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7 Taxpayers Association

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SACRAMENTO**

10 HOWARD JARVIS TAXPAYERS  
11 ASSOCIATION, and JON COUPAL, an  
individual;

12 *Plaintiffs*

13 v.

14 ALEX PADILLA, in his official capacity as the  
23 Secretary of State of California: and DOES 1-25.

16 *Defendants.*

Case No.

**VERIFIED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

**[Code of Civil Procedure §§ 526a, 1060;  
Public Contract Code § 10421]**

17 Plaintiffs seek declaratory relief and a preliminary and permanent injunction prohibiting  
18 Defendant PADILLA's continuing attempt to carry-out an unlawful \$35 million expenditure of  
19 taxpayer funds using the services of a partisan political consulting firm. As indicated more fully  
20 below, PADILLA is proceeding:

21 (i) In secret;

22 (ii) Without budgetary authority to fund the \$35 million state advertising contract;

23 (iii) Even after the State Controller's office told PADILLA that he had no budget  
24 authority; and

25 (iv) In violation of the Public Contract Code.

26 Upon proof that Defendants in their individual capacity spent taxpayers' funds without  
27 due care, Plaintiffs may seek to amend this complaint to obtain the personal reimbursement of the  
28

1 taxpayer funds expended to reimburse the State General Fund. (*Stanson v. Mott* (1976) 17 Cal.3d  
2 206, 226-227.)

3 Plaintiffs allege as follows:

4 **PARTIES**

5 1. Plaintiff HOWARD JARVIS TAXPAYERS ASSOCIATION (“HJTA”), is a  
6 nonprofit public benefit corporation representing the interests of tens of thousands of member  
7 taxpayers and homeowners. In particular, HJTA is opposing several ballot measures on the  
8 November 3, 2020 General Election ballot, including Proposition 15 which would repeal parts of  
9 Proposition 13, HJTA’s landmark property tax initiative, as well as Propositions 19 and 21.

10 2. Plaintiff JON COUPAL is a resident of Sacramento County, is a registered voter in  
11 the State of California, and is a taxpayer. COUPAL is also President of Plaintiff HOWARD  
12 JARVIS TAXPAYERS ASSOCIATION.

13 3. Defendant ALEX PADILLA, is the Secretary of State of California (“SOS” or  
14 “PADILLA”). He is proceeding with a \$35 million advertising contract without budget authority  
15 to pay the contract and without complying with the Public Contract Code. His slippery and ever-  
16 changing attempts to explain or justify the contract are either gross incompetence or malfeasance.

17 4. Defendants DOES 1-25 are State officials, employees, or consultants who are  
18 acting in their official or individual capacities in carrying-out the unlawful contract and without  
19 “due care.” Plaintiffs do not know the identity of these Defendants but once their identity is  
20 discovered they will amend this Complaint to include and identify such Defendants.

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over this matter pursuant to Code of Civil Procedure  
23 sections 526a, 1060, and Public Contract Code section 10421.

24 6. Venue for this action is appropriately in Sacramento County as all the Parties  
25 maintain their principal offices in Sacramento County.

26 **GENERAL ALLEGATIONS**

27 7. Plaintiffs are informed and believe, and on that basis allege that sometime in July  
28 or August of 2020, Defendant SOS “invited” as many as seven political consulting firms to “bid”

1 on a proposed \$35 million advertising contract for voter outreach and public education. The  
2 invitations were directed only at partisan political consulting firms – not traditional non-partisan  
3 advertising agencies. The “invitation” did not comply with the Public Contract Code as it was not  
4 publicly noticed.

5 8. The State frequently awards advertising contracts for a variety of public education  
6 efforts under provisions of the Public Contract Code (e.g. anti-tobacco campaign, recycling  
7 campaigns, don’t text while driving campaigns). Many non-partisan professional advertising  
8 agencies bid on these contracts.

9 9. Plaintiffs are informed and believe, and on that basis allege that none of the  
10 traditional advertising agencies that would typically bid on and have been awarded these types of  
11 contracts by other State agencies were “invited” to bid on Defendant SOS’s proposed contract. In  
12 fact, some of those advertising agencies became aware of the proposed contract and inquired of the  
13 SOS for an opportunity to bid, but they were informed that it was a “closed – invitation only” bid.

