Id.* at 9. The  
4 Court also found that EIPCa had failed to establish organizational standing, and  
5 accordingly dismissed Plaintiffs’ equal protection and due process claims. *Id.* at  
6 11. The Court also dismissed Plaintiffs’ claim under the Elections Clause for lack  
7 of standing, and their Guarantee Clause claim as not justiciable. *Id.* at 11–13.

8 Plaintiffs appealed. *See* ECF No. 116. Following briefing and oral argument,  
9 the Ninth Circuit affirmed in part and reversed in part. *See* ECF No. 121. Finding  
10 that EIPCa did have organizational standing, the circuit court vacated this Court’s  
11 holding that it lacked jurisdiction and remanded. *Id.* at 6. Notably, the circuit court  
12 expressly did not reach the question of whether any of the individual plaintiffs had  
13 standing. *Id.* at 5–6. The Ninth Circuit affirmed this Court’s dismissal of  
14 Plaintiffs’ Guarantee Clause claim. *Id.* at 6.

15 Following remand and pursuant to a joint stipulation, Plaintiffs filed the now-  
16 operative Second Amended Complaint on February 21, 2023, raising two claims  
17 under the Equal Protection and Due Process Clauses of the Fourteenth Amendment  
18 relying solely on alleged vote-dilution harms. *See* ECF No. 132 (“SAC”) at  
19 ¶¶ 149–67. The SAC also removes several candidate Plaintiffs, with five remaining  
20 on as individual voter, non-candidate Plaintiffs; removes the Governor as a  
21 defendant; and adds two additional County Defendants.

## 22 LEGAL STANDARD

23 The legal standard applicable to motions under Federal Rules of Civil  
24 Procedure 12(b)(1) and 12(b)(6) are well known. Rule 12(b)(1) requires a court to  
25 dismiss a claim if it lacks subject-matter jurisdiction, which “defines [a court’s]  
26 power to hear cases.” *Lightfoot v. Cendant Mortgage Corp.*, 137 S. Ct. 553, 560  
27 (2017). Although the court must accept the allegations of the complaint as true, the  
28 burden of proof is on the party asserting federal subject-matter jurisdiction.

1 *See Chandler v. State Farm Mut. Auto Ins. Co.*, 598 F.3d 1115, 1121–22 (9th Cir.  
2 2010). “[A] lack of Article III standing requires dismissal for lack of subject matter  
3 jurisdiction under [Rule 12(b)(1)].” *Maya v. Centex Corp.*, 658 F.3d 1060, 1067  
4 (9th Cir. 2011).

5 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the  
6 claims in the complaint. *See N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578,  
7 581 (9th Cir. 1983). “Dismissal is proper when the complaint does not make out a  
8 cognizable legal theory or does not allege sufficient facts to support a cognizable  
9 legal theory.” *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041  
10 (9th Cir. 2011). On review of a 12(b)(6) motion, the court need not accept the truth  
11 of legal assertions cast as factual allegations, *Fayer v. Vaughn*, 649 F.3d 1061, 1064  
12 (9th Cir. 2011), nor must it “supply essential facts that were not initially pled,”  
13 *Chapman v. Pier 1 Imports (U.S.), Inc.*, 631 F.3d 939, 954 (9th Cir. 2011).

## 14 ARGUMENT

### 15 I. THE INDIVIDUAL PLAINTIFFS LACK ARTICLE III STANDING

16 The “irreducible constitutional minimum of standing” requires that a plaintiff  
17 demonstrate three elements: (1) an “injury in fact” that is “concrete and  
18 particularized” and “actual and imminent”; (2) “a causal connection between the  
19 injury” and the defendant’s conduct; and (3) a likelihood “that the injury will be  
20 redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 560,  
21 561 (1992) (quotation marks omitted). Where a plaintiff fails to establish any one  
22 of these elements of standing, Rule 12(b)(1) mandates dismissal of the case.

23 In this case, the individual voter Plaintiffs fail to meet any one of the three  
24 prongs. Accordingly, their claims against State Defendants must be dismissed.

#### 25 A. There Is No “Concrete and Particularized” Injury-in-Fact That 26 Is Both “Actual and Imminent”

27 In ruling on Plaintiffs’ FAC, this Court determined that “Plaintiffs have not  
28 alleged a concrete and particularized injury that is both actual and imminent, and

1 thus, have not adequately alleged an injury-in-fact sufficient for standing.” ECF  
2 No. 111 at 10. This portion of the order granting Defendants’ prior motions to  
3 dismiss was left undisturbed by the circuit court in its decision finding that EIPCa  
4 had sufficiently demonstrated organizational standing. ECF No. 121 at 5–6  
5 (“Because EIPCa has standing, we do not need to reach the question of whether any  
6 other plaintiff has standing to reverse the district court’s judgment.” (citation  
7 omitted)). Between the FAC and the SAC, all operative facts remain the same.  
8 Accordingly, the five individual Plaintiffs who remain in the case do not have  
9 standing now, for the exact same reasons already articulated by this Court.

