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No Fee Gov. Code § 6103

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SACRAMENTO

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12
13 **ELECTION INTEGRITY PROJECT**
14 **CALIFORNIA, INC.; LARRY LEWIS, an**
15 **individual,**

16 Petitioners,

17 v.

18 **SHIRLEY WEBER, CALIFORNIA**
19 **SECRETARY OF STATE; DEAN LOGAN,**
20 **LOS ANGELES COUNTY REGISTRAR-**
21 **RECORDER/COUNTY CLERK,**

22 Respondents.

Case No. 24WM000168

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RESPONDENT SECRETARY OF
STATE'S DEMURRER**

Date: May 16, 2025
Time: 10:00 a.m.
Dept: 21
Judge: Hon. Shelleyanne W.L. Chang
Trial Date: None set
Action Filed: October 30, 2024

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1 **INTRODUCTION**

2 Petitioners Election Integrity Project California, Inc. (“EIPCa”) and Larry Lewis seek to
3 compel Respondents Shirley Weber, in her official capacity as California’s Secretary of State (the
4 “Secretary”) and Dean Logan, in his official capacity as the Los Angeles County Registrar-
5 Recorder / County Clerk, “to abide by California election laws” based on EIPCa’s “audit” of the
6 November 2022 General Election. (First Amended Petition [“FAP”] ¶ 1.) EIPCa’s “audit” is
7 premised on a faulty comparison of voter registration information they obtained from the
8 Secretary in June 2024 with the official statement of the vote, which is issued by the Secretary
9 under Elections Code section 15501, subdivision (b),¹ for the November 2022 General Election.
10 Weeks before the November 2024 General Election, based on its flawed “audit” findings, EIPCa
11 sent a letter to the Secretary with questions about “discrepancies” they identified. Though the
12 Secretary has already explained to Petitioners the fundamentally flawed nature of the audit, they
13 seek a writ compelling the Secretary to provide additional answers to their questions. Petitioners
14 also seek a writ compelling the Secretary to provide a “voter list” of all persons who voted in the
15 November 2024 General Election, and vaguely allege that the Secretary has violated her
16 ministerial duties.

17 The Secretary brings this demurrer because Petitioners have failed to state any valid claims
18 against her. Though Petitioners assert only a single count against the Secretary, it involves three
19 independent elements. All three fail as a matter of law because the statutes invoked either do not
20 apply to the Secretary at all, or Petitioners identify no legal duty owed by her.

21 *First*, Petitioners seek to compel a response to EIPCa’s letter under the Voter Bill of Rights,
22 section 2300, subdivision (a)(9)(B), which allows voters “to ask questions of the precinct board
23 and elections officials regarding election procedures and to receive an answer or be directed to the
24 appropriate official for an answer.” (FAP ¶¶ 29, 76, 90, 92; *id.* Prayer ¶ 1.) But the plain text and
25 legislative history of section 2300 make clear that it does not apply to (i) a non-voter such as
26 EIPCa, or (ii) the Secretary, who is not a local elections official. Rather, that statute applies to
27 local elections officials and activities at local polling places.

28 ¹ All statutory references herein are to the Elections Code unless otherwise stated.

1 19, 2024. (Minute Order, Nov. 19, 2024.) The Secretary then filed an answer to the Petition on
2 December 2, 2024. (Respondent Secretary of State’s Answer, Dec. 2, 2024.)

3 On December 20, 2024, Petitioners filed requests for dismissals of four Respondents—the
4 individual registrars of voters for the Counties of Orange, Tulare, Riverside, and Kern. (Requests
5 for Dismissal, Dec. 20, 2024.) After the voluntary dismissals, only the Secretary and the registrar
6 of voters for Los Angeles County—Dean Logan—remained as Respondents.

7 In January and February 2025, the Secretary and Logan entered into two stipulations with
8 Petitioners regarding their intent to file a first amended petition for writ of mandate. (Stipulation,
9 Jan. 14, 2025; Stipulation, Feb. 5, 2025.) In short, the parties agreed that Petitioners could file
10 their first amended petition once the Court entered an order granting them leave to do so.
11 (Stipulation, Feb. 5, 2025.)

12 On February 11, 2025, Petitioners filed the operative first amended petition (“FAP”). In the
13 FAP, the only Petitioners named were EIPCa and an individual named Larry Lewis; the only
14 Respondents named were the Secretary and Logan. (FAP at p. 1.)

15 On February 18, 2025, the Court entered an order approving of the parties’ stipulation and
16 granting Petitioners’ leave to file the FAP.

