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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE CITY AND COUNTY OF SAN FRANCISCO

16 **James V. Lacy**; Michael Denny; United  
17 States Justice Foundation; and California  
18 Public Policy Foundation,

19 Plaintiffs and Petitioners;

20 vs.

21 **City and County of San Francisco**;  
22 **John Arntz**, in his official capacity as  
23 Director of Elections for the City and  
24 County of San Francisco;  
25 **DOES 1 through 25**, inclusive;

26 and

27 **All Persons Interested in the Matter of**  
28 San Francisco Ordinance No. 206-21,  
which allows noncitizen voting in  
elections for the San Francisco Unified  
School District Board of Trustees,

Defendants and Respondents.

ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**03/14/2022**  
Clerk of the Court  
BY: KAREN VALDES  
Deputy Clerk

Case No.:

**CPF-22-517714**

**Priority Matter**

Elec. Code § 13314

CCP §§ 35, 867

**Verified Complaint & Petition for**

1. Declaratory Relief (CCP § 1060)
2. Writ of Mandate (Elec. Code § 13314)
3. Writ of Mandate (CCP § 1085)
4. Validation (CCP § 860)

1 Plaintiffs and Petitioners allege as follows:

2 1. The State of California has a long-standing requirement that voters must be United States  
3 citizens. This requirement applies to every election in the state, even those conducted by charter  
4 cities, because determining voter qualifications is a matter of statewide concern where state law  
5 supersedes conflicting charter city ordinances. Therefore, the San Francisco ordinance  
6 authorizing noncitizen voting in elections for the San Francisco Unified School District (SFUSD)  
7 is unlawful and may not be implemented.

8 2. This action is brought in the public interest on behalf of every citizen of the City and  
9 County of San Francisco as well as the State of California. San Francisco residents have an  
10 undeniable interest in ensuring that their elections are conducted in accordance with controlling  
11 state law and that their interests are represented by persons elected in accordance with those  
12 laws. This right extends to everyone in the state because integrity of elections is a matter of  
13 statewide concern. Additionally, school districts are funded with the taxes paid by each of the  
14 state's taxpayers into the state's general fund. When SFUSD spends taxpayer funds, it is not  
15 spending local taxpayer funds; it is spending state taxpayer funds. In this regard, everyone in the  
16 state has an interest in SFUSD's expenditures. From that interest, everyone in the state also has  
17 an interest in ensuring that SFUSD's governing board is elected in accordance with state law.

18 **PARTIES**

19 3. Plaintiff and Petitioner **United States Justice Foundation (USJF)** is a nonprofit public  
20 benefit corporation organized under the laws of the State of California. Enforcing state law as it  
21 relates to the claims in this case is within the scope of USJF's purpose. USJF has public interest  
22 standing on this basis. (See, e.g., *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208  
23 Cal.App.4th 899, 912.)

24 4. Plaintiff and Petitioner **California Public Policy Foundation (CPPF)** is a nonprofit  
25 public benefit corporation organized under the laws of the State of California. Enforcing state law  
26 as it relates to the claims in this case is within the scope of CPPF's purpose. CPPF has public  
27 interest standing on this basis. (See, e.g., *Rialto Citizens for Responsible Growth, supra*, 208  
28

1 Cal.App.4th at p. 912.)

2 5. Plaintiff and Petitioner **James V. Lacy** is a California resident, voter/elector, and  
3 taxpayer, residing in the County of Orange, State of California. He pays taxes into the state's  
4 general fund, which are allocated to SFUSD. Mr. Lacy is President of USJF and Chairman of  
5 CPPF. Mr. Lacy has individual standing based on (1) his association with USJF and CPPF  
6 (*Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1172-1173), and  
7 (2) the public right of everyone in the state to bring actions in the public interest, as described in  
8 *Green v. Obledo* (1981) 29 Cal.3d 126 and its progeny.