10 “When we have used the adjective ‘concrete,’ we have meant to convey the  
11 usual meaning of the term—‘real,’ and not ‘abstract.’” *Spokeo, Inc. v. Robins*, 136  
12 S. Ct. 1540, 1548 (2016). To demonstrate an injury that is “particularized,” it  
13 “must affect the plaintiff in a personal and individual way.” *Raines v. Byrd*, 521  
14 U.S. 811, 819 (1997). And while “imminence is concededly a somewhat elastic  
15 concept, it cannot be stretched beyond its purpose, which is to ensure that the  
16 alleged injury is not too speculative for Article III purposes—that the injury is  
17 certainly impending.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013).

18 Plaintiffs do *not* allege that they were prohibited from voting, were denied the  
19 ability to vote in the manner that they chose, or that their votes were not counted.  
20 Instead, the injury-in-fact that Plaintiffs claim is vote dilution, as a result of  
21 differential treatment between in-person and VBM voters, as well as between voters  
22 in different counties. *See* SAC at ¶¶ 151–53, 163–65. This is the same injury that  
23 was claimed in the FAC and considered by the Court in its prior order. *See* ECF  
24 No. 111 at 6. Both then and now, individual Plaintiffs present only “a generalized  
25 grievance” that “is insufficient for standing.” *Id.* at 9.

26 “The Supreme Court continues to decline to extend standing to plaintiffs  
27 asserting objections to state election laws on generalized vote dilution theories.” *Id.*  
28 at 7–8 (first citing *Sinkfield v. Kelley*, 531 U.S.D. 28 (2000), then citing *Gill v.*

1 *Whitford*, 138 S. Ct. 1916 (2018)). Recent district court decisions have found the  
2 same. For instance, prior to the November 2020 election, one presidential  
3 campaign challenged a Nevada law that mandated ballots be mailed to all registered  
4 voters, similar to several of the provisions challenged here by Plaintiffs. Granting  
5 defendant’s motion to dismiss, the court held that “[e]ven if accepted as true,  
6 plaintiffs’ pleadings allude to vote dilution that is impermissibly generalized.”  
7 *Donald J. Trump for President, Inc. v. Cegavske*, 488 F.Supp.3d 993, 1000 (D.  
8 Nev. 2020). The court in that case highlighted plaintiffs’ failure to “describe how  
9 their member voters will be harmed by vote dilution where other voters will not,”  
10 and found that “plaintiffs’ claims of a substantial risk of vote dilution amount to  
11 general grievances that cannot support a finding of particularized injury as to  
12 [p]laintiffs.” *Id.* (internal citation and quotation marks omitted). So too in Arizona,  
13 where a court ruling in a post-election challenge noted not only the speculative and  
14 generalized nature of the alleged injury, but also the plaintiff’s failure to advance a  
15 viable theory of vote dilution. *See Bowyer v. Ducey*, 506 F.Supp.3d 699, 711 (D.  
16 Ariz. 2020) (“As courts have routinely explained, vote dilution is a very specific  
17 claim that involves votes being weighed differently and cannot be used generally to  
18 allege voter fraud.”). Again, this Court has already considered much of this case  
19 law and found it to be persuasive. *See* ECF No. 111 at 7–8.

20 In addition to not being sufficiently particularized, Plaintiffs’ alleged injuries  
21 fail “for lack of actuality and imminence.” *Id.* at 9. Plaintiffs’ claims of vote  
22 dilution are based wholly on speculation that fraudulent VBM ballots *may* have  
23 been cast and counted, and that they *may* be cast and counted again in the future.  
24 *See, e.g.*, SAC at ¶ 50 (alleging that one voter “reported receiving a VBM ballot for  
25 the 2020 election for her deceased husband”); ¶ 57 (“It is unclear whether any of  
26 these discarded ballots could have been subsequently removed from the trash, filled  
27 out, and counted in the vote totals.”); ¶ 145 (alleging that “election outcomes could  
28 have been changed and citizens disenfranchised throughout the state”). As the

1 Court wrote in its prior order, “[a]ssuming all allegations to be true, the Court is  
2 still left to speculate whether the present voting system will lead to concrete and  
3 particularized vote dilution which results in a specific group having their votes  
4 weighted differently. . . . Even if these policies continue, will they actually lead to  
5 fraud? Will that fraud impact specific, individual voters?” ECF No. 111 at 9–10.  
6 The SAC does not alleviate any of these concerns, as it still “relies on conjecture  
7 that this injury will continue to inflict harm.” *Id.* at 10. Accordingly, Plaintiffs do  
8 not demonstrate any actual and imminent injury through the allegations levied in  
9 the SAC.

10 Having failed to allege a concrete and particularized injury-in-fact that is both  
11 actual and imminent, individual Plaintiffs have not and cannot establish Article III  
12 standing.

