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16 **SUPERIOR COURT OF CALIFORNIA**  
17 **COUNTY OF SAN FRANCISCO**

18 CALIFORNIANS FOR EQUAL RIGHTS  
19 FOUNDATION; RUTH PARKER; and ELLEN  
20 LEE ZHOU,

21 Petitioners/Plaintiffs,

22 v.

23 CITY AND COUNTY OF SAN FRANCISCO;  
24 REGENTS OF THE UNIVERSITY OF  
25 CALIFORNIA; MARK GHALY, in his official  
26 capacity as Secretary of the California Health  
27 and Human Services Agency; THE SAN  
28 FRANCISCO UNIFIED SCHOOL DISTRICT,  
and DOES 1-10,

Respondents/Defendants.

**ELECTRONICALLY  
FILED**  
*Superior Court of California,  
County of San Francisco*

**05/31/2023**  
**Clerk of the Court**  
BY: JEFFREY FLORES  
Deputy Clerk

Case No.: **CGC-23-606796**

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

1 **INTRODUCTION**

2 1. Petitioners and Plaintiffs Californians for Equal Rights Foundation, Ruth Parker, and  
3 Ellen Lee Zhou bring this lawsuit to halt the illegal use of government resources and public funds to  
4 provide cash benefits to San Francisco residents on a discriminatory basis.

5 2. Respondents and Defendants are several public agencies who are participating in a  
6 series of so-called “guaranteed income” programs—cash payment programs—that unlawfully  
7 choose their beneficiaries based on race, ethnicity, gender/gender identity, and sexual orientation.  
8 This express use of prohibited classifications in distributing government benefits violates the  
9 principle of equal protection that is guaranteed by the United States and California Constitutions and  
10 enshrined in federal anti-discrimination law.<sup>1</sup>

11 3. Most prominently, these government-sponsored and publicly funded programs are  
12 designed to select beneficiaries on a racially exclusionary basis. This is unconstitutional.  
13 “‘Distinctions between citizens solely because of their ancestry are by their very nature odious to a  
14 free people,’ and therefore ‘are contrary to our [Nation’s] traditions and hence constitutionally  
15 suspect.’” *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 309 (2013) (quoting *Rice v. Cayetano*,  
16 528 U.S. 495, 517 (2000), and *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954)). And because  
17 Defendants’ conduct violates the Equal Protection Clause, it likewise violates federal  
18 antidiscrimination statutes, including Title VI of the Civil Rights Act of 1964, which applies to  
19 Defendants because they all receive federal funding. *See Gratz v. Bollinger*, 539 U.S. 244, 276 n.23  
20 (2003).

21 4. Defendants’ payment schemes also discriminate unlawfully on the bases of  
22 gender/gender identity and sexual orientation. Although courts have held that the federal  
23 constitution’s equal protection guarantee is more tolerant of such classifications than it is with racial  
24 distinctions, the California Constitution treats sex and sexual orientation as “suspect classifications.”  
25 *Sail’er Inn, Inc. v. Kirby*, 5 Cal.3d 1, 17–20 (1971); *Catholic Charities of Sacramento, Inc. v. Super.*

26  
27  
28 <sup>1</sup> Although the parties have dual roles, for clarity this petition and complaint refers to  
Petitioners and Plaintiffs as “Plaintiffs,” and refers to Respondents and Defendants as “Defendants.”

1 *Ct.*, 32 Cal.4th 527, 564 (2004); *In re Marriage Cases*, 43 Cal.4th 757, 839–43 (2008); *Strauss v.*  
2 *Horton*, 46 Cal.4th 364, 411 (2009).

3 5. Defendants’ discriminatory payment schemes cannot satisfy strict scrutiny and are  
4 therefore unconstitutional. Plaintiffs seek relief to ensure that Defendants cease using government  
5 resources or public funds to support these unlawful programs so long as such they discriminate on  
6 the basis of race, ethnicity, gender/gender identity, or sexual orientation.

### 7 **THE PARTIES**

8 6. Petitioner and Plaintiff Californians for Equal Rights Foundation (“CFER”) is a  
9 California non-profit public benefit corporation headquartered in San Diego, California. CFER is a  
10 non-partisan and non-profit organization established following the defeat of Proposition 16 in 2020,  
11 with a mission to defend and raise public awareness on the cause of equal rights through litigation,  
12 public education, civic engagement, and community outreach. CFER is dedicated to educating the  
13 public on the essential constitutional principle of equality. It has coalition members throughout the  
14 State of California that pay state and local taxes, including such members (like the individual  
15 Petitioners and Plaintiffs here) who are residents and taxpayers of the City and County of San  
16 Francisco and the San Francisco Unified School District.

17 7. Petitioner and Plaintiff Ruth Parker is an individual residing in the City and County  
18 of San Francisco who has paid taxes to the State of California, the City and County of San Francisco,  
19 and the San Francisco Unified School District.

20 8. Petitioner and Plaintiff Ellen Lee Zhou is an individual residing in the City and  
21 County of San Francisco who has paid taxes to the State of California, the City and County of San  
22 Francisco, and the San Francisco Unified School District.