9 6. Plaintiff and Petitioner **Michael Denny** is a resident, voter/elector, and taxpayer in the  
10 City and County of San Francisco and SFUSD. He is directly affected by the ordinance because,  
11 as a result of the ordinance at issue, his vote is subject to dilution by noncitizen voters, and he is  
12 otherwise impacted by being subject to the authority of a school board whose members are  
13 unlawfully elected by noncitizen voters. Furthermore, as a San Francisco taxpayer, Mr. Denny  
14 pays taxes that will be unlawfully used to allow for unlawful voting by noncitizens in the City and  
15 subject to spending by a SFUSD governing board elected in an election where noncitizens were  
16 allowed to vote.

17 7. Defendant and Respondent **City and County of San Francisco** (San Francisco) is a  
18 charter city and county organized under the laws of the State of California. San Francisco  
19 adopted and implemented the ordinance at issue in this case.

20 8. Defendant and Respondent **John Arntz**, is San Francisco's Director of Elections. In this  
21 capacity, he is the elections official for both the city and county as well as the San Francisco  
22 Unified School District (SFUSD). As such, he is charged with administering elections in San  
23 Francisco's jurisdiction and should be ordered to comply with applicable state law when he  
24 carries out those duties. He is sued in his official capacity.

25 9. The true names of Defendant and Respondent DOES 1 through 25, inclusive, are  
26 unknown to Plaintiff, who therefore brings this action against DOES 1 through 25, inclusive, by  
27  
28

1 such fictitious names and will seek leave of this Complaint to show their true names, identities,  
2 and capacities when they have been ascertained.

3 10. As provided in California's validation statutes, section 860 *et seq.* of the Code of Civil  
4 Procedure, Plaintiffs will publish the summons in newspaper of general circulation such that  
5 anyone interested in the ordinance may participate in this proceeding.

6 11. For convenience, Plaintiffs and Petitioners are described only as Plaintiffs. Likewise, the  
7 Defendants and Respondents are described as Defendants.

8  
9 **JURISDICTION AND VENUE**

10 12. The California Superior Court for the City and County of San Francisco is the proper  
11 venue because the acts complained of which are the subject of this Complaint, have all occurred  
12 or will all occur in San Francisco.

13 13. Defendant City and County of San Francisco is a political subdivision of the state of  
14 California, wholly located in this court's jurisdiction.

15 14. Defendant John Arntz is sued in his official capacity as an agent of the City and County of  
16 Francisco, which is where he has his principal place of business.

17 15. The relief sought is within the jurisdiction of this Court.

18 16. Additionally, because this matter raises issues concerning voter registration, it is entitled  
19 to priority under section 35 of the Code of Civil Procedure.

20 **FACTS COMMON TO ALL CAUSES OF ACTION**

21 17. In 2016, San Francisco voters approved a charter amendment, which added section 13.111  
22 to its Charter, allowing certain noncitizens to vote in school board elections through November  
23 2022.

24 18. The Charter amendment gave the Board of Supervisors authority to extend the  
25 noncitizen voting authorization beyond 2022.

26 19. On November 2, 2021, the San Francisco Board of Supervisors adopted Ordinance  
27 Number 206-21. This ordinance extended the noncitizen right to vote beyond 2022 without  
28 expiration.

1 20. After approval from the Mayor, Ordinance Number 206-21 became effective on January  
2 13, 2022.

3 21. Ordinance Number 206-21 is unconstitutional because it exceeds San Francisco's charter  
4 city and county powers, as conferred upon it by the State Constitution.

5 22. While section 5 of article XI of the State Constitution gives charter cities power over their  
6 own municipal affairs, this section does not authorize Ordinance Number 206-21 because voter  
7 qualifications for school board elections are not municipal affairs.

8 23. Alternatively, a charter city's authority over municipal affairs does not supersede the  
9 State's authority to govern matters of statewide concern. Because the determination of voter  
10 qualifications (specifically the requirement that all voters be United States citizens) is an issue of  
11 statewide concern, state law controls and Ordinance Number 206-21 is unlawful.

12 24. While section 16 of article IX of the State Constitution gives charter cities authority to  
13 provide for the *manner* of election for school board members, courts have held that determining  
14 "manner of election" does not include determining voter qualifications. (See *People ex rel. Devine*  
15 *v. Elkus* (1922) 59 Cal.App. 396, 405.) Just as above, authority to determine voter qualifications is  
16 reserved to the state.