14 10. In connection with its invitation, Defendant SOS prepared a document captioned  
15 “scope of work.” A true and correct copy of that document is attached hereto as **Exhibit A**. It  
16 directs the bidding political consulting firm to focus on several key points in its submitted  
17 proposal. For example, the scope of work states that the consultant must “include a GOTV (“get-  
18 out-the-vote”) targeting expert.” The contractor is to “review and utilize data from VoteCal, the  
19 statewide voter registration database, to inform outreach efforts.” Indeed, the SOS states his goal  
20 of “reaching our various target audiences such as inactive voters, first time voters, in-language  
21 voters, student voters, etc.” The scope of work requires the bidder to create and implement  
22 “targeted” messaging by using all forms of media, including television, digital, and social media.

23 11. By focusing (i.e. “targeting”) the voter outreach, the political consulting firm can  
24 and will necessarily affect voter turnout of certain types of voters more than others and in some  
25 parts of the State more than others. This can and will affect the outcomes of elections – indeed  
26 that is what targeted GOTV is intended to achieve.

27 ///

1           12.       At least three of the invited firms submitted written proposals and were asked to  
2 participate in a formal presentation with SOS staff. All three firms are partisan with deep ties to  
3 the State and national Democratic party, Democratic candidates and Democratic causes.

4           13.       One of the firms is called SKDKnickerbocker (“SKDK”). Its website prominently  
5 states that it is on “Team Biden.” Indeed, one of its principals is a spokesperson for the ‘Biden for  
6 President’ campaign. The same website homepage accuses the President of being a racist. In its  
7 written proposal, it identifies the individuals that will work on the project. The bios for them  
8 prominently note their personal connection to Democratic politics. A true and correct copy of the  
9 SKDK proposal is attached hereto as **Exhibit B**.

10          14.       Not surprisingly, the SKDK proposal responded to the SOS’s scope of work  
11 stating that it would use its expertise and experience taking “a close look at historical turnout and  
12 devote more resources to education and GOTV in lower-performing counties such as Imperial  
13 County or those in the Central Valley.”

14          15.       Plaintiffs have no objection with any general GOTV effort. However, “targeted”  
15 GOTV is designed to increase voter participation among certain voter groups or in certain regions  
16 and that is to obtain an electoral advantage.

17          16.       Plaintiffs are informed and believe that this targeted GOTV program could, and  
18 likely will, affect the outcome of Proposition 15 and other important state and local races.  
19 Secretary of State PADILLA has publicly supported Proposition 15.

20          17.       Almost no one was aware of the Secretary of State’s plan until news of the  
21 awarded contract to SKDK was broken by the Sacramento Bee on August 28, 2020. A true and  
22 correct copy of the Sacramento Bee story is attached hereto as **Exhibit C**.

23          18.       Following the Sacramento Bee article of August 28, 2020, Plaintiffs and others  
24 began to look for the SOS’ budget authority for a \$35 million advertising contract. The 2020-21  
25 Budget Bill was enacted by Senate Bill 74 (“SB 74”) in mid-June. A true and correct copy of the  
26 budget appropriations sections for the SOS in SB 74 are attached hereto as **Exhibit D**. Shortly  
27 thereafter, AB 89 was passed by the Legislature and signed by the Governor and amended several  
28 provisions of the SOS’s budget appropriation.

1           19.       Plaintiffs were informed that the asserted budget appropriation for the contract at  
2 issue here was AB 89, and in particular Item 0890-101-0001. A true and correct copy of AB 89 is  
3 attached hereto as **Exhibit E**. Section 19 of AB 89 included the identified appropriation as  
4 follows:

5                   SEC. 19. Item 0890-101-0001 of Section 2.00 of the Budget Act of 2020  
6 is amended to read:

7                   0890-101-0001—For local assistance, Secretary of State..... 36,500,000

8                   Schedule:

9                   (1) 0705-Elections..... 36,500,000

10                   (2) 9900100-Administration..... 1,500,000

11                   (3) 9900200-Administration—Distributed.....-1,500,000

12                   Provisions:

13                   3. Upon order of the Department of Finance, the Controller shall reduce  
14 the amounts appropriated in Schedule (1) of this item and Schedule (1) of  
15 Item 0890-001-0001 if federal funds are received for the same purposes.

