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**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**10/04/2011**  
**amacias**  
By \_\_\_\_\_, Deputy  
Case Number:  
**34-2011-80000966**

8 Attorneys for Plaintiffs and Petitioners

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11  
12 WARD CONNERLY, a citizen and taxpayer, and  
13 AMERICAN CIVIL RIGHTS FOUNDATION,  
a nonprofit public benefit corporation,

14 Plaintiffs and Petitioners,

15 v.

16 STATE OF CALIFORNIA, ELAINE M. HOWLE,  
17 in her official capacity as the STATE AUDITOR OF  
CALIFORNIA, and the CALIFORNIA CITIZENS  
18 REDISTRICTING COMMISSION,

19 Defendants and Respondents.

No. \_\_\_\_\_

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

Code of Civ. Proc.  
§§ 1060, 526, 526a, and 1085

DEPARTMENT 31

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1 Plaintiffs and Petitioners Ward Connerly, a citizen and taxpayer residing in California, and  
2 American Civil Rights Foundation, a nonprofit public benefit corporation whose members include  
3 citizens and taxpayers residing in California (together Plaintiffs or Petitioners) bring this action  
4 against Defendants and Respondents the State of California; Elaine M. Howle, in her official  
5 capacity as State Auditor; and the Citizens Redistricting Commission (together Defendants or  
6 Respondents) for declaratory and injunctive relief under Code of Civil Procedure sections 1060,  
7 526, and 526a and a writ of mandate under Code of Civil Procedure section 1085 for violating  
8 Article I, section 31, of the California Constitution (Section 31 or Proposition 209).

### 9 INTRODUCTION

10 1. This action challenges, on its face, Government Code section 8252(g) as violating  
11 Article I, section 31, of the California Constitution. In 1996, the people of California adopted  
12 Proposition 209, adding Section 31 to the state constitution. In adopting this historic initiative, the  
13 people of California mandated that race, sex, color, ethnicity, or national origin can no longer be  
14 a factor in deciding who should and who should not receive the benefit of being appointed to state  
15 boards and commissions. Nevertheless, in selecting the final six members to the Citizens  
16 Redistricting Commission, Government Code section 8252(g) requires the first eight members of  
17 the Commission to grant preferential treatment to applicants on the basis of race, ethnicity, and  
18 gender, and accordingly, to discriminate against other applicants on the same basis. (For the sake  
19 of clarity, herein Plaintiffs use the term "sex" to include both the term "sex" and "gender;" the  
20 former being the operative word in Section 31 and the latter being the word used by Government  
21 Code section 8252(g).)

### 22 PARTIES

23 2. Plaintiff and Petitioner Ward Connerly (Mr. Connerly) is a citizen and taxpayer of  
24 the State of California. He has a beneficial interest in ensuring that the State, its agencies,  
25 instrumentalities, and employees comply with the mandates and prohibitions set out in Section 31  
26 and in preventing the illegal and wasteful expenditure of public resources in connection with the  
27 enforcement of statutes that violate Section 31. Upon information and belief, the Defendants and  
28 Respondents utilize public resources, including public monies, when they consider the race,

1 ethnicity, and sex of applicants when appointing six members to the Defendant Citizens  
2 Redistricting Commission in violation of Section 31. Mr. Connerly resides within the State's  
3 boundaries and has paid real property taxes and income taxes to the State of California within one  
4 year of the commencement of this action. At all times relevant to this action, Mr. Connerly has  
5 been a registered voter in the County of Sacramento and State of California and is eligible to vote  
6 in any election concerning amending the California Constitution. Mr. Connerly was the Petitioner  
7 in *Connerly v. State Pers. Bd.*, 92 Cal. App. 4th 16 (2001), which held several California statutes  
8 unconstitutional under Section 31, and *Connerly v. State of California*, No. 34-2010-80000412  
9 (Sacramento County Super. Ct. filed Jan. 6, 2010), which resulted in a writ of mandate ordering  
10 the respondents to follow the mandates of Section 31 by not enforcing several California statutes.

11 3. Plaintiff and Petitioner American Civil Rights Foundation (Foundation) is a  
12 nonprofit, public benefit corporation headquartered in Sacramento, California. It is dedicated to  
13 eradicating practices of racial discrimination and preferences by government entities nationwide  
14 and to enforcing Section 31's prohibition of racial, ethnic, and sex-based discrimination and  
15 preferences in the operation of public education, public employment, and public contracting at the  
16 State and local levels in California. The Foundation's members include individuals who are  
17 citizens, residents, taxpayers, and property owners in the State of California. The Foundation's  
18 members have paid taxes both to the State of California and on real property located in California  
19 within one year of the commencement of this action. The Foundation is authorized by its members  
20 to bring litigation affecting the interests of citizens and taxpayers within the State of California.  
21 They have a beneficial interest in ensuring that the State, its agencies and instrumentalities, and its  
22 employees comply with the mandates and prohibitions set out in Section 31 and in preventing the  
23 illegal and wasteful expenditure of public resources by the State to comply with laws that violate  
24 Section 31. Upon information and belief, the Defendants and Respondents utilize public resources  
25 including public monies when they consider the race, ethnicity, and sex of applicants when  
26 appointing six members to the Defendant Citizens Redistricting Commission in violation of  
27 Section 31. The Foundation was petitioner in *American Civil Rights Foundation v. Los Angeles*  
28 *Unified Sch. Dist.*, 169 Cal. App. 4th 436 (2008), in which the appellate court found the school



