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GDSSC COURTHOUSE  
SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY

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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SACRAMENTO

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

13 Plaintiffs and Petitioners,

14 v.

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

17 Defendants and Respondents.  
18

) No. 34-2011-80000966-CU-WM-GDS

) **SECOND AMENDED**  
) **VERIFIED PETITION**  
) **FOR WRIT OF MANDATE**  
) **(C.C.P. § 1085) AND COMPLAINT**  
) **FOR DECLARATORY**  
) **AND INJUNCTIVE RELIEF**

) Place: Department 31  
) Judge: The Hon. Michael Kenny

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## INTRODUCTION

Petitioners and Plaintiffs Ward Connerly and American Civil Rights Foundation, a nonprofit public benefit corporation whose members include citizens and taxpayers residing in California (together Plaintiffs or Petitioners) bring this action against Respondents and Defendants State of California; Elaine M. Howle, in her official capacity as State Auditor; and the Citizens Redistricting Commission (together Defendants or Respondents). Petitioners and Plaintiffs seek a writ of mandate and declaratory and injunctive relief to prevent further implementation of a state statute that, on its face, violates the Federal Equal Protection Clause (U.S. Const. amend. XIV, § 1).

## PARTIES

1. Plaintiff and Petitioner Ward Connerly is a citizen and taxpayer of the State of California. He has a beneficial interest in preventing the illegal and wasteful expenditure of public resources in connection with the enforcement of an unconstitutional provision of a statute, such as Government Code section 8252(g). Mr. Connerly resides within the State's boundaries and has paid real property taxes and income taxes to the State of California within one year of the commencement of this action. At all times relevant to this action, Mr. Connerly has been a registered voter in the County of Sacramento and the State of California.

2. Plaintiff and Petitioner American Civil Rights Foundation (Foundation) is a nonprofit, public benefit corporation headquartered in Sacramento, California. It is dedicated to eradicating practices of racial discrimination and preferences by government entities in California and nationwide. The Foundation's members include individuals who are citizens, residents, taxpayers, and property owners in the State of California. The Foundation's members have paid taxes to the State of California and on real property located in California within one year of the commencement of this action. The Foundation has at least one member who applied to serve as a member of the Commission in the past, and intends to apply again through the discriminatory selection procedure mandated by Section 8252(g). The Foundation is authorized by its members to bring litigation affecting the interests of citizens and taxpayers within the State of California who have a beneficial interest in ensuring that the State, its agencies and instrumentalities, and its employees comply with the United States Constitution, and in preventing the illegal and wasteful

1 expenditure of public resources by the State to comply with laws that violate the Equal Protection  
2 Clause of the Fourteenth Amendment.

3 3. Defendant and Respondent State of California is the government entity responsible  
4 for enforcement of the laws of the State, and must comply with the State and United States  
5 Constitutions. As such, the State has a duty to provide equal treatment to individuals on the basis  
6 of race, gender, color, ethnicity, or national origin in the selection of public officers to serve on the  
7 Citizens Redistricting Commission.

8 4. Defendant and Respondent Elaine M. Howle is sued in her official capacity as the  
9 State Auditor. State Auditor Howle is responsible for overseeing the Citizens Redistricting  
10 Commission application and selection process, including the creation of the initial applicant pool,  
11 selecting the public employees who comprise the Applicant Review Panel, and selecting the first  
12 eight members of the Commission. Gov't Code § 8252. State Auditor Howle is an officer of the  
13 State of California and has a duty to enforce the laws of the State and the United States  
14 Constitutions. As such, Ms. Howle has a duty to provide equal treatment to individuals on the  
15 basis of race, gender, color, ethnicity, or national origin in the selection of public officers to serve  
16 on the Citizens Redistricting Commission.

17 5. Defendant and Respondent Citizens Redistricting Commission is a political  
18 subdivision or governmental instrumentality of the State of California and has a mandatory duty  
19 to enforce state laws and comply with the United States Constitution. The Commission is  
20 responsible for determining the boundaries for the Assembly, Senate, Board of Equalization, and  
21 congressional districts within the State. Cal. Const. art. XXI, § 1. The Commission has a duty to  
22 provide equal treatment to individuals on the basis of race, gender, color, ethnicity, or national  
23 origin in the selection of public officers to serve on the Citizens Redistricting Commission.

