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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

PETER LA FOLLETTE; and THE  
AMERICAN CIVIL LIBERTIES UNION OF  
NORTHERN CALIFORNIA,

Plaintiffs,

v.

ALEX PADILLA, in his official capacity as  
Secretary of State of the State of California;  
and WILLIAM F. ROUSSEAU, in his official  
capacity as Clerk-Recorder-Assessor-  
Registrar of Voters for the County of Sonoma,

Defendants.

**F I L E D**

Superior Court of California  
County of San Francisco

NOV 13 2017

CLERK OF THE COURT

BY: *Lawman Liu*  
Deputy Clerk

**LOWMAN LIU**

No. **CPF-17-515931**

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

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Plaintiffs allege as follows:

**INTRODUCTION**

1. The right to vote and have that vote counted is the cornerstone of democracy. Yet by statutory mandate, tens of thousands of California voters, including Plaintiffs, are disenfranchised each election without even knowing their fundamental right to vote has been usurped. A mandate from this Court is needed to stop this undemocratic practice.

2. California Elections Code Section 3019(c)(2) requires elections officials to reject vote-by-mail ballots if they think a signature on a ballot envelope does not match a signature on file for the voter. The Code does not prescribe how elections officials should make this determination or require officials to have training in handwriting identification or comparison. And elections officials need not, and generally do not, notify voters that their ballots were rejected. Nor does the Code permit voters to cure the perceived signature non-match so their votes can count.

3. As a result, tens of thousands of eligible voters' ballots are discarded each election cycle, including in the November 2016 election. Over half of California voters already participate in California's comprehensive vote-by-mail system; this number is set to increase substantially in forthcoming elections in light of the 2016 California Voter's Choice Act. This wholesale disenfranchisement of California voters without providing voters notice and an opportunity to show that their ballots are proper violates the guarantees of due process, equal protection, and the California constitutional right to have a properly cast vote counted.

Plaintiffs therefore ask this Court to:

- (i) declare that Section 3019(c)(2) is facially unconstitutional and that no ballot may be rejected based on a mismatched signature without providing the notice and opportunity to cure within eight days of the election, and
- (ii) issue an injunction and writ of mandate prohibiting Defendants from rejecting ballots for purportedly mismatched signatures without providing the voter with notice and an opportunity to show that the ballot is proper.



1           11.     If Mr. La Follette had been notified before the 2016 election results were certified  
2 that his vote was rejected and given an opportunity to cure the signature mismatch—by mail or by  
3 going to an elections office in person—he would have done so.

4           12.     Plaintiff La Follette has standing and a beneficial interest in this proceeding because  
5 he has had a ballot rejected in the past, without notice or an opportunity to show that the ballot was  
6 proper, and wants to ensure that this does not happen again. In addition, Mr. La Follette has  
7 standing as a citizen to petition for mandamus to require elections officials to comply with the law.  
8 *See Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432, 439 (1989).

9           13.     Plaintiff American Civil Liberties Union of Northern California (ACLU-NC) is a  
10 nonpartisan civil-liberties organization, incorporated as a nonprofit under § 501(c)(4) of the Internal  
11 Revenue Code, and dedicated to the principles of liberty and equality embodied in both the United  
12 States and California Constitutions. Founded in 1934 and based in San Francisco, the ACLU-NC  
13 has more than 150,000 members who live in California from Tulare and Fresno Counties north to  
14 the Oregon border. Many of those members are assessed and pay California state and local taxes  
15 every year, including income and property taxes. Many of them also vote by mail and are directly  
16 subject to the disenfranchising provisions of § 3019.

17           14.     The ACLU-NC has a beneficial interest in protecting the voting rights of its  
18 members and in advancing its organizational mission of protecting the voting rights of all  
19 Californians. The ACLU-NC brings this suit to further those interests, to prevent the misuse of  
20 taxpayer funds, and to “procure the enforcement of a public duty.” *See Common Cause*, 49 Cal.  
21 3d at 439. It also brings suit to protect the right of its members to vote and to have their votes  
22 counted.

23           15.     Defendants are responsible for the administration of California elections laws,  
24 including in Sonoma County.