17 **II. THE FIRST AMENDED PETITION**

18 The latest iteration of Petitioners’ case arises from the same “audit performed by EIPCa of
19 election data from the November 8, 2022 General Election.” (FAP ¶ 2.) To conduct their audit,
20 Petitioners allege that EIPCa requested a “voter list or file, by precinct, of all persons who voted”
21 in the November 2022 General Election pursuant to section 2191, subdivision (a). (*Id.*, citing
22 Declaration of Linda Paine [“Paine Decl.”] ¶ 4; Declaration of Carl Knowles [“Knowles Decl.”].)
23 Petitioners allege their audit involved comparing this “voter list” of all persons who voted in the
24 November 2022 General Election (which Petitioners refer to as the “June 2024 Accounting”) with
25 the statement of the vote issued by the Secretary for the November 2022 General Election (which
26 Petitioners refer to as the “November 2022 Voter Participation Statistics”). (*Id.* ¶¶ 2-4, 18.)

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1 The comparison allegedly revealed “numerous discrepancies between the EIPCa’s June
2 2024 Accounting and the November 2022 Voter Participation Statistics.” (*Id.* ¶ 4.) These
3 discrepancies allegedly include, for example, the two datasets showing a different total number of
4 ballots cast for the November 2022 General Election. (*Id.* ¶ 22.) Petitioners allege that the
5 “discrepancies” they found are based on their “belie[f] the June 2024 Accounting would match
6 the data used to prepare the November 2022 Voter Participation Statistics.” (*Id.* ¶ 20.)
7 Acknowledging these discrepancies are based only on their belief the two datasets must align
8 perfectly, Petitioners admit they do not know “whether any error occurred” with the Secretary or
9 Logan, and that “there is possibly a legitimate answer as to why the data reflects substantial
10 discrepancies.” (*Id.* ¶¶ 6, 35.)

11 On September 6, 2024, EIPCa sent a letter to the Secretary asking a series of questions
12 based on the purported discrepancies it found. (*Id.* ¶¶ 29-31, citing Paine Decl. ¶ 6, Ex. 2.)
13 Petitioners acknowledge the Secretary has responded to their questions by informing them that
14 their “audit” involves comparing “apples to oranges” because it involves two differing datasets (i)
15 certified results of the November 2022 General Election, and (ii) county-by-county voter
16 registration data pulled from California’s centralized voter registration database (known as
17 “VoteCal”) from a point in time, specifically, in June 2024. (*Id.* ¶ 33.) In other words,
18 Petitioners have been informed that they are comparing voter registration information to the
19 statement of the vote, not a “voter list” of every person that voted in that election. Petitioners
20 even acknowledge that their audit could be flawed in that respect. (*Id.* ¶¶ 33, 35, 69.)

21 Nevertheless, Petitioners maintain that the Secretary’s response thus far has not met their
22 standards, and that this lawsuit is necessary to compel a further response by the Secretary. (*Id.*
23 ¶ 33.) Consequently, the main relief requested by Petitioners is quite narrow: Petitioners “do[]
24 not challenge past actions of Respondents or the results of a past election or the November 2022
25 Voter Participation Statistics”; rather, Petitioners seek to ensure that the Secretary fulfills her
26 “legal obligation” to respond to Petitioners’ questions under section 2300, subdivision (a)(9)(B).
27 (*Id.* ¶¶ 34, 92.) Petitioners pray for a writ of mandate ordering the Secretary to respond to the
28 questions in EIPCa’s September 6, 2024 letter. (*Id.* at p. 23, ¶ 1.)

1 In addition, Petitioners pray for a writ of mandate ordering the Secretary to provide EIPCa
2 with “an accurate and finalized list of the 16,140,044 state voters whose ballots were cast and
3 counted in the November 2024 general election” so that EIPCa can conduct an audit of the
4 November 2024 General Election. (*Id.* at pp. 23-24, ¶ 4 & fn. 5, citing Declaration of Ellen
5 Swenson [“Swenson Decl.”] ¶ 17.) This is the first request for any November 2024 General
6 Election data that the Secretary has ever received from Petitioners.

7 Aside from the specific relief prayed for by Petitioners, the FAP vaguely alleges the
8 Secretary “violated her ministerial duties under Elec. Code section 15500, et. seq., by certifying
9 an inaccurate compilation of votes and ballots.” (*Id.* ¶ 90.) Petitioners further allege the
10 Secretary “must perform her ministerial duty to verify that all ballots are lawfully cast and
11 accurately counted and that only a single ballot is associated with a single voter registration ID,”
12 (*Id.* ¶¶ 92, 94), but do not allege any statutory basis for this specific “verification duty.”

