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19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY SACRAMENTO**

21 ELECTION INTEGRITY PROJECT
22 CALIFORNIA, INC.; LARRY LEWIS, an
23 individual,

24 Petitioners,

25 v.

26 SHIRLEY WEBER, CALIFORNIA
27 SECRETARY OF STATE; DEAN LOGAN,
28 LOS ANGELES COUNTY REGISTRAR-
RECORDER/COUNTY CLERK,

 Respondents,

Case No.: 24WM000168

**PETITIONERS' OPPOSITION TO
SHIRLEY WEBER, CALIFORNIA
SECRETARY OF STATE'S DEMURRER**

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1 statewide, why there were duplicate ballots, and what corrective action may be taken with respect
2 to voters who appeared to vote more than once. To date, Respondent has failed to provide answers
3 to EIPCa’s questions, contrary to their contentions. Respondent argues in her Demurrer that the June
4 2024 Accounting data represents election data as of June 2024, not the data for the November 2022
5 election. (Memorandum of Points and Authorities in Support of Demurrer (“MPA”) at p. 9.) This is
6 a red herring, as the discrepancies identified by EIPCa already accounted for the alleged differences
7 in the data sets (June 2024 Accounting v. the November 2022 Voter Participation Statistics) prior
8 to initiating this First Amended Writ Petition. Petitioners not only request answers to their questions
9 regarding election procedures and discrepancies for the November 2022 election but also seek
10 accurate data for the November 2024 election that is auditable, factoring in any explanations for
11 discrepancies found for the November 2022 data audit. For the reasons set forth below, Petitioners’
12 FAP adequately pleads facts entitling them to writ relief under Code of Civil Procedure Section
13 1085, and Respondent’s Demurrer should be overruled in its entirety.

14 **II. LEGAL ARGUMENT**

15 **A. Legal Standard**

16 A demurrer is limited to defects on the face of the complaint or facts that are judicially
17 noticed. (Code Civ. Proc. § 430.30; *Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318.) In evaluating the
18 complaint (or writ petition, in this case), the Court must accept all factual allegations by Petitioners
19 as true and give those allegations a liberal construction. (*Gerawan Farming, Inc. v. Lyons* (2000) 24
20 Cal. 4th 468, 515-16; Code Civ. Proc. § 452.) A complaint’s minor imperfections will be ignored,
21 and a general demurrer to a complaint will be overruled if “the necessary facts are shown to exist,
22 although inaccurately or ambiguously stated, or appearing by necessary implication only.”
23 (*Anderson v. Bank of Lassen* (1903) 140 Cal. 695, 699.) If the complaint states sufficient facts to
24 constitute a cause of action under *any possible legal theory (not just those intended by the*
25 *Petitioners)*, the demurrer must be overruled. (*Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.
26 4th 992, 998.) It is an abuse of discretion by the Court to sustain a demurrer without leave to amend
27 if the plaintiff has shown there is a reasonable possibility a defect can be cured by amendment.
28 (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

1 Here, the facts alleged within the FAP must be taken as true. Any issues regarding the
2 questions EIPCa submitted, and the data EIPCa received/the Secretary provided, are improper
3 subjects on demurrer.¹ Further, any one of Petitioners’ legal theories (duties under Elections Code
4 § § 2191, 2300, etc.) could warrant proper relief so long as Petitioners’ FAP states facts sufficient
5 to support mandamus relief under Code of Civil Procedure § 1085. Petitioners address Respondent’s
6 arguments individually below, given Petitioners’ position that the FAP states facts sufficient to
7 support a claim for mandamus relief under: (1) Elections Code Section 2191; (2) Elections Code
8 Section 2300; and (3) Code of Civil Procedure Section 1085.

9 **B. Petitioners Have Adequately Pled Their Right To Ask Questions Of, And Receive**
10 **Answers From, The Secretary Of State Under Elections Code § 2300**