25           16.     Defendant Alex Padilla is sued in his official capacity as Secretary of State of the  
26 State of California. The Secretary of State is a proper defendant to a petition for writ of mandate  
27 that challenges the constitutionality of a state voting statute. *Young v. Gness*, 7 Cal. 3d 18, 21 n.5  
28 (1972). As the State’s chief elections official, the Secretary is responsible for administering

1 California's election laws. Cal. Gov. Code § 12172.5(a). The Secretary is further responsible for  
2 "promulgat[ing] regulations establishing guidelines for county elections officials relating to the  
3 processing of vote by mail ballots." Cal. Elec. Code § 3026.<sup>1</sup>

4 17. In addition, the Secretary of State provides written advisories to county elections  
5 officials via "CCROVs" (named as such because they are delivered to County Clerks & Registrars  
6 of Voters).<sup>2</sup> The Secretary also issues the California Uniform Vote Counting Standards, which  
7 includes standards for counting vote-by-mail ballots, including comparing signatures.<sup>3</sup>

8 18. Defendant William Rousseau is sued in his official capacity as Clerk-Recorder-  
9 Assessor-Registrar of Voters for the County of Sonoma. He is responsible for conducting all  
10 federal, state, and local elections in Sonoma County, and for administering California's election  
11 laws, including Section 3019(c)(2). §§ 320, 3019.

## 12 FACTUAL AND LEGAL BACKGROUND

### 13 A. MORE THAN HALF OF CALIFORNIA VOTERS VOTE BY MAIL, BY CHOICE OR 14 NECESSITY.

15 19. California permits any qualified voter to vote by mail—either on a permanent or  
16 one-time basis. §§ 3001, 3003, 3200-3206.

17 20. Well over half of California voters avail themselves of this process. For example,  
18 in 2016, 58.92% of California voters voted by mail in the primary election and 57.79% in the  
19 general election. Thus in the November 2016 general election, over 8.4 million Californians voted  
20 by mail.<sup>4</sup>

21 21. In some precincts, voters have no other option. For example, counties may require  
22 all votes to be cast by mail when there are 250 or fewer registered voters. § 3005. California  
23 counties such as Alpine, Sierra, and Plumas Counties offer voting exclusively by mail under § 3005.

24 \_\_\_\_\_  
25 <sup>1</sup> Statutory references are to the California Elections Code unless otherwise specified.

26 <sup>2</sup> CAL. SEC'Y OF STATE, 2016 Advisories to County Elections Officials, [http://www.sos.ca.gov/elections/advisories-county-elections-officials/](http://www.sos.ca.gov/elections/advisories-county-elections-officials/2016-advisories-county-elections-officials/) (last visited August 18, 2017).

27 <sup>3</sup> CAL. SEC'Y OF STATE, UNIFORM VOTE COUNTING STANDARDS 6-8 (2012), available at  
<http://elections.cdn.sos.ca.gov/pdfs/uniform-vote-count-52312.pdf>.

28 <sup>4</sup> CAL. SEC'Y OF STATE, Historical Vote-By-Mail (Absentee) Ballot Use in California, <http://www.sos.ca.gov/elections/historical-absentee/> (last visited August 18, 2017).

1 California law also permits counties to require voting by mail in a number of other circumstances.  
2 See §§ 4000-4002.

3 22. Voting by mail is set to increase substantially in the coming elections in light of the  
4 California Voter's Choice Act, which was passed in 2016 to authorize widespread all-mailed-ballot  
5 elections. As a result, fourteen counties may conduct all-mailed elections in 2018; and all counties  
6 may do so in 2020. §§ 4005(a), 4007. At least five counties are indeed planning to conduct all-  
7 mailed elections in 2018, including Sacramento, San Mateo, Napa, Nevada, and Madera Counties.

8 **B. CALIFORNIA LAW PROVIDES PROCEDURES FOR VOTING BY MAIL AND**  
9 **PROCESSING VOTE-BY-MAIL APPLICATIONS AND BALLOTS.**

10 23. To vote by mail in a single election, voters must submit applications in hard-copy,  
11 electronically, or by telephone. §§ 3006-3008. The applications request, among other things, the  
12 voter's name and address as listed on the affidavit of registration, as well as the voter's current  
13 mailing address. §§ 3006(a)(2), 3007.5(b)(2). For hard-copy applications, elections officials  
14 compare the application signature to the affidavit-of-registration signature. § 3009(a), (c). If the  
15 application is approved, the elections official will send the voter a ballot. § 3009(b). If, on the  
16 other hand, the official determines the application is defective and "is able to ascertain the voter's  
17 address," the official must, within one working day, mail the applicant a notice of defect along with  
18 the vote-by-mail ballot. § 3009(c). This "notice shall specifically inform the voter of . . . the reason  
19 for the defects in the application, and shall state the procedure necessary to remedy the defective  
20 application." *Id.* "If the voter substantially complies with the requirements contained in the  
21 elections official's notice, the voter's ballot shall be counted." *Id.*

22 24. California also permits voters to become permanent vote-by-mail voters. § 3200.  
23 In fact, California requires voter registration cards to include an option to apply for permanent vote-  
24 by-mail status. § 2150(e). And California also offers a process for military voters to vote by mail.  
25 § 3102.

