

Exhibit 3

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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 JUDICIAL WATCH, INC., and THE
14 LIBERTARIAN PARTY OF
15 CALIFORNIA,

16 Plaintiffs,

17 v.

18 SHIRLEY N. WEBER, in her official
19 capacity as California Secretary of
20 State; and the STATE OF
21 CALIFORNIA,

22 Defendants.

Case No. 2:24-cv-3750

**FIRST AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

23 Plaintiffs Judicial Watch, Inc. and the Libertarian Party of California (“Plaintiffs”) file this First Amended Complaint for Declaratory and Injunctive Relief against defendants Shirley N. Weber, in her official capacity as the California Secretary of State, and the State of California (“Defendants”).

24 1. Plaintiffs seek declaratory and injunctive relief to compel Defendants to
25 comply with their voter list maintenance obligations under Section 8 of the National
26 Voter Registration Act of 1993 (“NVRA” or “Act”), 52 U.S.C. § 20507. Plaintiffs also

1 seek reasonable attorneys’ fees, litigation expenses, and costs, which are available to
2 prevailing parties under the Act. *Id.* § 20510(c).

3 **JURISDICTION AND VENUE**

4 2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as
5 this action arises under the laws of the United States, and in particular under 52 U.S.C.
6 §§ 20507 and 20510(b).

7 3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a
8 defendant resides in this district and all defendants reside in California, and because a
9 substantial part of the events and omissions giving rise to the claims herein occurred in
10 this district.

11 **PARTIES**

12 4. Plaintiff Judicial Watch, Inc. (“Judicial Watch”) is a not-for-profit,
13 educational organization incorporated under the laws of the District of Columbia and
14 headquartered at 425 Third Street SW, Suite 800, Washington, D.C. 20024.

15 5. Plaintiff Libertarian Party of California (“LPCA”) is a registered political
16 party in California and a state affiliate of the national Libertarian Party, and is devoted
17 to recruiting and maintaining LPCA members and to electing candidates who espouse its
18 principles to state and federal office in California.

19 6. Defendant SHIRLEY N. WEBER is the California Secretary of State. The
20 Secretary of State is designated by California law as the chief state elections official
21 responsible for coordination of the state’s responsibilities under the NVRA. The
22 Secretary of State also ensures that election laws are enforced, and maintains the
23 statewide database of all registered voters. The Secretary of State’s Elections Division
24 oversees all federal and state elections within California. Secretary Weber is sued in her
25 official capacity only.

26 7. Defendant STATE OF CALIFORNIA is a sovereign state of the United
27 States of America.
28

STATUTORY BACKGROUND

1
2 8. Section 8 of the NVRA provides that “each State shall ... conduct a general
3 program that makes a reasonable effort to remove ... from the official lists of eligible
4 voters” the names of voters who have become ineligible by reason of death or a change
5 of residence. 52 U.S.C. § 20507(a)(4).

6 9. With respect to voters who have changed residence, Section 8 provides that
7 no registration may be cancelled on that ground unless the registrant either (1) confirms
8 this fact in writing, or (2) fails to timely respond to an address-confirmation notice
9 described by the statute (the “Confirmation Notice”). 52 U.S.C. § 20507(d)(1).

10 10. A Confirmation Notice must incorporate a “postage prepaid and pre-
11 addressed return card, sent by forwardable mail,” asking the registrant to confirm his or
12 her residence address. *Id.* at (d)(2). If a registrant fails to respond to such a Confirmation
13 Notice, and then fails to vote (or contact the registrar) during a statutory waiting period
14 extending from the date of the notice through the next two general federal elections, the
15 registration is cancelled. *Id.* at (d)(1)(B). These cancellations are mandatory under both
16 federal and California law. *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 767 (2018)
17 (“federal law makes this removal mandatory”); CAL. ELEC. CODE § 2226(b).

18 11. Under both federal and California law, a voter registration is referred to as
19 “inactive” when a registrant has failed to respond to a Confirmation Notice and the
20 statutory waiting period has commenced but has not yet concluded. 11 C.F.R. §
21 9428.2(d); CAL. ELEC. CODE § 2225(c), (f).

22 12. Under both federal and California law, a voter with an inactive registration
23 may still vote on election day. 52 U.S.C. § 20507(d)(2)(A); CAL. ELEC. CODE § 2226(c).
24 Accordingly, inactive voters are still registered voters.

25 13. In June of each odd-numbered year, the U.S. Election Assistance
26 Commission (“EAC”) is required by law to report to Congress its findings relating to
27 state voter registration practices. 52 U.S.C. § 20508(a)(3).
28

1 14. Federal regulations require states to provide various kinds of NVRA-related
2 data to the EAC for use in its biennial report. 11 C.F.R. § 9428.7.

3 15. Section 8(i) of the NVRA grants the public the right to request information
4 concerning voter list maintenance. It provides: “Each State shall maintain for at least 2
5 years and shall make available for public inspection” and copying “all records
6 concerning the implementation of programs and activities conducted for the purpose of
7 ensuring the accuracy and currency of official lists of eligible voters.” 52 U.S.C. §
8 20507(i).

9 16. Though not purporting to be an exhaustive list, Section 8(i)(2) provides
10 specific examples of responsive records: “The records maintained . . . shall include lists
11 of the names and addresses of all persons to whom notices described in subsection (d)(2)
12 are sent, and information concerning whether or not each such person has responded to
13 the notice as of the date that inspection of the records is made.” 52 U.S.C. § 20507(i)(2).

14 17. The NVRA provides that “[e]ach State shall designate a State officer or
15 employee as the chief State election official to be responsible for coordination of State
16 responsibilities under this chapter.” 52 U.S.C. § 20509. California law designates the
17 Secretary of State as this official. CAL. ELEC. CODE § 2402(a).

18 18. The NVRA affords a private right of action to any “person who is aggrieved
19 by a violation” of the Act. 52 U.S.C. § 20510(b). Ordinarily, a private litigant is required
20 to send notice of a violation to the chief State election official 90 days prior to
21 commencing a lawsuit. *Id.* § 20510(b)(1), (2). However, notice of only 20 days is
22 required “if the violation occurred within 120 days before the date of an election for
23 Federal office,” and no notice is required if a “violation occurred within 30 days before
24 the date of an election for Federal office.” *Id.* § 20510(b)(2), (3).

25 **FACTS**

26 ***The Data from the Latest EAC Report***

27 19. On June 29, 2023, the EAC published its biennial, NVRA-related report,
28 entitled ELECTION ADMINISTRATION AND VOTING SURVEY 2022 COMPREHENSIVE

1 REPORT, A REPORT FROM THE U.S. ELECTION ASSISTANCE COMMISSION TO THE 118TH
2 CONGRESS. This report is available online at
3 https://www.eac.gov/sites/default/files/2023-06/2022_EAVS_Report_508c.pdf.

4 20. Along with this report, the EAC published the responses it received to a voter
5 registration survey it sent to the states. The survey is available at
6 <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> under the
7 heading for 2022, at a link entitled “2022 Election Administration and Voting Survey
8 Instrument.” The chief State election officials of the states, in consultation with county
9 and local officials, provided their responses to this voting survey directly to the EAC.

10 21. State responses to EAC surveys are compiled in datasets available online in
11 several different software formats, at [https://www.eac.gov/research-and-data/datasets-](https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys)
12 [codebooks-and-surveys](https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys). Responses to the most recent survey were published on June
13 29, 2023. They are available online under the heading for 2022 as “EAVS Datasets
14 Version 1.0.”¹

15 22. The largest number of outdated registrations subject to removal under the
16 NVRA almost always belong to those who have changed residence. For this reason, the
17 largest number of removals under the NVRA are usually made pursuant to Section
18 8(d)(1)(B), for failing to respond to a Confirmation Notice and failing to vote in two
19 consecutive general federal elections.

20 23. The data Defendant Weber provided to the EAC indicated that 27 California
21 counties removed five or fewer voter registrations from November 2020 to November
22 2022 pursuant to Section 8(d)(1)(B). Nineteen of these counties reported removing zero
23 voter registrations under Section 8(d)(1)(B) during that two-year period.

24 24. In Plaintiffs’ experience, based on years of enforcing the NVRA, these are
25 absurdly small numbers of removals under Section 8(d)(1)(B). There is no possible way
26 any county can be conducting a general program that makes a reasonable effort to cancel

27 ¹ An updated version of the initial responses (“EAVS Datasets Version 1.1”) was published on
28 the same webpage on December 18, 2023, to account for new information submitted by Delaware,
Hawaii, West Virginia, and Wisconsin. California’s data was unchanged.

1 the registrations of voters who have become ineligible because of a change of residence
2 while removing so few registrations under Section 8(d)(1)(B).

3 25. According to the Census Bureau, 11.6% of California residents are not living
4 at the same residence address as they were one year ago.

5 26. According to the Census Bureau, about 690,000 California residents moved
6 out of state in 2023 (the most recent year for which such data is available), and about
7 818,000 California residents moved out of state in 2022.

8 27. If the identified counties were complying with Section 8(d)(1)(B) of the
9 NVRA, the number of registrations they remove pursuant to that provision in any two-
10 year period should be much higher. In particular, that number should never be zero, in
11 any jurisdiction.

12 28. The data Defendant Weber provided to the EAC indicated that another 19
13 California counties did not report any data regarding the number of voter registrations
14 cancelled from November 2020 to November 2022 under Section 8(d)(1)(B), but
15 reported instead, "Data not available."

16 29. In Plaintiffs' experience, jurisdictions do not ignore their reporting
17 obligations to the EAC where the data is favorable to them. Rather, they often fail to
18 report data that suggests non-compliance with the NVRA.

19 30. The data Defendant Weber provided to the EAC indicated that 17 California
20 counties did not report any data regarding Confirmation Notices received back
21 confirming an existing registration address; 22 California counties did not report any data
22 regarding Confirmation Notices received back confirming a change of address; 14
23 California counties did not report any data regarding Confirmation Notices returned as
24 undeliverable; and 20 California counties did not report any data regarding Confirmation
25 Notices that were not returned. Instead, in the relevant columns where the data should
26 have been, the survey responses for these counties merely state, "Data not available."

1 **Allegations and Admissions in Correspondence**

2 ***A. Judicial Watch’s August 4, 2023 Inquiry.***

3 31. On August 4, 2023, Plaintiff Judicial Watch wrote a letter to Defendant
4 Weber referring to the data California reported to the EAC. The letter identified the 46
5 California counties whose NVRA data was problematic—27 counties who reported five
6 or fewer removals pursuant to Section 8(d)(1)(B) in the previous reporting period, and
7 19 counties who reported that their data was “not available.” The letter asked that
8 Secretary Weber confirm whether the reported information was accurate, and, if not, it
9 asked her to supply the correct data. The letter did not purport to be a pre-suit notice of
10 violation or to start a notice period described in 52 U.S.C. § 20510, but was styled as an
11 “Inquiry and request for public records.” This letter is attached to this complaint as
12 Exhibit 1.