13 **B. The SAC Also Fails to Establish Causation and Redressability**

14 Even if Plaintiffs had alleged an injury sufficient to establish standing—and  
15 they have not—their claims do not pass muster as to the other two prongs of  
16 standing. The individual Plaintiffs have failed to show how their alleged injuries  
17 are fairly traceable to State Defendants’ conduct, and their requested relief would  
18 do absolutely nothing to actually redress their alleged injury of vote dilution. *See,*  
19 *e.g., Lujan*, 504 U.S. at 560–61.

20 Relevant to State Defendants, Plaintiffs here ask the Court for: (1) immediate  
21 orders directing all Defendants to preserve certain election equipment and materials  
22 used to cast votes in all elections since the November 2020 election for the  
23 purposes of inspection and an audit; (2) the appointment of one or more special  
24 masters to oversee evidence preservation, any audits, and the accuracy of vote  
25 counting in future elections; (3) a declaration that California Assembly Bills 860  
26 and 37; California Senate Bills 503, 397, and 450; California Elections Code  
27 sections 3000.5, 3019, and 3020; and California Code of Regulations sections  
28 20910, 20960, 20961, 20962, 20980, 20981, 20982, 20983, 20985, 20990, 20991,

1 and 20992 are unconstitutional; (4) a declaration that “Defendants’ lack of uniform  
2 and secure vote counting, laws, regulations, and procedures” are unconstitutional  
3 under the Fourteenth Amendment; and (5) an injunction “preventing the Defendants  
4 from enforcing and/or applying a lack of uniform and secure voting laws,  
5 regulations, and procedures.” *See* SAC at 39–40, ¶¶ 1–6.

6 Turning first to causation, the individual Plaintiffs suggest that the challenged  
7 statutes and regulations allowed for and “promote[d]” the alleged fraud that resulted  
8 in the diminution in the value of their votes. *See, e.g.*, SAC at ¶¶ 75, 82, 143, 162.  
9 The crux of their argument against State Defendants is that the expansion of vote-  
10 by-mail preceding the 2020 general election created the conditions for widespread  
11 voter fraud, and they suggest that State Defendants’ actions approving of and  
12 implementing the challenged provisions were simply the latest in a decades-long  
13 scheme to allow voter fraud at a massive scale throughout California. *See, e.g.*,  
14 SAC at ¶¶ 48–84 (detailing three decades of laws and regulations that “have  
15 systematically undermined election integrity and enabled pervasive irregularities”).

16 By Plaintiffs’ own admission, however, even prior to the legislation and  
17 emergency regulations that they challenge, “approximately 75% of voters in  
18 California regularly received VBM ballots . . . .” SAC at ¶ 53. And neither of the  
19 State Defendants carried out the election activities where Plaintiffs allege much of  
20 this conjectural fraud occurred (e.g., signature verification, vote tabulation)—those  
21 are the tasks of local officials, and are also the focus on Plaintiffs’ most concrete  
22 allegations. *See* SAC at ¶¶ 91–129. There are no allegations, for example, that the  
23 State Defendants somehow manipulated vote tallies, submitted fraudulent votes, or  
24 allowed drop boxes to be compromised at any point during the November 2020  
25 election or any subsequent elections. The Secretary of State’s emergency  
26 regulations were issued expressly “to ensure uniform application and practices for  
27 signature verification” of VBM ballots, and “to provide uniform vote counting  
28 standards for consistent application of ballot processing and counting throughout

1 the state.” 2 Cal. Code Regs. § 20910. Such uniformity helps ensure that no votes  
2 are in fact “diluted,” and that every valid vote is counted accurately and equally,  
3 regardless of the county in which a voter resides or the voting method that they use.  
4 Far from causing the harms of which Plaintiffs complain, the statutes and  
5 regulations that they challenge—and that Attorney General Bonta and Secretary  
6 Weber herein defend—in fact protect against such harms.

7 Nor do the individual Plaintiffs satisfy the requirement that the relief they seek  
8 effectively redress the injury that they allege. Plaintiffs request declaratory relief  
9 finding numerous election provisions to be unconstitutional, and an injunction  
10 preventing State Defendants from enforcing or applying any of them. SAC at  
11 49– 50, ¶¶ 5–7. But as already discussed above (and below, see section II.A.1), the  
12 provisions that Plaintiffs seek to invalidate *expressly provide uniform procedures*  
13 for processes such as signature verification and vote counting. A judgment  
14 declaring those provisions unconstitutional and preventing their application would  
15 exacerbate any alleged vote dilution, not redress it. Moreover, the appointment of  
16 special masters and the conducting of an audit of past election results could in no  
17 way rectify past vote dilution; if anything, an outcome such as decertification would  
18 result in the full disenfranchisement of all California voters, individual Plaintiffs  
19 included.

20 The individual voter Plaintiffs have failed to satisfy any of the three prongs for  
21 Article III standing—let alone all three, as they must. Because they have neither  
22 alleged a concrete and particularized injury that is both actual and imminent nor  
23 established that any such injury is traceable to State Defendants’ conduct and able  
24 to be redressed by the relief they seek, they do not have standing in this matter.  
25 Accordingly, all five individual Plaintiffs—James P. Bradley, Mark Reed, Buzz  
26 Paterson, Mike Cargile, and Ronda Kennedy—must be dismissed.