26 25. Vote-by-mail ballots are processed and counted in a similar manner. § 3205. First,  
27 elections officials send voters ballots and supplies for returning the ballots, including identification  
28 envelopes. §§ 3010, 3011. Before returning their ballots, voters must sign the identification

1 envelopes in their own handwriting, but need not sign in any particular manner. § 3011(a)(2), (7).  
2 Voters must then mail their ballots by the close of election day, and the ballots must arrive at the  
3 elections official's office within three days after election day. § 3020(b).

4 26. When the elections officials receive the ballots, they must compare the signatures  
5 on the identification envelopes with the voters' signatures on their affidavits of registration or other  
6 official forms in their registration records. § 3019(a), (b). Elections officials begin this process  
7 twenty-nine days before election day. *See* § 15101. The only statutory guidance for this process  
8 is that officials must not invalidate ballots when voters substitute their initials for their first or  
9 middle names. § 3019(d).

10 27. While elections officials may use automated signature-verification technology to  
11 determine whether the signatures compare, most do not. § 3019(e). Instead, they rely solely on  
12 subjective visual assessments by elections officials. Sonoma County, where Plaintiff La Follette  
13 casts ballots, does not use signature-verification technology. In any event, an elections official  
14 must always visually examine the signatures before rejecting the ballot. § 3019(e). Elections  
15 officials are not, however, required to have handwriting-analysis education or training. In addition,  
16 the automated systems that elections officials use are purchased from different vendors and use  
17 different software, which results in varying threshold settings for signature-verification match and  
18 prohibits threshold standardization.

19 28. This signature comparison results in one of two outcomes:

20 (i) If the official determines that the signatures match, the ballot, still in the  
21 identification envelope, is placed in a container to be counted. § 3019(c)(1).

22 (ii) If, however, "the elections official determines that the signatures do not compare,  
23 the identification envelope shall not be opened and *the ballot shall not be counted.*" § 3019(c)(2)  
24 (emphasis added). The Elections Code does not provide for notice to the voter or any opportunity  
25 to cure the perceived mismatch. *See id.* To the contrary, the use of "shall" requires that these  
26 ballots be discarded. *See* § 354 ("shall" is mandatory).<sup>5</sup>

27 \_\_\_\_\_  
28 <sup>5</sup> It appears that, despite § 3019(c)(2)'s mandatory language, elections officials in some counties  
do try to provide notice and permit voters to cure their signature mismatch. However, any such

1           29.     The State’s automatic invalidation of mismatch-signature ballots contrasts with its  
2 treatment of ballots that lack a signature altogether. Voters who completely fail to sign the ballot  
3 envelope are not automatically disenfranchised; instead, they have until eight days after the election  
4 to cure the violation. § 3019(f). Unsigned ballots must be accepted and counted if the voter (i)  
5 signs the envelope at the official’s office within eight days of the election, (ii) submits an “unsigned  
6 ballot statement” affidavit within eight days of the election, (iii) submits an affidavit to a polling  
7 place or ballot dropoff box on election day, or (iv) otherwise provides a signature. § 3019(f)(1)(A),  
8 (C). Similarly, in counties that conduct all-mailed elections pursuant to the Voter’s Choice Act,  
9 elections officials are required to “make a reasonable effort to inform a voter of either . . . if the  
10 voter’s vote by mail ballot envelope is missing a signature [and h]ow the voter can correct the  
11 missing signature.” § 4006.

12           30.     The automatic rejection of mismatch-signature ballots also contrasts with the State’s  
13 treatment of ballots cast at the polls on election day. Those ballots generally are not subject to a  
14 signature comparison at all; the voters simply go to their assigned polling site and say and write  
15 their name and address, and once elections officials confirm the voters are on the voter index for  
16 that polling site, they are given a ballot to vote. *See* §§ 14216, 14278. Voters return the voted  
17 ballots to the elections officials, who place the ballots in a ballot container for counting. §§ 14277,  
18 14293.

19           31.     County elections officials have thirty days after the election to count and certify the  
20 election results. § 15372.

21           32.     After all votes—including vote-by-mail votes—have been tallied, local elections  
22 officials and the Secretary of State make it possible for vote-by-mail voters to find out on the  
23 Internet whether their ballots were rejected. *See* § 3019.5.<sup>6</sup> There is no requirement, however, that  
24 voters whose ballots were rejected for mismatched signatures receive individualized notice.

25  
26 notice and opportunity to cure is the exception and is arbitrary both across counties and in its  
27 application within the county, as there are no standards for when voters are afforded notice and  
28 opportunity to cure.

<sup>6</sup> CAL. SEC’Y OF STATE, Ballot Status, <http://www.sos.ca.gov/elections/ballot-status/> (last visited August 18, 2017).