13 32. Judicial Watch’s August 4, 2023 letter also requested seven categories of
14 public records pursuant to Section 8(i) of the NVRA.

15 33. The second public records request in the August 4, 2023 letter, quoting the
16 language of Section 8(i)(2), sought a “list of the names and addresses of all persons to
17 whom notices described in 52 U.S.C. § 20507(d)(2) [i.e., Confirmation Notices] were
18 sent, and information concerning whether or not each such person responded to the
19 notice.”

20 34. The third public records request in the August 4, 2023 letter requested
21 “[c]ommunications concerning the EAC’s 2022 Election Administration and Voting
22 Survey,” including “responses to Section A of that survey, and any records provided
23 along with those responses.”

24 ***B. The Secretary of State’s August 29, 2023 Response.***

25 35. On August 29, 2023, Judicial Watch received a response to its August 4 letter,
26 from Constituent Affairs at the Secretary of State’s office. A copy of this email is
27 attached to this complaint as Exhibit 2.

28 36. The August 29, 2023 email treated Judicial Watch’s detailed inquiries about

1 Section 8(d)(1)(B) removals in 46 California counties as if they were simply requests for
2 public records—which they were not—and, in response, merely stated, “We have no
3 records responsive to your requests.”

4 37. The August 29, 2023 email was accompanied by documents, and by links to
5 documents, purporting to respond to Judicial Watch’s seven identified public records
6 requests. However, in response to the second request, which sought records specifically
7 identified by Section 8(i)(2) of the NVRA, the email admitted in response, “We have no
8 records responsive to your request.”

9 38. In response to Judicial Watch’s third request for public records, the August
10 29, 2023 email stated, “We will provide all non-privileged and non-exempt records
11 relating to this request, however, these records are currently still under legal review.”

12 ***C. Plaintiffs’ October 30, 2023 Notice of NVRA Violations.***

13 39. On October 30, 2023, Judicial Watch, on its own behalf and on behalf of
14 Plaintiff LPCA, sent a letter to Defendant Weber in her capacity as California’s chief
15 State election official notifying her of violations of the NVRA and of Plaintiffs’ intention
16 to file a lawsuit unless those violations were cured within 90 days. The letter expressly
17 stated that it constituted the pre-suit notice prescribed by 52 U.S.C. § 20510. This letter
18 is attached to this complaint as Exhibit 3 (the “Notice Letter”).

19 40. The Notice Letter repeated the allegations contained in Judicial Watch’s
20 August 4, 2023 correspondence. It identified again the 46 California counties who
21 reported removing no or only a few registrations under Section 8(d)(1)(B), or who failed
22 to report any data at all, and it said that these low or missing numbers showed a violation
23 of the list maintenance provisions of Section 8(a)(4) of the NVRA.

24 41. The Notice Letter observed that non-compliance with the NVRA was also
25 indicated by the unusually high registration rates observed in many California’s counties.
26 Specifically, a comparison of California’s responses to the EAC with the most recent
27 Census Data suggested that 21 California counties have more voter registrations than
28 citizens of voting age.

1 42. High registration rates are consistent with, and are evidence of, a failure to
2 remove ineligible registrants from the rolls and, in particular, with a failure to utilize the
3 procedures prescribed by Section 8(d)(1)(B) to remove registrants who have become
4 ineligible by virtue of a change of residence.

5 43. The Notice Letter also observed that California's counties reported
6 unusually high *inactive* registration rates. Specifically, California's responses to the
7 EAC showed that in 12 California counties inactive registrations constituted more than
8 20% of all registrations, and in one county more than 27% of all registrations.

9 44. The Notice Letter pointed out that, according to the EAC's most recent
10 NVRA report, the national inactive rate is 11.1%.

11 45. High inactive registration rates are consistent with, and are evidence of, a
12 failure to remove ineligible registrants from the rolls and, in particular, with a failure to
13 utilize the procedures prescribed by Section 8(d)(1)(B) to remove registrants who have
14 become ineligible by virtue of a change of residence.

15 46. The Notice Letter confirmed that public records responsive to request nos. 2
16 and 3 of the seven public records requests contained in the August 4, 2023 letter had not
17 been provided and alleged that the failure to do so violated Section 8(i) of the NVRA.

18 ***D. The Secretary of State's March 11, 2024 Response to the Notice Letter, and the***
19 ***Admissions it Contains.***

20 47. The parties agreed to an extended schedule for Secretary Weber's anticipated
21 response to the Notice Letter to allow her office to individually contact the counties
22 identified in that letter.

23 48. On March 11, 2024, the Secretary of State sent a written response to
24 Plaintiffs. This letter constitutes Defendants' first and only substantive response to the
25 detailed factual allegations made in the Notice Letter and in the August 4, 2023 inquiry
26 letter. This response is attached to this complaint as Exhibit 4 (the "March Response").

27 49. The March Response purported to address, by county, the information
28 reported to the EAC and referred to in Plaintiffs' correspondence, and to confirm, deny,

1 or correct that information as appropriate. The March Response also included
2 information purporting to set forth what some of the counties have done, or intend to do,
3 to comply with the NVRA.

4 50. Even if Plaintiffs conceded the accuracy of all of the information contained
5 in the March Response (which they do not concede), that letter establishes a statewide
6 failure to comply with the NVRA.

7 51. The March Response admits that 21 California counties removed five or
8 fewer registrations pursuant to Section 8(d)(1)(B) (*i.e.*, for failing to respond to a
9 Confirmation Notice and then failing to vote in two general federal elections) in the
10 measuring period from November 2020 to November 2022. Sixteen of the 21 counties
11 removed *zero* such registrations during this period. The 21 counties are: Alameda (1
12 such removal), Alpine (0), Calaveras (0), Imperial (0), Lake (1), Modoc (0), Placer (0),
13 Plumas (0), San Benito (0), San Bernardino (0), San Luis Obispo (5), San Mateo (0),
14 Santa Barbara (0), Santa Cruz (0), Shasta (0), Siskiyou (2), Solano (0), Stanislaus (0),
15 Trinity (0), Ventura (0), and Yolo (2).

16 52. Together, these 21 counties reported a combined total of 11 removals under
17 Section 8(d)(1)(B) during this two-year reporting period.

18 53. According to census estimates these 21 counties contain about 22% of the
19 population of California.

20 54. According to the data published by the EAC, these 21 counties had 5,976,426
21 voter registrations as of November 2022.

22 55. As a point of comparison, San Diego County, California, with a smaller total
23 of 2,398,443 voter registrations in November 2022, removed 130,050 registrations
24 pursuant to Section 8(d)(1)(B) in the last two-year reporting period.

25 56. As a point of comparison, Mariposa County, California, with a comparatively
26 miniscule voter roll of 13,197 registrations, removed 294 registrations pursuant to
27 Section 8(d)(1)(B) in the last two-year reporting period. That is, literally, an
28 exponentially greater number than were removed under that provision in all 21 identified

1 counties combined.

2 57. The fact that the March Response admits that 21 of California’s 58 counties,
3 which contain more than a fifth of California’s population, removed a combined total of
4 11 registrations under Section 8(d)(1)(B) in a two-year period for failing to respond to a
5 Confirmation Notice and failing to vote in the next two general federal elections
6 establishes both a statewide failure to conduct a general program that makes a reasonable
7 effort to cancel the registrations of voters who have become ineligible by reason of a
8 change of residence, and a failure by Defendant Weber to fulfill her duties as California’s
9 chief State election official to coordinate State responsibilities under the NVRA.

10 58. These statutory failures by Defendants are supported by admissions in the
11 March Response that other counties removed too few registrations pursuant to Section
12 8(d)(1)(B), albeit more than five. For example, Merced County’s “best estimate” is that
13 it removed 15 such registrations in the last two-year period, which amounts to 0.01% of
14 the County’s reported voter registrations.

15 59. For example, Tulare County was “unable to report precisely how many”
16 registrations were removed under Section 8(d)(1)(B), though “[b]y the county’s best
17 estimate,” the number “is less than 50.” Assuming that the number was exactly 50, this
18 amounts to 0.02% of the County’s reported voter registrations.

19 60. Similarly, Riverside County did not know the “precise number” of
20 registrations removed under Section 8(d)(1)(B), though “[b]y the county’s best
21 estimate,” the number “is approximately 750.” This amounts to 0.05% of the County’s
22 reported registrations.

23 61. The March Response admits that 16 California counties could not, at the time
24 of the EAC’s survey, tell how many registrations were removed pursuant to Section
25 8(d)(1)(B) in the period from November 2020 to November 2022, although some of these
26 counties did provide reconstructed or estimated numbers for the March Response. The
27 16 counties are: Del Norte, El Dorado, Inyo, Kern, Lassen, Marin, Mendocino, Merced,
28 Mono, Nevada, Orange, Riverside, San Joaquin, Santa Clara, Sonoma, and Tulare.

1 62. According to census estimates these 16 counties contain about 28% of the
2 population of California.

3 63. The fact that the March Response admits that 16 of California’s 58 counties,
4 which together contain more than a fourth of California’s population, did not know how
5 many registrations they removed under Section 8(d)(1)(B) in a two-year period
6 establishes both a statewide failure to conduct a general program that makes a reasonable
7 effort to cancel the registrations of voters who have become ineligible by reason of a
8 change of residence, and a failure by Defendant Weber to fulfill her duties as California’s
9 chief State election official to coordinate State responsibilities under the NVRA.

10 64. The March Response purports to identify steps that California counties have
11 taken since November 2022 or will take to comply with the NVRA. Even if true, which
12 Plaintiffs do not concede, they do not establish statewide compliance with the NVRA.

13 65. Most often the March Response states that a county “expects to be able” to
14 report precisely on Section 8(d)(1)(B) removals (*e.g.*, San Joaquin, Orange, Sonoma), or
15 “expects to remove” certain numbers of registrations at a certain point (*e.g.*, Kern,
16 Stanislaus, Tulare), which is another way of saying that it has not happened yet.

17 66. Even where the March Response asserts that a county has made removals or
18 taken other concrete steps since November 2022, it is often apparent that these actions
19 were taken only after Judicial Watch contacted the Secretary of State alleging that the
20 county had a problem. *E.g.*, Alameda, Placer, San Luis Obispo, Yolo, Shasta, Imperial,
21 Lake.

22 67. Even where a county claims to have taken steps on their own since November
23 2022 which, if true, would represent genuine progress towards compliance with the
24 NVRA, the same county often will have reported few or no Section 8(d)(1)(B) removals,
25 or no data, in the last two-year reporting period.

26 68. The fact that a county only complied with the NVRA after Judicial Watch
27 pointed out its non-compliance, or that a county attempted compliance with the NVRA
28 in one reporting period but failed abysmally to comply in the preceding period, suggests

1 that Defendants have not instituted a systematic, reasonable, general program of
2 compliance required by the NVRA, and that non-compliance is likely to recur.