1 **ALLEGATIONS**

2 **Article I, Section 31, of the California Constitution**

3 8. On November 5, 1996, the voters of California adopted Proposition 209, adding  
4 Article I, section 31, to the California Constitution. In adopting Section 31, the voters issued a  
5 clear mandate prohibiting the State from discriminating against or granting preferences to  
6 individuals or groups on the basis of race, ethnicity, or sex in the operation of public employment  
7 or public contracts. The operative provision of Section 31 provides: "The state shall not  
8 discriminate against, or grant preferential treatment to, any individual or group on the basis of race,  
9 sex, color, ethnicity, or national origin in the operation of public employment, public education,  
10 or public contracting." Cal. Const. art. I, § 31(a).

11 9. Section 31 extends not only to the State itself, but also to all political subdivisions  
12 and instrumentalities of state government, including Defendant and Respondent Citizen  
13 Redistricting Commission. Section 31(f) defines the "State" as follows: "'State' shall include, but  
14 not necessarily be limited to, the state itself, any city, county, city and county, public university  
15 system, including the University of California, community college district, school district, special  
16 district, or any other political subdivision or governmental instrumentality of or within the state."  
17 Cal. Const. art. I, § 31(f).

18 10. Public employment or public contracting schemes that discriminate against or  
19 require preferential treatment on the basis of race, ethnicity, or sex in the operation of public  
20 employment or contracting violate Section 31. *Hi-Voltage Wire Works, Inc. v. City of San Jose*,  
21 24 Cal. 4th 537, 564 (2000). "Rather than classifying individuals by race . . . Proposition 209  
22 *prohibits* the State from classifying individuals by race." *Id.* at 561 (citation omitted).

23 **Government Code § 8252(g)**

24 11. On November 4, 2008, the voters of the State of California approved Proposition 11.

25 12. Proposition 11 transferred power over redistricting State Assembly, Senate, and  
26 Board of Equalization districts to a newly created Citizens Redistricting Commission.  
27 Proposition 11 amended Article XXI of the State constitution to transfer the redistricting power.  
28 It also added Government Code sections 8251-8252.5, which established the processes for the

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1 selection and governance of the Commission. Proposition 20, adopted in November 2010, gave  
2 the Commission authority to redistrict congressional districts as well.

3 13. Under Government Code section 8252, to select the Commission's members, the  
4 State Auditor initiates an application process and removes ineligible applicants to create an  
5 applicant pool. Auditors then reduce the applicant pool to 60 applicants. Next, state legislative  
6 leaders have an opportunity to further reduce the applicant pool by striking a certain number of  
7 applicants. Auditors then randomly select from the remaining applicant pool the first eight  
8 Commission members. These eight Commission members then select the final six Commission  
9 members.

10 14. During the selection of the final six Commission members, Government Code  
11 section 8252(g) requires the first eight Commission members to discriminate against or grant  
12 preferential treatment to applicants upon the basis of race, ethnicity, and sex.

13 Section 8252(g) provides in pertinent part:

14 No later than December 31 in 2010, and in each year ending in the number zero  
15 thereafter, the eight commissioners shall review the remaining names in the pool  
16 of applicants and appoint six applicants to the commission as follows: . . . . The  
17 six appointees *shall be chosen to ensure* the commission reflects this state's  
diversity, including, but not limited to, *racial, ethnic, geographic, and gender  
diversity*. However, it is not intended that formulas or specific ratios be applied for  
this purpose.

18 Gov't Code § 8252(g) (emphasis added).

19 15. Government Code section 8252(g) violates Section 31 to the extent that  
20 Section 8252(g) requires, authorizes, or encourages preferential or discriminatory treatment to be  
21 made on the basis of race, ethnicity, or sex in the operation of public employment or public  
22 contracting in appointing six members to the Commission.