1 C. VOTING OFFICIALS ERRONEOUSLY REJECT TENS OF THOUSANDS OF PROPERLY  
2 CAST BALLOTS EACH ELECTION BASED ON SUPPOSEDLY MISMATCHED  
SIGNATURES.

3 33. Tens of thousands of ballots are rejected at each statewide election because officials  
4 determine the ballot-envelope signatures do not match those on file. For example, a statewide  
5 survey found that in the 2012 general election, approximately 23% of rejected vote-by-mail ballots,  
6 or some 15,870 ballots, were uncounted due to signature mismatch.<sup>7</sup> The author of a 2013 bill  
7 seeking to address the problem (described below) estimated the total to be higher, finding  
8 approximately 20,000 ballots rejected in the 2012 election due to mismatched signatures.<sup>8</sup>

9 34. In 2013, as the number of Californians who vote by mail continued to increase, the  
10 Legislature recognized that wide swaths of vote-by-mail ballots were being wrongly rejected due  
11 to signature mismatch, and revised Section 3019 to “permit”—but not require—local elections  
12 officials to compare signatures to those on file beyond the current affidavit of registration.<sup>9</sup>

13 35. In any event, the problem has not diminished. To the contrary, some studies find  
14 that as many as 45,000 ballots—or 0.54% of all ballots cast—were rejected in the 2016 general  
15 election due to perceived signature mismatch. Although other studies have found the numbers to  
16 be closer to 35,000, there is no dispute that tens of thousands of ballots were rejected for signature  
17 mismatch.

18 36. A leading voter-file company that manages a system to track California voter data  
19 on behalf of clients that include both the state Republican and Democratic Parties analyzed data  
20 from the 2016 general election in 29 California counties that use the necessary data platform. These  
21 29 counties span the range of urban and rural, coastal and inland, big and small, and provide enough  
22 quality data to allow for detailed evaluation of ballots rejected for signature non-match.

23  
24 <sup>7</sup> CALIFORNIA’S UNCOUNTED VOTE-BY-MAIL BALLOTS: IDENTIFYING VARIATION IN COUNTY  
25 PROCESSING, UC DAVIS CTR. FOR REG’L CHANGE (Sept. 2014) *available at*  
[https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-](https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/UCDavisVotebyMailBrief2.pdf)  
[files/UCDavisVotebyMailBrief2.pdf](https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/UCDavisVotebyMailBrief2.pdf).

26 <sup>8</sup> July 2, 2013 S. Comm. on Elections & Constitutional Amendments, Analysis for AB-1135 2013  
27 Leg., Reg. Sess. (Cal. 2013), *available at* [https://leginfo.legislature.ca.gov/faces/](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1135)  
[billAnalysisClient.xhtml?bill\\_id=201320140AB1135](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1135).

28 <sup>9</sup> *Id.*; AB-1135, 2013 Leg., Reg. Sess. (Cal. 2013), *available at* [https://leginfo.legislature.ca.gov/](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1135)  
[faces/billNavClient.xhtml?bill\\_id=201320140AB1135](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1135).

1           37.     The analysis of this data showed that officials in those counties rejected 0.54% of  
2 vote-by-mail ballots for signature mismatch in the November 2016 election. The Secretary of State  
3 reports that there were 8,511,992 ballots cast by mail in that election. Applying that rate statewide  
4 suggests that California elections officials rejected some 45,590 vote-by-mail ballots in the 2016  
5 general election for signature mismatch.

6           38.     The civil rights group Asian Americans Advancing Justice recently issued a report  
7 that also shows that tens of thousands of vote-by-mail ballots were rejected for signature mismatch  
8 in the last election.<sup>10</sup> The organization examined data from four counties: Contra Costa, Los  
9 Angeles, San Francisco, and Santa Clara. It found that elections officials rejected 0.89% of all  
10 vote-by-mail ballots, and that 44% of those rejections were for allegedly mismatched signatures.  
11 This means that elections officials in these four counties rejected 0.39% of mailed-in ballots for  
12 signature mismatch. If these figures reflect the statewide rate, this suggests that California elections  
13 officials rejected approximately 33,330 vote-by-mail ballots in the 2016 general election for  
14 signature mismatch, out of the total of 8,511,992 ballots cast.

15           39.     It is likely that this report significantly understates the number of ballots rejected for  
16 signature mismatch because two of the four counties it studied have rejection rates that are  
17 significantly lower than the 29-county average of 0.54% discussed above: Contra Costa County  
18 rejected only 0.19% of vote-by-mail ballots for signature mismatch, and Santa Clara County  
19 rejected only 0.46% on those grounds. The Asian Americans Advancing Justice report nevertheless  
20 confirms that tens of thousands of ballots were rejected in the 2016 general election for alleged  
21 signature mismatch.