3 69. Other admissions in the March Response suggest that California’s efforts to
4 comply with the NVRA are in disarray. For example, San Bernardino County reported
5 that its previous Confirmation Notices did not comply with the requirements of Section
6 8(d)(2) of the NVRA, with the result that it “issued or re-issued over 200,000 new”
7 Confirmation Notices in 2023. Of course, these new Confirmation Notices restart the
8 statutory time period and delay any removal of ineligible registrations at least through
9 November 2026.

10 70. Similarly, Imperial County reported that its previous Confirmation Notices
11 “did not contain Section 8(d)(2)-compliant language,” with the result that it issued
12 “approximately 88,000” new Confirmation Notices in September 2023.

13 71. Throughout the March Response, county data is expressed as estimates or
14 approximations, in round numbers, as bounded ranges, and, in the case of Ventura
15 County, as words (citing removal of “a large number” of registrations). The general
16 unwillingness to cite precise numbers suggests that California counties simply do not
17 have necessary access to NVRA-related data.

18 72. The March Response confirmed that Defendants could not provide records
19 response to Judicial Watch’s request no. 2, and admitted that “the Secretary does not
20 maintain the requested list.”

21 73. The March Response stated that Defendants would not provide
22 “communications concerning the EAC’s 2022 EAVS survey,” sought by Judicial
23 Watch’s request no. 3, on the grounds that it “is not a program or activity undertaken by
24 State or county election officials within the meaning of Section 8(i).” This position is
25 clearly incorrect. The whole purpose of that survey is to allow the EAC to make its
26 statutorily required report to Congress about the NVRA (*see* 52 U.S.C. § 20508(a)(3)),
27 and communications regarding the portion of that report concerning California and its
28 counties are “records concerning the implementation of programs and activities

1 conducted for the purpose of ensuring the accuracy and currency of official lists of
2 eligible voters.” 52 U.S.C. § 20507(i)(1).

3 74. The March Response makes no mention of the allegations in the Notice Letter
4 concerning high registration rates in certain California Counties.

5 75. The March Response makes no mention of the allegations in the Notice Letter
6 concerning high inactive registration rates in certain California Counties.

7 76. Defendants have failed to fulfill their obligations under Section 8(a)(4) of the
8 NVRA to conduct a general program that makes a reasonable effort to cancel the
9 registrations of California voters who have become ineligible by reason of a change of
10 residence.

11 77. Defendant Weber has failed in her duty as California’s chief State election
12 official to coordinate State responsibilities under the NVRA.

13 ***The Interests of the Plaintiffs***

14 78. Plaintiff Judicial Watch’s mission is to promote transparency, integrity, and
15 accountability in government and fidelity to the rule of law. The organization, which has
16 been in existence since 1994, fulfills its mission through public records requests and
17 litigation, among other means.

18 79. Judicial Watch is supported in its mission by hundreds of thousands of
19 individuals across the nation. An individual becomes a member of Judicial Watch by
20 making a financial contribution, in any amount, to the organization. Members’ financial
21 contributions are by far the single most important source of income to Judicial Watch
22 and provide the means by which the organization finances its activities in support of its
23 mission. Judicial Watch in turn represents the interests of its members.

24 80. Over the past several years, Judicial Watch’s members have become
25 increasingly concerned about the state of the nation’s voter registration rolls, including
26 whether state and local officials are complying with the NVRA’s voter list maintenance
27 obligations. They are concerned that failing to comply with the NVRA’s voter list
28

1 maintenance obligations impairs the integrity of elections by increasing the opportunity
2 for ineligible voters or voters intent on fraud to cast ballots.

3 81. In response to the concerns of its members, Judicial Watch commenced a
4 nationwide program to monitor state and local election officials' compliance with their
5 NVRA list maintenance obligations. As part of this program, Judicial Watch utilizes
6 public records laws to request and receive records and data from jurisdictions across the
7 nation about their voter list maintenance efforts. It then analyzes these records and data
8 and publishes the results of its findings to the jurisdictions, to its members, and to the
9 general public.

10 82. Defendants' failure to comply with their NVRA voter list maintenance
11 obligations burdens the federal and state constitutional rights to vote of all individual
12 members of Judicial Watch and LPCA who are lawfully registered to vote in California
13 by undermining their confidence in the integrity of the electoral process, discouraging
14 their participation in the democratic process, and instilling in them the fear that their
15 legitimate votes will be nullified or diluted.

16 83. Mr. Michael Sienkiewicz is a registered voter in San Francisco County and a
17 member of Judicial Watch. His knowledge of California politics has convinced him that
18 the state's voter list maintenance practices are so inadequate that they impair the integrity
19 of its electoral process. As a result, his confidence in that process has been undermined.
20 This discourages his participation in it and instills in him the fear that his legitimate votes
21 will be nullified or diluted by ineligible votes. Mr. Sienkiewicz now doubts whether
22 there is any point in casting his ballot in California elections.

23 84. Mr. Nick Apostolopoulos is a registered voter in San Diego County and a
24 member of LPCA. He is also an At-Large Alternate for LPCA. His involvement in
25 California politics has convinced him that the state's voter list maintenance practices are
26 so inadequate that they impair the integrity of its electoral process. As a result, his
27 confidence in that process has been undermined, which discourages his participation in
28 it and instills in him the fear that his legitimate votes will be nullified or diluted by

1 ineligible votes. As a further result, Mr. Apostolopoulos no longer votes in California's
2 elections.

3 85. Ms. Trendalyn Hallsey is a registered voter in San Mateo County and the
4 Treasurer of LPCA. Her involvement in California politics has convinced her that the
5 state's voter list maintenance practices are so inadequate that they impair the integrity of
6 its electoral process. As a result, her confidence in that process has been undermined,
7 which discourages her participation in it and instills in her the fear that her legitimate
8 votes will be nullified or diluted by ineligible votes. Ms. Hallsey has considered
9 abandoning the effort of voting in California elections.

10 86. Protecting the voting rights of Judicial Watch and LPCA members who are
11 lawfully registered to vote in California is germane to their mission.

12 87. Because the relief sought herein will inure to the benefit of Judicial Watch
13 and LPCA members who are lawfully registered to vote in California, neither the claims
14 asserted nor the relief requested requires the participation of Judicial Watch's or LPCA's
15 individual members.

16 88. Plaintiff LPCA, along with its members, supporters, and candidates, exercise
17 their rights under the First and Fourteenth Amendments to join together and associate in
18 support of their common political beliefs.

19 89. LPCA purchases and relies on California's voter rolls to identify in-state
20 voters and to contact them and encourage them to assist its candidates by learning about
21 the Party and its beliefs, volunteering, organizing, contributing, and voting. These voter-
22 contact and election-related activities are core activities of LPCA, and, indeed, are core
23 activities of any political party.

24 90. California's centralized voter registration database is the official system of
25 record for voter registration in the state. It maintains all of the voter registration
26 information for all voters in all 58 California counties.

27 91. Acquiring California's official voter lists is necessary in order to contact
28 California's voters.

1 92. Private contractors often are employed by the largest political parties to help
2 identify outdated voter registrations on California’s official voter lists. But even voter
3 lists processed by private contractors ultimately are based on, and are limited by the
4 accuracy of, California’s official voter lists.

5 93. Hiring private contractors to process California’s voter lists costs money that
6 LPCA does not have.

7 94. The California voter list itself is always the least expensive way for cash-
8 strapped parties like LPCA to obtain the information needed to reach out to California
9 voters.

10 95. Defendants’ failure to conduct list maintenance required by the NVRA
11 causes California’s voter rolls to have many more outdated and ineligible registrations—
12 both on its active and inactive voter lists—than they otherwise would.

13 96. LPCA’s candidates use California’s active voter lists to contact voters to ask
14 them to volunteer, organize, contribute, and vote.

15 97. LPCA uses California’s inactive voter registration lists to contact LPCA
16 members whose registrations have become inactive in order to verify their residence
17 addresses and to encourage them, if they are still eligible, to become active voters again.

18 98. California’s voter data includes a field indicating whether a voter is active or
19 inactive. It is easy to search and sort on this field.

20 99. LPCA has no employees. It has a limited budget, and it relies on volunteers
21 for its activities. It has to make hard choices about how to use its limited resources.

22 100. LPCA engages in targeted mailings concerning specific elections or issues.

23 101. Mailings are important to LPCA, as they are to any political party. Older
24 voters in particular, who tend to have more disposable income and are more likely to
25 contribute and to vote, like to receive physical mail and are more likely to respond to it.

26 102. Mailings are expensive.

27 103. A significant proportion of LPCA’s mailings to active voters are returned as
28 undeliverable because the addressee no longer lives at the stated address.

1 104. A significant proportion of LPCA's mailings to inactive voters are returned
2 as undeliverable because the addressee no longer lives at the stated address.

3 105. The cost of mailings to addresses taken from California's voter list returned
4 as undeliverable constitutes an economic loss to LPCA and its candidates.

5 106. The proportion of mailings to addresses from California's voter list returned
6 as undeliverable is greater than it would be if Defendants complied with Section 8(a)(4)
7 of the NVRA.

8 107. Another way LPCA reaches out to voters is through door-to-door visits. Like
9 mailings, this activity relies on voter information found on California's official voter list.

10 108. LPCA depends on volunteers to conduct these door-to-door visits.

11 109. At a significant number of the addresses visited by LPCA's volunteers, the
12 address is plainly not accurate or current.

13 110. At many of the addresses visited by LPCA volunteers, a current resident
14 confirms that the person the volunteers are seeking no longer resides there.

15 111. It costs LPCA scarce volunteer and organizational resources to visit
16 addresses taken from California's voter list that are not accurate or current.

17 112. LPCA also uses volunteers to make telephone calls on behalf of candidates
18 to ask for contributions and votes.

19 113. LPCA obtains many of the telephone numbers that it uses for these calls
20 directly from California's voter rolls.

21 114. A significant number of the calls made by volunteers on behalf of LPCA
22 candidates result in no contact with the intended resident. Many of these calls are
23 answered by someone who informs LPCA volunteers that the person the volunteers are
24 seeking no longer resides there.

25 115. It costs LPCA scarce volunteer and organizational resources to make
26 telephone calls, based on voter information from California's voter list that is no longer
27 accurate or current, to individuals who no longer reside at a listed address.
28

1 116. Based on the proportion of returned mailings observed when LPCA conducts
2 mailings, and based on the number of times a current resident confirms that a person
3 sought in person or by telephone has moved, and on information and belief, the
4 proportion of addresses visited or called by LPCA volunteers that do not result in any
5 contact with the intended voter because the addressee has moved is greater than it would
6 be if Defendants complied with Section 8(a)(4) of the NVRA.

7 117. Monetary losses from returned mailings sent to voters who have moved, and
8 resource losses from door-to-door visits and telephone calls to voters who have moved,
9 are greater than they would be if Defendants complied with their list maintenance
10 obligations as required by Section 8(a)(4) of the NVRA.

11 118. Because losses from returned mailings and fruitless home visits and
12 telephone calls are higher than they would be if Defendants complied with the NVRA,
13 the average monetary and volunteer costs associated with each successful voter contact
14 made by LPCA are higher.