1 **II. AS A MATTER OF LAW, THE CHALLENGED STATUTES AND**  
2 **REGULATIONS DO NOT VIOLATE THE FOURTEENTH AMENDMENT**

3 “A court considering a challenge to a state election law must weigh ‘the  
4 character and magnitude of the asserted injury to the rights protected by the First  
5 and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the  
6 precise interests put forward by the State as justifications for the burden imposed by  
7 its rule,’ taking into consideration ‘the extent to which those interests make it  
8 necessary to burden the plaintiff’s rights.’” *Burdick v. Takushi*, 504 U.S. 428, 434  
9 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). The Ninth  
10 Circuit has repeatedly recognized this framework, often referred to as the  
11 *Anderson-Burdick* balancing test, as “the appropriate standard of review for laws  
12 regulating the right to vote.” *Pub. Integrity All., Inc. v. City of Tucson*, 836 F.3d  
13 1019, 1024 (9th Cir. 2016); *Dudum v. Arntz*, 640 F.3d 1098, 1106 n.15 (9th Cir.  
14 2011) (“The Supreme Court has addressed [due process and equal protection]  
15 claims collectively using a single analytic framework. . . . We do the same here.”  
16 (internal citations omitted)); *see also Clark v. Weber*, 54 F.4th 590 (9th Cir. 2022)  
17 (applying the *Anderson-Burdick* test); *Arizona Libertarian Party v. Reagan*, 798  
18 F.3d 723 (9th Cir. 2015) (same). Accordingly, the *Anderson-Burdick* test applies to  
19 Plaintiffs’ Fourteenth Amendment claims in the instant case.

20 Under this test, “the rigorousness” of a court’s “inquiry into the propriety of a  
21 state election law depends upon the extent to which a challenged regulation burdens  
22 First and Fourteenth Amendment rights.” *Burdick*, 504 U.S. at 434. Strict scrutiny  
23 applies to a challenge to state election laws only when Fourteenth Amendment  
24 rights “are subjected to ‘severe’ restrictions.” *Id.* (citation omitted). “But when a  
25 state election law provision imposes only ‘reasonable, nondiscriminatory  
26 restrictions’ upon the First and Fourteenth Amendment rights of voters, ‘the State’s  
27 important regulatory interests are generally sufficient to justify’ the restrictions.”  
28 *Id.* (quoting *Anderson*, 460 U.S. at 788). The Ninth Circuit has “repeatedly upheld

1 as ‘not severe’ restrictions that are generally applicable, even-handed, politically  
2 neutral, and . . . protect the reliability and integrity of the election process.”  
3 *Dudum*, 640 F.3d at 1106 (citation omitted).

4 Here, Plaintiffs have failed to state any claim under *Anderson-Burdick* because  
5 not a single one of the statutes or regulations that they seek to invalidate burden  
6 their Fourteenth Amendment rights whatsoever. In fact, the challenged laws do the  
7 precise opposite, protecting individuals’ right to vote and providing statewide  
8 standards meant to enhance the consistency and evenhandedness of election  
9 administration statewide. The laws and regulations that Plaintiffs challenge are  
10 sufficiently justified by the State’s interests in increasing voluntary participation in  
11 the democratic process and safeguarding public confidence in California’s  
12 elections, amongst other possible interests. It follows that Plaintiffs’ claims against  
13 State Defendants should be dismissed.

14 **A. The Challenged Provisions Are Not Subject to Strict Scrutiny**  
15 **Because They Do Not Severely Burden the Right to Vote**

16 **1. Each Law Individually Protects or Expands Upon the**  
17 **Right to Vote**

18 As a provisional matter, strict scrutiny does not apply because none of the  
19 individual election laws and regulations that Plaintiffs challenge severely burden  
20 voting rights—in fact, they do the opposite. Grouped here functionally for the ease  
21 of the following discussion, the provisions that Plaintiffs challenge are: **(1)**  
22 Assembly Bills 860 (2020) and 37 (2021), and Elections Code sections 3000.5 and  
23 3020; **(2)** Senate Bill 503 (2021) and Elections Code section 3019; **(3)** Senate Bills  
24 397 (2012) and 450 (2016); and **(4)** California Code of Regulations sections 20910,  
25 20960, 20961, 20962, 20980, 20981, 20983, 20984, 20985, 20990, 20991, and  
20992.<sup>1</sup> SAC at 39–40, ¶ 5.