13 For the reasons discussed below, the Secretary brings this demurrer to all allegations and
14 claims asserted against her in the FAP.

15 LEGAL STANDARD

16 “The legal sufficiency of a petition for writ of mandate may be tested by demurrer.”
17 (*Center for Biological Diversity v. County of San Benito* (2024) 104 Cal.App.5th 22, 34, quoting
18 *Com. for Sound Water & Land Development v. City of Seaside* (2022) 79 Cal.App.5th 389, 399.)
19 “A petition that fails to allege specific facts showing entitlement to relief may be subject to
20 general demurrer. [Citation] [The Court] independently determine[s] whether the petition states a
21 cause of action as a matter of law.” (*People v. Super. Ct. (Woodward)* (2024) 100 Cal.App.5th
22 679, 693 [“*Woodward*”].) In doing so, the Court deems “true all material facts that were properly
23 pled, as well as all facts that may be inferred from those expressly alleged.” (*Ibid.*) In addition,
24 the Court must “accept as true all recitals of evidentiary facts contained in exhibits attached to the
25 petition” or incorporated therein by reference. (*Jones v. Omnitrans* (2004) 125 Cal.App.4th 273,
26 277-278; *Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 95 [“[E]videntiary facts were before the
27 trial court [on demurrer] in the exhibits incorporated in plaintiff’s complaint.”])

28 ///

1 “To be entitled to relief, the petitioner must show that the respondent has a clear, present,
2 and ministerial duty, and that the petitioner has a correlative right to performance of that duty
3 entitling him to a writ of mandate.” (*Woodward, supra*, 100 Cal.App.5th at pp. 693-694.) The
4 petitioner also must demonstrate no plain, speedy, and adequate alternative remedy exists. (*Ibid.*)

5 ARGUMENT

6 I. PETITIONERS FAIL TO STATE A CLAIM UNDER ELECTIONS CODE SECTION 2300

7 Petitioners principally seek to compel the Secretary to provide a written explanation
8 addressing their questions regarding purported discrepancies they identified when comparing
9 their two datasets. (FAP ¶ 92.) Petitioners pray for a writ ordering the Secretary “to respond to
10 Petitioner’s questions laid forth in their September 6, 2024, correspondence pertaining to the
11 November 2022 election,” and contend they have “exercised their rights under the California
12 Voter Bill of Rights” by invoking section 2300, subdivision (a)(9)(B). (*Id.* ¶ 90 & p. 23, ¶ 1.)

13 However, by its plain language, section 2300 does not apply to the type of inquiry that
14 EIPCa submitted to the Secretary—questions from a non-profit organization relating to its own
15 “audit” of an election that occurred more than two years ago. Rather, section 2300, also known
16 as the Voter Bill of Rights, simply enumerates existing rights that voters (not entities) have. As
17 shown below, there are at least three independent reasons why section 2300 does not apply to
18 EIPCa, the Secretary, or the questions raised in EIPCa’s September 6, 2024 letter.

19 Section 2300, subdivision (a)(9)(B) provides:

20 All voters, pursuant to the California Constitution and this code, shall be citizens of
21 the United States. There shall be a Voter Bill of Rights *for voters*, available to the
public, which shall convey all of the following to voters: . . .

22 You have the right to ask questions of the *precinct board and elections officials*
23 *regarding election procedures* and to receive an answer or be directed to the
24 appropriate official for an answer. However, if persistent questioning disrupts the
execution of their duties, the precinct board or elections officials may discontinue
responding to questions.

25 The September 6, 2024 letter sent to the Secretary, to which Petitioners demand a response, is not
26 covered by this statute because the letter (i) did not come from a “voter,” (ii) was not sent to an
27 “elections official,” and (iii) did not concern “election procedures.”

28 ///

1 **A. EIPCa is not a “voter” under the Elections Code.**

2 The September 6, 2024 letter was sent on behalf of EIPCa, “a 501(c)(3) nonprofit public
3 benefit corporation,” which is not a “voter” under California law. (See FAP ¶¶ 7, 29-31; Paine
4 Decl. Ex. 2.) A “voter” is any “elector” registered under the Elections Code. (§ 359.) In turn, an
5 elector is any person who is a United States citizen, 18 years of age or older, and a California
6 resident on or before election day. (§ 321, subd. (a).) Because only natural persons 18 years of
7 age or older can register to vote in California, EIPCa—a self-described “501(c)(3) nonprofit
8 public benefit corporation” (FAP ¶ 7)—does not constitute a “voter” under section 2300,
9 subdivision (a)(9)(B). (See also *Chula Vista Citizens for Jobs and Fair Competition v. Norris*
10 (9th Cir. 2015) 782 F.3d 520, 527 [interpreting “elector” in section 321 to refer “only [to] natural
11 persons (also known as human beings) who have the qualifications to vote”].)