23 16. Citizen Redistricting Commission members are public employees. Commission  
24 members are chosen by a process initiated and overseen by the State of California and the State  
25 Auditor, with input from the leadership of the State Assembly and Senate. Gov't Code § 8252.  
26 Commission members are subject to removal by the Governor, with concurrence of the Senate.  
27 Gov't Code § 8252.5(a). Commission members are also subject to prosecution by the Attorney  
28 General for "substantial neglect of duty or gross misconduct in office." *Id.* Commission members

1 are compensated by the state and eligible for reimbursement of personal expenses connected with  
2 their duties under the act. Gov't Code § 8253.5. In the alternative, the Commission members are  
3 public contractors appointed by the Defendants and Respondents based upon a selection process  
4 using race, ethnicity, and sex in violation of Section 31.

5 **INJUNCTIVE RELIEF ALLEGATIONS**

6 **(Enforcement of Article I, Section 31, of the California Constitution)**

7 17. Plaintiffs and Petitioners incorporate by reference and reallege each and every  
8 allegation set forth in this complaint.

9 18. Plaintiffs and Petitioners contend that, unless enjoined by this Court, Defendants  
10 and Respondents will cause great and irreparable injury to Plaintiffs and members of Plaintiff  
11 Foundation, who are taxpaying residents of California, in that Defendants and Respondents will  
12 expend public monies and public resources to implement and administer Government Code section  
13 8252(g), which requires the granting of preferences as well as discrimination in the selection of  
14 members to the Commission on the basis of race, ethnicity, and sex. Such continued actions by  
15 Defendants and Respondents are unlawful and contrary to the obligations of Defendants' and  
16 Respondents' respective public offices and the trusts and duties arising therefrom.

17 19. Plaintiffs and Petitioners seek relief under Code of Civil Procedure sections 526 and  
18 526a. Plaintiffs and Petitioners have no adequate remedy at law, and pecuniary compensation  
19 would not provide adequate relief. On information and belief, without an injunction restraining  
20 the continued enforcement and administration of the offending portions of Government Code  
21 section 8252(g), Defendants and Respondents will continue to administer, implement, maintain,  
22 and enforce Government Code section 8252(g) to the extent that it discriminates against and grants  
23 preferential treatment to applicants in violation of Section 31.

24 **FIRST CAUSE OF ACTION**

25 **Declaratory Relief for Violation of Article I, Section 31, of the California Constitution**  
26 **(Code of Civ. Proc. § 1060)**  
**(Against All Defendants)**

27 20. Plaintiffs incorporate by reference and reallege each and every allegation set forth  
28 in this complaint.

1 21. Defendants have a duty pursuant to Section 31 not to discriminate against or grant  
2 preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or  
3 national origin in the operation of public employment or public contracting.

4 22. Notwithstanding this duty, Defendants are required to follow and enforce  
5 Government Code section 8252(g), which uses race, ethnicity, and sex in selecting members to the  
6 Commission.

7 23. An actual and justiciable controversy exists between the parties concerning the  
8 constitutionality of Government Code section 8252(g). Plaintiffs contend that Section 8252(g)  
9 violates Section 31 to the extent that it mandates racial, ethnic, or sex preferences or discrimination  
10 in the operation of public employment or public contracting in violation of Section 31.

11 24. Plaintiffs are informed and believe, and therefore allege, that Defendants dispute  
12 that Section 8252(g) violates Section 31 to the extent it mandates, encourages, or authorizes the  
13 granting of preferential treatment to or discriminating against any applicant based on race,  
14 ethnicity, or sex in the operation of public employment and public contracting in violation of  
15 Section 31.

16 25. A judicial determination of rights and responsibilities arising from this actual  
17 controversy is necessary and appropriate at this time.

18 WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

19 **SECOND CAUSE OF ACTION**

20 **WRIT OF MANDATE COMPELLING ALL RESPONDENTS**  
21 **TO FOLLOW THEIR DUTIES UNDER ARTICLE I,**  
22 **SECTION 31, OF THE CALIFORNIA CONSTITUTION**

23 **(Mandamus—Code of Civ. Proc. § 1085)**  
24 **(Against All Respondents)**

25 26. Petitioners incorporate by reference and reallege each and every allegation set forth  
26 in this petition.

27 27. California Code of Civil Procedure section 1085 permits this Court to issue a writ  
28 of mandate to compel actions required of the State of California, state boards or commissions, and  
state officers and employees.



1           28.    Section 31 prohibits the State and its political subdivisions or governmental  
2 instrumentalities of the State from granting preferential treatment to, or discriminating against, any  
3 group or individual on the basis of race, color, ethnicity, sex, or national origin in the operation of  
4 public employment and public contracting. Cal. Const. art. I, § 31(a), (t). Section 31 prohibits the  
5 State and all its political subdivisions or governmental instrumentalities from classifying applicants  
6 for public employment or public contracting by race. *Hi-Voltage*, 24 Cal. 4th at 561 (citation  
7 omitted) (“Rather than classifying individuals by race . . . Proposition 209 *prohibits* the State from  
8 classifying individuals by race.”).