22           40.     As discussed below, in some counties the percentage of ballots discarded due to  
23 signature mismatch is much higher, for example: 1.67% in Yuba County, 1.18% in Fresno County,  
24 and 1.15% in Riverside County. *See infra* at Section D. These percentages are greater than the  
25 margin of victory in some close races. For example, in November 2016, a widely watched race  
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27 <sup>10</sup> *Asian Americans Face Higher Than Average Vote-by-Mail Rejection Rates in California*, ASIAN  
28 AMS. ADVANCING JUSTICE, available at [https://www.advancingjustice-  
la.org/sites/default/files/issuebrief-vbm-FINAL-1\\_0.pdf](https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1_0.pdf).

1 between Congressman Darrell Issa and Doug Applegate in U.S. Representative District 49 was  
2 decided by just 0.6%, while the 29th State Senate District race was decided by a margin of 0.8%.<sup>11</sup>

3 41. There is no evidence to suggest that a significant number of rejected vote-by-mail  
4 ballots are the result of attempted voter fraud. Rather, ballots generally are rejected because an  
5 official erroneously determined a voter's envelope signature did not compare to the signature on  
6 file.<sup>12</sup>

7 42. Indeed, individuals with no handwriting-identification training are likely to make  
8 mistakes when trying to determine whether a signature is genuine. Laypersons wrongly determine  
9 that authentic signatures are not genuine at much higher rates than trained examiners, likely because  
10 they perceive variations in a single individual's signatures to be differences between multiple  
11 individuals' signatures. In fact, a 2001 study in which participants compared six genuine signatures  
12 with six non-genuine signatures found that laypersons incorrectly determined that signatures made  
13 by the same person did not match in 26.1% of the cases. And they are much more likely to wrongly  
14 believe that a genuine signature does not match than they are to wrongly believe that a forged  
15 signature is in fact genuine.

16 43. Before experts can even be trained in handwriting identification, they must pass a  
17 form-blindness test, which assesses individuals' ability to see minute differences in form, including  
18 shapes, curves, angles, and size; but the Elections Code does not require that elections officials  
19 undertake this test, let alone obtain subsequent training. *See* § 3019. And even a trained analyst  
20 cannot promise complete accuracy by comparing one handwriting sample to one other sample: only  
21 when compared to at least 10 samples can a completely accurate assessment be made. Moreover,  
22 comparing individuals' signatures is even more vulnerable to error, as signatures can be "stylized,"  
23 or inherently unidentifiable and variable.

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27 <sup>11</sup> CAL. SEC'Y OF STATE, STATEMENT OF VOTE: NOVEMBER 8, 2016 GENERAL ELECTION 8 (2016),  
*available at* <http://elections.cdn.sos.ca.gov/sov/2016-general/sov/2016-complete-sov.pdf>.

28 <sup>12</sup> Some county elections officials, however, will count ballots if they are received in two envelopes  
from the same household with signatures that have been switched.

1           44.     Elections officials may also mistake signatures as mismatched for a number of  
2 reasons related to the signatures.<sup>13</sup> For example, a voter's signature may simply have changed since  
3 signing the document on file. This is particularly likely when the comparison signature is from a  
4 document signed many years prior, perhaps when the voter was still a teenager, such as driver's  
5 licenses and old voter registration affidavits. In some instances, particularly with DMV documents,  
6 the signatures on file are low-quality scans. Signatures also may differ based on the medium on  
7 which the voter signed. For example, voters who register online or at the DMV usually sign on an  
8 electronic touch-screen, rather than on paper. A signature made on a touch-screen device may be  
9 quite different than one made on paper.

10           45.     Additionally, a voter's condition or background may lead to signature mismatch.  
11 For example, physical disabilities, injuries, or medication may result in changed signatures, while  
12 the signatures of individuals whose primary languages do not use Roman characters may vary  
13 signature-to-signature. Furthermore, voters who are less educated and/or infrequently write tend  
14 to have variable signatures. Even the type of pen used may cause a signature discrepancy.

15           46.     The California Senate Committee on Elections and Constitutional Amendments has  
16 found that signature mismatch is most commonly due to signatures changing over time or  
17 technology rendering signatures unreadable.<sup>14</sup> Young voters who have not yet developed  
18 permanent signatures and older voters whose signatures have changed with age are particularly  
19 affected. In addition, the technologies used for online registration may, for example, truncate a  
20 signature; while registering online may mean the signature on file is not updated, but instead  
21 incorporates the DMV signature on file as the registration signature.

