

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**24WM000168: ELECTION INTEGRITY PROJECT CALIFORNIA, INC., et al. vs
SHIRLEY WEBER, CALIFORNIA SECRETARY OF STATE, et al.
05/16/2025 Hearing on Demurrer in Department 21**

Tentative Ruling

The following shall constitute the Court's tentative ruling on Respondent Secretary of State's demurrer to the First Amended Petition which is scheduled to be heard by the Court on Friday, May 16, 2025, at 10:00 a.m. in Department 21. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

Oral argument shall be limited to no more than 20 minutes per side.

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government Code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf>. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at <https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf>

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list, Once the form is signed it must be filed with the clerk.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

Moving counsel is **admonished** that its notice of motion does not provide notice of the Court's tentative ruling system, as required by Local Rule 1.06. Moving counsel is directed to contact Petitioners' counsel and advise of Local Rule 1.06 and the Court's tentative ruling procedure and the manner to request a hearing. If moving counsel is unable to contact Petitioners' counsel prior to hearing, moving counsel is ordered to appear at the hearing in person.

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05/16/2025 Hearing on Demurrer in Department 21**

I. Factual And Procedural Background

As this is a demurrer, the Court considers the allegations pled in the Petition to be true.

Petitioner Election Integrity Project California, Inc. (“EPICa”) is a 501(c)(3) nonprofit public benefit corporation doing business in the State of California. (FAP, ¶ 7.) Petitioner Larry Lewis is resident of Los Angeles County, and is a United States Citizen over eighteen years of age.

On February 27, 2024, EPICa submitted an application to the California Secretary of State for the “voter list or file” maintained by the elections officials for each precinct of all voters who voted in previous elections. (FAP ¶ 18.) The application requested each voter’s name, address, birthdate, state Registration ID number, precinct, voting method, and current registration status. (*Ibid.*)

The Secretary of State’s office sent EPICa non-responsive data on several occasions. (FAP ¶ 19.) After numerous emails and phone calls, EPICa received what it refers to as the June 2024 Accounting, containing the voter history and voter information files of those who voted in the November 2022 election. (*Ibid.*) EPICa conducted an audit of this data, and found “major discrepancies” between this and the November 8, 2022 Voter Participation Statistics. (FAP ¶¶ 20-21.)

EPICa sent a certified letter on September 6, 2024 to the Secretary of State setting forth its concerns and requesting “answers to its questions regarding the discrepancies.” (FAP ¶¶ 29-30.) The letter asked questions including:

1. Why the total number of ballots provided by the Secretary’s office in June 2024 exceeds the number in the certification and what procedures were used to reconcile these differences;
2. Why certain counties had fewer ballots, and other counties had more ballots than listed in the certification;
3. Whether registrants with multiple ballots attributable to their voter registration ID voted or attempted to vote twice in the November 8, 2022, election;
4. What corrective action the Secretary’s office has taken regarding voters who appeared to have voted more than once;
5. Why the VoteCal system permits entry of multiple ballots for one registrant in an election and the course of action planned to correct this problem; and
6. How “confidential registrants” votes are counted and how many such ballots were counted. (FAP ¶ 30.)

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**24WM000168: ELECTION INTEGRITY PROJECT CALIFORNIA, INC., et al. vs
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05/16/2025 Hearing on Demurrer in Department 21**

EPICa sent a second letter on September 20, 2024. To date, the Secretary of State has not provided answers to the questions posed in the September 6, 2024 letter. (FAP ¶ 31.)

With respect to the Secretary of State, Petitioners request the Court issue a writ of mandate ordering Respondent to respond to Petitioner’s questions in the September 6, 2024 letter, and order Respondent to “provide EPICa with an accurate and finalized list of the 16,140,044 state voters whose ballots were cast and counted in the November 2024 general election, their state Registration ID numbers, the methods by which these ballots were cast, and the counties and precincts in which the voters resided at the time they voted to align with the 2024 Voter Participation Statistics published at the time of certification.” (FAP, p. 23-24.)

II. Standard

A. Demurrer

A defendant may demur to the entire complaint or any of the causes of action within it. (Code Civ. Proc., § 430.50(a).) In reviewing the sufficiency of a complaint against a demurrer, the trial court considers the properly pleaded material facts and matters that may be judicially noticed and tests their sufficiency. (*Cedar Fair, L.P. v. County of Santa Clara* (2011) 194 Cal.App.4th 1150, 1158-59.) A court should not sustain a demurrer unless the complaint, liberally construed, fails to state a cause of action on any theory. Doubt in the complaint may be resolved against plaintiff and facts not alleged are presumed not to exist. (*Kramer v. Intuit, Inc.* (2004) 121 Cal.App.4th 574, 578.) In reviewing a demurrer, the Court will not “assume the truth of contentions, deductions or conclusions of fact or law and may disregard allegations that are contrary to the law or to a fact of which judicial notice may be taken.” (*Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 493.)