12 Petitioners may argue that the September 6, 2024 letter sent to the Secretary was signed by
13 an individual, Linda Paine. (FAP ¶ 2 & Paine Decl. Ex. 2.) But Ms. Paine is not a party to this
14 lawsuit nor is she alleged to be a “voter” in the FAP. (See also Paine Decl. Ex. 2 at p. 4 [“*EIPCa*
15 submits the following questions . . . ,” emphasis added].) In fact, Ms. Paine’s declaration (which
16 is cited in the FAP) was executed in Prescott, Arizona, suggesting that she is not even a California
17 resident who is eligible to vote in this state. (Paine Decl. p. 3.) And although Mr. Lewis is
18 alleged to be a California voter and election observer, (FAP ¶ 8; Lewis Decl. ¶ 5), he did not send
19 the September 6, 2024 letter—EIPCa did. And EIPCa is not a “voter.” Because the questions in
20 the September 6, 2024 letter did not come from a “voter,” Petitioners cannot invoke section 2300,
21 subdivision (a)(9)(B) to compel a response from the Secretary.

22 **B. The Secretary is not a “precinct board” or “elections official” under the**
23 **Elections Code.**

24 The Secretary is not the “precinct board” or “elections official” referenced in the Voter Bill
25 of Rights. Those terms have specific meanings under the Elections Code.

26 To start, a “precinct” is “a geographical area within a county that is made up of voters and
27 is formed pursuant to” sections 12220-12225. (§ 338.6.) Precincts are small; they generally
28 cannot exceed 1,000 voters. (§ 12223, subd. (a).) “All voters from the same precinct are

1 assigned to a specific polling place for an election,” or can use any vote center located within the
2 same county. (§ 338.6.) A “precinct board” is “the board appointed by the elections official to
3 serve at a single precinct, [] a consolidated precinct, . . . [or] a vote center.” (§ 339, subd. (a).)
4 After polls have closed, the “precinct board” can also refer to any “canvassing and counting
5 board” at the same precinct location. (§ 339, subd. (b).) In short, the “precinct board” in the
6 Voter Bill of Rights is not the Secretary of State, but rather refers to a specific local-level
7 elections official.

8 An “elections official” is a general term for a local-level elections official. An “elections
9 official” refers to a “clerk or anyone charged with the duty of conducting an election.” (§ 320,
10 subd. (a); see also § 307 [“‘Clerk’ means the county elections official, registrar of voters, city
11 clerk, or other officer or board charged with the duty of conducting any election.”].) “Elections
12 official” also means a “county clerk, city clerk, registrar of voters, or elections supervisor having
13 jurisdiction over elections within any county, city, or district within the state.” (§ 320, subd. (b);
14 see also 85 Ops.Cal.Atty.Gen. 49 (2002), 2002 WL 394567 [“The ‘elections official’ would
15 normally be the county clerk or the registrar of voters having jurisdiction to conduct the
16 election.”].) It is also evident that “elections official” refers to local officials when one reads the
17 definitions of “precinct board” and “elections official” together. (*Dept. of Corrections &*
18 *Rehabilitation v. Workers’ Comp. Appeals Bd.* (2008) 166 Cal.App.4th 911, 917 [“We read
19 related provisions together as part of an overall statutory scheme, so as to harmonize them and
20 give them all effect if possible.”].) The “precinct board” is “the board *appointed by the elections*
21 *official* to server at a single precinct.” (§ 339, subd. (a), emphasis added.) Because the Secretary
22 does not appoint precinct boards for thousands of precincts across the state, “elections official”
23 must be referring to the *local* elections official.

24 In contrast, the Secretary is the state’s chief elections officer and is referred to as such, or as
25 “the Secretary of State,” throughout the Elections Code and California law. (See, e.g., § 10, subd.
26 (a); Gov. Code, § 12172.5, subd. (a).) As the chief elections officer, the Secretary’s duties
27 include administering the Elections Code, ensuring that elections are conducted efficiently, and
28 enforcing state election laws. (Gov. Code § 12172.5, subd. (a); see also § 10, subd. (b) [stating

1 that the Secretary “shall make reasonable efforts to” promote voter registration and
2 preregistration to eligible voters and citizens, encourage eligible voters to vote, and promote civic
3 learning and engagement[.]) But her role does not include conducting the on-the-ground election
4 that takes place at the local level. In fact, the Secretary’s role as chief elections officer is
5 specifically distinguished—in the same provision setting forth her duties and powers—from “the
6 elections official” which is the individual “responsible for conducting elections in the[ir]
7 jurisdiction.” (Gov. Code § 12172.5, subd. (a).)

