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6 **Pro Hac Vice Application Pending*

7 Attorneys for Plaintiffs,
Robin Crest, Earl De Vries, and Judy De Vries

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

10
11 ROBIN CREST, EARL DE VRIES, and
12 JUDY DE VRIES,

13 Plaintiffs,

14 v.

15 ALEX PADILLA, in his official capacity as
Secretary of State of the State of California.

16 Defendants.

Case No. 19STCV27561

**AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

17 **INTRODUCTION**

18
19 1. Plaintiffs ROBIN CREST, EARL DE VRIES, and JUDY DE VRIES, taxpayers and
20 citizens of the State of California, seek to enjoin Defendant ALEX PADILLA from expending taxpayer
21 funds and taxpayer-financed resources enforcing or carrying out the provisions of Senate Bill 826 (“SB
22 826”), which requires California-based, publicly-held domestic or foreign corporations to have at least
23 one female director by December 31, 2019, and, depending on board size, up to three female directors
24 by December 31, 2021.

25 **JURISDICTION AND VENUE**

26 2. Jurisdiction in this case is founded on California’s common law taxpayer standing
27 doctrine and Code of Civil Procedure section 526a, which grants California taxpayers the right to sue
28 government officials to prevent unlawful expenditures of taxpayer funds and taxpayer-financed

1 resources. The mere expending of a paid, public official's time performing illegal or unauthorized acts
2 constitutes an unlawful use of funds that may be enjoined, and it is immaterial that the amount of the
3 expenditure is small or that enjoining the illegal expenditure will permit a savings of tax funds. *Blair*
4 *Pitchess*, 5 Cal. 3d 258, 268 (1971). It has long been held that "state officers too may be sued under
5 section 526a." *Serrano v. Priest*, 5 Cal. 3d 584, 618 n.38 (1971).

6 3. Venue in this Court is appropriate under Code of Civil Procedure section 393, as the
7 taxpayer funds and taxpayer-financed resources at issue are being expended or will be expended in the
8 County of Los Angeles. *Regents of the University of California v. Karst*, 3 Cal.3d 529, 542 (1970)
9 ("[F]or the purpose of venue, the action arises in the county where the agency spends the tax money that
10 cases the alleged injury.").

11 PARTIES

12 4. Plaintiff ROBIN CREST is a taxpayer and citizen of the State of California and has paid
13 income and other taxes to the State of California during the one-year period prior to the commencement
14 of this action.

15 5. Plaintiff EARL DE VRIES is a taxpayer and citizen of the State of California and has
16 paid income and other taxes to the State of California during the one-year period prior to the
17 commencement of this action.

18 6. Plaintiff JUDY DE VRIES is a taxpayer and citizen of the State of California and has
19 paid income and other taxes to the State of California during the one-year period prior to the
20 commencement of this action.

21 7. Defendant ALEX PADILLA is the Secretary of State of the State of California and a
22 constitutional officer of the State. Cal. Const. art. V, § 11. As Secretary of State, Defendant is charged
23 with overseeing, administering, and enforcing SB 826. Defendant is sued in his official capacity only.

24 STATEMENT OF FACTS

25 8. On September 30, 2018, California Governor Jerry Brown signed SB 826 into law. That
26 same day, the legislation was chaptered by the Secretary of State at Chapter 954, Statutes of 2018. SB
27 826 adds two new provisions to the Corporations Code, section 301.3 and section 2115.5.

28 9. SB 826 requires California-based, publicly-held corporations, defined as "a domestic or

1 foreign corporation whose principal executive offices, according to the corporation’s SEC 10-K form,
2 are located in California,” have at least one female director on its board by the end of the 2019 calendar
3 year. SB 826 also requires, by the end of the 2021 calendar year, such corporations comply with the
4 following:

- 5 • boards of six or more directors must include at least three female directors;
- 6 • boards of five directors must include at least two female directors; and
- 7 • boards of four or fewer members must include at least one female director.

8 10. SB 826 also directs the Secretary of State to prepare and publish a report, no later than
9 July 1, 2019, documenting the number of publicly-held, domestic and foreign corporations with
10 principal executive offices in California that have at least one female director on their boards. The
11 Secretary of State published its report on July 1, 2019.

12 11. For purposes of SB 826, “female” means an individual who self-identifies her gender as a
13 woman, without regard to the individual’s designated sex at birth.

14 12. According to the Senate Floor Analysis of SB 826, there are currently 761 publicly-
15 traded corporations headquartered in California, the vast majority of which are subject to the
16 legislation’s provisions. In its July 1, 2019 report, the Secretary of State identified 537 corporations that
17 must comply with SB 826. On information and belief, these corporations include those engaging in
18 public contracting with the State.