11 A statute must be interpreted by determining the Legislature’s intent so that the law’s
12 purpose can be effectuated. (*See, Citizens Oversight, Inc. v. Vu* (2019) 35 Cal.App.5th 612, 617.) A
13 court must first “examine the statutory language, giving it a plain and commonsense meaning.” (*Id.*
14 at 618.) “We do not examine that language in isolation, but in the context of the statutory framework
15 as a whole in order to determine its scope and purpose and to harmonize the various parts of the
16 enactment.” (*Id.*) The California Voter Bill of Rights, found in Elections Code § 2300 allows
17 citizens to “verify accountability” of their government and was enacted in part to ensure properly
18 registered voters were not turned away and to “protect voters . . . so they may understand and defend
19 their rights.” (*C.B.S., Inc. v. Block* (1986) 42 Cal.3d 646, 651; Declaration of Emma F. Plotnik
20 (“Plotnik Decl.”) at ¶ 6; Request for Judicial Notice (“RJN”), Ex. 4.) As detailed below, EIPCa is a
21 “voter” under Elections Code § 2300 under the plain meaning of the statute, legislative and standing
22 principles, and recent case law. Furthermore, the statutory scheme set forth under the Elections Code
23

24 ¹ Respondent presents myriad factual allegations in her Demurrer, namely that the Secretary has responded to
25 Petitioners’ questions by informing them that the June 2024 Accounting data and the November 2022 Voter
26 Participation Statistics are two different datasets. Petitioners have provided sufficient facts on the face of their FAP
27 alleging why this explanation does not account for the discrepancies revealed in their audit or answer their questions,
28 which must be taken as true. (*See, e.g., FAP* at ¶ 33.) Any contrary contentions should not be considered by this Court
on demurrer, as the hearing on the demurrer may not be transformed into a contested evidentiary hearing. (*Fremont
Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114.)

1 indicates that the Secretary of State is an elections official such that questions may be asked of her.
2 Finally, a plain reading of Elections Code § 2300 indicates that the statute is *not* limited to “local
3 elections officials and activities at local polling places,” as improperly alleged in the Secretary’s
4 Demurrer. (MPA at p. 6.)

5 1. *EIPCa may properly be considered a “Voter” under Elections Code § 2300,*
6 *warranting the validity of the present Petition for Writ of Mandate*

7 The Secretary erroneously argues that the Voter Bill of Rights, located in Elections Code
8 § 2300, only applies to individual voters, and, when voters form an organization, they lose the ability
9 to exercise such rights. This argument is flawed for three reasons, as detailed below.

10 *First*, the plain meaning and legislative intent underlying Elections Code § 2300 indicates
11 that this section is meant to encompass voter education organizations, such as EIPCa. The California
12 Voter Bill of Rights was meant to provide public access to government officials and information
13 and to allow voters to become informed by asking questions of elections officials, providing in
14 relevant part as follows: “(9) (A) You have the right to ask questions about election procedures and
15 observe the election process; (B) You have the right to ask questions of the precinct board and
16 elections officials regarding election procedures and to receive an answer or be directed to the
17 appropriate official for an answer . . .” (Elec. Code § 2300(a)(9)(B).) If the legislature intended to
18 exclude organizations from asking questions or being directed to officials for answers, it would have
19 expressly written “*Voters* have the right to ask questions . . .” or used other qualifying language,
20 rather than “*You* have the right to ask questions. (See, e.g., Elec. Code § 2300(a)(1)(A) [providing
21 that, “You have the right to cast a ballot *if you are a valid registered voter*”].) To read the statute as
22 allowing individual voters to ask questions, but not organizations, would be an unreasonable
23 outcome. As previously discussed, the purpose of the Voter Bill of Rights was to “protect voters . .
24 . so they may understand and defend their rights.” (Plotnik Decl. at ¶ 6; RJN, Ex. 4.) Prohibiting
25 an organization, made up of voters, from exercising rights on behalf of the voting public undermines
26 this purpose. (See *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 186 Cal.App.3d
27 814, 828 [providing that, “It has been called a golden rule of statutory interpretation that
28 unreasonableness of the result produced by one among alternative possible interpretations of a

1 statute is reason for rejecting that interpretation in favor of another which would produce a
2 reasonable result”].) Organizations have the time and resources that individuals do not and,
3 therefore, can better ensure that voter rights are upheld.