15 119. Because losses from returned mailings and fruitless home visits and
16 telephone calls are higher than they would be if Defendants complied with the NVRA,
17 LPCA is able to contact fewer voters with its current monetary and volunteer resources
18 to encourage them to assist its candidates by learning about the Party and its beliefs,
19 volunteering, organizing, contributing, and voting.

20 120. Losses from returned mailings and fruitless home visits and telephone calls
21 that are due to Defendants' failure to comply with Section 8(a)(4) of the NVRA directly
22 injure LPCA's ability to conduct its core activities. These injuries arise independently
23 of, and apart from, any response by LPCA to Defendants' failure to comply with the
24 NVRA.

25 121. Inaccuracies on California's voter list affect LPCA in another way. As a
26 political party, LPCA has a heightened interest in the accuracy and currency of voter
27 registration information, which is different from that of other California organizations
28 and individuals. Defendants' failure to conduct proper list maintenance impairs LPCA's

1 particular informational interest under the NVRA in ensuring the maintenance of an
2 accurate and current voter registration roll for elections for federal office.

3 122. Inaccuracies on California’s voter list affect LPCA in yet another way. When
4 LPCA receives a supportive email, it often tries to locate the author’s name on
5 California’s voter list in order to ensure that that person is a California voter and to allow
6 the Party to respond by focusing on local issues and candidates that are likely to interest
7 that person.

8 123. The information on California’s voter rolls is less accurate and current than
9 it would be if Defendants complied with Section 8(a)(4) of the NVRA.

10 124. When voter registration lists wrongly indicate that email authors are
11 California voters when, in fact, they have moved out of state, or when those lists provide
12 the wrong local addresses for those authors, LPCA’s ability to perform its core activity
13 of identifying in-state voters and contacting them and encouraging them to assist the
14 candidates it supports by learning about the Party and its beliefs and by volunteering,
15 organizing, contributing, and voting, is impaired.

16 125. Plaintiff Judicial Watch was denied access to a category of public records
17 concerning California’s “programs and activities conducted for the purpose of ensuring
18 the accuracy and currency of official lists of eligible voters” that it was entitled to access
19 under the NVRA.

20 126. The fact that Judicial Watch could not access these records hampered its
21 mission to promote transparency, integrity, and accountability in government and fidelity
22 to the rule of law.

23 **COUNT I**

24 **(Violation of Section 8(a)(4) of the NVRA, 52 U.S.C. § 20507(a)(4))**

25 127. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

26 128. Plaintiffs are persons aggrieved by a violation of the NVRA, as set forth in
27 52 U.S.C. § 20510(b).

28 129. Defendants have failed to fulfill their obligations under Section 8(a)(4) of the

1 NVRA to conduct a general program that makes a reasonable effort to cancel the
2 registrations of California voters who have become ineligible by reason of a change of
3 residence.

4 130. Defendant Weber has failed in her duty as California’s chief State election
5 official to coordinate State responsibilities under the NVRA.

6 131. Plaintiffs have suffered and will continue to suffer irreparable injury as a
7 direct result of Defendants’ failure to fulfill their obligations under the NVRA.

8 132. Plaintiffs have no adequate remedy at law.

9 **COUNT II**

10 **(Violation of Section 8(i) of the NVRA, 52 U.S.C. § 20507(i))**

11 133. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

12 134. Defendants have failed to fulfill their obligations under Section 8(i) of the
13 NVRA to make available to Plaintiff Judicial Watch “all records concerning the
14 implementation of programs and activities conducted for the purpose of ensuring the
15 accuracy and currency of official lists of eligible voters.”

16 135. Plaintiff Judicial Watch has suffered, and will continue to suffer, irreparable
17 injury as a direct result of Defendants’ failure to fulfill their obligations under Section
18 8(i) of the NVRA.

19 136. Plaintiff Judicial Watch has no adequate remedy at law.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for entry of a judgment:

- 22 a. Declaring Defendants to be in violation of Section 8(a)(4) of the NVRA;
- 23 b. Permanently enjoining Defendants from violating Section 8(a)(4) of the
24 NVRA;
- 25 c. Ordering Defendants to develop and implement a general program that makes
26 a reasonable effort to remove the registrations of ineligible registrants from the voter
27 rolls in California;
- 28 d. Declaring that Defendants have violated Section 8(i) of the NVRA by

1 refusing to allow Plaintiffs to inspect and copy the requested records;

2 e. Permanently enjoining Defendants from refusing to allow Plaintiffs to
3 inspect and copy the requested records;

4 f. Ordering Defendants to pay Plaintiffs' reasonable attorney's fees, including
5 litigation expenses and costs; and

6 g. Awarding Plaintiffs such other and further relief as this Court deems just and
7 proper.

8
9 March 26, 2024

Respectfully submitted,

10 JUDICIAL WATCH, INC.

11 By: /s Eric W. Lee
12 ERIC W. LEE

13 Attorneys for Plaintiffs
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EXHIBIT 1



August 4, 2023

VIA USPS CERTIFIED MAIL AND EMAIL

Hon. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814

Re: Inquiry and request for public records

Dear Secretary Weber:

I write on behalf of Judicial Watch, Inc., a non-partisan educational foundation that promotes transparency, accountability and integrity in government, politics and law. We wish to inquire about certain data you recently provided to the Election Assistance Commission (EAC) regarding your state's implementation of the National Voter Registration Act of 1993 (NVRA).¹ This letter also serves as a public records request seeking records related to the accuracy of the voter registration list, which you are obligated to provide under Section 8(i) of the NVRA.² We write to you as the chief State election official responsible for coordinating state compliance with the NVRA.³

Background

As you are no doubt aware, the NVRA was intended both to "increase the number of eligible citizens who register" and "to protect the integrity of the electoral process" and "ensure that accurate and current voter registration rolls are maintained."⁴ The goal of ensuring election integrity was embodied in Section 8, which requires each state to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of ... the death of the registrant; or ... a change in the residence of the registrant."⁵

The registration of a voter who may have moved may only be cancelled in one of two ways. First, it is cancelled if the registrant confirms a change of address in writing.⁶ Second, if a registrant is sent a postage prepaid, pre-addressed, forwardable notice requesting address confirmation (the "Confirmation Notice"), fails to respond to it, and then fails to vote in the next

¹ 52 U.S.C. § 20501 *et seq.*

² *Id.*, § 20507(i).

³ Cal. Elec. Code § 10(a).

⁴ 52 U.S.C. § 20501(b).

⁵ *Id.*, § 20507(a)(4).

⁶ *Id.*, § 20507(d)(1)(A).

Inquiry and Public Records Request

August 4, 2023

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two general federal elections, that registration is cancelled.⁷ Registrants who have failed to respond to a Confirmation Notice and whose registrations will be cancelled after the statutory waiting period are said to be “inactive.”⁸ However, inactive registrations may still be voted on election day.⁹

Federal law requires the EAC to submit a report to Congress every second year assessing the impact of the NVRA on the administration of federal elections during the preceding two years.¹⁰ Federal regulations require chief State election officials to provide data to the EAC for use in this report.¹¹ The EAC posted the most recent survey it sent to the states to elicit their responses for its biennial report.¹²

On June 29, 2023, the EAC published the data it received from the states, including your state, in response to this survey, for the reporting period from November 2020 through November 2022. Our inquiries concern the data you sent to the EAC, which are revealed in that release.

Inquiries

1. According to the EAC, your survey responses show that 19 California counties reported removing *zero* voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.¹³ These counties are: Alpine County, Amador County, Calaveras County, Del Norte County, Glenn County, Humboldt County, Madera County, Merced County, Modoc County, Monterey County, Placer County, San Bernardino County, San Francisco County, San Mateo County, Santa Barbara County, Santa Cruz County, Sierra County, Solano County, and Stanislaus County.

Another eight counties had five or fewer removals under that NVRA provision. These are: Alameda County (1 removal), Colusa County (1), Lake County (1), Mendocino County (1), San Joaquin County (2), San Luis Obispo County (5), Siskiyou County (2), and Yolo County (2).

Within two weeks of the date of this letter, please confirm whether this data is accurate. If it is accurate, please explain why or whether you believe such data is consistent with NVRA compliance. If the data is not accurate, please provide the correct data.

⁷ *Id.*, § 20507(d)(1)(B), (d)(2), (d)(3); see *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841-42 (2018) (“federal law makes this removal mandatory”).

⁸ *E.g.*, 11 C.F.R. § 9428.2(d).

⁹ 52 U.S.C. § 20507(d)(2)(A).

¹⁰ 52 U.S.C. § 20508(a)(3).

¹¹ 11 C.F.R. § 9428.7.

¹² The survey is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>, under the heading for 2022, at the link entitled “2022 Election Administration and Voting Survey Instrument.”

¹³ The data referred to is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>, under the heading for 2022, at the link entitled “EAVS Datasets Version 1.0 (released June 29, 2023),” in Column CZ, which contains the responses to question A9e of the survey.

Inquiry and Public Records Request

August 4, 2023

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2. According to the EAC, your state did not report any data for another 19 counties regarding the number of voter registrations cancelled from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal election. Instead, in the relevant column where the data should have been, the state merely reported “Data not available,” for those counties.¹⁴ The 19 counties for which no data was provided are: El Dorado County, Imperial County, Inyo County, Kern County, Lassen County, Marin County, Mono County, Napa County, Nevada County, Orange County, Plumas County, Riverside County, San Benito County, Santa Clara County, Shasta County, Sonoma County, Trinity County, Tulare County, and Ventura County.

Please provide us the data that is missing from the EAC’s report regarding cancellations under Section 8(d)(1)(B) of the NVRA, for each of these 19 counties, within two weeks of the date of this letter.

Request for Records

Section 8(i)(1) of the NVRA requires that “[e]ach state shall maintain for at least 2 years and shall make available for public inspection . . . all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.”¹⁵ That provision goes on to specifically provide that “[t]he records maintained . . . shall include lists of the names and addresses of all persons to whom [address confirmation] notices . . . are sent, and information concerning whether or not each such person has responded to the notice.”¹⁶

Pursuant to Section 8(i) of the NVRA, Judicial Watch requests that you produce the following records within two weeks of the date of this letter:

1. Copies of the state’s most recent voter registration database, including fields indicating each registered voters’ name, full date of birth, home address, most recent voter activity, and active or inactive status.
2. A list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.
3. Communications concerning the EAC’s 2022 Election Administration and Voting Survey, including, but not limited to, responses to Section A of that survey, and any records provided along with those responses.

¹⁴ The responses referred to are also available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>, under the heading for 2022, at the link entitled “EAVS Datasets Version 1.0 (released June 29, 2023),” in Column CZ.

¹⁵ 52 U.S.C. § 20507(i)(1).

¹⁶ *Id.*, § 20507(i)(2).

Inquiry and Public Records Request

August 4, 2023

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4. All manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters.
5. All contracts with the U.S. Postal Service or any other federal agency to provide change-of-address information concerning registered voters.
6. All records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of official lists of eligible voters.
7. Records sufficient to support any explanation you provided in response to the inquiries contained in this letter.