19 13. In addition, SB 826 directs the Secretary of State to prepare and publish an annual report,
20 starting on March 1, 2020, documenting the number of corporations that are in compliance with SB 826,
21 the number of corporations that moved their headquarters out of California, and the number of
22 corporations that are no longer publicly traded.

23 14. According to the Assembly Appropriations Committee, SB 826 will have ongoing
24 General Fund costs of approximately \$500,000 each year for the Secretary of State to develop
25 regulations, investigate claims, and enforce violations of the statute’s provisions and unknown additional
26 costs to produce a required annual report.

27 15. The Assembly Floor Analysis identified a “significant risk of legal challenges” to SB
28 826. It characterized the legislation as creating a “quota-like system” and noted, “[T]his bill, if enacted

1 into law, would likely be challenged on equal protection grounds . . . The use of a quota-like system, as
2 proposed by this bill, to remedy past discrimination and differences in opportunity may be difficult to
3 defend.”

4 16. In signing SB 826, then-Governor Brown noted that “serious legal concerns have been
5 raised” to the legislation. “I don’t minimize the potential flaws that indeed may prove fatal to its
6 ultimate implementation,” he wrote.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Cal. Const., art I, §§ 7 and 31)**

9 17. Plaintiffs incorporate by reference and reallege all their prior allegations.

10 18. An actual and justiciable controversy has arisen and now exists between Plaintiffs and
11 Defendant. Plaintiffs contend they have paid income and other taxes to the State of California during
12 the one-year period prior to the commencement of this action and that Defendant is expending, intend to
13 expend, or will expend taxpayer funds and taxpayer-financed resources illegally by enforcing and
14 otherwise carrying out the provisions of SB 826.

15 19. Specifically, Plaintiffs contend that any expenditure of taxpayer funds or taxpayer-
16 financed resources on SB 826 is illegal under the California Constitution. The legislation’s quota
17 system for female representation on corporate boards employs express gender classifications. As a
18 result, SB 826 is immediately suspect and presumptively invalid and triggers strict scrutiny review. *See*
19 *e.g., Woods v. Horton*, 167 Cal. App. 4th 658, 674 (2008); *Connerly v. State Personnel Bd.*, 92 Cal.
20 App. 4th 16, 40-44 (2001); Cal. Const., art. I, § 7; Cal. Const., art. I, § 31. Because gender
21 classifications are necessary to SB 826’s quota system, the legislation can only be justified by a
22 compelling governmental interest, and its use of gender classifications must be narrowly tailored to
23 serve that compelling interest. *Woods*, 167 Cal. App. 4th at 674-675; *Connerly*, 92 Cal. App. 4th at 44.
24 As Defendant cannot make these difficult showings and SB 826 cannot be interpreted to preserve the
25 legislation’s quota system’s validity, it is unconstitutional and any expenditure of taxpayer funds or
26 taxpayer-financed resources enforcing or otherwise carrying out the quota system is illegal.

27 20. On information and belief, Defendant contends SB 826 does not violate the California
28 Constitution and that therefore he is not expending taxpayer funds and taxpayer-financed resources

1 illegally and does not intend to expend or will not expend taxpayer funds and taxpayer-financed
2 resources illegally in the future.

3 21. A judicial declaration pursuant to Code of Civil Procedure section 1060 is necessary and
4 appropriate so that the parties may ascertain their respective legal rights and duties with respect to
5 Defendant's illegal expenditure of taxpayer funds and taxpayer-financed resources on SB 826.

6 22. Plaintiffs have no adequate remedy at law.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for the following relief against Defendant:

9 1. A judgment declaring any and all expenditures of taxpayer funds and taxpayer-financed
10 resources to enforce or carry out the provisions of SB 826 to be illegal;

11 2. An injunction permanently prohibiting Defendant from expending or cause the
12 expenditure of taxpayer funds and taxpayer-financed resources to enforce or carry out the provisions of
13 SB 826.

14 3. Costs of suit herein;

15 4. Reasonable attorney's fees under the Private Attorney General Statute, Code of Civil
16 Procedure section 1021.5, the Common Defense Fund, and the Substantial Benefit Doctrine; and

17 5. Such other relief as this Court deems just and proper.

18 Dated: September 20, 2019

JUDICIAL WATCH, INC.

19 By: /s/ Robert Patrick Sticht.
20 ROBERT PATRICK STICHT

21 MICHAEL BEKESHA*
22 * *Pro Hac Vice Application Pending*

23 *Attorneys for Plaintiffs*