4 *Second*, it is well-settled law that voter education organizations are “voters.” For example,
5 in *Judicial Watch, Inc. v. Lamone*, 399 F.Supp.3d 425 (D. Md. 2019), the defendants argued that
6 because Judicial Watch Incorporated, a nonprofit dedicated to promoting election integrity, was not
7 a voter, it was not entitled to Maryland’s voter registration list under Maryland law—which limited
8 the distribution of the voter list to “Maryland voters.” (*Id.* at 442-443.) While the case dealt with
9 pre-emption under the National Voter Registration Act, the court noted that organizations have “the
10 resources and expertise that few individuals can marshal.” (*Id.* at 445.) The court rejected the
11 defendants’ attempt to exclude these organizations because the law was not meant to be an obstacle
12 to identifying error in voter rolls. (*Id.*) The right of voter education organizations to serve as voters
13 ostensibly extends to Elections Code § 2300. (*See, e.g., League of California Women Voters of*
14 *California v. McPherson* (2006) 145 Cal.App.4th 1469 [considering Elections Code § 2300 in
15 issuing a writ of mandate compelling the Secretary of State and county elections official to accept
16 affidavits of voter registration brought by *three nonprofit organizations* and three individuals who
17 were confined in prison as a condition of felony probation].) Thus, case law supports EIPCa’s status
18 as a “voter” entitled to ask questions of its elections officials under Elections Code § 2300(a)(9)(B).

19 *Third*, standing principles inform an organization’s ability to bring an action under Elections
20 Code § 2300.² EIPCa has associational standing on behalf of its members, who are California voters.

21
22 ² Respondent argues that Petitioners cannot invoke Elections Code § 2300(a)(9)(B) on behalf of: (1) Linda Paine, who
23 submitted EIPCa’s application for data due to her purported residency in Arizona; and/or (2) Petitioner Larry Lewis,
24 who was a voter and elections observer but did not send the September 6, 2024 letter to the Secretary of State. As to
25 Linda Paine, the FAP makes no such allegation that EIPCa is acting for Ms. Paine as a “voter” in requesting answers
26 to EIPCa’s September 6, 2024, correspondence. Further, even if Petitioners were to make this argument, the FAP
27 indicates that there are other members of EIPCa, who qualify as individual California voters and were involved in
28 rendering questions regarding the data requests and analysis. (*See, e.g.,* FAP at 18; Knowles Decl. at ¶ 7; Ex. 6;
Swensen Decl. at ¶ 6.) As to Larry Lewis, he has individual standing as a California voter to ensure that all
Respondents in this matter fulfill their statutory obligations of accurately counting and certifying ballots, which
EIPCa’s September 6, 2024 questions target. Most importantly, these factual issues raised by the Secretary are
improper on demurrer, and EIPCa is entitled to mandamus relief through associational standing or through the public
interest exception to the beneficial interest requirement, as set forth above.

1 (See, e.g., FAP at 18; Declaration of Carl Knowles (“Knowles Decl.”) at 7; Ex. 6; Declaration of
2 Ellen Swensen (“Swensen Decl.”) at 6.) This right has been recognized by the Ninth Circuit. (See,
3 e.g., *Election Integrity Project Cal., Inc. v. Weber*, No. 21-56061, 2022 WL 16647768, at *2 (9th
4 Cir. Nov. 3, 2022) (citing *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th
5 651, 682 n.32 (9th Cir. 2022).) Alternatively, EIPCa has public interest standing to bring the action
6 under Elections Code § 2300 because there is “an important public right and the object of the action
7 is to enforce a public duty.” (*Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution*
8 *Control District* (2015) 235 Cal. App. 4th 957.) The FAP sets forth EIPCa’s right to bring the present
9 action to enforce the Secretary’s ministerial duties on behalf of all California voters regarding the
10 “broad [] public concern of ensuring transparent and fair elections by requesting that Respondents
11 fulfill their statutory obligations of accurately counting and certifying ballots.” (FAP at p. 5, ¶ 14,
12 citing *Loeber v. Lakeside Joint School Dist.* (2024) 103 Cal.App.5th 552 at p. 576.) Thus,
13 Petitioners request that Respondent’s demurrer be overruled on the ground that EIPCa is not a
14 “voter” under Elections Code § 2300(a)(9)(B).)

15 2. *Elections Code § 2300 imposes a statutory duty on The Secretary, warranting*
16 *mandamus relief under Code of Civil Procedure § 1085.*

17 The Secretary incorrectly argues that she is not an “elections official” under Elections Code
18 § 2300. Section 320 defines an “elections official” as either “(a) A clerk or **any person who is**
19 **charged with the duty of conducting an election**”; or “(b) A county clerk, city clerk, registrar of
20 voters, **or elections supervisor having jurisdiction over elections** within any county, city, or district
21 within the state.” (Elec. Code § 320, emphasis added.) In the present matter, the Secretary of State
22 falls under both or either definition of an “elections official.”