8 The distinction between the Secretary and an “elections official” is further reflected
9 throughout the Elections Code. (See, e.g., *Persky v. Bushey* (2018) 21 Cal.App.5th 810, 820
10 [explaining in the context of recall procedures that a petition to initiate a recall “must be filed
11 with the elections official—or, in the case of a ‘state officer,’ with the Secretary of State”]; *Cook*
12 *v. Super. Ct.* (2008) 161 Cal.App.4th 569, 578 [recognizing in the context of nominations
13 paperwork a difference between “elections officials” on the one hand, and “the Secretary of
14 State” on the other].) This distinction also arises in the context of counting ballots by elections
15 officials and reporting those results out to the Secretary. (See, e.g., § 15150 [“For every election,
16 the elections official shall conduct a semifinal official canvass by tabulating vote by mail and
17 precinct ballots and compiling the results.”]; § 15151, subd. (a) [“The elections official shall
18 transmit the semifinal official results to the Secretary of State. . . .”]; § 15500 [“The Secretary of
19 State, commencing with the first results from the semifinal official canvass received from the
20 elections officials, shall compile the results for the offices and measures listed in Section
21 15151.”].)

22 Thus, California law is clear: elections officials actually count the votes and tabulate the
23 results; elections officials then report those results to the Secretary; the Secretary compiles the
24 statewide results and certifies and publishes them in a statement of the vote. (§ 15501, subd. (b)
25 [“The Secretary of State shall prepare, certify, and file a statement of the vote from the compiled
26 results no later than the 38th day after the election.”]; *County of San Diego v. Bowen* (2008) 166
27 Cal.App.4th 501, 505, 512 & fn. 12 [acknowledging, in a lawsuit between counties and the
28 Secretary over the Secretary imposing “a comprehensive system of postelection manual ballot

1 tallying on local elections officials,” that § 15360, subd. (a) “authorizes local ‘elections
2 official[s]’ (*i.e., not the Secretary*) to increase the number of precincts tallied,” emphasis added].)

3 Accordingly, the Secretary of State is not the “elections official” referenced in section
4 2300, subdivision (a)(9)(B), nor anywhere else in the Elections Code.

5 **C. The questions posed in the September 6, 2024 letter did not concern**
6 **“elections procedures” at the polling place.**

7 EIPCa’s September 6, 2024 letter poses questions about a self-described “audit” that it
8 conducted by comparing data from the statement of the vote for the November 2022 General
9 Election with voter registration information obtained from VoteCal (*i.e., the state’s centralized*
10 *voter registration database*) in June 2024.² These questions have nothing to do with “election
11 procedures” or the rights that voters have when at polling places casting their voters or lawfully
12 observing an ongoing election. Nothing in the Voter Bill of Rights contemplates that any
13 elections official—let alone the Secretary—must respond to lengthy inquiries regarding the
14 private audits of past elections by private organizations.

15 To begin, the plain language of section 2300, subdivision (a)(9)(B) indicates that it only
16 covers election procedures relevant to voters and elections observers who are physically at a
17 polling place. (See § 2300, subd. (a)(1)-(10).) These rights include: the right to cast a
18 provisional ballot if a voter’s name is not on the voter rolls; the right to cast a ballot if a voter is in
19 line at the polling place before polls close; the right to cast a secret ballot free from intimidation;
20 the right to receive a new ballot if a voter makes a mistake; the right to request and receive
21 assistance in casting a ballot; the right to return a ballot to any precinct in your county; the right to
22 have election materials in another language; the right to ask questions and observe election
23 processes; and the right to report any illegal or fraudulent activity. (*Ibid.*) The common thread
24 between these rights is that they concern voting related activity at the polling place. This
25 statutory context informs how the phrase, “the right to ask questions of the precinct board and
26 elections officials regarding election procedures,” should be interpreted. (§ 2300, subd. (a)(9)(B);

27 ² As Petitioners acknowledge in the FAP, data pulled from VoteCal is from “the point in
28 time at which the data is requested.” (FAP ¶ 33.) Thus, Petitioners have been comparing voter
registration information from June 2024 with the November 2022 statement of the vote.