If we do not hear within two weeks of the date of this letter that you intend to provide these records, we will assume that you do not intend to do so, and will treat your course of conduct as a violation of Section 8(i) of the NVRA.

Please contact us if you have any questions about the foregoing. We look forward to receiving your prompt response.

Sincerely,

JUDICIAL WATCH, INC.

s/ Robert D. Popper

Robert D. Popper
Attorney, Judicial Watch, Inc.

EXHIBIT

Robert Popper

From: Secretary of State, Constituent Affairs <constituentsaffairs@sos.ca.gov>
Sent: Tuesday, August 29, 2023 12:06 PM
To: Robert Popper
Subject: Re: [EXTERNAL] Inquiry and request for public records
Attachments: CA inquiry and pub rec req - 8-4-2023.pdf; 23032cik.pdf; CCROV 22132rj.pdf; CCROV 22135jh.pdf; CCROV 22203bk.pdf; CCROV 22214bk.pdf; CCROV 22262rd.pdf; CCROV 22264pk.pdf; nvra-updates.pdf; sos-nvra-toolkit.pdf; county-elections-officials.pdf

Dear Mr. Popper,

Thank you again for contacting the Secretary of State with your requests for information and records relating to implementation of the National Voter Registration Act.

The following will respond to each of your requests on an item-by-item basis.

1. According to the EAC, your survey responses show that 19 California counties reported removing zero voter registrations from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.

These counties are: Alpine County, Amador County, Calaveras County, Del Norte County, Glenn County, Humboldt County, Madera County, Merced County, Modoc County, Monterey County, Placer County, San Bernardino County, San Francisco County, San Mateo County, Santa Barbara County, Santa Cruz County, Sierra County, Solano County, and Stanislaus County.

Another eight counties had five or fewer removals under that NVRA provision. These are: Alameda County (1 removal), Colusa County (1), Lake County (1), Mendocino County (1), San Joaquin County (2), San Luis Obispo County (5), Siskiyou County (2), and Yolo County (2).

Within two weeks of the date of this letter, please confirm whether this data is accurate. If it is accurate, please explain why or whether you believe such data is consistent with NVRA compliance. If the data is not accurate, please provide the correct data.

2. According to the EAC, your state did not report any data for another 19 counties regarding the number of voter registrations cancelled from November 2020 to November 2022 pursuant to Section 8(d)(1)(B) of the NVRA for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal election. Instead, in the relevant column where the data should have been, the state merely reported "Data not available," for those counties. 14 The 19 counties for which no data was provided are: El Dorado County, Imperial County, Inyo County, Kern County, Lassen County, Marin County, Mono County, Napa County, Nevada County, Orange County, Plumas County, Riverside County, San Benito County, Santa Clara County, Shasta County, Sonoma County, Trinity County, Tulare County, and Ventura County.

Please provide us the data that is missing from the EAC's report regarding cancellations under Section 8(d)(1)(B) of the NVRA, for each of these 19 counties, within two weeks of the date of this letter.

Response: We have no records responsive to your requests.

1. Copies of the state's most recent voter registration database, including fields indicating each registered voters' name, full date of birth, home address, most recent voter activity, and active or inactive status.

Response: To receive the requested information, you will need to submit an application and be approved to receive this restricted information. <https://www.sos.ca.gov/elections/voter-registration/voter-registration-information-file-request>

2. A list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.

Response: We have no records responsive to your request.

3. Communications concerning the EAC's 2022 Election Administration and Voting Survey, including, but not limited to, responses to Section A of that survey, and any records provided along with those responses.

Response: We will provide all non-privileged and non-exempt records relating to this request, however, these records are currently still under legal review.

4. All manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters.

Response: After a diligent search, we have identified 10 records responsive to your request. Also note that these additional items are available on our website:

<https://elections.cdn.sos.ca.gov/votecal/guidance/ballot-processing.pdf>

<https://elections.cdn.sos.ca.gov/nvra/training/pdf/list-maintenance.pdf>

<https://www.sos.ca.gov/elections/voter-registration/nvra/laws-standards/nvra-manual>

<https://elections.cdn.sos.ca.gov/votecal/guidance/ems-message.pdf>

5. All contracts with the U.S. Postal Service or any other federal agency to provide change-of-address information concerning registered voters.

Response: We have no records responsive to your request. VoteCal exchanges information with the Employment Development Department (EDD) to get national address change information from the United States Postal Service (USPS) for voter registration records. If a voter's address has been changed with the USPS in California, his or her information will be updated in VoteCal and the voter's registration record and voting history is transferred to the voter's new California address.

6. All records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of official lists of eligible voters.

Response: This request is not specific enough to perform a search to identify any specific record or records that might be responsive, (not "a reasonable and focused request" per *Rogers v. Superior Court* (1993) 19 Cal. App. 4th 469, 481). Information related to the processes to maintaining accurate and current official lists of eligible voters is available on our website at <https://www.sos.ca.gov/elections/voter-registration/votecal-project>.

7. Records sufficient to support any explanation you provided in response to the inquiries contained in this letter.

Response: We have no records responsive to your request.

We hope this information is helpful to you.

Sincerely,

Constituent Affairs
Secretary of State

EXHIBIT



October 30, 2023

VIA EMAIL AND USPS CERTIFIED MAIL

Hon. Shirley N. Weber
California Secretary of State
1500 11th Street
Sacramento, California 95814

Re: Notice of violation of the National Voter Registration Act of 1993, U.S.C.

Dear Secretary Weber:

I write on behalf of Judicial Watch, Inc. (“Judicial Watch”) and the Libertarian Party of California (“LPCA”) to notify you that your office is currently in violation of Section 8 of the National Voter Registration Act of 1993 (NVRA). We write to you as the chief state election official responsible for coordinating California’s compliance with Section 8 of the NVRA.¹ This letter serves as pre-suit notice pursuant to 52 U.S.C. § 20510(b)(1)–(2) that Judicial Watch and the LPCA will file a lawsuit against you if these violations are not corrected within 90 days.

Background

As you are no doubt aware, the NVRA was intended both to “increase the number of eligible citizens who register” and “to protect the integrity of the electoral process” and “ensure that accurate and current voter registration rolls are maintained.”² The goal of ensuring election integrity was embodied in Section 8, which requires each state to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of ... the death of the registrant; or ... a change in the residence of the registrant.”³

The registration of a voter who may have moved may only be cancelled in one of two ways. First, it is cancelled if the registrant confirms a change of address in writing.⁴ Second, if the registrant is sent a postage prepaid, pre-addressed, forwardable notice requesting address confirmation (the “Confirmation Notice”), fails to respond to it, and then fails to vote in the next two general federal elections, that registration must be cancelled.⁵ Registrants who have failed to

¹ Cal. Elec. Code § 10(a); Cal. Gov. Code § 12172.5(a).
² 52 U.S.C. § 20501(b).
³ *Id.*, § 20507(a)(4).
⁴ *Id.*, § 20507(d)(1)(A).
⁵ *Id.*, § 20507(d)(1)(B) (“Section 8(d)(1)(B)”; (d)(2), (d)(3); see *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1841-42 (2018) (“federal law makes this removal mandatory”).

Notice of Violation of the NVRA
October 30, 2023
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respond to a Confirmation Notice and whose registrations will be cancelled after the statutory waiting period are said to be “inactive.”⁶ However, inactive registrations may still be voted on election day.⁷

The NVRA contains a public records provision. Section 8(i) requires that “[e]ach state shall maintain for at least 2 years and shall make available for public inspection . . . all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.”⁸ That provision goes on to specifically provide that “[t]he records maintained . . . shall include lists of the names and addresses of all persons to whom [address confirmation] notices . . . are sent, and information concerning whether or not each such person has responded to the notice.”⁹

Federal law requires the Election Assistance Commission (“EAC”) to submit a report to Congress every second year assessing the impact of the NVRA on the administration of federal elections during the preceding two years.¹⁰ Federal regulations require you to provide data to the EAC for use in this report.¹¹ The EAC posted the most recent survey it sent to the states to elicit their responses for its biennial report.¹²

On June 29, 2023, the EAC published the data it received from the states, including your state, in response to this survey, for the reporting period from November 2020 through November 2022.

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According to your state’s responses to the EAC’s survey, 27 California counties reported removing five or fewer and, in most of those counties, zero voter registrations from the list of eligible voters during the period from November 2020 to November 2022 for failing to respond to a Confirmation Notice and failing to vote in two consecutive general federal elections.¹³ Another 19 counties simply did not report any data whatsoever to the EAC regarding removals under

⁶ E.g., 11 C.F.R. § 9428.2(d).

⁷ 52 U.S.C. § 20507(d)(2)(A).

⁸ 52 U.S.C. § 20507(i)(1).

⁹ *Id.*, § 20507(i)(2).

¹⁰ 52 U.S.C. § 20508(a)(3).

¹¹ 11 C.F.R. § 9428.7.

¹² The survey is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> at the link entitled “2022 Election Administration and Voting Survey Instrument.”

¹³ The data referred to is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> at the link entitled “EAVS Datasets Version 1.0 (released June 29, 2023),” in Column CZ, which contains the responses to question A9e of the survey. The following 19 counties reported zero such removals during that period: Alpine County, Amador County, Calaveras County, Del Norte County, Glenn County, Humboldt County, Madera County, Merced County, Modoc County, Monterey County, Placer County, San Bernardino County, San Francisco County, San Mateo County, Santa Barbara County, Santa Cruz County, Sierra County, Solano County, and Stanislaus County. Another eight counties reported from one to five such removals during that period: Alameda County (1 removal), Colusa County (1), Lake County (1), Mendocino County (1), San Joaquin County (2), San Luis Obispo County (5), Siskiyou County (2), and Yolo County (2).

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Section 8(d)(1)(B). Instead, in the relevant column where the data should have been, the survey response for each of these counties merely states, “Data not available.”¹⁴

On August 4, 2023, Judicial Watch wrote to you pointing out these facts and asking you to confirm the data contained in the EAC’s report and to provide the data that was omitted. We also asked for certain public records pursuant to Section 8(i). On August 29, 2023, your office responded by means of an email from “Secretary of State, Constituent Affairs,” which treated our factual inquiries about the aforementioned county data as requests for public records, and stated that “[w]e have no records responsive to your requests.” (Both our letter and your email response, without documentary attachments, are annexed hereto.) Our inquiries were not requests for public records, however, but requests for information, which your response signally failed to provide.

Both common sense and Judicial Watch’s enforcement experience confirm that there is no possible way California has complied with Section 8(d)(1)(B) of the NVRA, the key NVRA provision dealing with voters who have changed residence, when 46 of its 57 counties either removed no or just a few registrations under that provision, or failed to report removals at all, for the past two reporting years. Nor is it possible, given these facts, that California is complying with its list maintenance obligations to “conduct a general program that makes a reasonable effort to remove the names” of voters who have moved or died. *See* 52 U.S.C. § 20507(a)(4).