16                   4. Of the amount appropriated in this item, \$23,133,000 **shall be provided**  
17 **to counties** for: (1) conducting the November 2020 election consistent  
18 with state requirements put in place to reduce the spread of COVID-19,  
19 and (2) conducting voter education and outreach. The Secretary of State  
20 shall estimate costs for these requirements by county, including additional  
21 ballot printing, mailing and postage, equipment needs, additional staffing,  
22 communication and outreach, and other costs as necessary. Pursuant to  
23 Section 19402 of the Elections Code, counties may use excess funding to  
24 cover COVID-19 related costs in the November 2020 election. The  
25 Secretary of State shall compile the remaining amounts from the state’s  
26 voting system funding provided in the Budget Act of 2018 (Chs. 29 and  
27 30, Stats. 2018) and the Budget Act of 2019 (Chs. 23 and 55, Stats. 2019)  
28 by county. The Secretary of State shall then calculate the difference  
between the costs related to conducting the November 2020 election and  
remaining state voting system funding by county. The Secretary of State  
shall then reimburse counties for the difference in costs by using  
\$23,133,000 provided in this item and a portion of the \$65,482,000  
provided in Item 0890-101-0890.

5. Of the amount appropriated in this item, \$11,867,000 **shall be provided**  
**to counties** for costs related to COVID-19 in the November 2020 election.  
The Secretary of State shall provide this funding to counties based on a  
prorated amount per registered voter in each county. (emphasis added)

20           20.       This budget appropriation comes close to matching the reported \$35 million total  
21 contract and included any reference to voter education and outreach. However, that appropriation  
22 was split into two parts and both appropriations are specifically stated to be for the benefit of  
23 counties, not the SOS.  
24

1           21.     State Controller Betty Yee was notified by a letter dated September 3, 2020  
2 alerting her to the appropriation issue. That letter included a reference to Government Code  
3 section 12440 which prohibits the Controller from issuing a warrant (i.e. making a payment) to the  
4 SOS without a lawful appropriation to the SOS for that purpose. A true and correct copy of that  
5 letter is attached hereto as **Exhibit F**.

6           22.     Thereafter, a flurry of emails with Yee’s Chief Counsel took place over several  
7 days. First, Yee stated that she had been told by the SOS that he was now asserting that its budget  
8 authority was not AB 89. Rather, SOS was asserting the budget authority was found in the  
9 original Budget Bill (SB 74) under item 0890-101-0890. That item is an appropriation of Federal  
10 Trust Fund monies to the SOS. The SOS also pointed to another “budget” document specifically  
11 identifying \$36.5 million in Federal CARES Act funds for COVID-19 election related expenses.

12           23.     Plaintiffs are informed and believe, and on that basis allege that the CARES Act  
13 prohibits the use of such funds for GOTV and increasing voter turnout. Thus, use of CARES Act  
14 money would violate Federal law. Moreover, the Legislature, in SB 74, required Department of  
15 Finance and Joint Legislative Budget Committee consent before that money could be used for any  
16 purpose other than as provided for in a spending plan that had long been submitted and approved  
17 by the Department of Finance. As reported by the Sacramento Bee on September 29, 2020, the  
18 Department of Finance has not provided SOS with consent.

19           24.     Plaintiffs are informed and believe, and on that basis allege that after learning that  
20 his program could not be funded with CARES Act money and without Department of Finance and  
21 legislative consent, the SOS changed his story again, returning to AB 89, but with a twist. In an  
22 email to the Controller’s office the SOS stated the following:

23                   The contract specifies that the agreement is entered into on behalf of all of  
24 California’s 58 counties pursuant to State Contracting Manual to ensure  
25 safe and secure voting during the COVID-19 pandemic in the November 3  
26 election. Entering into the contract on behalf of all 58 counties was  
essential to maximize statewide reach and consistent messaging across all  
media markets for all Californians. Specifically, the contract provides:

27                   Pursuant to State Contracting Manual Volume 1 Section 3.17  
28 (“SUBVENTION AND LOCAL ASSISTANCE CONTRACTS”):