26 <sup>1</sup> While the SAC does not include years specifying which bills Plaintiffs in  
27 fact challenge, the years identified above are the ones that involve election issues  
28 salient to this case. In challenging specific bills, rather than code sections, the SAC  
does not identify whether the challenge is to every statutory section amended or

1 Both **Section 3000.5** and **3020** were added to the Elections Code by **AB 860**  
2 and subsequently amended by **AB 37**. Section 3000.5 established the statewide  
3 practice of mailing a VBM ballot to all registered voters in advance of each  
4 election. Cal. Elec. Code § 3000.5. Section 3020 regulates the time for return of  
5 VBM ballots, establishing a seven-day window for an election official to receive a  
6 VBM ballot and have it be “timely cast,” so long as the ballot is postmarked on or  
7 before Election Day. Cal. Elec. Code § 3020(b). Neither of these laws “severely  
8 burden” voting rights. They are generally applicable provisions that in fact *expand*  
9 the opportunity for voters to cast their votes by mail, and they establish  
10 evenhanded, commonsense regulations governing the timing within which such  
11 ballots need to be received.<sup>2</sup>

12 **Section 3019**, amended in 2021 by **SB 503**, established consistent statewide  
13 standards for signature verification of VBM ballots. Under section 3019, the  
14 following standards apply when comparing a signature on a VBM identification  
15 envelope with the voter’s registration record: (1) there is a presumption that the  
16 signature on a VBM identification envelope is indeed the voter’s signature; (2) an  
17 exact signature match is not required where it is determined that sufficient similar  
18 characteristics exist; (3) two officials must agree that a signature does not match  
19 before rejecting a ballot; (4) elections officials may not review a voter’s party  
20 preference, race, or ethnicity when comparing signatures; and (5) when a ballot is  
21 rejected, the voter must be given an opportunity to cure the ballot, as specified in

22 \_\_\_\_\_  
23 added in each bill, or only specific portions. Where applicable, we have read the  
24 challenges to general bills as challenges to the specific Elections Code sections  
25 elsewhere named in the prayer for relief. Moreover, the SAC purports to also  
26 challenge “all bills and future bills that have or will expand VBM and all  
27 regulations that have or will not provide uniform requirements regarding  
28 observation, signature verification, ballot remaking, and voter rolls.” SAC at 40,  
n.3. Such an open-ended, hypothetical challenge is clearly impermissible, and State  
Defendants address only the actual statutes and regulations expressly challenged in  
this action.

<sup>2</sup> Notably, Plaintiffs do not challenge section 3020 from the perspective that  
seven days is too *short* a duration within which ballots may be received;  
accordingly, we need not address whether this period creates a burden by virtue of  
not being long enough.

1 the section. Cal. Elec. Code § 3019. Again, nothing about this statute burdens the  
2 right to vote. What it *does* do is establish consistent standards that can be used by  
3 election administrators across the state, so that the verification of signatures on  
4 VBM ballots is evenhanded and fair, and so that the process does not inadvertently  
5 result in the improper rejection of ballots—in other words, it serves to *ameliorate* a  
6 possible burden on voting rights.

7 Section 3019 also makes specific reference to the regulations promulgated by  
8 the Secretary of State as they relate to the characteristics that should be considered  
9 when determining whether a given signature matches. *See* Cal. Elec. Code  
10 § 3019(a)(2)(C), (E). Read together, the statute and the regulations recognize the  
11 reality that over time, signatures can change, and they provide a consistent means of  
12 assessing such changes without improperly rejecting valid votes. There are myriad  
13 reasons why one’s signature may not exactly match that on their voter registration  
14 record—styles change over time; both age and medical conditions can affect one’s  
15 handwriting; one may sign the ballot identification envelope in haste. California  
16 Code of Regulations section 20960, also challenged in this action, supplements  
17 section 3019 by providing a comprehensive list of characteristics that should be  
18 considered—things like the slant of the signatures, how certain letters are crossed or  
19 looped, and similar endings to the signatures (e.g., a long tail or a loop back  
20 around). *See* 2 Cal. Code. Regs. § 20960(f), (g). Again, these provisions *protect*  
21 voting rights.

22 Plaintiffs also challenge **SB 397**, passed in 2012, and **SB 450**, passed in 2016.  
23 *See* SAC ¶¶ 55, 56. Senate Bill 397 implemented online voter registration in  
24 California. *See* Cal. Elec. Code § 2196. Senate Bill 450, also known as the Voter’s  
25 Choice Act, established a system under which voters in certain counties would be  
26 automatically mailed a VBM ballot, and would be permitted to return the ballot at  
27 any ballot dropoff location in the county, rather than just one specific precinct  
28 location. Neither of these laws created any burden—let alone a severe burden—on

1 the right to vote. Allowing for online voter registration is a commonsense reform  
2 that expanded individuals' ability to register to vote. And the Ninth Circuit has  
3 already heard a Fourteenth Amendment challenge to the Voter's Choice Act and  
4 determined that it "does not burden anyone's right to vote." *Short v. Brown*, 893  
5 F.3d 671, 677 (9th Cir. 2018). "Instead, it makes it easier for some voters to cast  
6 their ballots by mail, something that California voters already can do." *Id.*

7 Finally, the numerous sections of the **California Code of Regulations** that  
8 Plaintiffs challenge similarly create no burdens on voting. Section 20910 simply  
9 states the applicability of the chapter, which "is to ensure uniform application and  
10 practices for signature verification on local and statewide election-related petitions,  
11 vote-by-mail identification envelopes, and provisional ballot envelopes," and "to  
12 provide uniform vote counting standards for consistent application of ballot  
13 processing and counting throughout the state." 2 Cal. Code. Regs. § 20910.  
14 Section 20960 details the process for signature verification (in conjunction with  
15 Elections Code section 3019, as discussed above). Section 20961 provides that if  
16 signature verification technology is used and a ballot is rejected, election officials  
17 shall subsequently conduct a manual comparison. Section 20962 outlines what  
18 issues should be included in any signature verification training process. *See* 2 Cal.  
19 Code Regs. §§ 20960, 20961, 20962.