23 9. Respondent and Defendant City and County of San Francisco is a charter city and  
24 county organized and existing as a legal subdivision under the laws of the State of California.

25 10. Respondent and Defendant San Francisco Unified School District (“SFUSD”) is a  
26 school district under California law located in San Francisco, California.

27 11. Respondent and Defendant Regents of the University of California (“Regents”) is a  
28 California corporation established pursuant to Article IX, Section 9 of the California Constitution.

1 Regents is responsible for administering and governing the University of California, a public trust.  
2 *Id.* § 9(a). The California Constitution vests Regents with the specific authority to be sued on behalf  
3 of the University of California system, *id.* § 9(f), which includes University of California, San  
4 Francisco (“UCSF”) and University of California, Berkeley, which actively participate in the  
5 discriminatory programs as set forth below.

6 12. Respondent and Defendant Mark Ghaly is the Secretary of the California Health and  
7 Human Services Agency (“HHS”). HHS is the state agency tasked with administration and  
8 oversight of California’s state and federal programs for health care, social services, public assistance,  
9 and rehabilitation. HHS oversees several subsidiary arms of the state government, including the  
10 Department of Social Services. HHS has directed government resources and public funds through  
11 the Department of Social Services to support one or more of the programs as set forth below. Ghaly  
12 is sued in his official capacity.

13 13. Petitioners/Plaintiffs do not know the true names and capacities of the  
14 Respondents/Defendants named in this action as DOES 1-10, and therefore sue them under fictitious  
15 names. Petitioners/Plaintiffs will request permission to amend this Petition and Complaint, or  
16 substitute the Doe Respondents/Defendants via a court-approved form, to state the true names and  
17 capacities of these fictitiously named respondents/defendants when it ascertains them.  
18 Petitioners/Plaintiffs allege that these fictitiously named respondents/defendants are legally  
19 responsible in some manner for the acts set forth below and are liable for the relief requested.

20 **STANDING**

21 14. Petitioners and Plaintiffs have standing to seek the relief requested in this action  
22 through both public interest standing and their standing as taxpayers. Plaintiffs are beneficially  
23 interested as citizens and taxpayers in ensuring that the government entities named as Defendants  
24 adhere to the guarantees of equal protection enshrined in the United States and California  
25 Constitutions and that they abide by the country’s antidiscrimination laws. Accordingly, Petitioners  
26 and Plaintiffs have standing to seek a writ of mandate, declaratory relief, and injunctive relief to  
27 secure the government’s compliance and control its illegal activity. *Nat’l Asian Am. Coal. v.*  
28 *Newsom*, 33 Cal.App.5th 993, 1008–10 (2019); *Weatherford v. City of San Rafael*, 2 Cal.5th 1241,

1 1247–48 (2017). Put simply, programs that discriminate on the basis of race “are matters of intense  
2 public concern,” and “a claim that such a program violates principles of equal protection . . . is  
3 precisely the type of claim to which citizen and taxpayer standing rules apply.” *Connerly v. State*  
4 *Personnel Bd.*, 92 Cal.App.4th 16, 29–30 (2001).

5 **JURISDICTION AND VENUE**

6 15. This Court has general subject matter jurisdiction over state law claims, including  
7 mandamus claims pursuant to Code of Civil Procedure section 1085. This Court has jurisdiction  
8 over this action and authority to issue declaratory relief pursuant to Code of Civil Procedure section  
9 1060, and to issue declaratory and injunctive relief pursuant Code of Civil Procedure section 526a.

10 16. Venue is appropriate in this Court pursuant to Code of Civil Procedure section 394(a).

11 **GENERAL ALLEGATIONS**

12 **I. Defendants Use Public Funds To Administer Guaranteed-Income Programs**  
13 **Intentionally Discriminating On The Basis Of Race, Ethnicity, Gender/Gender**  
14 **Identity, And Sexual Orientation.**

15 17. Plaintiffs challenge Defendants’ use of government resources and public funds to  
16 support four discriminatory programs that provide cash benefits on the basis of unlawful  
17 classifications.

18 **A. San Francisco Guaranteed Income Plan for Artists / Creative Communities**  
19 **Coalition for Guaranteed Income**

20 18. In June 2022, San Francisco launched the San Francisco Guaranteed Income Plan for  
21 Artists in collaboration with the Yerba Buena Center for the Arts (“YBCA”). The program was and  
22 is designed to transfer \$1,000.00 per month to each participating artist. The YBCA program has  
23 since rebranded and extended for additional years as the Creative Communities Coalition for  
24 Guaranteed Income (“CCCGI”). At its initial launch, San Francisco described the program as one  
25 benefitting San Francisco’s resident artists, without indicating the existence of any demographic  
26 eligibility criteria for the program.