23 Under Elections Code § 320(a), the Secretary of State is an “elections official” because the
24 position is charged with “the duty of conducting an election.” (Elec. Code § 320(a).) “[C]onducting
25 an election” is not defined in the Elections Code. Where a statute does not define the relevant terms,
26 courts “must look to the statute’s words and give them their usual and ordinary meaning.” (*People*
27 *v. Arias* (2008) 45 Cal. 4th 169, 177). When attempting to ascertain the usual and ordinary meaning
28 of a word, courts appropriately refer to the dictionary definition of that word. (*People v. Leal* (2004)

1 33 Cal. 4th 999, 1009.) To “conduct” means to “to direct or take part in the operation or management
2 of”; “to direct the performance of”; or “to lead from a position of command.” (Merriam-Webster
3 Dict. Online (2025) <<https://www.merriam-webster.com/dictionary/conduct>> [as of Apr. 30,
4 2025].)

5 As acknowledged by Respondent’s Demurrer, the Secretary of State is the “chief elections
6 officer”, whose duty is to “administer the provisions of the elections code.” (Gov. Code § 12172.5.)
7 Accordingly, by her own admission, she meets the definition set forth in section 320. As part of her
8 duty, the Secretary may examine ballots, vote counting programs, vote-by-mail envelopes, records,
9 and other such material to ensure the integrity and accuracy of the election. (*Id.*) The Secretary is
10 also responsible for amending administrative procedures for use with each of the voting systems,
11 approving the electronic voting system used to cast electronic ballots; preserving the electronic
12 computer program; compiling results of elections and make them public; and preparing, certifying,
13 and filing the statement of the vote (*See, e.g.*, Elec. Code §§ 301, 15001-15002, 15500-15505). The
14 Secretary is the ultimate supervisor of an election, fulfilling the definition of an “elections official”
15 under Elections Code § 320(b), as it is the Secretary’s duty to oversee elections and finalize election
16 results.

17 Under Elections Code § 320 subsection (b), the Secretary of State meets the requirements of
18 being an “elections supervisor” with jurisdiction over elections within the state. (Elec. Code
19 § 320(b).) The dictionary definition of a supervisor is “an administrative officer in charge of a
20 business, government, or school unit or operation.” (Merriam-Webster Dict. Online (2025)
21 <<https://www.merriam-webster.com/diction/supervisor>> [as of Apr. 30, 2025].) As discussed
22 above, as the “Chief Elections Officer,” there is no question that the jurisdiction for the Secretary’s
23 power covers elections within California to implicate the Secretary under Elections Code § 2300.

24 Accordingly, under both subsection (a) and (b) of section 320, the Secretary of State meets
25 the definition of an “elections official.” As such, Elections Code section 2300, which allows
26 questions to be asked of an “elections official,” applies to the Secretary of State.

27 The plain language of Elections Code section 2300 does not limit duties to respond to voters’
28 questions to *local* elections officers as Respondent contends. For example, subsection (a)(10) allows

1 voters “the right to report any illegal or fraudulent activity to a local elections official or to the
2 Secretary of State’s Office.” (Elec. Code § 2300(a)(10).) The Voter Bill of Rights also provides a
3 confidential voter hotline connecting voters directly to a local elections official or the Secretary’s
4 office if they suspect fraud or misconduct in an election. (Elec. Code § 2300(b); Plotnik Decl.” at ¶
5 5; RJN, Ex. 3.) This section demonstrates that the Legislature knew how to delineate between a
6 “local election official” and the “Secretary of State.” If the legislature meant for voters only to be
7 able to ask questions of the local elections official, it would have specifically stated this.

8 Additionally, the legislative history of Elections Code § 2300 confirms that questions by
9 voters may be directed to the Secretary, and not solely to local elections officials. The Legislative
10 Counsel’s Digest for Assembly Bill No. 177—which gave rise to Elections Code § 2300—
11 establishes a system wherein the Secretary and local elections officials collaborate in the
12 “impos[ition] of a state-mandated local program. The California Constitution requires the state to
13 reimburse local agencies and school districts for certain costs mandated by the state. Statutory
14 provisions establish procedures for making that reimbursement . . .” (Plotnik Decl. at ¶ 4; RJN, Ex.
15 2.) Code of Regulations § 20876(j) explains that “As observers have the right to ask questions about
16 elections processes and receive answers pursuant to Elections Code section 2300, the elections
17 officials shall provide answers to questions posed as soon as is reasonably practicable.” (Cal. Code
18 Regs., Tit. 2, § 20876(j).) Unsurprisingly, this section of the Code of Regulations titled “Duties of
19 Elections Officials” is found under Division 7, titled “Duties of the Secretary of State,” indicating
20 that the Secretary has the same responsibilities as local elections officials to promptly provide
21 answers to questions asked by voters and observers under Elections Code § 2300(a)(9)(B). (*Id.*)