20 The next article of regulations concern uniform vote counting standards.  
21 Section 20980 sets out the purpose of the article, which is "to provide standards to  
22 define the circumstances under which 'marking' of a ballot constitutes a vote and  
23 when a vote will or will not count for each category of voting system certified and  
24 in use in California." 2 Cal. Code Regs. § 20980. Section 20981 is simply a  
25 definitions provision. 2 Cal. Code Regs. § 20981. Section 20982 lays out the  
26 general vote counting standards, under which improperly marked ballots may be  
27 counted so long as "it is clear that" the improper mark "represents the voter's  
28 choice and is the technique consistently used by the voter to indicate his or her

1 selections.” 2 Cal. Code Regs. § 20982(c). For instance, if a voter circles all of his  
2 ballot selections, rather than completely filling in each box, that ballot could be  
3 counted. Sections 20983, 20984, and 20985 all outline similar standards that are to  
4 be used with particular types of voting systems. *See* 2 Cal. Code Regs. §§ 20983,  
5 20984, 20985.

6 The final article of regulations concerns the processing of VBM and  
7 provisional ballots. Section 20990 requires that upon receipt, election officials  
8 “immediately . . . enter the return status of that ballot into the statewide voter  
9 registration system,” and mandates a cure process for rejected ballots. *See*  
10 2 Cal. Code Regs. §§ 20990(a), (d). Section 20991 details the standards for both  
11 valid and invalid VBM ballots. Generally, a ballot may be considered valid if the  
12 election official is able to sufficiently determine that the ballot was cast by a  
13 registered voter and was postmarked by Election Day or otherwise received within  
14 the statutory window for timely receipt, and the voter’s choices are clearly marked  
15 and identifiable. *See* 2 Cal. Code Regs. §§ 20991(b). Generally, a ballot may be  
16 considered invalid if the voter’s signature cannot be matched to a voter registration  
17 record or the ballot was not timely received. *See* 2 Cal. Code Regs. §§ 20991(c).  
18 Similar provisions concerning signature verification are made applicable to  
19 provisional ballots through section 20992. *See* 2 Cal. Code Regs. § 20992.

20 This set of regulations in no way burdens the right to vote. Rather, it  
21 demonstrates the great care and consideration taken by the Secretary to ensure that  
22 the expansion of VBM to all registered California voters did *not* create a situation  
23 in which myriad standards and procedures were used across the state. The stated  
24 purpose of these regulations is indeed to ensure consistency in signature verification  
25 and vote counting, and that is exactly what the regulations achieve. They ensure  
26 that all valid votes are counted, and that none are arbitrarily or inconsistently  
27 rejected. They prevent a scenario in which different county election officials  
28 develop and administer different standards for what qualifies as a valid signature or

1 ballot mark. In other words, they prevent precisely the ills that Plaintiffs allege  
2 through their equal protection claim, and they ultimately protect the right to vote.

3 **2. Plaintiffs’ Theory of Vote Dilution Is Neither Cognizable**  
4 **Nor the Result of the Challenged Laws**

5 Perhaps because they realize that none of the laws they challenge actually  
6 burden the right to vote, Plaintiffs attempt to establish a burden by alleging that all  
7 of the challenged statutes and regulations, operating collectively, function to dilute  
8 the value of their votes. On their equal protection claim, Plaintiffs allege that these  
9 “nonuniform laws, regulations, and procedures” had the effect of:

10 (1) “diminish[ing] the value of in-person voters” and (2) “treat[ing] voters . . .  
11 differently than voters in other counties.” SAC at ¶¶ 149–155. On their due  
12 process claim, Plaintiffs refer to “[p]ractices that promote the casting of illegal or  
13 unreliable ballots or fail to contain basic minimum guarantees against such  
14 conduct,” alleging that as a result of such practices in California, they have suffered  
15 a “diminution in value of their votes.” SAC at ¶¶ 156–67.