1 This agreement will be entered into on behalf of the counties of California  
2 by the State for voter outreach and a public education services, to ensure  
3 during the COVID-19 pandemic all eligible Californian’s are able to  
4 register and vote safely, securely, and accessibly in the November 3, 2020  
5 Statewide General Election. We have contacted counties who expressed an  
6 inability to administer funds directly, lacking resources and expertise to  
7 coordinate outreach and education funds. This is consistent with Section  
8 3.17, parts A and B, which contemplate ‘agreements providing assistance  
9 to local governments directly or through an intermediary....’ Furthermore,  
10 this is in-line with current practices for purchases and contracts related to  
11 providing personal protection equipment (PPE) to the counties for the  
12 November 3, 2020 Statewide General Election. Additionally, the  
13 Secretary of State has contracted on the behalf of the counties in the past  
14 utilizing local assistance funding for contracted services related to  
15 County’s elections management systems, voter registration systems, and  
16 implementation of the Voters Choice Act. **[i.e. translations and printed  
17 materials]**

18 25. This email was sent to the Controller on September 11, 2020. Plaintiffs are  
19 informed and believe, and on that basis allege that on that date few, if any, of the 58 counties were  
20 contacted and agreed to forego their portions of the \$35 million in State funds under AB 89, nor  
21 did the counties authorize the SOS to spend their funds on the SKDK contract.

22 26. The Controller’s Chief Counsel, upon learning of the latest SOS story stated:  
23 “Trying to get a definitive answer is a little like catching a greased pig.”

24 27. Plaintiffs are informed and believe, and on that basis allege, that this change in  
25 direction set off a whirlwind of activity at the SOS, having told the Controller that it had the  
26 counties’ approval to use their money for the SKDK contract, the SOS needed to find a way to  
27 accomplish this. The SOS set about asking the various counties to retro-actively approve use of the  
28 AB 89 money.

29 28. Despite this fact, on September 24, 2020, the SOS announced that the project was  
30 going forward with SKDK. Plaintiffs are further informed and believe, and on that basis allege  
31 that the public “campaign” under the contract began, including broadcast television, digital and  
32 other very expensive advertising.

33 29. The Public Contract Code applies to consulting and advertising contracts of the  
34 type proposed to be executed between the State and SKDK (See, Pub. Contracts Code §§ 10335,  
35 et. seq.). The Public Contract Code requires an open, public process, including bidding, a

1 presumption that the award should go to the lowest bidder, and importantly it requires Department  
2 of General Services approval, among other requirements. The SOS's story about its non-  
3 compliance with the Public Contract Code has varied over time.

4         30. In the original Sacramento Bee story, the SOS stated that there was no "lowest"  
5 bidder for the contract because the amount of the contract was set at \$35 million. But the contract  
6 amount is not the issue with respect to "lowest bidder." The lowest bidder would be the agency  
7 proposing to charge the least amount of fees and/or commission. Here, the SOS's scope of work  
8 stated that the commission amount would be no more than 10%. (i.e. \$3.5 million on a \$35 million  
9 advertising budget). Thus, the SOS immediately eliminated judgment based on the cost of service  
10 to the State from the bidding process. Would any of the bidders have proposed a lower  
11 commission? Indeed, Plaintiffs are informed and believe, and on that basis allege that smaller  
12 advertising contracts issued by other agencies are negotiated at rates much less than 10%  
13 commission. Moreover, the SOS reportedly alleged it was exempt from the Public Contract Code  
14 because the contract was an "emergency." It was not.

15         31. After seeing a posting of a vendor named SKDK for the SOS on the Department of  
16 General Services website, a copy of the contract was requested of the Department of General  
17 Services under the Public Records Act. A true and correct copy of that contract is attached hereto  
18 as **Exhibit H**. On September 15, 2020, the Department stated that there was no contract with the  
19 agency. A copy of that letter dated September 15, 2020 is attached as **Exhibit G**.

20         32. All State contracts require Department of General Services approval. Plaintiffs are  
21 informed and believe, and on that basis allege that a contract was, in fact, submitted to the  
22 Department for approval.