22 As a purely practical matter, it makes sense that voters were meant to be able to query the
23 Secretary of State regarding elections under the Voter Bill of Rights. Because the Secretary is the
24 ultimate authority on providing the vote count and investigation of election issues, there are certain
25 questions that *only* the Secretary can answer. The plain language of the statute would not allow
26 voters to “be directed to the appropriate official for an answer,” if the Secretary were not required
27 to answer any questions. Thus, as alleged within the FAP, Petitioners had a right to question the
28

1 Secretary as to the election procedures giving rise to the discrepancies identified through EIPCa’s
2 audit. (FAP at pp. 9-10, ¶ 30; Declaration of Linda Paine (“Paine Decl.”), ¶ 6; Ex. 2.)

3 Finally, Respondent’s argument that “The Secretary is not the precinct board . . . referenced
4 in the Voter Bill of Rights” and defining “precinct” and “precinct board” is a red herring. (MPA at
5 pp. 11-12, internal quotations omitted.) Nowhere in the FAP do Petitioners allege that the Secretary
6 is a “precinct board,” appoints the “precinct board,” or otherwise fulfills the roles of the “precinct
7 board.” Thus, Respondent’s argument referring to the Secretary’s duty under Elections Code
8 § 2300(a)(9)(B) should be disregarded.

9 3. *The right to ask questions under Elections Code § 2300 is not limited to “Elections
10 Procedures at the Polling Place”*

11 The Secretary’s Demurrer improperly claims that the Voter Bill of Rights only applies to
12 cover “elections procedures that are relevant to voters and elections observers who are physically at
13 the polling place.” (MPA at p. 15.) However, the Voter Bill of Rights contains no such provision.
14 Instead, it states that a voter has the right to ask questions *and* observe the election process. (Elec.
15 Code § 2300(a)(9)(A). It does *not* say a voter has a right to ask questions *during* the election process.
16 If the right were meant to be restricted so drastically, the Legislature would have written it
17 accordingly.

18 While Respondent is correct in that *part* of the legislative intent underlying A.B. 177 (which
19 eventually became Elections Code § 2300) encompassed “a common sense approach to voter
20 education at the polling place,” Respondent overlooks that the broader legislative intent and
21 underlying Elections Code § 2300 is to “protect all voters, so that they may understand and defend
22 their rights,” including “notification of these rights *both* in the sample ballot *and* at their polling
23 places.” (See Declaration of Malcolm Brudigam in Support of Demurrer, Ex. A at pp. 3-4.) This
24 intent supports the plain language of the Voter Bill of Rights, which includes rights unrelated to in-
25 person observance of election procedures, such as the right to return a completed vote by mail ballot
26 in any precinct in the county. (Elec. Code § 2300(a)(7).) The Secretary’s reading would prohibit a
27 voter from asking questions about this right unless they did so in person at the time of election—at
28

1 which point it would be too late for the voter. This constrictive reading is nonsensical in the context
2 of the Voter Bill of Rights.

3 Further, the term, “elections procedures” is not expressly defined within the Elections Code
4 sections pertaining to “Voters.” However, the statutory scheme set forth within the Elections Code
5 indicates that an “elections procedure” encompasses a process that occurs beyond polling places.
6 For example, Elections Code § 2265(B)(3)(A)(ii) pertaining to the “California New Motor Voter
7 Program” pinpoints “An elections official’s ability to prevent duplicate voter registrations or
8 preregistrations, to assess the eligibility of the applicant, or to administer voter registration,
9 preregistration, *and other elections procedures.*” Section 9083.5 requires the Secretary to “include
10 in the state voter information guide a written explanation of the *election procedure*” for nomination
11 or election to a partisan or voter-nominated office. (Elec. Code § 9083.5) For district elections,
12 “ordinances may be enacted by any district pursuant to this article, except that this article shall not
13 apply to . . . a district governed by an *election procedure* that permits voters, in electing the district’s
14 directors or trustees, to cast more than one vote per voter . . .” (Elec. Code § 9300.) Finally, Section
15 10704 sets forth an elections procedure for special elections involving nomination of congressional
16 candidates. (Elec. Code § 10704.) Notably, the FAP sets forth facts indicating that EIPCa asked
17 questions about election procedures, such as “[w]hat pre-certification procedures are used to
18 reconcile the total number of votes with the total number of persons who voted” [emphasis removed]
19 and “[h]ow are the votes of ‘confidential’ registrants accounted for in your system.” (FAP at pp. 9-
20 10.) Therefore, the FAP states facts sufficient to support a cause of action under Elections Code
21 § § 2300 and 1085.