24 **VENUE**

25 6. Venue is proper in this Court pursuant to Code of Civil Procedure sections 393(b)  
26 and 395(a) because Defendants and Respondents execute their public offices and duties in the  
27 County of Sacramento.

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**ALLEGATIONS**

7. Plaintiffs and Petitioners bring this facial challenge to Government Code section 8252(g) as violating the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**Government Code § 8252**

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

9. Proposition 11 amended Article XXI of the State constitution to transfer the power to redraw State Assembly, Senate, and Board of Equalization districts to a newly created Citizens Redistricting Commission (Commission). It also added Government Code sections 8251-8252.5.

10. Proposition 20, adopted in November, 2010, gave the Commission authority to redraw congressional districts.

11. Citizens Redistricting Commission members are public officers.

12. The State of California and the State Auditor choose Commission members through a process initiated and overseen by and with input from the leadership of the State Assembly and Senate. Gov't Code § 8252.

13. By August 15 of each year ending in the number nine, the State Auditor shall initiate an application process, open to all registered California voters in a manner that promotes a diverse and qualified applicant pool. Gov't Code § 8252(a)(1).

14. The State Auditor creates a "diverse and qualified applicant pool" by initiating an application process and removing any ineligible applicants. Gov't Code § 8252(a)(1). The State Auditor then randomly selects three auditors, chosen "from a pool consisting of all auditors employed by the state and licensed by the California Board of Accountancy," to form an Applicant Review Panel.

15. The Applicant Review Panel is composed of public employees, employed by Respondent State of California and supervised by Respondent State Auditor Howle. Gov't Code § 8252. The public employees of the Applicant Review Panel review eligible applicants and select 60 "of the most qualified applicants." Gov't Code § 8252(d). Next, state legislative leaders have

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1 an opportunity to further reduce the applicant pool by striking a certain number of applicants.  
2 Gov't Code § 8252(e).

3 16. Thereafter the State Auditor randomly selects the eight Commission members from  
4 the remaining applicant pool. Gov't Code § 8252(f). These eight Commission members then  
5 select the final six Commission members. Gov't Code § 8252(g).

6 **Government Code § 8252(g) and the Final Appointments to the Commission**

7 17. In selecting the final six Commission members, Government Code section 8252(g)  
8 requires the randomly-selected eight Commission members to deny equal treatment to applicants  
9 on the basis of race, gender, color, ethnicity, or national origin.

10 18. Section 8252(g) provides that the last six members of the Commission "shall be  
11 chosen to ensure the commission reflects this state's diversity, including, but not limited to, racial,  
12 ethnic, geographic, and gender diversity." Gov't Code § 8252(g).

13 19. On November 18, 2010, the State Auditor selected eight members of the  
14 Commission.

15 20. These eight Commissioners met for their first public meeting of the Commission  
16 on November 30, 2010.

17 21. During a series of public meetings of the eight-member Commission in December  
18 2010, those members considered the race, ethnicity, and sex of applicants during the selection  
19 process of the final six members.

20 22. On December 15, 2010, the randomly-selected eight members of the Commission  
21 selected the final 6 Commission members on the basis of race, sex, and ethnicity.

22 23. Section 8252(g) requires the randomly-selected eight Commission members to deny  
23 equal treatment to potential Commission members on the basis of race, sex, and ethnicity. An  
24 applicant who does not make the Commission "diverse" is punished by having his or her  
25 application rejected because of race, gender, or ethnicity. An applicant who will further "diversify"  
26 because he or she is the favored race, gender, or ethnicity is granted preferential treatment in the  
27 commissioner selection process.

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**Equal Protection Clause, U.S. Const. amend. XIV, § 1**

24. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution mandates that, “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. The Fourteenth Amendment protects persons, not groups. States must treat citizens and residents as individuals rather than as members of a group or class. All governmental action based on race must be subjected to detailed judicial scrutiny to ensure that the personal right to equal protection of the laws has not been infringed.

25. The Equal Protection Clause prohibits states from classifying, discriminating against, or granting preferential treatment to individuals on the basis of their race, sex, or ethnicity, unless such actions are narrowly tailored to achieve a compelling state interest.