16 But Plaintiffs’ conception of “vote dilution” does not track any of the case law  
17 in this area. *See, e.g., Gray v. Sanders*, 372 U.S. 368, 381 (1963) (striking down  
18 “county unit” system for political primaries because it valued votes differently  
19 based on geographic location); *Reynolds v. Sims*, 377 U.S. 533 (1964) (invalidating  
20 state legislative apportionment plans); *Wesberry v. Sanders*, 376 U.S. 1 (1964)  
21 (invalidating state law apportioning congressional districts). “As courts have  
22 routinely explained, vote dilution is a very specific claim that involves votes being  
23 weighed differently and cannot be used generally to allege voter fraud.” *Bowyer*,  
24 506 F.Supp.3d at 711 (citation omitted); *see also Rucho v. Common Cause*,  
25 139 S. Ct. 2484, 2501 (2019) (“More fundamentally, ‘vote dilution’ in the one-  
26 person, one-vote cases refers to the idea that each vote must carry equal weight.”)  
27 Plaintiffs do *not* allege that any of their—or anyone’s—votes were not counted, or  
28 that they were only partially counted. Rather, they attempt to use a vote dilution

1 theory to allege generally that because some fraudulent votes were (allegedly) cast,  
2 their own votes counted for less. While Plaintiffs cite to some landmark voting  
3 rights cases in the SAC, none of these cases offer actual support for their novel  
4 theory. Compare, e.g., SAC at ¶ 162 (quoting *Reynolds*, 377 U.S. at 555) with  
5 *Reynolds*, 377 U.S. at 555 n.29 (explaining that “vote dilution,” as understood in  
6 the context of the Fourteenth Amendment and civil rights, is when a “favored group  
7 has full voting strength,” and “[t]he groups not in favor have their votes  
8 discounted” (citation omitted)).

9 Putting aside its incompatibility with the applicable jurisprudence, the logic of  
10 Plaintiffs’ vote dilution theory fails to hold up when subjected to even the barest of  
11 scrutiny. In both their equal protection and due process claims, Plaintiffs  
12 specifically allege that the votes of *in-person* voters were diluted, as compared to  
13 those of *VBM* voters. SAC at ¶¶ 151, 163. But if the cause of this dilution was the  
14 casting of improper votes (by *VBM* voters or otherwise), then the resulting  
15 diminution in value would apply equally to *all* people who legally cast votes,  
16 regardless of how they cast that vote. In other words, there is no disparate  
17 treatment on the basis on one’s voting method, no vote dilution, and no Fourteenth  
18 Amendment violation. See ECF No. 111 at 9 (noting that “a vote cast by fraud,  
19 mailed in by the wrong person, or otherwise compromised during the elections  
20 process has an impact on the final tally and thus on the proportional effect of *every*  
21 vote, but no single voter is specifically disadvantaged”). This exercise reveals  
22 Plaintiffs’ claims for what they are—generalized grievances against alleged voter  
23 fraud, rather than concrete allegations of disparate treatment suffered by a particular  
24 category of voters.

25 Plaintiffs’ attempt to demonstrate disparate treatment on the basis of the  
26 county in which one voted further fails to either demonstrate vote dilution or create  
27 cause for heightened scrutiny. On this point, the Ninth Circuit’s decision in *Short*  
28 *v. Brown*, upholding the constitutionality of the Voter’s Choice Act, is particularly

1 illustrative. In rejecting appellants’ argument of vote dilution, the court explained  
2 “that a state may not *allocate representation differently* based on a voter’s county of  
3 residence.” *Short*, 893 F.3d at 678 (emphasis in original). It went on to hold that  
4 because the Voter’s Choice Act “does not allocate representation differently among  
5 voters, [] its distinction along county lines does not trigger heightened scrutiny.”  
6 *Id.* Here, Plaintiffs do not explain how they suppose that voters in certain counties  
7 had their votes diluted, and they certainly do not allege that anything about the  
8 challenged laws, regulations, or procedures resulted in the differential allocation of  
9 representation. Moreover, the Ninth Circuit in *Short* held plainly that “[c]ounty of  
10 residence is not a suspect classification warranting heightened scrutiny under [the  
11 equal protection doctrine].” *Id.* at 679.

12 Lastly, Plaintiffs’ argument that in-person voters were disproportionately  
13 burdened is not well pled and is contrary to the facts. They allege that VBM voters  
14 had additional time to vote, as compared with in-person voters, because “VBM  
15 voters could legally vote by dropping off ballots in mailboxes until 11:59 p.m. and  
16 still have their ballots postmarked on election day and therefore counted,” and that  
17 “nothing prevented VBM voters from voting the day after the election by dropping  
18 ballots in such boxes.” SAC at ¶¶ 131, 132. In fact, VBM ballots mailed through  
19 the postal service are required to be *postmarked* on or before Election Day, which  
20 would not happen were a voter to place their ballot in a mailbox after postal office  
21 business hours. *See* Cal Elec. Code § 3020(b). Moreover, ballot drop boxes are  
22 “locked and covered or otherwise made unavailable” at 8 p.m. on Election Day.  
23 2 Cal. Code Regs. § 20136(e). It also bears noting that because every registered  
24 voter was mailed a VBM ballot, every voter had an equal opportunity to choose  
25 whether to vote in-person or by mail. Accordingly, even taking Plaintiffs’  
26 allegations as true, the difference in timing would not constitute a severe burden on  
27 voting, nor would it establish in-person voters as a separate, distinct category  
28 subject to differential treatment. And to the extent that Plaintiffs intend to argue

1 that voting method stands in as a proxy for race, see SAC at ¶¶ 141–42, this  
2 argument fails because the SAC makes no allegations of any “racially  
3 discriminatory intent or purpose,” as required for such an equal protection claim.  
4 *See, e.g., Mendiola-Martinez v. Arpaio*, 836 F.3d 1239, 1261 (9th Cir. 2016)  
5 (quoting *City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S.  
6 188, 194 (2003)) (internal quotation marks omitted).