22 **C. Petitioners’ Claim For Mandamus Relief Is Properly Pled Under Elections Code**
23 **§ 2191**

24 Respondent first claims that the Secretary is not an “elections official” under the Elections
25 Code because there is a difference between an “elections official” and “the Secretary of State” in
26 “comparing section 2191 to section 2188 . . .” (MPA at p. 18.) However, the legislative history of
27 both Code sections indicates that the Secretary is an “elections official” and therefore, has duties
28 under Elections Code Section 2191. Assembly Bill No. 1020, which preceded the enactment of *both*

1 Elections Code Section 2191(a) and Section 2188 was adopted “in anticipation of the deployment
2 of the federally mandated VoteCal statewide voter registration database” in compliance with the
3 Help America Vote Act of 2002 (“HAVA”). (Plotnik Decl. at ¶ 3; RJN, Ex. 1.) Accordingly, the
4 intent behind the bill was that “the SOS and county elections officials [would] collectively use”
5 VoteCal to “manage the voter information for all Californians,” and perform list maintenance
6 registrations, including “check[ing] for duplicate registrations.” (*Id.*) Further, relevant Elections
7 Code provisions (including 2188 and 2191) “were developed through collaboration between the
8 SOS and county elections officials in an ongoing process to identify statutory changes in preparation
9 for implementing VoteCal.” (*Id.*) In other words, the Elections Code forms a statutory scheme
10 whereby a principal-agency relationship exists for the Secretary and local elections officials to
11 efficiently carry out elections, including tabulation, certification, proper maintenance of voter rolls,
12 and the ability to answer questions and provide accurate indexes and lists of voters in any given
13 election upon request. (*See, e.g., Ross v. Superior Court* (1977) 19 Cal.3d 899, 907-08 [providing
14 that the statutes governing the administration of the state’s welfare system created a principal-agent
15 relationship between the state welfare agency and the county boards of supervisors, holding them
16 both in contempt for violating an injunction directed at state officials and their “agents”].)

17 Respondent further alleges that, “EIPCa never obtained a ‘voter list’; rather, EIPCa
18 requested and obtained voter registration information from the Secretary pursuant to an application
19 form provided by her office under section 2188.” (MPA at p. 17, n. 6.) Respondent seemingly
20 implies that Petitioners are entitled to “voter registration information” under Elections Code Section
21 2188 but “cannot obtain a writ compelling the Secretary to provide a voter list or file, by precinct,
22 of all persons who voted in the November 2024 General Election”³ under Elections Code Section
23

24 ³ Respondent mischaracterizes Petitioners’ requested writ relief and underlying legal theories set forth in Petitioners’
25 FAP by improperly alleging that, “For the first time, Petitioners now request a voter list or file, by precinct, of all persons
26 who voted in the November 2024 General Election pursuant to section 2191.” (MPA at p. 17, internal quotations
27 omitted.) While Petitioners do request a “voter list or file by precinct, of all persons who voted in the November 2024
28 General Election pursuant to section 2191,” they do *not* do so to “challenge past actions of Respondents or the results
of a past election or the November 2022 Voter Participation Statistics.” (FAP at p. 11, ¶ 34.) In other words, Petitioners
seek to understand discrepancies in the election data and seek a plausible explanation underlying the causes of these
discrepancies (through answers to their September 6, 2024, inquiries) so that they can properly audit future elections,
including the November 2024 election. (*Id.* at p. 7, ¶ 21.)