26. The Equal Protection Clause prohibits states from denying equal treatment to individuals on the basis of their race, sex, or ethnicity, unless such actions are narrowly tailored to achieve a compelling state interest.

**INJUNCTIVE RELIEF ALLEGATIONS**

**(Code of Civil Procedure sections 526, 526a)**

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

28. Plaintiffs and Petitioners contend that, unless enjoined by this Court, Defendants and Respondents will cause great and irreparable injury to Plaintiff Connerly and members of Plaintiff Foundation.

29. Defendants and Respondents will expend public monies and public resources to implement and administer Government Code section 8252(g), which requires properly-selected members of the Commission to deny equal treatment to individuals on the basis of race, sex, and ethnicity when selecting and appointing the last six members of the Commission.

30. Such continued actions by Defendants and Respondents are unlawful and contrary to the obligations of Defendants’ and Respondents’ respective public offices and the trusts and duties arising therefrom.

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1 31. Plaintiffs and Petitioners seek relief under Code of Civil Procedure sections 526 and  
2 526a. Plaintiffs and Petitioners have no adequate remedy at law, and pecuniary compensation  
3 would not provide adequate relief.

4 32. On information and belief, Plaintiffs and Petitioners allege that, without an  
5 injunction restraining the continued enforcement and administration of the offending portions of  
6 Government Code section 8252(g), Defendants and Respondents will continue to violate the Equal  
7 Protection Clause of the Fourteenth Amendment to the United States Constitution by  
8 administering, implementing, maintaining, and enforcing Government Code section 8252(g) in a  
9 manner that denies equal treatment to individuals on the basis of race, gender, and ethnicity in the  
10 selection and appointment of six members to the Commission.

11 **FIRST CAUSE OF ACTION**

12 **DECLARATORY RELIEF FOR VIOLATION OF FOURTEENTH**  
13 **AMENDMENT TO THE UNITED STATES CONSTITUTION**

14 **(Code of Civ. Proc. § 1060)**

15 33. Plaintiffs incorporate by reference and reallege each and every allegation set forth  
16 in this complaint.

17 34. The Federal Equal Protection Clause requires that the screening process of  
18 individuals applying to serve as public officers on the California Redistricting Commission be  
19 conducted in a neutral manner without consideration of an applicant's race, sex, or ethnicity.

20 35. Government Code section 8252(g) violates the Equal Protection Clause because it  
21 requires, authorizes, or encourages the denial of equal treatment of individuals on the basis of race,  
22 gender, or ethnicity when appointing the final six members of the Commission.

23 36. The use of race, gender, and ethnicity required by Section 8252 does not serve a  
24 compelling state interest.

25 37. Proposition 11 amended Article XXI of the State Constitution to state that the  
26 selection process for the members of the new Citizens Redistricting Commission "is designed to  
27 produce a commission that is independent from legislative influence and reasonably representative  
28 of this State's diversity."

1           38.     Section 8252(g) was not adopted to remedy racial discrimination against individuals  
2 applying to serve as members on any public commission.

3           39.     Section 8252(g) was not adopted to remedy discrimination on the basis of gender  
4 against individuals applying to serve as members on any public commission.

5           40.     Section 8252(g) was not adopted to remedy discrimination on the basis of ethnicity  
6 against individuals applying to serve as members on any public commission.

7           41.     The Legislative Analyst's analysis of Proposition 11, included in the California  
8 General Election Official Voter Information Guide for the November 4, 2008 election, contains no  
9 mention of past discrimination on the basis of race, gender, or ethnicity against individuals  
10 applying to serve on any public commission.

11          42.     The Legislative Analyst's analysis of Proposition 11 does not indicate that the  
12 selection process for the individuals to serve on the Citizens Redistricting Commission was enacted  
13 for a remedial purpose.

14          43.     Section 8252(g) does not provide for constitutional methods to increase the diversity  
15 of the Commission.

16          44.     Section 8252(g) does not provide for an alternative commissioner selection process  
17 that is race- and gender-neutral.

18          45.     There is no expiration date for the use of race, sex, and ethnicity in choosing the last  
19 six members of the Commission. Gov't Code §§ 8251-8253.6.