California’s non-compliance with the NVRA is further indicated by the unusually high registration rates observed in its counties. Comparing the data your state reported to the EAC regarding the total registration numbers for each county¹⁵ to the U.S. Census Bureau’s most recent five-year estimates of the numbers of resident citizens over the age of eighteen¹⁶ suggests that 21 California counties have more voter registrations than citizens of voting age.¹⁷ Several federal courts have determined that such high registration rates are sufficient grounds for alleging a failure

¹⁴ These responses are also found at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> at the link entitled “EAVS Datasets Version 1.0 (released June 29, 2023)” in Column CZ. The 19 counties for which no data was provided are: El Dorado County, Imperial County, Inyo County, Kern County, Lassen County, Marin County, Mono County, Napa County, Nevada County, Orange County, Plumas County, Riverside County, San Benito County, Santa Clara County, Shasta County, Sonoma County, Trinity County, Tulare County, and Ventura County.

¹⁵ See the data at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> at the link entitled “EAVS Datasets Version 1.0 (released June 29, 2023),” in Column E.

¹⁶ This data is found on the U.S. Census Bureau’s website in table DP05 (“ACS Demographic and Housing Estimates”), by selecting “2021: ACS 5-Year Estimates Data Profiles” as the data source and scrolling down to the heading, “Citizen, 18 and over population” for each county. For example, the relevant data for Alameda County is available at https://data.census.gov/table/ACSDP5Y2021.DP05_q_Alameda_County_California.

¹⁷ These are: Alameda County, Alpine County, Calaveras County, El Dorado County, Imperial County, Marin County, Modoc County, Nevada County, Placer County, Plumas County, Riverside County, San Benito County, San Diego County, San Mateo County, Santa Clara County, Santa Cruz County, Shasta County, Solano County, Stanislaus County, Ventura County, and Yolo County. The same is true for the State of California as a whole, in that its total registration exceeds its citizen voting-age population.

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to comply with the NVRA's mandate to make reasonable efforts to remove voters by reason of death or change of address.¹⁸

Consistent with the foregoing facts, your own data shows that California's counties have unusually high inactive registration rates. For example, data your state supplied to the EAC shows that in 12 California counties inactive registrations constitute more than 20% of all registrations, and in one county more than 27% of all registrations.¹⁹ By contrast, the national inactive rate is 11.1%.²⁰ High inactive rates are also sufficient grounds for alleging non-compliance with the NVRA.²¹

The foregoing facts amply demonstrate that California is not complying with the list maintenance provisions of the NVRA.

acts of violations of the public Records provisions of the NVRA

Judicial Watch's August 4, 2023 letter also requested, pursuant to Section 8(i) of the NVRA, seven categories of public records concerning California's programs and activities to ensure the accuracy and currency of its voter lists.

The second request and the response we received from you on August 29, 2023, were:

2. A list of the names and addresses of all persons to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.

Response: We have no records responsive to your request.

This request seeks a category of documents that the NVRA specifically requires states to provide on request.²² Accordingly, your response effectively concedes a violation of the public records provisions of the NVRA.

The third request and your response are as follows:

¹⁸ See e.g. *Green v. Bell*, No. 3:21-cv-00493-RJC-DCK, 2023 U.S. Dist. LEXIS 45989, at 12 (W.D.N.C. Mar. 20, 2023); *Judicial Watch v. Rio Grande*, 554 F. Supp. 3d 1091, 1107 (D. Colo. 2021); *Voter Integrity Pro et al. v. State of North Carolina*, 301 F. Supp. 3d 612, 620 (E.D.N.C. 2017).

¹⁹ These are: Del Norte County, Imperial County, Lake County, Modoc County, Plumas County, San Mateo County, Santa Clara County, Santa Cruz County, Shasta County, Solano County, Stanislaus County, and Yolo County. The data are obtained for each county by dividing Column G by Column E, in the document entitled "EAVS Datasets Version 1.0 (released June 29, 2023)," available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>.

²⁰ See ELECTION ADMINISTRATION AND VOTING SURVEY 2022 COMPREHENSIVE REPORT at 141-42, available at link entitled "2022 Election Administration and Voting Survey Report (Full PDF Version)," at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys>.

²¹ See *Judicial Watch v. Rio Grande*, 554 F. Supp. 3d at 1107.

²² See 52 U.S.C. § 20507(i)(2).

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3. Communications concerning the EAC's 2022 Election Administration and Voting Survey, including, but not limited to, responses to Section A of that survey, and any records provided along with those responses.

Response: We will provide all non-privileged and non-exempt records relating to this request, however, these records are currently still under legal review.

Until responsive documents have been provided, this request has not been complied with.

The sixth request and your response are:

6. All records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of official lists of eligible voters.

Response: This request is not specific enough to perform a search to identify any specific record or records that might be responsive, (not "a reasonable and focused request" per *Rogers v. Superior Court* (1993) 19 Cal. App. 4th 469, 481). ...

This request restricts its reach both to a particular kind of evaluation and to a particular kind of topic for such an evaluation, and is specific enough to allow a proper search. Your failure to conduct a search or provide documents violates the public records provisions of the NVRA.

If you do not contact us about correcting or otherwise resolving the above-identified violations within 90 days, Judicial Watch and the LPCA will commence a federal lawsuit seeking declaratory and in unctive relief against you. In such a lawsuit we would seek, in addition to in unctive relief, a udgment awarding reasonable attorney's fees, expenses, and costs. *See* 52 U.S.C. § 20510(c). For the reasons set forth above, we believe that such a lawsuit would be likely to succeed.

We have long experience with list maintenance litigation and are well aware of the practical difficulties urisdictions face in trying to maintain their voter rolls. As we believe we showed during our previous litigation involving your office and Los Angeles County, we are absolutely willing to compromise and work together to come up with a realistic plan to address these difficulties. We are always glad to avoid costly litigation and to amicably resolve disputes.

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Please contact us if you have any questions about the foregoing. We look forward to hearing from you.

Sincerely,

JUDICIAL WATCH, INC.

s/ Robert D. Popper

Robert D. Popper
Attorney, Judicial Watch, Inc.

EXHIBIT



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March 11, 2024

VIA EMAIL

Robert Popper
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rpopper@judicialwatch.org

RE: Letters dated August 4, 2023 and October 30, 2023

Dear Mr. Popper:

On behalf of Secretary of State Dr. Shirley N. Weber, we respond further to your letters of August 4, 2023, and October 30, 2023 inquiring about the responses of 46 California counties to question A9e on the 2022 Election Administration and Voting Survey (EAVS) conducted by the U.S. Election Assistance Commission (EAC). We acknowledge that a person aggrieved by an alleged violation of the National Voter Registration Act (NVRA) may bring a civil lawsuit within 90 days of providing notice of the alleged violation (52 U.S.C. § 20510(b)(2)), and we appreciate your willingness to provide additional time to look into your inquiries.

Your letters allege that the list-maintenance practices of 46 California counties fail to comply with Section 8(a)(4) of the NVRA. This section requires elections officials to “conduct a general program to make a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of” change in a registrant’s residence. (52 U.S.C. § 20507(a)(4).)

Under California’s system for administering elections, each county has primary responsibility for carrying out its list maintenance practices in accordance with California and federal law. California law requires counties to engage in numerous list maintenance activities, as detailed below. This includes amendments to state law to conform to the United States Supreme Court’s 2018 decision regarding the cancellation of voter registrations under the NVRA, *Husted v. A. Philip Randolph Institute* (2018) 584 U.S. 756. The Secretary has issued detailed written guidance and conducted in-person and webinar trainings for county elections officials on this subject. Together, these California laws and the related guidance and training offered by the Secretary, as well as the commitments made (and kept) by the Secretary under its prior

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settlement with Judicial Watch, constitute a general program that makes a reasonable effort to maintain accurate lists of eligible voters, and thus comports fully with Section 8(a)(4) of the NVRA.

BACKGROUND

I. LIST-MAINTENANCE REQUIREMENTS UNDER CALIFORNIA LAW

In requiring elections officials to conduct a general program to make a reasonable effort to remove the names of ineligible voters, the NVRA does not mandate any particular method of identifying ineligible voters. Elections officials in California must follow the procedures for confirming registrants' addresses set forth in sections 2220 through 2226 of the Elections Code. These procedures are described in detail in Chapter 4 of California's NVRA Manual, entitled "Voter Registration Applications and Voter List Maintenance," a copy of which is enclosed with this response. The procedures include:

- the sending of voter notification cards (Elec. Code, §§ 2155, 2155.3);
- the use of a pre-election residency confirmation postcard (Elec. Code, § 2220) or an alternative procedure, such as
 - the use of national change-of-address data from the U.S. Postal Service (Elec. Code, § 2222);
 - the mailing of county voter information guides with address correction requests (Elec. Code, § 2223); or
 - obtaining change-of-address data from a consumer credit reporting agency (Elec. Code, § 2227);
- the sending of address confirmation notices in response to information indicating that a registrant has moved (Elec. Code, §§ 2155, 2225, 2226);
- the intra- or inter-county transfer of voter registrations, when appropriate (Elec. Code, § 2155);
- the placement of voter registration records on inactive status, when appropriate (Elec. Code, §§ 2221, 2225); and
- the cancellation of voter registrations when all requirements of Section 8(d) of the NVRA (52 U.S.C. § 20507(d)(2)) have been satisfied (Elec. Code, §§ 2225, 2226).

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In accordance with these requirements under California law, county elections officials conduct list maintenance through confirmatory mailings, the use of change-of-address data, the placement of voters on inactive status, and, ultimately, the cancellation of registrations in compliance with Sections 8(a)(4), 8(d)(1)(B), and 8(d)(2) of the NVRA.

New and updated registrations are checked against a number of data points to determine their accuracy. VoteCal, the federally mandated and compliant statewide voter registration database, automatically runs voter-to-voter duplicate checks on new registrations and updates to existing voter registrations. If a potential match (for example, the same registrant, registered twice with different addresses) is determined, VoteCal notifies relevant county election officials for a potential match final determination. If the county election official determines that the records are a match based upon a variety of data points, the records are merged and the most recent information is applied to the record.

Additionally, voter registration records are reviewed and updated regularly based on data from the California Department of Corrections, California Department of Public Health, Department of Motor Vehicles (DMV), and the Employee Development Department (EDD). With respect to changes of address, the Secretary provides the full voter registration database to the EDD on a monthly basis to compare against its National Change of Address (NCOA) database. EDD is the sole licensed provider of the NCOA database for the State. In return, EDD marks the voters that may have moved and provides this data to the Secretary, which is processed into VoteCal. Notices of potential address changes are then sent to county election officials for final determination. The Secretary also receives daily change of address notifications from the DMV from registrants who update their address records with DMV about changes of address made at DMV. VoteCal identifies potential changes of address and sends notices to county election officials for final determination.