1 2191. (*Id.* at p. 17.) This contention is not well taken. For the reasons previously discussed, the
2 Secretary is an “elections official” under the Elections Code and falls within the scope of an
3 “elections official” under Section 2191 based on the statutory scheme created by Assembly Bill No.
4 1020. Moreover, the legislative history of Assembly Bill No. 1020 indicates that the statewide
5 registration database accounts for “voter activity and *voter participation history* . . . voter affidavit
6 and signature images, and much more.” (Plotnik Decl. at ¶ 3; RJN, Ex. 1, emphasis added.)
7 Regardless of whether the application was made under Elections Code section 2188 or 2191 (a
8 factual issue improper on demurrer), EIPCa, per its request to the Secretary, was entitled to an index
9 of “voter participation history,” including the county and precinct an individual voter voted in and
10 their voting method at the time of any given election (Elec. Code § 2191(a).)

11 Finally, Respondent’s argument that Elections Code section 2191 does not provide a means
12 for Petitioners to receive a “voter list” is undercut by the fact that this lawsuit began in part after
13 Respondent provided Petitioner with November 2022 election data pursuant to EIPCa’s application
14 made under Elections Code § 2191, albeit with discrepancies. (*See* FAC, ¶ 18; Paine Decl., Ex. 3;
15 MPA, p. 18.) By sending over the information previously when it was requested pursuant to § 2191,
16 the Secretary of State implicitly acknowledged that it falls within the definition of an “election
17 official” under that section. As such, the Secretary has a duty under § 2191 to provide a “voter list
18 or file by precinct” of all persons who voted in the November 2024 election at the time of the election
19 pursuant to a proper request, warranting Petitioners’ requested relief for a writ of mandate. (Elec.
20 Code § § 2191, 1085.)

21 **D. Petitioners’ FAP Provides Facts Sufficient To Uphold A Ministerial Duty(ies),**
22 **Warranting Writ Relief Under Code Of Civil Procedure § 1085**

23 Respondent inaccurately contends that, “Petitioners have failed to state a claim under Code
24 of Civil Procedure section 1085 against the Secretary for allegedly violating her ministerial duties,
25 because Petitioners have not identified any specific legal duty owed to them that the Secretary has
26 failed to meet.” (MPA at p. 19.) Again, the FAP pleads that the Secretary has specific legal duties
27 to: (1) answer questions by voters pertaining to election procedures or direct voters to the appropriate
28 official for an answer; and (2) “Upon request . . . compile a voter list or file, by precinct, of all

1 persons who voted in previous elections.” (FAP at p. 9, ¶ 29, citing Elec. Code §§2300(a)(9)(B);
2 2191(a).) The Secretary has the knowledge requisite to enforce these duties as the chief elections
3 officer of the state, who may “administer[] the provisions of the Elections Code” and notify the
4 district attorney or attorney general if the election laws are not being properly enforced. (FAP at p.
5 12, ¶ 37, citing Gov. Code § 12172.5, NVRA 52 U.S. Code § 20501(b)(4).)

6 Respondent’s Demurrer incorrectly implies that the only duty alleged by Petitioners to be
7 attributable to the Secretary is the duty to “verify that all ballots are lawfully cast and accurately
8 counted and that only a single ballot is associated with a single voter registration ID,” and therefore,
9 the FAC fails to state facts sufficient to support a cause of action for a writ of mandate under
10 California Code of Civil Procedure § 1085. (MPA at p. 19.) The FAP asserts myriad facts sufficient
11 to support a cause of action for mandamus relief under Code of Civil Procedure § 1085, such as
12 Petitioners’ application for a “voter list or file” of all persons who voted in the November 2022
13 election, the Secretary’s providing the requested data after providing non-responsive data on several
14 occasions, the audit revealing the discrepancies, the request for explanations underlying the
15 discrepancies, and the Secretary’s duties to provide explanations as the chief elections official and
16 to provide an accurate “voter list or file” upon a request made under Elections Code § 2191. (*See*,
17 *e.g.*, FAP at pp. 6-10, ¶¶ 18-30.) Respondent cites no authority that writ relief under Code of Civil
18 Procedure § 1085 is limited to a single statutory duty. Respondents also omit that Petitioners allege
19 in their FAP that, “At issue in the present matter are the duties of both the Los Angeles County
20 elections official and the Secretary in counting, analyzing, and certifying the voter numbers from an
21 election. Petitioners contend that the discrepancies described above are a result of the failure of the
22 Registrar and the Secretary to properly and accurately perform *one or more of their ministerial*
23 *duties.*” (*Id.* at p. 12, ¶ 39, emphasis added.) In other words, Petitioners have pled that, because the
24 Secretary has failed to render an explanation regarding the discrepancies between the June 2024
25 Accounting and the November 2022 Voter Participation Statistics used to prepare the Statement of
26 the Vote, Petitioners cannot determine whether any error that occurred resulting in differences in
27 total ballots between the two data sets or duplicate ballots happened at the county level with the Los
28 Angeles County Registrar Recorder/County Clerk or with the Secretary’s office.” (*Id.* at p. 3, ¶ 6.)