The burden is on a petitioner to show in what manner it can amend the pleading and how that amendment will change the legal effect of the pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) “Leave to amend *should be denied* where the facts are not in dispute and the nature of the claim is clear, but no liability exists under substantive law.” (*Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436 (emphasis added).)

B. Statutory interpretation

The interpretation of statutes is an issue of law on which the court exercises its independent judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.) In exercising its independent judgment, the Court is guided by certain established principles of

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**24WM000168: ELECTION INTEGRITY PROJECT CALIFORNIA, INC., et al. vs
SHIRLEY WEBER, CALIFORNIA SECRETARY OF STATE, et al.
05/16/2025 Hearing on Demurrer in Department 21**

statutory construction, which may be summarized as follows. The primary task of the court in interpreting a statute is to ascertain and effectuate the intent of the Legislature. (See, *Hsu v. Abbata* (1995) 9 Cal.4th 863, 871.) This extends to a challenge that a regulation exceeds the agency's authority, although the Court gives great weight to the agency's interpretation. (*Nick v. City of Lake Forest* (2014) 232 Cal.App.4th 871.)

The starting point for the task of interpretation is the words of the statute itself, because they generally provide the most reliable indicator of legislative intent. (See, *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.) The language used in a statute is to be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The court should give meaning to every word of a statute if possible, avoiding constructions that render any words surplus or a nullity. (See, *Reno v. Baird* (1998) 18 Cal.4th 640, 658.) Statutes should be interpreted so as to give each word some operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.)

Beyond that, the Court must consider particular statutory language in the context of the entire statutory scheme in which it appears, construing words in context, keeping in mind the nature and obvious purpose of the statute where the language appears, and harmonizing the various parts of the statutory enactment by considering particular clauses or sections in the context of the whole. (See, *People v. Whaley* (2008) 160 Cal.App.4th 779, 793.)

III. Discussion

A. Request for Judicial Notice

Respondent has filed a request for judicial notice concerning one document. Petitioners have not filed any opposition to this request. The request is **GRANTED**.

Petitioners have filed a request for judicial notice concerning four documents. Respondent has not filed any objections. The Court has reviewed the documents and finds judicial notice is appropriate as to Exhibits 1, 2, and 4, but not appropriate as to Exhibit 3. Accordingly, the request is **GRANTED** as to Exhibits 1, 2, and 4, but **DENIED** as to Exhibit 3.

B. Elections Code section 2300

EPICa alleges it made a request for, "answers to its questions regarding the discrepancies" pursuant to Elections Code section 2300, subdivision (a)(9)(B), and title 2 of the

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**24WM000168: ELECTION INTEGRITY PROJECT CALIFORNIA, INC., et al. vs
SHIRLEY WEBER, CALIFORNIA SECRETARY OF STATE, et al.
05/16/2025 Hearing on Demurrer in Department 21**

California Code of Regulations, sections 19001, 19003, 198008, and 19009. (FAP, ¶ 29.) EPICa alleges it has “associational standing under the public interest exception to the beneficial interest requirement under California law because ‘the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty.’ (*Loeber v. Lakeside Joint School Dist.* (2024) 103 Cal.App.5th 552, 573-75.)” (FAP, ¶ 14.)

The Secretary of State argues section 2300 does not apply to EPICa’s request, as EPICa is not a “voter” within the meaning of the Elections Code.

The Court notes that the parties frame the issue as one of “standing” in arguing whether Petitioners have stated a claim for relief within the meaning of section 2300. The Court finds the question is not whether EPICa has “standing” but whether, accepting all allegations as true, EPICa has alleged that the Secretary of State violated a mandatory ministerial duty imposed by section 2300. That is, whether EPICa has properly alleged that a “voter” within the meaning of the Elections Code, asked questions regarding “elections procedures” to an “elections official” such that the “elections official” violated a mandatory ministerial duty by not responding to said questions. If the allegations in the FAP do not allege such conduct occurred, then the FAP fails to state a claim for relief. This is an issue independent of whether EPICa may qualify for “public interest” standing to pursue a claim for relief that otherwise properly states a cause of action for violation of a mandatory ministerial duty.

Section 2300 provides, in full:

(a) All voters, pursuant to the California Constitution and this code, shall be citizens of 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:

(1)(A) You have the right to cast a ballot if you are a valid registered voter.

(B) A valid registered voter means a United States citizen who is a resident in this state, who is at least 18 years of age and not serving a state or federal prison term for conviction of a felony, and who is registered to vote at their current residence address.

(2) You have the right to cast a provisional ballot if your name is not listed on the voting rolls.