20          46.     There is no provision for reevaluating the use of race, gender, and ethnicity in  
21 choosing the last six members of the Commission. Gov't Code §§ 8251-8253.6.

22          47.     Defendants have a duty to comply with the Equal Protection Clause.

23          48.     Notwithstanding this duty, Defendants are required by Government Code  
24 section 8252, to enforce an application process that requires eight, randomly-selected members of  
25 the Citizens Redistricting Commission to deny equal treatment to individuals on the basis of race,  
26 gender, and ethnicity in the selection and appointment of the final six members of the Commission.

27          49.     To the extent Government Code section 8252(g) subjects individuals or groups to  
28 classification, screening, an unequal and disadvantageous treatment on the basis of race, ethnicity,



1 or gender when they apply to serve as public officers on the Commission, it violates the Equal  
2 Protection Clause of the Fourteenth Amendment to the United States Constitution.

3 50. An actual and justiciable controversy exists between the parties concerning the  
4 constitutionality of Government Code section 8252(g).

5 51. Plaintiffs contend that Section 8252(g) violates the Fourteenth Amendment to the  
6 extent it mandates, encourages, or authorizes the denial of equal treatment to individuals based on  
7 race, ethnicity, or gender in the selection and appointment of members to the Commission.

8 52. Plaintiffs are informed and believe, and therefore allege, that Defendants dispute  
9 that Section 8252(g) violates the Fourteenth Amendment to the extent it mandates, encourages, or  
10 authorizes the denial of equal treatment to individuals based on race, ethnicity, or gender in the  
11 selection and appointment of members to the Commission.

12 53. A judicial determination of rights and responsibilities arising from this actual  
13 controversy is necessary and appropriate at this time.

14 WHEREFORE, Plaintiffs pray for judgment as set forth below.

15 **SECOND CAUSE OF ACTION**

16 **WRIT OF MANDATE TO COMPEL ALL**  
17 **RESPONDENTS TO PERFORM THEIR DUTIES UNDER**  
18 **THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH**  
19 **AMENDMENT TO THE UNITED STATES CONSTITUTION**

20 **(Mandamus—Code of Civ. Proc. § 1085)**

21 54. Petitioners incorporate by reference and reallege each and every allegation set forth  
22 in this petition.

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

26 56. Respondents are under a clear and present duty to comply with the Equal Protection  
27 Clause of the Fourteenth Amendment to the United States Constitution, which prohibits the denial  
28 of equal treatment to individuals based on race, ethnicity, or gender in the selection and  
appointment of public officers.

1 57. Petitioners have a clear, present, legal right to enforce Respondents' performance  
2 of their duties under the Equal Protection Clause of the Fourteenth Amendment.

3 58. Petitioners have a beneficial interest in assuring that the most qualified applicants  
4 be appointed to the Commission, free from any unequal treatment by government based upon race,  
5 gender, color, ethnicity, or national origin.

6 59. Government Code section 8252(g) violates the Equal Protection Clause of the  
7 Fourteenth Amendment to the United States Constitution because it requires Respondents to treat  
8 individuals unequally on the basis of race, ethnicity, and gender when selecting the final six  
9 members of the Citizens Redistricting Commission.

10 60. Respondents cannot perform their legal duties as required by the Equal Protection  
11 Clause of the Fourteenth Amendment to the United States Constitution, because they must consider  
12 race pursuant to Section 8252(g). Respondents will continue to enforce Government Code  
13 section 8252(g), which mandates, encourages, or authorizes unequal treatment based on race,  
14 ethnicity, or gender in the selection of members to the Commission.

15 61. The enforcement of Section 8252(g) constitutes a prejudicial abuse of discretion and  
16 exceeds Respondents' lawful powers and authority.

17 62. Petitioners request a writ of mandate compelling Respondents to perform the duties  
18 resulting from their respective offices, trusts, and stations, by treating individuals equally with  
19 regard to race, ethnicity and sex, in full compliance with the Equal Protection Clause of the  
20 Fourteenth Amendment to the United States Constitution, in the selection of Commission members  
21 under Government Code section 8252(g).