17 25. For these reasons, San Francisco does not have the power to grant voting rights to  
18 noncitizens and Ordinance Number 206-21 must be declared void.  
19

## 20 CAUSES OF ACTION

### 21 **I. FIRST CAUSE OF ACTION:** Declaratory Relief (CCP § 1060) by all Plaintiffs against all 22 Defendants

23 26. Plaintiff realleges and incorporates paragraphs 1 through 25 as if fully set forth herein.

24 27. Plaintiffs contend that San Francisco Ordinance Number 206-21 is invalid, void, and  
25 without effect because it violates the California Constitution and Elections Code, which prohibit  
26 cities, even charter cities, from allowing persons who are not United States citizens from voting  
27 in local elections.  
28

1 28. Plaintiffs are informed and believe that Defendants contend otherwise.

2 29. There is an actual controversy between the parties, which is ripe for adjudication.

3 30. Plaintiffs request a declaratory judgment from this Court that San Francisco Ordinance  
4 Number 206-21 is invalid as set forth herein.

5 31. Plaintiffs have standing as set forth under the heading “Parties,” *supra*.

6  
7 **II. SECOND CAUSE OF ACTION:** Writ of Mandate (Elec. Code § 13314) by Plaintiff  
8 Michael Denny against Defendant John Arntz

9 32. Plaintiff realleges and incorporates paragraphs 1 through 25 as if fully set forth herein.

10 33. Elections Code section 13314 allows an elector to seek a writ of mandate alleging, among  
11 other things, “that any neglect of duty has occurred, or is about to occur.” (Elec. Code § 13314,  
12 subd. (a)(1).)

13 34. Under this section, a writ of mandate shall issue if (A) “the error, omission, or neglect is  
14 in violation of this code or the Constitution” and (B) the “issuance of the writ will not  
15 substantially interfere with the conduct of the election.” (Elec. Code § 13314, subd. (a)(2).)

16 35. Plaintiff Michael Denny is an elector in the City and County of San Francisco and has  
17 standing to bring this petition, under Elections Code section 13314, on that basis.

18 36. Defendant John Arntz is San Francisco’s elections official. In this capacity, Arntz has a  
19 duty to comply with the Elections Code and State Constitution when conducting elections in San  
20 Francisco.

21 37. Under both the Elections Code and the State Constitution, San Francisco may not allow  
22 noncitizens to vote in elections for the SFUSD governing board.

23 38. Plaintiffs are informed and believe that Arntz intends to violate state law by allowing  
24 noncitizens to vote in the next election for SFUSD’s governing board.

25 39. This will be a breach of his duties as contemplated by Elections Code section 13314.  
26  
27  
28

1 40. The next election for members of the SFUSD governing board is November 8, 2022.  
2 There is plenty of time to resolve this dispute without any interference in the conduct of that  
3 election.

4 41. This cause of action is entitled to calendar preference.

5 **III. THIRD CAUSE OF ACTION: Writ of Mandate (CCP § 1085) by All Plaintiffs against**  
6 **Defendants San Francisco and Arntz**

7 42. Plaintiff realleges and incorporates paragraphs 1 through 25 as if fully set forth herein.

8 43. Under Code of Civil Procedure section 1085, “[a] writ of mandate may be issued by any  
9 court to any inferior tribunal, corporation, board, or person, to compel the performance of an act  
10 which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel  
11 the admission of a party to the use and enjoyment of a right or office to which the party is  
12 entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation,  
13 board, or person.” (*Id.* at subd. (a).)

14 44. Applied here, applicable election rules prohibit noncitizens from voting in elections  
15 throughout the state. Enforcement of this rule is a mandatory duty imposed on every elections  
16 official in the state.

17 45. As to this Court, Defendant John Arntz is an inferior person. Plaintiffs are informed and  
18 believe that Arntz intends to violate state law by allowing noncitizens to vote in the next SFUSD  
19 election, which will take place on November 8, 2022.