1 *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.* (2018) 4 Cal.5th 1082, 1090 [“[T]he
2 words of a statute must, of course, be read in the context of the provision as a whole and in the
3 context of the statutory scheme as a whole,” cleaned up.] Because all these enumerated rights
4 are connected to election day, voting activities by voters or observers, and polling places, the
5 “right to ask questions” must be understood to relate to such topics.³

6 The limited application of section 2300 to election day activities is further supported by the
7 regulations that the Secretary has developed to implement and clarify the Voter Bill of Rights.
8 (§ 2300, subd. (c)(1).) These extensive regulations outline the rights and duties of election
9 observers⁴ and elections officials at the polling place. (See Cal. Code Regs., tit. 2, §§ 20871-
10 20879.) Among those rights and duties are that “elections official may designate a person to
11 whom an election observer can ask questions,” *id.*, § 20874, subds. (c), (e), while “observers have
12 the right to ask questions about elections processes and receive answers” under section 2300, *id.* §
13 20876, subd. (j). Like with section 2300, a plain reading of these regulations indicates that they
14 apply only to elections officials at polling places to questions from voters or election observers.

15 Because the plain text is unambiguous, the Court’s analysis need not go any further.
16 (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th
17 26, 29-30.) But even if the text was ambiguous, the legislative history supports the Secretary’s
18 plain reading of the text. Enacted in 2003, the Voter Bill of Rights expressly concerns voters’
19 rights *at the polls*. The legislative history shows it was enacted in response to concerns that (i)
20 new voters—namely, those who had recently become citizens and whose primary language was
21 not English—were being turned away at the polls, and (ii) poll workers were not offering
22 provisional ballots under many permissible circumstances. (Declaration of Malcolm Brudigam
23 [“Brudigam Decl.”], Ex. A at pp. 3-4.) The then-Secretary of State, a bill sponsor, explained in
24 the legislative history that “[t]he provisions of the Voters Bill of Rights provide for a

25 ³ In fact, the second sentence in subdivision (a)(9)(B) strongly implies this voting-day
26 connection because it gives elections officials the right to discontinue responding to questions if
those questions would “disrupt[] the execution of their duties.” (§ 2300, subd. (a)(9)(B).)

27 ⁴ An “election observer” is defined as someone “who observes the conduct of elections in
28 California.” (Cal. Code Regs., tit. 2, § 20872, subd. (e); see also *id.* subd. (h) [“ ‘Observe’ means
to watch, view, listen, take notes, and ask questions.”].) This definition further shows that the
right to ask questions is in the context of the being present at a polling place.

1 commonsense approach to voter education *at the polling place.*” (*Id.* at p. 4.) In contrast, the
2 questions set forth in EIPCa’s September 6, 2024 letter relate to “discrepancies” EIPCa identified
3 in their own private “audit” of two datasets regarding an election that occurred over two years
4 ago. (See, e.g., Paine Decl. Ex. 2 at p. 4 [“Why did you report to EIPCa 32 counties as having
5 more votes than certified and 25 counties having fewer votes than certified?”].) They have
6 nothing to do with voting or voter education “at the polling place.” Thus, because EIPCa’s
7 September 6, 2024 letter does not concern “election procedures” at the polling place, the
8 questions posed do not fall within section 2300, subdivision (a)(9)(B)’s purview.

9 For the three reasons mentioned above, section 2300, subdivision (a)(9)(B) does not apply
10 to the September 6, 2024 letter sent to the Secretary by EIPCa. As such, there is no duty for
11 which the Secretary has not complied because the Secretary does not owe Petitioners a duty to
12 respond to their letter at all. Thus, no writ may issue against her.⁵ (*Woodward, supra*, 100
13 Cal.App.5th at pp. 693-694.) Accordingly, the Secretary’s demurrer should be sustained without
14 leave to amend as to Petitioners’ section 2300, subdivision (a)(9)(B) claim.

15 **II. PETITIONERS FAIL TO STATE A CLAIM UNDER ELECTIONS CODE SECTION 2191**

16 For the first time, Petitioners now request “a voter list or file, by precinct, of all persons
17 who voted in” the November 2024 General Election pursuant to section 2191.⁶ (FAP ¶¶ 34, 93.)
18 Petitioners cannot obtain a writ compelling the Secretary to provide “a voter list or file, by
19 precinct, of all persons who voted in” the November 2024 General Election because the Secretary
20 has no duty to do so under section 2191.