22 63. There is no plain, speedy, and adequate remedy in the ordinary course of law to  
23 protect Petitioners' rights and interests, and because this is an action to prevent the illegal and  
24 wasteful expenditure of public resources by the State to comply with laws that violate the United  
25 States Constitution, no compensation could afford relief.

26 WHEREFORE, Petitioners pray for judgment as hereinafter set forth.

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## PRAYER FOR RELIEF

1. For a declaration that Government Code section 8252(g) is unconstitutional, invalid, and unenforceable under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, to the extent that it mandates, encourages, or unequal treatment to individuals based on race, gender, color, ethnicity, or national origin in the selection of individuals applying to serve as members on the Citizens Redistricting Commission;

2. For a permanent prohibitory injunction enjoining Defendants and Respondents, and each Defendant and Respondent individually, from enforcing or attempting to enforce Government Code section 8252(g), to the extent that it mandates, encourages, or authorizes unequal treatment to individuals based on race, gender, color, ethnicity, or national origin in the selection of individuals applying to serve as members on the Citizens Redistricting Commission;

3. For the Court to issue a writ of mandate and/or prohibition compelling Respondents to perform their duties under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by commanding the Respondents, their agents, employees, officers, and representatives to stop enforcing, or attempting to enforce, Government Code section 8252(g) to the extent that it mandates, encourages, or authorizes unequal treatment to individuals based on race, gender, color, ethnicity, or national origin in the selection of individuals applying to serve as members on the Citizens Redistricting Commission;

4. That the Court sever and find invalid, unenforceable, and unconstitutional that portion of Government Code section 8252(g), which requires the State of California, its agencies, departments, officers, public employees, and political subdivisions or governmental instrumentalities to deny equal treatment on the basis of race, ethnicity, or gender in the selection and appointment of public officers in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

5. For costs of suit;

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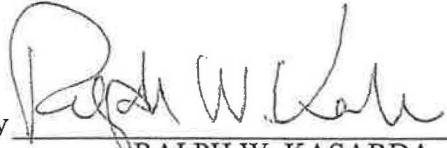
1 6. For attorneys' fees; and

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

3 DATED: December 2nd 2014.

4 Respectfully submitted,

5 MERIEM L. HUBBARD  
6 RALPH W. KASARDA  
7 JOSHUA P. THOMPSON

8  
9 By   
RALPH W. KASARDA

10 Attorneys for Plaintiffs and Petitioners

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**WARD CONNERLY VERIFICATION**

I, Ward Connerly, hereby declare as follows:

I am a Plaintiff and Petitioner in this matter. I have read the SECOND AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE and know its contents. The facts alleged in this matter are within my own personal knowledge, and I know these facts to be true, except for matters stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 30<sup>th</sup> day of November, 2014, in Sacramento, California.

  
WARD CONNERLY

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Sacramento, CA 95814  
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AMERICAN CIVIL RIGHTS FOUNDATION VERIFICATION

I, Diane Schachterle, hereby declare as follows:

I am the authorized representative of American Civil Rights Foundation (Foundation), a Plaintiff and Petitioner in this matter. I have the authority to act on behalf of the Foundation and to make this verification for, and on behalf of, the Foundation. I have read the SECOND AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE and know its contents. The facts alleged in this matter are within my own personal knowledge, and I know these facts to be true, except for matters stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 2nd day of December, 2014, in Sacramento, California.



DIANE SCHACHTERLE  
American Civil Rights Foundation



PACIFIC LEGAL FOUNDATION  
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Sacramento, CA 95814  
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## DECLARATION OF SERVICE

I, Barbara A. Siebert, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On December 4, 2014, true copies of SECOND AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE were placed in envelopes addressed to:

PAUL STEIN  
California Attorney General's Office  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102  
*Counsel for Defendants State of California  
and the Citizens Redistricting Commission*

MARGARET CAREW TOLEDO  
Toledo Don LLP  
3001 Douglas Boulevard, Suite 340  
Roseville, CA 95661-3853

STEVEN BENITO RUSSO  
California State Auditor's Office  
621 Capitol Mall, Suite 1200  
Sacramento, CA 95814  
*Counsel for Defendant Elaine M. Howle,  
State Auditor of California*

which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 4<sup>th</sup> day of December, 2013, at Sacramento, California.

  
BARBARA A. SIEBERT