7 The laws and regulations that Plaintiffs challenge provided for online voter  
8 registration, expanded VBM to every registered California voter, established  
9 consistent statewide standards for signature verification and vote counting of VBM  
10 ballots, and set a window for the timely receipt of VBM ballots. As discussed  
11 above, nothing inherent in any of these individual provisions creates any burden on  
12 voting, let alone a severe burden. And far from “promot[ing] the casting of illegal  
13 or unreliable ballots,” SAC ¶ 162, the very regulations that Plaintiffs seek to  
14 invalidate were promulgated for the express purpose of ensuring consistent  
15 practices in signature verification and vote counting. *See, e.g., 2 Cal. Code Regs.*  
16 *§§ 20910, 20980.* Whether a certain voter chooses to exercise the option to cast a  
17 VBM ballot or vote in person is entirely up to them. Plaintiffs may prefer to vote in  
18 person, and that is their right—but they do not have the right to prevent others from  
19 voting via their preferred method. It is precisely the statutes and regulations that  
20 Plaintiffs challenge which ensure that in California, “no voter is denied an  
21 opportunity to cast a ballot at the same time and with the same degree of choice  
22 among candidates available to other voters.” *Dudum*, 640 F.3d at 1109.

23 Under *Anderson-Burdick*, this Court must first consider the degree to which  
24 the challenged election laws burden the right to vote. Here, the burden is not just  
25 minimal; it is nonexistent. Because none of the challenged laws or regulations  
26 create a severe burden on the right to vote, and because Plaintiffs’ claimed burden  
27 of vote dilution is neither cognizable nor the result of the challenged provisions,  
28

1 strict scrutiny does not apply to Plaintiffs’ claims challenging their  
2 constitutionality. *See, e.g., Burdick*, 504 U.S. at 434.

3 **B. The Challenged Provisions Further Important Governmental**  
4 **Interests**

5 Because none of the challenged provisions severely burden the right to vote,  
6 they must be upheld if they serve important governmental interests. *Burdick*, 504  
7 U.S. at 434. They plainly do.

8 One interest that the challenged laws and regulations serve is increasing voter  
9 turnout and voluntary participation in the democratic process. This interest has  
10 already been recognized by the Ninth Circuit as a sufficient basis for upholding a  
11 challenged voting law under the *Anderson-Burdick* test. *See Short*, 893 F.3d at 674,  
12 679. By allowing for online voter registration and expanding VBM to all registered  
13 California voters, it is fair to reason that one result will be an increase in democratic  
14 participation.

15 Another interest furthered by the challenged laws and regulations is the  
16 safeguarding of public confidence in California’s elections. By ensuring consistent  
17 statewide standards for signature verification and vote counting and providing a  
18 process for ballot curing, voters can have more confidence that their vote will be  
19 counted and not arbitrarily rejected, unbeknownst to them. Again, this interest has  
20 been recognized as a valid rationale when considering the *Anderson-Burdick* test.  
21 *See Crawford v. Marion Cnty. Elec. Bd.*, 553 U.S. 181, 197 (2008).

22 Other interests exist. For instance, allowing for online voter registration  
23 serves the purpose of modernizing election processes. *See Crawford*, 553 U.S. at  
24 192. And the State also has an interest in ensuring the efficient and consistent  
25 administration of elections, which is furthered by laws and regulations setting a  
26 window for the timely receipt of VBM ballots and otherwise setting standards for  
27 things like signature verification. Given that the burdens in this case are slight (or  
28 nonexistent), “the State need not establish a compelling interest to tip the

1 constitutional scales in its direction.” *Burdick*, 504 U.S. at 439. As it is, “these  
2 important governmental interests are more than sufficient to outweigh the  
3 extremely limited burdens” that the laws and regulations that Plaintiffs challenge  
4 impose upon California’s voters. *See Dudum*, 640 F.3d at 1117.

5 Under the *Anderson-Burdick* test, all of the statutes and regulations challenged  
6 by Plaintiffs survive constitutional scrutiny because they further an important  
7 governmental interest. Accordingly, Plaintiffs have failed to state a claim under the  
8 Fourteenth Amendment, and their claims should be dismissed.

9 **CONCLUSION**

10 For the foregoing reasons, all claims against State Defendants should be  
11 dismissed with prejudice.

12  
13 Dated: March 31, 2023

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for State Defendants Secretary of State Dr. Shirley Weber and Attorney General Rob Bonta, named in their official capacities, certifies that this brief contains 22 pages, which:

   complies with the word limit of L.R. 11-6.1.

  X   complies with the page limit set by The Hon. André Birotte Jr.’s Standing Order, ¶ 6c.

Dated: March 31, 2023

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