21 ⁵ Even if the Court concludes that there is a present duty, the Secretary has fulfilled her
22 duty and responded to the questions posed by Petitioners, as alleged in the FAP. (FAP ¶¶ 32-33.)
23 Just because Petitioners are dissatisfied with those answers, does not mean that the Secretary has
24 not complied with any duty to provide a response.

25 ⁶ In the FAP, Petitioners repeatedly allege—mistakenly—that their “audit” was conducted
26 by comparing a “voter list” of all persons who voted in the November 2022 General Election to
27 the statement of the vote from that election. (See, e.g., FAP ¶¶ 18, 20, citing Paine and Knowles
28 Decls.) But EIPCa never obtained a “voter list”; rather, EIPCa requested and obtained *voter
registration information* from the Secretary pursuant to an application form provided by her
office under section 2188. (See Paine Decl. Ex. 1; Knowles Decl. ¶¶ 7, 9.) Petitioners’ own
allegations are contradicted by the declarations and exhibits cited through the FAP and thus
should be disregarded. (*Barnett v. Fireman’s Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505.)
But even assuming the truth of Petitioners’ allegation that their audit was based in part on a “voter
list” of all persons who voted in the November 2022 General Election, all their claims against the
Secretary still fail as a matter of law for the reasons set forth in this demurrer.

1 Section 2191, subdivision (a) provides, in part, that “[u]pon request, the *elections official*
2 shall compile a voter list or file, by precinct, of all persons who voted in previous elections.” As
3 discussed above, the Secretary is not an “elections official” under the Elections Code. (See,
4 *supra*, Section I.B.) The difference between an “elections official” and “the Secretary of State” is
5 particularly apparent when comparing section 2191 to section 2188, the latter of which is the
6 provision allowing applications for voter registration information. Section 2188, subdivision (a)
7 provides that “[a]ny application for voter registration information available pursuant to law and
8 maintained by *the Secretary of State or by the elections official of any county* shall be made
9 pursuant to this section.” (§ 2188, subd. (a), emphasis added; see also Cal. Code Regs., tit. 2, §
10 19001 [“‘Source agency’ means the Secretary of State or a county elections official, both of
11 which maintain voter registration information and provide access to such information pursuant to
12 Elections Code sections 2188 and 2194.”]; *id.* § 19002, subd. (a) [“This Article [§§ 19001-19013]
13 shall apply to any person who directly or indirectly receives *voter registration information* from
14 *any source agency*,” emphasis added].) Thus, section 2188 explicitly states that an application for
15 voter registration information can be made either to the Secretary or to the elections official of
16 any county; in contrast, section 2191 only mentions that it applies to elections officials.

17 The omission of “the Secretary of State” from section 2191, coupled with the statutory
18 definition of “elections official” under the Elections Code discussed above, shows that the
19 Secretary does not owe Petitioners a duty to provide a “voter list” under section 2191. (*People v.*
20 *Vaesau* (2023) 94 Cal.App.5th 132, 150 [“[A] matter that is not covered by a statute must be
21 treated as not covered. . . . [I]t is not the proper function of the courts to supply legislative
22 omissions from a statute.”].) As with section 2300, there is no duty for which the Secretary has
23 not complied under section 2191 because the Secretary does not owe Petitioners a duty to provide
24 a “voter list” upon request. Thus, no writ may issue against her.⁷ (*Woodward, supra*, 100
25

26 ⁷ Even if section 2191 did apply to the Secretary, there is no pending request for the
27 November 2024 “voter list” data—the FAP is the first time Petitioners have sought that data.
28 Thus, even assuming *arguendo* section 2191 applies to the Secretary, she owes Petitioners no
present duty because they did not request the data, and no writ can issue. (*Cal. Assn. for Health
Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 709.)

1 Cal.App.5th at pp. 693-694.) Accordingly, the Secretary’s demurrer should be granted without
2 leave to amend as to Petitioner’s section 2191, subdivision (a) claim.

3 **III. PETITIONERS FAIL TO STATE A CLAIM THAT THE SECRETARY VIOLATED ANY**
4 **MINISTERIAL DUTY**

5 Lastly, Petitioners have failed to state a claim under Code of Civil Procedure section 1085
6 against the Secretary for allegedly violating her ministerial duties, because Petitioners have not
7 identified any specific legal duty owed to them that the Secretary has failed to meet.