22           47.     In most instances, voters do not have access to their registration signature and will  
23 not know that their signatures have changed from those on file. Accordingly, without notice the

24 \_\_\_\_\_  
25 <sup>13</sup> Although signatures deemed mismatched by signature verification technology are always subject  
26 to ultimate visual verification by elections officials, § 3019(e), such technology is unregulated,  
27 uncertified, and can use different standards with variable levels of reliability.

28 <sup>14</sup> July 2, 2013 S. Comm. on Elections & Constitutional Amendments, Analysis for AB-1135 2013  
Leg., Reg. Sess. (Cal. 2013), *available at* [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201320140AB1135](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1135); Aug. 19, 2013, 2013 Concurrence in S.  
Amendments for AB-1135 2013 Leg., Reg. Sess. (Cal. 2013) (Assembly Floor Analysis), *available at* [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201320140AB1135](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1135).

1 ballots were rejected based on discrepant signatures, voters generally have no idea their ballots  
2 were rejected or that they must take steps to prevent future rejection.

3 **D. REJECTION RATES VARY WIDELY FROM COUNTY TO COUNTY AND BY VOTER**  
4 **DEMOGRAPHICS.**

5 48. The percentage of ballots discarded for perceived mismatched signatures varies  
6 widely from county to county. Data from the 2016 general election for 29 counties that together  
7 comprise approximately one third of California voters show that the percentage of vote-by-mail  
8 ballots rejected ranged from a low of 0.15% in Mariposa County to a high of 1.67% in Yuba County.  
9 Other counties with high rejection rates include Fresno County (1.18%), Sutter County (1.08%),  
10 and Riverside County (1.15%). Sonoma County, where Plaintiff La Follette resides, had a rejection  
11 rate of 0.34%. (*Id.*) The average among the 29 counties was 0.54%.

12 49. In addition, Latino and Asian voters' ballots are consistently rejected for signature  
13 mismatch at rates higher than those cast by other voters. In the 2016 general election, the statewide  
14 average rejection rates were 0.88% for Latino voters and 0.61% for Asian-American voters, versus  
15 the 0.45% statewide rejection rate for non-Latino, non-Asian votes. And again, these numbers  
16 varied widely across counties. Thus, for example, Latino voters' ballots were rejected at over twice  
17 the rate of non-Latino, non-Asian voters in 11 of the 29 counties, while Asian-Americans' ballots  
18 were rejected at over twice the rate of non-Latino, non-Asian voters in 6 counties.

19 50. A recent issue brief by the Asian Americans Advancing Justice-California  
20 concluded that (i) Asian Americans' ballot rejection rate is 15% higher than the rate for all voters  
21 and (ii) signature-mismatch rejection is both higher than the rate for all voters and the most common  
22 reason for rejection of Asian Americans' ballots.<sup>15</sup> These numbers are even worse for foreign-born  
23 Asian Americans.

24 51. Non-English-language ballots also face higher rejection rates of ballots generally.  
25 In the 2012 general election, non-English-language ballots comprised just over 2.5% of votes cast,  
26

27 <sup>15</sup> *Asian Americans Face Higher Than Average Vote-by-Mail Rejection Rates in California*, ASIAN  
28 AMS. ADVANCING JUSTICE, available at [https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1\\_0.pdf](https://www.advancingjustice-la.org/sites/default/files/issuebrief-vbm-FINAL-1_0.pdf).

1 but accounted for 3.3% of all rejected ballots. And 25% of rejected non-English-language ballots  
2 were rejected due to mismatched signatures.<sup>16</sup>

3 52. Finally, 2016 data from four California counties—Santa Cruz, Sacramento, Orange,  
4 and Shasta—”suggest that a substantial percentage of voters who are notified of a ballot signature  
5 deficiency and given the opportunity to cure the deficiency will do so to have their ballot counted.”  
6 In fact, as many as 64% of voters (in the Orange County 2016 general election) who were contacted  
7 because they have completely failed to sign their ballot envelopes cured the deficiency.

8 **E. OTHER STATES PROVIDE MISMATCH-SIGNATURE VOTE-BY-MAIL VOTERS WITH**  
9 **NOTICE AND AN OPPORTUNITY TO CURE.**

10 53. Other states with signature-match requirements for mailed-in ballots provide voters  
11 notice and an opportunity to cure mismatch determinations. For example, in Washington State,  
12 elections officials must compare vote-by-mail voters’ signatures on their ballot declarations to the  
13 signatures in their registration files. RCW 29A.40.110(3). If an official determines the signatures  
14 do not match, the official must:

15 notify the voter by first-class mail, enclosing a copy of the  
16 declaration, and advise the voter of the correct procedures for  
17 updating his or her signature on the voter registration file. If the  
18 ballot is received within three business days of the final meeting of  
19 the canvassing board, or the voter has been notified by first-class  
20 mail and has not responded at least three business days before the  
21 final meeting of the canvassing board, then the [official] shall attempt  
22 to notify the voter by telephone, using the voter registration record  
23 information.