II. CANCELLATION OF VOTER REGISTRATIONS IN ACCORDANCE WITH SECTION 8 OF THE NVRA

Section 8(b)(2) of the NVRA prohibits the cancellation of a registration for failure to vote, and Section 8(d)(1)(B) allows for removal on the ground that the registrant has changed residence only after a qualifying notice has been sent and certain conditions are thereafter satisfied.¹ (52

¹ An address confirmation notice that begins the Section 8(d)(2) cancellation process must provide a postage paid, pre-addressed return form on which a registrant may confirm their current address, and must explain that: (1) if the registrant did not change their place of residence, or changed residence within California, the registrant should return the card not later than 15 days prior to the date of the next election; (2) if the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice; (3) if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters; and (4) if the registrant has changed their place of

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U.S.C. § 20507(b)(2), (d)(2).) A qualifying notice can be sent in response to information indicating that the registrant has moved out of state, or has moved and left no forwarding address. (Elec. Code, §§ 2221, subd. (a)(1); 2225, subd. (c).) After this, if a voter fails to return the address confirmation notice; does not offer or appear to vote in any election within the next two federal general election cycles following the mailing of that notice; and does not notify a county elections official of continued residency within California, the county elections official must update the voter's registration record to reflect that the registration is cancelled. (Elec. Code, §§ 2225, subd. (c); 2226, subd. (b); 52 U.S.C. §§ 21803(a)(4)(A), 20507(a)(4), (d)(3); *Husted*, 584 U.S. 767.)

Previously, Elections Code section 2226 was permissive, allowing removal once Section 8(d)(1)(B) requirements had been met, but without requiring it. This reflects the California Legislature's prior understanding that such removals were permitted, but not mandatory, under the NVRA. Although Section 8(d)(1)(B) does not explicitly require removal, the Supreme Court clarified for the first time in its *Husted* decision that cancellation is mandatory under federal law. (584 U.S. at p. 767 [“Not only are States allowed to remove registrants who satisfy these requirements, but federal law makes this removal mandatory.”], citing 52 U.S.C. § 20507(d)(3); 52 U.S.C. § 21083(a)(4)(A).)

As you know, in *Judicial Watch v. Logan*, No. 17-cv-8948 (C.D. Cal. 2017), which concerned the list-maintenance practices of Los Angeles County and removal obligations under Section 8 of the NVRA, the parties entered into a settlement agreement that required the Secretary to update the California NVRA Manual (which the Secretary did in 2019) to reflect the Supreme Court's interpretation of Section 8 in *Husted*. In addition, the Legislature amended the Elections Code to align California law with the Supreme Court's pronouncement in *Husted*. As of January 1, 2020, Elections Code section 2226, as amended, required the cancellation of registrations once all Section 8(d)(1)(B) prerequisites had been satisfied. (Cal Stats. 2019, ch. 262, § 6.)

RESPONSE TO INQUIRIES AND RECORDS REQUESTS

Your letters allege that 19 California counties (Alpine, Amador, Calaveras, Del Norte, Glenn, Humboldt, Madera, Merced, Modoc, Monterey, Placer, San Bernardino, San Francisco, San Mateo, Santa Barbara, Santa Cruz, Sierra, Solano, and Stanislaus) have failed to conduct a general program that makes a reasonable effort to remove the names of ineligible voters based on the sole fact that these counties reported removing zero voter registration records during the EAVS 2020-2022 reporting period. The letters make similar allegations as to eight counties (Alameda, Colusa, Lake, Mendocino, San Joaquin, San Luis Obispo, Siskiyou, and Yolo) that reported removing between one and five registration records under Section 8(d)(1)(B), and as to

residence to a location outside of California, the notice must include information concerning how the voter can remain eligible to vote.

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19 counties that reported that data on the number of registration records removed under Section 8(d)(1)(B) was unavailable.

Your letters do not inquire about the Section 8(a)(4) compliance efforts of the remaining 12 counties (Butte, Contra Costa, Fresno, Kings, Los Angeles, Mariposa, Sacramento, San Diego, Sutter, Tehama, Tuolumne, and Yuba). Over 10 million registered voters, corresponding to more than 45 percent of registered voters statewide, reside in these 12 counties.²

At the outset, it is not correct to infer that a county is failing to comply with Section 8(a)(4) based on few or no reported Section 8(d)(1)(B) removals or the unavailability of the requested data. There are a variety of reasons why an NVRA-compliant county might respond to the EAVS survey in this manner. Some are operational. For example, a county that did not remove inactive registrations prior to *Husted*, and that first revised its form of Section 8(d)(2) notice to comply with the Section 8, as construed by *Husted*, in 2019, would not have become eligible to remove those inactive registration records during the 2020-2022 EAVS reporting period. Some are related to the EAVS survey instrument itself. The 2022 survey instrument recognizes that elections officials may not track registration data in a way that corresponds precisely to the categories of information requested by the EAC, and in such cases directs the respondent to state that the data is not available.³ Others are demographic. For example, a rural county with a small population might expect to see fewer address changes and higher response rates to Section 8(d)(2) mailings as compared with larger counties, such that few, if any, Section 8(d)(1)(B) removals would be mandated during a given federal election cycle.

With respect to the 46 counties at issue in your letters, as explained below, their elections officials follow general programs that make a reasonable effort to remove registration records of those who become ineligible to vote by reason of a change of address, as the NVRA requires. Twenty counties either removed significantly more registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period than were reported to the EAC, or believe that they have done so but were unable to provide precise reporting on the number of removals based on data limitations at the time of the survey response. Seventeen counties have demonstrated compliance with Section 8(a)(4) by removing the registration records of those who became inactive by nature of Section 8(d)(2) notices mailed prior to the 2020 general election. These counties expect to timely report such removals to the EAC in response to its anticipated 2024

² Cal. Secretary of State, Report of Registration as of February 20, 2024: Registration by County, <https://elections.cdn.sos.ca.gov/ror/15day-presprim-2024/county.pdf>.

³ EAC, 2022 Election Administration and Voting Survey, at 2 (instructions for survey section A). The EAC has acknowledged that the questions in Section A of the 2022 EAVS survey instrument do not reflect current “data collection practices” and use “outdated vocabulary” (including its definition of “confirmation notice”) and “confusing instructions” that have led to “recurrent help desk and data quality issues.” (EAC, Planned Changes to Section A of the 2024 Election Administration and Voting Survey, Jul. 2022), at 2.) The EAC is proposing changes to the 2024 survey instrument intended to address these issues.

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survey. The remaining nine counties, despite reasonable efforts, did not report removing registration records under Section 8(d)(1)(B) during the 2020-2022 reporting periods for other reasons, as discussed below.

These county election officials also comply fully with the NVRA and state-law requirements applicable to inactive-status registrants. Such registrants can only vote in person, using a provisional ballot, and after confirming their residence address. They are not mailed ballots or election materials, and they are not taken into consideration in determining the number of signatures required for qualification of candidates or ballot measures, precinct size, or other election administration processes. (Elec. Code, § 2226(a)(2).)

I. ADDITIONAL INFORMATION BY COUNTY

Alameda County. Alameda County reported in response to Question A9e on the EAVS survey instrument that it had removed one registration record under Section 8(d)(1)(B) during the 2020-2022 reporting period. Upon further investigation, the county identified additional registration records that had become eligible for removal under Section 8(d)(1)(B) during the same reporting period. The county removed approximately 40,000 registration records under Section 8(d)(1)(B) in December 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Alpine County. Alpine County, the smallest in California by population, accurately reported its response to Question A9e on the 2022 EAVS survey instrument. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing those registrants who do not vote or update their registration during the next two general federal election cycles. The county is not presently aware of any inactive registrants who will become eligible for cancellation on account of failure to respond to a Section 8(d)(2) notice. For example, when the county last sent Section 8(d)(2) notices to inactive registrants in September 2023, all recipients responded to the notice.

Amador County. Amador County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed 220 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Calaveras County. Calaveras County's response to Question A9e on the EAVS survey instrument was accurately reported. 2,389 registrants were removed under Section 8(d)(1)(B) in 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Colusa County. Colusa County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting

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period. The county removed 17 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Del Norte County. Del Norte County's response to Question A9e on the EAVS survey instrument was not accurately reported. The county removed registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period, but it was unable to determine how many using the data classification scheme in place at the time. By the county's best estimate, the number of Section 8(d)(1)(B) removals during this period exceeds 100. The county is taking steps to improve the tracking capabilities of its election management system so that it can report on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

El Dorado County. El Dorado County's response to Question A9e on the EAVS survey instrument was accurately reported. 13,088 registration records were removed under Section 8(d)(1)(B) in January 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Glenn County. Glenn County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed 722 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Humboldt County. Humboldt County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed approximately 7,800 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Imperial County. Imperial County is not able to determine whether any registration records were removed under Section 8(d)(1)(B) during the 2020-2022 reporting period, but by its best estimate using available data, there were few or no Section 8(d)(1)(B) removals. The county attempted to conduct a mass mailing of Section 8(d)(2) notices to inactive registrants in 2020. In 2023, the county determined that its form of notice did not contain Section 8(d)(2)-compliant language. Accordingly, the county issued approximately 88,000 Section 8(d)(2)-compliant notices to inactive registrants in September 2023.

Inyo County. Inyo County's response to Question A9e on the EAVS survey instrument was accurately reported; at the time, the county's election management system was not set up to allow for reporting on this category of information. The county, which has since improved its tracking and reporting capabilities, later determined that 203 registration records were removed under Section 8(d)(1)(B) during the 2020-2022 reporting period. The county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

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Kern County. Kern County's response to Question A9e on the EAVS survey instrument was accurately reported. The county expects to remove roughly 60,000 registration records of inactive voters during the 2022-2024 reporting period, although the precise number of removals will depend upon voting and registration activity. The county expects to report these cancellations to the EAC in response to the 2024 EAVS survey.

Lake County. Lake County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 438 registration records under Section 8(d)(1)(B) in September 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Lassen County. Lassen County's response to Question A9e on the EAVS survey instrument was accurately reported. The number of removals under Section 8(d)(1)(B) during the 2020-2022 reporting period could not be determined using the county's existing data classification scheme. The tracking capabilities of the county's election management system have improved, and the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Madera County. Madera County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed approximately 944 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Marin County. Marin County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing the records of those registrants who do not respond to the notice and do not vote or correct their address information before the second general federal election occurring after the date of the notice. The county projects that approximately 2,500 registration records will become eligible for removal under Section 8(d)(1)(B) after the 2024 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election.

Mendocino County. Mendocino County's response to Question A9e on the EAVS survey instrument reflects the total number of Section 8(d)(1)(B) removals from the 2020-2022 reporting period that can be confirmed as such based on existing records. The county removed a total of 623 registration records during the same reporting period; this population likely includes more than one Section 8(d)(1)(B) removal, but the precise number could not be determined using the data classification scheme in place at the time of the county's response. The county is improving its tracking capabilities and expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Merced County. Merced County's response to Question A9e on the EAVS survey instrument may not accurately reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022

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reporting period. By the county's best estimate, the number of Section 8(d)(1)(B) removals during this period is approximately 15. Additionally, the county projects that approximately 25,000 registration records will become eligible for removal under Section 8(d)(1)(B) after the 2024 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election.