8 In the FAP, Petitioners vaguely allege that the Secretary has “violated her ministerial duties
9 under Elec. Code section 15500, et seq., by certifying an inaccurate compilation of votes and
10 ballots.” (FAP ¶ 90.) Petitioners further allege that the Secretary “must perform her ministerial
11 duties to verify that all ballots are lawfully cast and accurately counted and that only a single
12 ballot is associated with a single voter registration ID.” (*Id.* ¶¶ 92, 94.) However, Petitioners do
13 not pray for any writ relief regarding these allegations, nor do they identify any statutory basis for
14 these alleged ministerial duties.

15 “A writ of mandate under Code of Civil Procedure section 1085 [] is a legal tool to compel
16 a public agency to perform a legal, typically ministerial, duty.” (*Cal. Privacy Protection Agency*
17 *v. Super. Ct.* (2024) 99 Cal.App.5th 705, 721, citations omitted.) “A ministerial duty is an act that
18 a public agency is required to perform in a prescribed manner under the mandate of legal
19 authority without the exercise of judgment or opinion concerning the propriety of the act.” (*Ibid.*,
20 citation omitted.) “Put another way, a ministerial act is one where a statute or ordinance clearly
21 defines the specific duties or course of conduct that a governing body must take, thus eliminating
22 any element of discretion.” (*Ibid.*, quotations and brackets omitted.)

23 Where a writ petition fails to identify a specific legal duty by the Secretary, the court of
24 appeal has affirmed the superior court’s sustaining of a demurrer without leave to amend. (*Keyes*
25 *v. Bowen* (2010) 189 Cal.App.4th 647, 658-661.) In *Keyes v. Bowen*, the petitioners alleged that
26 the “Secretary of State had a ministerial duty to verify that President Obama met the
27 constitutional qualifications for office before certifying him for inclusion on the ballot.” (*Id.* at p.
28 652.) Specifically, the petitioners maintained that the Secretary had a duty to verify that President

1 Obama met the requirement of being a natural born citizen. (*Ibid.*) The court of appeal affirmed
2 the superior court’s ruling dismissing the action, because the petitioners failed to identify a statute
3 that imposed a ministerial duty on the Secretary to investigate and determine whether a
4 presidential candidate was constitutionally eligible to run for that office. (*Id.* at pp. 659, 661.)

5 As in *Keyes v. Bowen*, Petitioners have not identified a ministerial duty that requires the
6 Secretary “to verify that all ballots are lawfully cast and accurately counted and that only a single
7 ballot is associated with a single voter registration ID.” (FAP ¶¶ 92, 94.) Sections 15500-15505
8 establish the Secretary’s legal duties concerning compiling, certifying, and publishing election
9 results that she receives from local elections officials. Nowhere in the FAP do Petitioners allege
10 that the Secretary failed to follow any of these legal duties. To the contrary, Petitioners’ “audit”
11 relies on, and assumes the accuracy of, the Secretary’s statement of the vote that she published of
12 the November 2022 General Election. (FAP ¶¶ 3, 18, 20.) Thus, Petitioners acknowledge that
13 the Secretary has complied with her legal duty to “prepare, certify, and file a statement of the vote
14 from the compiled results no later than the 38th day after the election.” (§ 15501, subd. (b).)
15 There is no additional duty for the Secretary to “verify” these results by aligning the statement of
16 the vote with voter registration information pulled almost two years after the 2022 election has
17 occurred. Yet that is what Petitioners seek here. (FAP ¶ 20 [alleging that the “June 2024
18 Accounting is supposed to provide the data the Secretary relied on to determine the final
19 Statement of Vote . . . and should represent the statewide vote as of the date the Secretary of State
20 certified the vote”].)

21 Because Petitioners have failed to identify a legal duty for the Secretary to further “verify”
22 ballots and match them with registration IDs, this case mirrors *Keyes v. Bowen*, and the Court
23 should therefore sustain the Secretary’s demurrer without leave to amend.

24 CONCLUSION

25 For the reasons discuss above, the Court should sustain the Secretary’s demurrer as to the
26 entirety of the First Amended Petition without leave to amend.

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Dated: March 20, 2025

Respectfully submitted,
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SA2024305021

DECLARATION OF SERVICE BY E-MAIL and U.S. MAIL

Case Name: **Election Integrity Project California, Inc., et al. v. Shirley Weber, et al.**
No.: **24WM000168**

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. My business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. My electronic service address is Kyle.Nicholson@doj.ca.gov. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 20, 2025, I served the attached **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONDENT SECRETARY OF STATE'S DEMURRER** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, 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 March 20, 2025, at Sacramento, California.

Kyle Nicholson
Declarant

/s/ Kyle Nicholson
Signature