24 RCW 29A.60.165(2)(a).

25 54. In Oregon, an all vote-by-mail election state, elections officials must verify  
26 identification-envelope signatures on mailed-in ballots with the voters’ registration-record  
27 signatures and only count ballots once verified. ORS 254.470(8), (9). If the signatures are deemed  
28 not to match, however, the official “shall mail to the elector a notice that describes the nature of the  
challenge.” 216 (ORS 254.431(1)). The voter then has until “the 14th calendar day after the date

16 DISPARITIES IN CALIFORNIA’S UNCOUNTED VOTE-BY-MAIL BALLOTS: YOUTH, LANGUAGE PREFERENCE AND MILITARY STATUS, UC DAVIS CTR. FOR REG’L CHANGE (Oct. 2014) *available at* <https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/UCDavisVotebyMailBrief3.pdf>.

1 of the election” to “provide evidence sufficient to disprove” the mismatch determination. ORS  
2 254.431(2)(a).

3 55. Similarly, Montana law requires elections officials to compare absentee ballots’  
4 envelope signatures with signatures on the absentee ballot request or voter registration forms.  
5 M.C.A. 13-13-241(1)(a). If there is a mismatch, the official must give notice “by the most  
6 expedient method available” of the mismatch and how the voter may cure. M.C.A. 13-13-241(5);  
7 M.C.A. 13-13-245. Specifically, “prior to 8 p.m. on election day,” voters may:

8 (a) . . . verify the . . . signature . . . , after proof of identification, by  
9 affirming that the signature is in fact the elector’s, by completing a  
10 new registration card containing the elector’s current signature, or  
11 by providing a new agent designation form; or

12 (b) if necessary, request and receive a replacement ballot . . . .

13 *Id.*

14 56. Massachusetts law also requires voting officials to compare voters’ signatures on  
15 the inner envelopes of absentee ballots to the signatures on their absentee ballot applications, and  
16 to reject any ballots with mismatched signatures. M.G.L.A. 54 § 94. But Massachusetts law also  
17 provides that the officials “shall notify, as soon as possible, each voter whose ballot was rejected  
18 that such ballot was rejected,” and “[u]nless the [official] determines that there is clearly  
19 insufficient time for the voter to return another ballot, the [official] shall then proceed as if the voter  
20 had requested a substitute ballot.” *Id.* For ballots received by mail, this means sending the voter a  
21 substitute ballot (and other required papers). *Id.* If the substitute ballot is returned and deemed  
22 proper, the vote will count. *Id.*

23 57. In Arizona, elections officials also must compare mailed-in ballot signatures with  
24 those on the registration forms. A.R.S. 16-550A. Arizona elections procedures then require  
25 officials, if the signatures do not compare, to “make a reasonable and meaningful attempt to contact  
26 the voter” to “ascertain whether the voter actually voted the early ballot and any reasons why the  
27 signatures may not match”; and if the official “receives and accepts an explanation . . . why the  
28 signatures do not match,” the vote may count. ARIZ. SEC’Y OF STATE, STATE OF ARIZONA

1 ELECTIONS PROCEDURES MANUAL 60, 166-67, available at  
2 [https://www.azsos.gov/sites/azsos.gov/files/election\\_procedure\\_manual\\_2014.pdf](https://www.azsos.gov/sites/azsos.gov/files/election_procedure_manual_2014.pdf).

3 58. These examples are representative only. Other states also provide notice and  
4 opportunity to cure to signature-mismatch voters, and there is no reason that California officials  
5 cannot do the same.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of Due Process, U.S. CONST., amend. XIV, § 1 and CAL. CONST., art. 1, § 7)**

8 (All Plaintiffs against All Defendants)

9 59. Plaintiffs herein incorporate by reference paragraphs 1 through 58 above, as if set  
10 forth in full.

11 60. Due process requires, at a minimum, that votes not be discarded without providing  
12 voters individualized notice of the alleged problem with the ballot and an opportunity to cure.

13 61. Defendants violate the rights of Plaintiffs—and tens of thousands of California  
14 voters—to due process under the federal and state Constitutions by discarding their ballots without  
15 providing them with individualized notice and a meaningful opportunity to cure the signature-  
16 mismatch determinations.