9           29.    Respondent Commission is a political subdivision or an instrumentality of the state  
10 government. Cal. Const. art. I, § 31(f); Cal. Const. art. XXI, § 1; Gov’t Code § 8251, *et seq.*

11           30.    Thus, Respondents are under a clear and present duty not to discriminate against or  
12 grant preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or  
13 national origin in the operation of public employment or contracting.

14           31.    Petitioners have a clear, present, legal right to enforce Respondents’ performance  
15 of their duties under Section 31. Furthermore, Petitioners have a beneficial interest in assuring that  
16 the most qualified applicants be appointed to the Commission, free from any government  
17 discrimination or preferential treatment based upon race, sex, color, ethnicity, or national origin  
18 in the operation of public employment or public contracting.

19           32.    Government Code section 8252(g) requires the Commission to use race, ethnicity,  
20 and sex in selecting six members to the Commission. This requirement violates Section 31 because  
21 it classifies and treats individuals differently on the basis of race, ethnicity, and sex in the operation  
22 of public employment or public contracting.

23           33.    With the adoption of Government Code section 8252(g), Respondents are prohibited  
24 from performing their legal duties as required by Section 31, they exceed their lawful powers and  
25 authority, and abuse their discretion in their use of race, ethnicity, or sex in the selection process  
26 of six Commission members.

27           34.    To the extent Government Code section 8252(g) subjects individuals and groups  
28 to unequal and disadvantageous treatment on the basis of race, ethnicity, or sex when competing

1 for public employment or public contract it violates Section 31. It requires the Commission to  
2 discriminate against potential commission members on the basis of race, ethnicity, and sex. An  
3 applicant who does not make the Commission "diverse" is punished by having his or her  
4 application rejected because of race, ethnicity, or sex.

5 35. Respondents' continued enforcement of Government Code section 8252(g), which  
6 mandates racial, ethnic, and sex-based preferences in the operation of public employment or public  
7 contracting, constitutes a prejudicial abuse of discretion and is beyond Respondents' lawful powers  
8 and authority.

9 36. Petitioners are informed and believe, and on that basis allege, that Respondents  
10 expend public resources, including staff time, monies, and other resources in administering  
11 Government Code section 8252(g).

12 37. Issuance of a writ of mandate compelling Respondents to perform their duties  
13 resulting from their respective offices, trusts, and stations, in a nondiscriminatory and  
14 nonpreferential manner in full compliance with Section 31, for the opposition of the six  
15 Commission members mentioned in Government Code section 8252(g) is required because there  
16 exists no plain, speedy, and adequate remedy in the ordinary course of law which would protect  
17 Petitioners' rights and interests, and it would be extremely difficult to determine how much  
18 compensation would afford adequate relief.

19 WHEREFORE, Petitioners pray for judgment against Respondents as hereinafter set forth.

20 **PRAYER FOR RELIEF**

21 1. For a declaration that Government Code section 8252(g) is unconstitutional, invalid,  
22 and unenforceable under Article I, section 31(a), of the California Constitution, to the extent that  
23 it discriminates against or grants preferences on the basis of race, sex, color, ethnicity, or national  
24 origin in the operation of public employment or public contracting;

25 2. For a permanent prohibitory injunction enjoining Defendants and Respondents, and  
26 each Defendant and Respondent individually, from enforcing or attempting to enforce Government  
27 Code section 8252(g), to the extent that it discriminates against or grants preferential treatment to

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1 any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation  
2 of public employment or public contracting now and in the future;

3 3. For this Court to issue a writ of mandate and/or prohibition compelling Respondents  
4 to follow their duties under Article I, section 31, of the California Constitution by commanding the  
5 Respondents, their agents, employees, officers, and representatives from enforcing or attempting  
6 to enforce Government Code section 8252(g) to the extent that it mandates the use of racial, ethnic,  
7 or sex-based discrimination and preferential treatment in the operation of public employment or  
8 public contracting, now and in the future;

9 4. That the Court sever and find invalid, unenforceable, and unconstitutional that  
10 portion of Government Code section 8252(g), which requires the State of California, its agencies,  
11 departments, officers, and political subdivisions or governmental instrumentalities to discriminate  
12 against or grant preferential treatment on the basis of race, ethnicity, and sex in the operation of  
13 public employment or public contracting in violation of Article I, section 31, of the California  
14 Constitution;

15 5. For costs of suit;

16 6. For attorneys' fees; and

17 7. For such other and further relief as the Court may deem proper.

18 DATED: October 4, 2011.

19 Respectfully submitted,

20 SHARON L. BROWNE  
21 RALPH W. KASARDA  
22 JOSHUA P. THOMPSON  
23 ADAM R. POMEROY

24 By   
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25 Attorneys for Plaintiffs and Petitioners  
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