23         33. Later, it was confirmed by the Department's Chief Counsel that the SOS had  
24 voluntarily pulled the contract from Department of General Services for approval, stating that it  
25 would re-submit it in the coming days or weeks.

26         34. On September 24, 2020, Plaintiffs were informed that the SOS was proceeding to  
27 spend money under the SKDK contract without the Department's approval citing Public Contract  
28 Code section 10371(d). In other words, SOS went back to the "emergency" excuse. In fact,



1 despite repeated efforts by the Sacramento Bee to obtain a copy of the contract, Defendant SOS  
2 declined to provide a copy to anyone.

3 35. An email to both the Department of General Services and Controller Yee, through  
4 their respective Chief Counsels, was sent objecting to the SOS's assertion that he can proceed  
5 without an approved contract and without budgetary authority and demanding that they take action  
6 to stop the SOS.

7 36. Finally, on Friday, October 2, 2020, PADILLA presented a contract to both the  
8 Department of General Services and the State Controller's office -- almost six weeks after the first  
9 news broke that a contract had been made between PADILLA and SKDK. The contract is dated  
10 September 22, 2020. On the first page of the contract, the SOS finally settled on a claim of  
11 budgetary authority – he now cites both appropriations discussed above. A true and correct copy  
12 of the contract is attached hereto as **Exhibit H**.

13 37. The contract includes an odd provision. Under a provision entitled "Budget  
14 Contingency Clause" the contract states:

15 It is mutually agreed that if the Budget Act of the current year and/or any  
16 subsequent years covered under this Agreement does not appropriate  
17 sufficient funds for the program, this Agreement shall be of no further  
18 force and effect. In this event, the State shall have no liability to pay any  
19 funds whatsoever to Contractor or to furnish any other considerations  
20 under this Agreement and Contractor shall not be obligated to perform any  
21 provisions of this Agreement.

22 38. After consideration of the contract, Plaintiffs were informed by the Controller's  
23 Chief Counsel that their office had concluded that neither cited reference provides PADILLA  
24 budget authority for this contract. Plaintiffs were also told that the SOS was told this on the  
25 morning of Monday, October 5, 2020, during a conference call between staff of both offices. On  
26 October 7, 2020 the Sacramento Bee reported confirmation that the Controller's office had  
27 rejected the cited budget authority. A true and correct copy of the October 7, 2020 Sacramento  
28 Bee story is attached hereto as **Exhibit I**.

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1 39. Despite the conveyance of this information, PADILLA has not stopped State  
2 spending. Indeed, the Sacramento Bee story quotes the SOS indicating that the campaign will  
3 continue.

4 40. On October 6, Plaintiffs sent a demand letter to PADILLA seeking confirmation  
5 that he would cease all State spending under the unlawful contract. PADILLA did not respond to  
6 Plaintiffs' demand letter. A true and correct copy of the demand letter is attached hereto as  
7 **Exhibit J.**

8 41. Time of the essence, as the SOS is committing taxpayer resources that he does not  
9 have under a contract that has not been approved and will never be approved because there is no  
10 lawful appropriation to pay for the contracted services and it does not comply with the Public  
11 Contract Code.

12 **FIRST CAUSE OF ACTION**  
13 **FOR DECLARATORY RELIEF**  
14 **AGAINST DEFENDANT PADILLA, in his Official Capacity**  
15 **(Code Civ. Proc. §§ 526a, 1060)**

16 42. Plaintiffs hereby incorporate paragraphs 1 through 41 of this Verified Petition.

17 43. As indicated, the contract entered into by PADILLA was and is without budget  
18 authority and all expenditures made or that will be made are unlawful. Declaratory relief is  
19 authorized under the Code of Civil Procedure sections 526a and 1060.

20 44. A present and actual controversy exists between Plaintiffs and Defendants  
21 concerning the right of Defendants to spend \$35 million of taxpayer dollars without the necessary  
22 budget authority. Plaintiffs contend that Defendants are illegally spending millions of taxpayer  
23 dollars on the SKDK contract without any budget authority to do so. Defendants dispute  
24 Plaintiffs' contentions.