(3) You have the right to cast a ballot if you are present and in line at the polling place before the close of the polls.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**24WM000168: ELECTION INTEGRITY PROJECT CALIFORNIA, INC., et al. vs
SHIRLEY WEBER, CALIFORNIA SECRETARY OF STATE, et al.
05/16/2025 Hearing on Demurrer in Department 21**

(4) You have the right to cast a secret ballot free from intimidation.

(5)(A) You have the right to receive a new ballot if, before casting your ballot, you believe you made a mistake.

(B) If at any time before you finally cast your ballot, you feel you have made a mistake, you have the right to exchange the spoiled ballot for a new ballot. Vote by mail voters may also request and receive a new ballot if they return their spoiled ballot to an elections official before the closing of the polls.

(6) You have the right to receive assistance in casting your ballot, if you are unable to vote without assistance.

(7) You have the right to return a completed vote by mail ballot to any precinct in the county.

(8) You have the right to election materials in another language, if there are sufficient residents in your precinct to warrant production.

(9)(A) You have the right to ask questions about election procedures and observe the election process.

(B) You have the right to ask questions of the precinct board and elections officials regarding election procedures and to receive an answer or be directed to the 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.

(10) You have the right to report any illegal or fraudulent activity to a local elections official or to the Secretary of State's office.

(b) Beneath the Voter Bill of Rights there shall be listed a toll-free telephone number to call if a person has been denied a voting right or to report election fraud or misconduct.

(c) The Secretary of State may do both of the following:

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**24WM000168: ELECTION INTEGRITY PROJECT CALIFORNIA, INC., et al. vs
SHIRLEY WEBER, CALIFORNIA SECRETARY OF STATE, et al.
05/16/2025 Hearing on Demurrer in Department 21**

(1) Develop regulations to implement and clarify the Voter Bill of Rights set forth in subdivision (a).

(2) Revise the wording of the Voter Bill of Rights as necessary to ensure the use of clear and concise language free from technical terms.

(d) The Voter Bill of Rights set forth in subdivisions (a) and (b) shall be made available to the public before each election and on election day, at a minimum, as follows:

(1) The Voter Bill of Rights shall be printed in the state voter information guide, pursuant to Section 9084, in a minimum of 12-point type. Subparagraph (B) of paragraph (1) of subdivision (a), subparagraph (B) of paragraph (5) of subdivision (a), and subparagraph (B) of paragraph (9) of subdivision (a) may be printed in a smaller point type than the rest of the Voter Bill of Rights.

(2) Posters or other printed materials containing the Voter Bill of Rights shall be included in precinct supplies pursuant to Section 14105.

Pursuant to section 359, “voter” within the meaning of the Elections Code is “any elector who is registered” under the Elections Code. Pursuant to section 321, subdivision (a), an “elector” is a “person who is a United States citizen 18 years of age or older and, except as specified in subdivision (b), is a resident of an election precinct in this state on or before the day of an election.” Organizations do not have the right to vote or to hold public office, and thus do not qualify as “electors.” (See *Chula Vista Citizens for Jobs and Fair Competition v. Norris* (9th Cir. 2019) 782.F3d 520.) As EPICa, the author of the September 6, 2024 letter, is not a “voter” within the meaning of section 3200, the Secretary of State argues that it cannot seek a writ of mandate pursuant to this section.

Petitioners argue that, “if the Legislature intended to exclude organizations from asking questions or being directed to officials for answers, it would have expressly written ‘*Voters* have the right to ask questions...’” (Oppo., p 4.) (emphasis in original.) In support of this argument Petitioners cite to a case interpreting Maryland State law, and its interplay with the National Voter Registration Act. The Court does not find this authority persuasive in interpreting the plain language of California law. Petitioners also cite to *League of California Women Voters of California v. McPherson* (2006) 145 Cal.App.4th 1469. However, *League of California Women Voters of California* does not discuss standing or the definition of “voter.” Petitioners further acknowledge that *League of California Women Voters of California* was brought by three

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**24WM000168: ELECTION INTEGRITY PROJECT CALIFORNIA, INC., et al. vs
SHIRLEY WEBER, CALIFORNIA SECRETARY OF STATE, et al.
05/16/2025 Hearing on Demurrer in Department 21**

individuals, in concert with three organizations. There is no evidence that a particular cause of action or claim was unique to one of the involved organizations, nor that any party raised the question of standing as is at issue here. “A case is not authority for a proposition not considered therein or an issue not presented by its own particular facts.” (*McConnell v. Advantest America, Inc.* (2023) 92 Cal.App.5th 596, 611.)