Modoc County. Modoc County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) cards to inactive registrants and removing the records of those registrants that do not vote or update their registration in two general federal election cycles. The county anticipates removing registration records under Section 8(d)(1)(B) after the 2024 general election.

Mono County. Mono County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed approximately 600 registration records removed under Section 8(d)(1)(B) in December 2023. The county has improved its tracking capabilities and expects to report these removals to the EAC in response to the 2024 EAVS survey.

Monterey County. Monterey County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period because the county did not interpret the survey instrument to include cancellations between reporting years. The county removed 493 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period. Monterey County removed approximately 8,000 additional registration records in January 2023; the county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Napa County. Napa County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period because the county's response to this question did not correctly reflect county-level data. The county removed approximately 1,412 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period. The tracking capabilities of the county's election management system have improved, such that the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Nevada County. Nevada County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county removed, by its best estimate, between 750 and 800 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period. Because the precise number of removals could not be determined using the county's existing data classification scheme, the county reported that the data was unavailable, consistent with the survey instrument instructions. The tracking capabilities of the county's election management system have improved, such that the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

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Orange County. Orange County’s response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 77,691 registration records for “other reasons,” as reported in response to Question A9g, during the 2020-2022 reporting period. This population includes removals under Section 8(d)(1)(B), but the precise number of Section 8(d)(1)(B) removals cannot be determined using the county’s existing data classification scheme. Accordingly, the county reported that the data was unavailable, consistent with the survey instrument instructions. The tracking capabilities of the county’s election management system have improved, and the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Placer County. Placer County’s response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 19,146 registration records under Section 8(d)(1)(B) in December 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Plumas County. Plumas County did not remove any registrants under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Riverside County. Riverside County’s response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The precise number of Section 8(d)(1)(B) removals could not be determined using the county’s existing data classification scheme. Accordingly, the county reported that the data was unavailable, consistent with the survey instrument instructions. By the county’s best estimate, which is based on reporting capabilities at the time, the number of registration records removed under Section 8(d)(1)(B) during the 2020-2022 reporting period is approximately 750.

San Benito County. San Benito County determined that it had no Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county removed 144 registration records under Section 8(d)(1)(B) in April 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

San Bernardino County. San Bernardino County’s response to Question A9e on the 2020-2022 EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing the records of those registrants who do not respond to the notice and do not vote or correct their address information before the second general federal election occurring after the date of the notice. The county was unable to remove registration records under Section 8(d)(1)(B) based on failure to vote in the 2018 and 2020 general elections because, among other reasons, the county determined that its form of Section 8(d)(2) notice did not contain Section 8(d)(2)-compliant language. Accordingly, the county issued or re-issued over 200,000 new, Section 8(d)(2)-compliant notices in 2023.

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San Francisco County. San Francisco County's response to Question A9e on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period because the county's response to this question did not correctly reflect county-level data. 12,657 registration records were removed under Section 8(d)(1)(B) during the 2020-2022 reporting period.

San Joaquin County. San Joaquin County removed 3,232 registration records during the 2020-2022 reporting period; this population may include Section 8(d)(1)(B) removals, but the precise number could not be determined using the county's existing data classification scheme. The county is improving its tracking capabilities and expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

San Luis Obispo County. San Luis Obispo County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 6,192 registration records under Section 8(d)(1)(B) in October 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

San Mateo County. San Mateo County's response to Question A9e on the EAVS survey instrument was accurately reported. Approximately 105,000 registration records were removed under Section 8(d)(1)(B) in March 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Santa Barbara County. Santa Barbara's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 23,509 registration records under Section 8(d)(1)(B) in 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Santa Clara County. Santa Clara County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed approximately 204,000 registration records under Section 8(d)(1)(B) in March 2023. This statistic was not reflected in the 2022 EAVS report, because the cancellation of these voters took place after the EAVS report was submitted. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Santa Cruz County. Santa Cruz County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing those registrants who do not respond to the notice and do not vote or correct their address information before the second general federal election occurring after the date of the notice. The county projects that approximately 50,000 registration records will become eligible for removal under Section 8(d)(1)(B) after the 2026 general election, but the actual number of removals will vary depending upon voting and registration activity prior to the election.

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Shasta County. Shasta County had no Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county removed 1,192 registration records under Section 8(d)(1)(B) in December 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Sierra County. Sierra County's response to Question A9 on the EAVS survey instrument does not reflect the total number of Section 8(d)(1)(B) removals during the 2020-2022 reporting period due to a reporting error. The county removed 99 registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period.

Siskiyou County. Siskiyou County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) cards to inactive registrants and removing those registrants who do not vote or update their registration during the next two general federal election cycles. The county projects that approximately 900 registration records will be removed under Section 8(d)(1)(B) after the 2024 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election.

Solano County. Solano County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 63,053 registration records under Section 8(d)(1)(B) in December 2022. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Sonoma County. Sonoma County's response to Question A9e on the EAVS survey instrument was accurately reported. The county removed over 15,000 registration records in total during the 2020-2022 reporting period. This population may include Section 8(d)(1)(B) removals, but the precise number for any particular category could not be determined using the county's existing data classification scheme. Accordingly, the county reported that the data was unavailable, consistent with the survey instrument instructions. The tracking capabilities of the county's election management system have since improved, such that the county expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during the 2022-2024 reporting period.

Stanislaus County. Stanislaus County's response to Question A9e on the EAVS survey instrument was accurately reported. The county follows a general program of sending Section 8(d)(2) notices to inactive registrants and removing the records of those registrants who do not vote or update their registration during the next two general federal election cycles. The county expects to remove approximately 2,500 registrants under Section 8(d)(1)(B) before the November 2024 election, and to report these removals to the EAC in response to the 2024 EAVS survey.

Trinity County. Trinity County determined that it had no Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county follows a general program of sending Section

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8(d)(2) notices to inactive registrants and removing the records of those registrants who do not vote or update their registration during the next two general federal election cycles. The county projects that approximately 1,300 registration records will be removed under Section 8(d)(1)(B) after the 2026 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election.

Tulare County. Tulare County’s response to Question A9e on the EAVS survey instrument was correctly reported. The county removed registration records under Section 8(d)(1)(B) during the 2020-2022 reporting period, but it is unable to report precisely how many using its existing data classification scheme. By the county’s best estimate, the number of Section 8(d)(1)(B) removals during this period is less than 50. The county projects that approximately 11,000 registration records will become eligible for removal under Section 8(d)(1)(B) after the 2024 general election, but the actual number of removals may vary depending upon voting and registration activity prior to the election. The county has improved the tracking capabilities of its election management system and expects to be able to provide reporting on the number of removals under Section 8(d)(1)(B) during future EAVS reporting periods.

Ventura County. Ventura County determined that it had no Section 8(d)(1)(B) removals during the 2020-2022 reporting period. The county removed a large number of registration records under Section 8(d)(1)(B) in April 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

Yolo County. Yolo County’s response to Question A9e on the EAVS survey instrument was accurately reported. The county removed 14,120 registration records under Section 8(d)(1)(B) in November 2023. The county expects to report these removals to the EAC in response to the 2024 EAVS survey.

II. RESPONSES TO RECORDS REQUESTS

Invoking Section 8(i) of the NVRA, 52 U.S.C. § 20507(i), your August 4 letter requests seven categories of records. The Secretary will provide copies of existing records that respond to these requests, to the extent required by Section 8(i), and as explained below.

Request 1 from your letters seeks “[c]opies of the state’s most recent voter registration database, including fields indicating each register voters’ [sic] name, full date of birth, home address, most recent voter activity, and active or inactive status.” In accordance with state law, the Secretary provides a copy of the California state voter registration file to applicants who certify that they will use the voter file data only for a purpose disclosed by the applicant and permitted by law, maintain its data in a secure and confidential manner, and not disclose any data to any third person without further written authorization from the Secretary. (*See* Elec. Code, §§ 2188, 2194, 18109; Gov. Code, § 7924.000; Cal. Code Regs., tit. 2, §§ 19001–19009.) Enclosed with this letter is a form application to request access to California’s voter registration file. If you would like to apply for a copy of the file, please complete and return this form, specifying which counties you would like the file to include.

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Request 2 asks for “[a] list of the names and addresses of all persons in the county to whom notices described in 52 U.S.C. § 20507(d)(2) were sent, and information concerning whether or not each such person responded to the notice.” Without conceding that this information is encompassed by Section 8(i), the Secretary does not maintain the requested list.

Request 3 seeks communications concerning the EAC’s 2022 EAVS survey. The EAVS survey is not a program or activity undertaken by State or county election officials within the meaning of Section 8(i)

Request 4 seeks “[a]ll contracts with the U.S. Postal Service or any other federal agency to provide change-of-address information concerning registered voters.” The Secretary does not contract with any federal agency to provide change of address information concerning registered voters; instead, it relies on data from the state Employee Development Department to aid in determining address changes for registered voters. We construe your request to include the Secretary’s contract with the Employee Development Department, a current copy of which is enclosed.

Request 5 asks for “[a]ll manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters.” Each January since 2019, as part of the settlement agreement in *Logan*, the Secretary provides Judicial Watch with copies of manuals, training materials, protocols, written standards, and official guidance concerning efforts to ensure the accuracy and currency of official lists of eligible voters from the previous calendar year. We enclose copies of these materials from the past two years.

Request 6 concerns “[a]ll records concerning any internal or external audit, evaluation, assessment, review, analysis, critique, or request for or response to any of the foregoing, relating to the accuracy and currency of the official lists of eligible voters.” By way of background, the Elections Division follows a number of protocols that use information from the statewide voter registration database, VoteCal, as well as administrative records from other state agencies, including the Employee Development Department, the California Department of Public Health, the California Department of Corrections and Rehabilitation, and the Department of Motor Vehicles, to aid in determining registrant eligibility. Voter registration eligibility checks are performed on all new registrants pursuant to automated processes. Other processes confirm the eligibility of existing registrants, including checks to identify duplicate voter registrations, process voter-initiated changes to registration records, and compare existing registration records with state administrative records reflecting address changes, felony criminal histories, and deaths. Checks resulting in a “match” may, after confirmation, require updates to a registrant’s voting record, including with respect to factors affecting a registrant’s eligibility to vote. VoteCal disseminates “match” information to county elections officials so that they may determine whether changes to the registrant’s record are needed. Combined, these processes perform tens of thousands of individual determinations daily. Even if Section 8(i) applied to this request, it would be infeasible to generate and produce “all” records associated with these

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processes. Nonetheless, without conceding that this request falls within the scope of Section 8(i), the Secretary would be willing to confer about an appropriately narrowed request.

Request 7 requests “[r]ecords sufficient to support any explanation you provided in response to the inquiries contained in this letter.” To the extent such records fall within the ambit of Section 8(i), we enclose copies.

California is committed to complying fully with the requirements of the NVRA. We remain available to discuss any further questions or concerns that you may have.

Sincerely,



ANNA FERRARI
Deputy Attorney General

For ROB BONTA
Attorney General

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