20 46. Plaintiffs are further informed and believe that Arntz is an agent of the City and County of  
21 San Francisco and, on its behalf, intends to breach his duties under the Elections Code and State  
22 Constitution under the guise of a local ordinance that is violative of state law. As to this Court,  
23 San Francisco is an inferior board. A writ of mandate is appropriately directed to the City of and  
24 County of San Francisco because it has the ability to exercise control over its agent, Defendant  
25 John Arntz and that Arntz is otherwise acting at the City’s direction.

26 47. A writ of mandate may issue when there is no plain, speedy, and adequate remedy in the  
27 ordinary course of law. (Code Civ. Proc. § 1086.) This relief is pled as an alternative to the other  
28

1 remedies requested. If those other remedies are unavailable for any reason or do not otherwise  
2 serve to enforce the state law as to voter qualifications, then Plaintiffs would have no other plain,  
3 speedy, or adequate remedy in the ordinary course of law and this writ relief would be  
4 appropriate.

5 48. A writ of mandate must issue “upon the verified petition of the party beneficially  
6 interested.” (Code Civ. Proc. § 1086.)

7 49. This complaint and petition is verified.

8 50. Plaintiffs have standing as set forth under the heading “Parties,” *supra*.

9  
10 **IV. FOURTH CAUSE OF ACTION: Validation (CCP § 860) by All Plaintiffs against all**  
11 **Defendants**

12 51. Petitioner realleges and incorporates paragraphs 1 through 25 as if fully set forth herein.

13 52. Under California’s validation statutes, Code of Civil Procedure section 860 *et seq.*,  
14 Plaintiffs also bring this action as a “reverse validation action.” (See also Code Civ. Proc. § 863.)

15 53. Upon publication of the summons in accordance with Government Code section 6063,  
16 this Court may obtain jurisdiction over all interested persons for the purpose of determining the  
17 validity of Ordinance 206-21 as to all such persons. (Code Civ. Proc. §§ 861, 870.)

18 54. As stated above, Plaintiffs contend that San Francisco Ordinance Number 206-21 is  
19 invalid because it is contrary to controlling state law. In this action, Plaintiffs seek invalidation of  
20 the ordinance on that basis.

21 55. Ordinance Number 206-21 took effect on January 13, 2022. This action is timely filed  
22 within the 60-day limitation period for validation actions.

23 56. This cause of action is entitled to calendar preference.

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiffs pray that the Court enter judgment in his favor with orders for the  
3 following:

- 4 1. Declaratory judgment that San Francisco Ordinance Number 206-21 is contrary to  
5 controlling state law and is therefore void and unenforceable;
- 6 2. An alternative and/or peremptory writ of mandate directed to Defendants commanding  
7 them to conduct elections for the governing board of the San Francisco Unified School District in  
8 the manner state law requires and prohibiting them from counting votes cast by persons who are  
9 not United States citizens;
- 10 3. Temporary, preliminary, and/or permanent injunctive relief prohibiting implementation  
11 of San Francisco Ordinance Number 206-21 in future elections;
- 12 4. Judgment of validation, as provided for in section 870 of the Code of Civil Procedure, that  
13 San Francisco Ordinance Number 206-21 is invalid and without effect;
- 14 5. Plaintiff's costs of suit and reasonable attorneys' fees; and
- 15 6. Such other and further relief as the Court deems proper.
- 16  
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18 DATE: March 14, 2022

18 Respectfully Submitted,  
19 LAW OFFICE OF CHAD D. MORGAN

20 By: \_\_\_\_\_ /s/  
21 Chad D. Morgan Esq.  
22 Attorney for all Plaintiffs

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VERIFICATION

1 I, Chad D. Morgan declare that I am counsel for the Plaintiffs and Petitions in this action.  
2 I have read the foregoing **Verified Complaint and Petition** and know the contents thereof to be  
3 true to my own knowledge, except as to those statements made upon information and belief, and  
4 as to them, I believe them to be true. I make this declaration on Plaintiffs' behalf because my  
5 office is absent from the county in which they are located.  
6

7  
8 I declare under penalty of perjury under the laws of the State of California that the  
9 foregoing is true and correct.

10 Executed on March 14, 2022.



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12  
13 Chad D. Morgan