25 45. Plaintiffs require a judicial determination and declaration of Plaintiffs' and  
26 Defendants' rights under Code of Civil Procedure Section 1060. Such a declaration is necessary  
27 and appropriate at this time because without such a judicial determination Defendants will  
28 continue to illegally expend up to \$35 million of taxpayer dollars. Unless Defendants are  
restrained and enjoyed from this illegal activity, they will continue to make these illegal payments  
of taxpayer dollars to SKDK. No adequate remedy at law exists by which the rights and duties of

1 the parties may be determined.

2 **SECOND CAUSE OF ACTION**  
3 **FOR TEMPORARY AND PERMANENT INJUNCTION**  
4 **AGAINST DEFENDANT PADILLA, in his Official Capacity**  
5 **(Code Civ. Proc. § 526a)**

6 46. Plaintiffs hereby incorporate paragraphs 1 through 45 of this Verified Complaint.

7 47. It is well-settled that an action may be maintained pursuant to Code of Civil  
8 Procedure section 526a against officers of the State government, notwithstanding the fact that the  
9 statute appears more limited on its face. (*Hooper v. Deukmejian* (1981) 122 Cal.App.3d 987,  
10 1018-19; *Serrano v. Priest* (1971) 5 Cal.3d 584, 618, fn. 38; *Los Altos Property Owners Assn. v.*  
11 *Hutcheon* (1977) 69 Cal.App.3d 22, 27.)

12 48. “If a taxpayer can demonstrate that a State official did authorize the improper  
13 expenditure of public funds, the taxpayer will be entitled, at least, to a declaratory judgment to that  
14 effect; if he establishes that similar expenditures were threatened in the future, the plaintiff would  
15 be entitled to declaratory and injunctive relief.” (*Hooper v. Deukmejian, supra*, 122 Cal.App.3d at  
16 1019.)

17 49. Here, not only are the past expenditures unlawful because they were made with no  
18 budget authorization to pay for them, but PADILLA is also presently and continuously expending  
19 more taxpayer funds under the unlawful contract.

20 50. Plaintiffs have no other speedy or adequate remedy at law and the continued illegal  
21 expenditure of taxpayer funds causes significant taxpayer harm and waste.

22 **THIRD CAUSE OF ACTION**  
23 **FOR TEMPORARY AND PERMANENT INJUNCTION**  
24 **AGAINST DEFENDANT PADILLA, in his Official Capacity**  
25 **(Pub. Contract Code § 10421)**

26 51. Plaintiffs hereby incorporate paragraphs 1 through 50 of this Verified Petition

27 52. The contract entered into by PADILLA with SKDKnickerbocker is invalid  
28 because of the numerous violations of the Public Contract Code. Section 10421 of the Code  
provides for injunctive relief to prohibit performance and payment under an unlawful contract.

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**RELIEF REQUESTED**

WHEREFORE, Plaintiffs pray that this Court:

1. Issue a preliminary injunction preventing Defendant PADILLA from spending any further taxpayer funds, including federal trust funds, on the SKDKnickerbocker contract;
2. Issue a permanent injunction prohibiting Defendant PADILLA from spending any further taxpayer funds, including federal trust funds, on the SKDKnickerbocker contract;
3. Grant declaratory relief that the SKDKnickerbocker contract is invalid and void for lack of budget authorization and/or non-compliance with the Public Contract Code;
5. Award Plaintiffs' attorneys' fees and costs incurred in connection with this matter; and
6. Grant other such and further relief as the Court may deem necessary.

Dated: October 8, 2020

Respectfully Submitted,  
BELL, McANDREWS, & HILTACHK, LLP

By: 

THOMAS W. HILTACHK  
Attorney for Plaintiffs Jon Coupal and  
Howard Jarvis Taxpayers Association

**VERIFICATION**

I, Jon Coupal, declare that I am the individual Plaintiff herein.

I am also President of Plaintiff Howard Jarvis Taxpayers Association.

I have read the foregoing VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and know of the contents thereof. The same is true of my own knowledge, except as to those matters that are herein alleged on information and belief, and as to those matters, I believe them to be true. If called as a witness, I could and would testify competently thereto.

Executed under penalty of perjury under the laws of the State of California this 8<sup>th</sup> day of October at Sacramento, California.

  
\_\_\_\_\_  
Jon Coupal