Petitioners’ citation to *Election Integrity Project California, Inc v. Weber* (9th Cir. 2022) an unpublished Ninth Circuit Court of Appeals decision is also not persuasive. (2022 WL 16647768.) The Ninth Circuit only addressed EPICa’s standing for purposes of Article III, and cited to allegations of a “credible fear of future harm based on the implementation and enforcement of statutory and regulatory provisions by state officials...” The Ninth Circuit did not address whether EPICa qualifies as a “voter” within the meaning of the Elections Code. The Court again reminds Petitioners that, “[a] case is not authority for a proposition not considered therein or an issue not presented by its own particular facts.” (*McConnell v. Advantest America, Inc.* (2023) 92 Cal.App.5th 596, 611.)

Lastly, Petitioners argue EPICa has “public interest standing” and cites to *Friends of Oceano Dunes, Inc. v. San Luis Obispo County Air Pollution Control District* (2015) 235 Cal.App.4th 957, and *Loeber v. Lakeside Joint School Dist.* (2024) 103 Cal.App.5th 552. The problem with these arguments is that the crux of EPICa’s allegations are that the Secretary of State has a mandatory ministerial duty to respond to EPICa’s questions in the September 6, 2024 letter. As explained above, the issue of standing is not relevant for purposes of deciding this demurrer.

The plain language of section 2300 subdivision (a) applies only to “all voters.” This limitation is repeated in the second sentence of subdivision (a), which specifies, again, that the Voter Bill of Rights is for “voters” and which conveys the enumerated rights to “voters.” Petitioners argue that if subdivision (a)(9)(B) was limited to voters within the meaning of the Elections Code, the Legislature should have *again* included such limiting language specifically in subdivision (a)(9)(B). The Court finds such an interpretation ignores the clear intent and plain meaning of the introductory language contained in subdivision (a). The Legislature chose to limit the “Voter Bill of Rights” to “voters” not once, not twice, but three times in subdivision (a).

As detailed above, the Court is required to give meaning to every word of a statute, without rendering any words surplus or a nullity. (See *Reno v. Baird* (1998) 18 Cal.4th 640, 658.) Sections 359 and 321 define a “voter” as an individual person, not an organization. Giving meaning to the plain language of section 2300, subdivision (a) provides that all rights identified in the subdivisions under (a) are rights that are reserved to “voters.” No additional limiting language was required. The Court finds that the rights identified in Elections Code section 2300, subdivision (a) are rights held only by an individual voter.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

**24WM000168: ELECTION INTEGRITY PROJECT CALIFORNIA, INC., et al. vs
SHIRLEY WEBER, CALIFORNIA SECRETARY OF STATE, et al.
05/16/2025 Hearing on Demurrer in Department 21**

Given the Court’s determination, for purposes of ruling on this demurrer, it declines to reach the Secretary of State’s further arguments that it is not a “precinct board” or “elections official” under the Elections Code, and that the questions posed in the September 6, 2024 letter did not concern “elections procedures.”

C. Elections Code section 2191, subdivision (a) – November 2024 Election

Petitioners seek a writ of mandate compelling the Secretary of State to provide EPICa with an “accurate finalized list from the November 2024 election of the voters who ballots were case and counted in the election, the methods by which these ballots were cast, and the counties and precincts in which the voters resided at the time they voted to align with the numbers in the November 2022 Voter Participation Statistics published at the time of certification.” (FAP ¶ 93.) Petitioners allege entitlement to this information pursuant to Elections Code section 2191, subdivision (a).

Section 2191, subdivision (a) provides, “(a) Upon request, the elections official shall compile a voter list or file, by precinct, of all persons who voted in previous elections. This information shall be compiled in conjunction with the purge of voter registration files conducted pursuant to Article 2 (commencing with Section 2220) of Chapter 3.” The Court emphasizes the language “upon request,” which suggests that a writ of mandate cannot be issued for a failure to comply with a mandatory ministerial duty if the moving party does not allege conduct triggering such mandatory ministerial duty. Here, an “elections official” must provide a voter list “upon request.” Petitioners have not alleged that, other than attempting to make such a request in the operative pleading, they requested the Secretary of State provide them with section 2191 information with regard to the November 2024 election.

As Petitioners have failed to allege that any such “request” was made prior to and separate from the request made in the FAP, they have not alleged an essential element of any claim that the Secretary of State failed to comply with a mandatory ministerial duty. In light of this finding, the Court need not address the Secretary of State’s argument that it does not have a mandatory ministerial duty pursuant to section 2191 because she is not an “elections official” within the meaning of section 2191.

IV. Conclusion

In the event a demurrer is sustained, leave to amend is routinely granted where there is any reasonable possibility that plaintiff can state a viable cause of action. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) The Court having found the FAP fails to state a claim for relief as to all relief sought against the Secretary of State, the demurrer is **SUSTAINED, with leave to amend**. Petitioners are granted leave to file an amended petition addressing the deficiencies raised in the demurrer as this is the first challenge to the pleadings, and the FAP does not “show