17 **SECOND CAUSE OF ACTION**

18 **(Violation of Equal Protection, U.S. CONST., amend. XIV, § 1 and CAL. CONST., art. 1, § 7)**

19 (All Plaintiffs against All Defendants)

20 62. Plaintiffs herein incorporate by reference paragraphs 1 through 58 above, as if set  
21 forth in full.

22 63. Equal protection requires laws and policies that deny some eligible voters the right  
23 to vote and to have their vote counted to be invalidated, unless the laws and policies are necessary  
24 to achieve a compelling government interest and are narrowly tailored to do so.

25 64. Defendants violate the rights of Plaintiffs—and tens of thousands of California  
26 voters—to equal protection under the federal and state Constitutions by depriving them of their  
27 rights to vote and to have their votes counted without providing meaningful notice and opportunity  
28



1 to cure, but by permitting similarly situated vote-by-mail voters who did not sign their identification  
2 envelopes with the opportunity to cure the missing signature prior to deprivation.

3 65. Defendants also violate equal protection by selectively disenfranchising voters  
4 whose signatures they deemed not to match the signatures they have on file, without notice or an  
5 opportunity to cure.

6 66. These deprivations of Plaintiffs' and other California voters' right to vote and to  
7 have their vote counted are not necessary to achieve a compelling government interest; nor are they  
8 narrowly tailored to any such interest.

9 **THIRD CAUSE OF ACTION**

10 **(Violation of CAL. CONST., art. II, § 2.5)**

11 (All Plaintiffs against All Defendants)

12 67. Plaintiffs herein incorporate by reference paragraphs 1 through 58 above, as if set  
13 forth in full.

14 68. Article II, section 2.5 of the California Constitution states that “[a] voter who casts  
15 a vote in an election in accordance with the laws of this State shall have that vote counted.”

16 69. Defendants violate the rights of Plaintiffs—and tens of thousands of California  
17 voters—to have their votes count under Article II, section 2.5 of the California Constitution by  
18 discarding properly cast votes without providing meaningful notice and opportunity to cure.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of CAL. CODE CIV. PROC. § 526a)**

21 (Plaintiff ACLU-NC against All Defendants)

22 70. Plaintiffs incorporate by reference all of the above allegations as though fully set  
23 forth herein.

24 71. Defendants are illegally expending public funds by performing their duties in  
25 violation of the constitutional provisions described above in violation of Code of Civil Procedure  
26 § 526a.

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1 **PRAYER FOR RELIEF**

2 Plaintiffs respectfully request that this Court:

3 72. Declare California Elections Code § 3019(c)(2) facially unconstitutional to the  
4 extent it permits or requires Defendants to reject voters' ballots based on perceived signature  
5 mismatches without providing voters with notice and opportunity to cure, in violation of state and  
6 federal due process and equal protection guarantees and Article II, section 2.5 of the California  
7 Constitution (*see* 42 U.S.C. § 1983; Code Civ. Proc. § 1060);

8 73. Declare that no ballot constitutionally may be rejected based on a perceived  
9 signature mismatch without providing the voter notice of the mismatch determination and  
10 opportunity to cure within eight days of the election (*see* 42 U.S.C. § 1983; Code Civ. Proc. § 1060);

11 74. Issue a writ of mandate and an injunction commanding (a) Defendant Secretary of  
12 State to inform county clerks and elections officials of the above holdings (*see, e.g., League of*  
13 *Women Voters of Cal. v. McPherson*, 145 Cal. App. 4th 1469, 1486 (2006)); and (b) prohibiting all  
14 Defendants, their agents, employees, officers, representatives, and all other persons acting on their  
15 behalf, from, in the case of, rejecting vote-by-mail ballots because of a perceived signature  
16 mismatch without providing voters timely notice of the mismatch determination and an opportunity  
17 to cure up until eight days after the election, or whatever time the Court deems constitutionally  
18 appropriate (*see* 42 U.S.C. § 1983; Cal. Code Civ. Proc. §§ 526, 526a, 1085);


19 75. Award Plaintiffs their costs, including attorneys' fees under 42 U.S.C. § 1988, Code  
20 of Civil Procedure § 1021.5, and any other available statutes; and

21 76. For such other and further relief as the Court deems just and proper.  
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Dated: November 13, 2017

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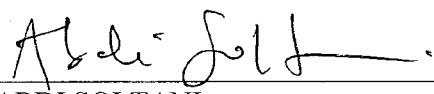
*Attorneys for Plaintiffs*  
*<sup>+</sup>To Be Admitted Pro Hac Vice*

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**VERIFICATION OF  
AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA**

I, Abdi Soltani, am the Executive Director of the ACLU of Northern California. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (“Petition”) in *La Follette v. Padilla* and am informed, and do believe, it to be true. On those grounds, I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on November 13, 2017.

  
ABDI SOLTANI