1 Thus, the FAP states sufficient facts to support the cause of action under Code of Civil Procedure §
2 1085 and sufficiently identifies multiple ministerial duties the Secretary owes to Petitioners on
3 behalf of all California voters under the Elections Code.⁴

4 Finally, Respondent cites *Keyes v. Bowen* in support of her contention; however, this case is
5 distinguishable from the present matter. In *Keyes v. Bowen*, petitioners sought a writ of mandate
6 “barring the Secretary of State from certifying the names of the Electors and from transmitting to
7 each elector a certificate of election until documentary proof was produced and verified showing
8 that any future presidential candidate is qualified to serve as President of the United States.” (*Keyes*
9 *v. Bowen* (2010) 189 Cal.App.4th 647, 653.) The court concluded that the Secretary had no
10 ministerial duty to determine eligibility of an elector prior to certification under Elections Code
11 section 6901. (*Id.* at 659.) The Secretary had the opposite non-discretionary duty to “place on the
12 ballot the names of the several political parties’ candidates.” (*Id.* at 658.) In the present case,
13 Petitioners once again cited several ministerial duties attributable to the Secretary within their FAP
14 under various statutory provisions of the Elections Code. (*See, e.g.*, Elec. Code §§2300(a)(9)(B);
15 2191(a); Gov. Code § 12172.5, NVRA 52 U.S. Code § 20501(b)(4).) Unlike in *Keyes*, there is no
16 opposite non-discretionary duty at play. Further, the concern with *Keyes* was that “the truly absurd
17 result would be to require each state’s election official to investigate and determine whether the
18 proffered candidate met eligibility criteria of the United States Constitution, giving each the power
19 to override a party’s selection of a presidential candidate. The presidential nominating process is not
20 subject to each of the 50 states’ election officials independently deciding whether a presidential
21 nominee is qualified, as this could lead to chaotic results.” (*Keyes, supra*, 189 Cal.App.4th at p.
22 660.) Here, there is no broad policy concern with granting Petitioners a writ of mandate to acquire
23 answers to their questions regarding the discrepancies in the November 2022 election or accurate
24

25 ⁴ Even if this Court finds that Petitioners must identify a single ministerial duty to be entitled to mandamus relief
26 under Code of Civil Procedure § 1085 (a position for which Respondent provides no supporting case law or statutory
27 authority), the proper remedy should be allowing Petitioners leave to amend their FAP, rather than dismissal of the
28 Secretary from this proceeding with prejudice. (*See, e.g., City of Danuba v. County of Tulare* (2007) 41 Cal.4th 859,
870 [providing that “In assessing whether plaintiffs should be allowed leave to amend, we determine de novo whether
the complaint states facts sufficient to state a cause of action under any possible legal theory” when the plaintiffs
sought a writ of mandate, among other relief within their complaint].)

1 data from the November 2024 election because the FAP alleges that EIPCa intends to use the
2 information provided within the scope of permissible use, including for research, education, and
3 election oversight activities. (See Ex. 1 to Paine Decl., p. 2.)

4 **III. CONCLUSION**

5 For the foregoing reasons, Petitioners respectfully request this Court overrule the Secretary’s
6 Demurrer in its entirety. Alternatively, Petitioners request leave to file a second amended writ
7 petition to include additional allegations pertinent to the Secretary’s ministerial duties warranting
8 Petitioners’ requested writ relief.

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Respectfully submitted,

ADVOCATES FOR FAITH & FREEDOM



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PROOF OF SERVICE

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On May 5, 2025, I served a copy of the following document(s) described as **PETITIONERS' OPPOSITION TO SHIRLEY WEBER, CALIFORNIA SECRETARY OF STATE'S DEMURRER** on the interested party(ies) in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission reported as complete and without error.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.



Susan Y. Kenney

SERVICE LIST

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