27 19. However, YBCA’s website discloses that “[i]n collaboration with San Francisco  
28 Mayor London Breed, YBCA ... implement[ed] the San Francisco Guaranteed Income Plan for

1 Artists” in racially defined “communities[.]” YBCA left no room for misunderstanding either the  
2 degree to which that “implementation” was racially targeted or the genesis of the particulars of that  
3 implementation in California’s legal landscape.<sup>2</sup> YBCA openly admitted that because this was a  
4 publicly-funded program, “we were not able to restrict funds by race or any group[.]” before  
5 explaining how it got around this restriction in selecting initial participants: “To target artists in our  
6 focus populations, we used imperfect proxy indicators to be eligible for the program” and “asked  
7 artists to respond to a question asking if their artistic practice is rooted in a historically marginalized  
8 community[.]” Still, in YBCA’s telling, all’s well that ends well: “In the end, the artist participants  
9 reflect the intended[.]” racially defined “target groups.”

10 20. YBCA’s report on its website about the demographic makeup of the first round of  
11 CCCGI beneficiaries proved that YBCA and Mayor Breed largely achieved their “intended”  
12 discriminatory goals.<sup>3</sup> YBCA “[i]n collaboration with San Francisco Mayor London Breed”  
13 managed to choose as recipients:<sup>4</sup> (a) Native American or Native Alaskan artists at a rate 12.5 times  
14 greater than these group’s share of San Francisco’s population; (b) LBGTQ artists at a rate at least  
15 three times such San Franciscan’s portion of the city’s population; (c) Black artists at a rate three  
16 times the group’s share of the city’s population; and (d) Hispanic artists at a rate more than 46%  
17 greater than the group’s share of San Francisco’s population; all while (y) choosing Asian artists at  
18 a rate less than half their share of the city’s population; and (z) omitting any indication that *any* of  
19 the program’s beneficiaries are White heterosexuals.

21 <sup>2</sup> Yerba Buena Center for the Arts, *San Francisco Guaranteed Income Pilot for Artists, Powered by YBCA, Learning and Insight from Design to Launch*, online at <https://bit.ly/3KVJlvR>.

22 <sup>3</sup> *San Francisco Guaranteed Income Pilot for Artists*, <https://www.guaranteedinc.org> (specifically  
23 noting – in relevant part – that the city’s chosen artist-beneficiaries are: 23% Hispanic, 17% Black,  
24 17% Asian, 10% American Indian or Native Alaskan, 3% Middle Eastern or North African, and 49% LBGTQIA2s).

25 <sup>4</sup> For the sake of comparison: (a) according to the Census Bureau  
(<https://www.census.gov/quickfacts/sanfranciscocountycalifornia>), SF’s demography breaks down  
26 as 38% non-Hispanic White, 5.7% non-Hispanic Black, 15.7% Hispanic, 37.2% Asian, 0.8%  
27 American Indian or Alaskan Native, 0.5% Native Hawaiian or Other Pacific Islander, and 4.8%  
28 multi-racial; and (b) as the Census Bureau does not publish sexuality and gender data, according to  
the City’s published data  
(<https://sfgov.org/dosw/sites/default/files/2019%20Gender%20Analysis%20of%20Commissions%20and%20Boards.pdf>), San Francisco’s population is “6%-15%” “LBGTQ[.]”

1           21. The rebranded continuation of the program saw YBCA delegate selection of  
2 participants downstream to six “partner” organizations.<sup>5</sup> “Stephanie Imah, senior manager of artist  
3 investments at YBCA” explained that “YBCA chose the partnering organizations not only for their  
4 connections to artists of color and LGBTQ+ artists, but because they’re trusted by people who aren’t  
5 the typical audience for a capital-A Art institution like YBCA: immigrants and refugees who aren’t  
6 fluent English speakers, sex workers and people who’ve experienced homelessness.” Thus, YBCA  
7 chose a selection mechanism expressly in order to produce a selection of participants defined by: (a)  
8 their membership in favored racial groups; and (b) their identification with favored sexualities or  
9 genders.

10           22. Since its inception, San Francisco has been funding CCCGI, with public dollars,  
11 while the program intentionally uses proxies to select recipients based on their race, ethnicity, sex,  
12 gender/gender identity, and sexual orientation.

13           **B. Abundant Birth Project.**

14           23. San Francisco established its Abundant Birth Project (“ABP”) in June 2021.  
15 According to the program’s website maintained by UCSF, ABP “represents a unique collaboration”  
16 with various “Partners” including defendant and respondent SFUSD and several departments of the  
17 San Francisco City government (the Department of Public Health, the Human Rights Commission,  
18 the Human Services Agency, the Treasurer’s office, and the Department of Children, Youth, and  
19 Families).<sup>6</sup> Since September 2021, HHSa has described the ABP as a project that various  
20 departments of San Francisco and UCSF (among others) are “conducting” “in conjunction” with  
21 each other.<sup>7</sup> The program is designed to transfer “\$1,000-\$1,500 per month for the duration of a  
22 woman’s pregnancy and then for the first two months of the baby’s life” to “Black and Pacific  
23

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24 <sup>5</sup> Nastia Voynovskaya, *60 More San Francisco Artists Receive Guaranteed Income Payments*  
25 *Through YBCA*, KQED (June 28, 2022), <https://www.kqed.org/arts/13915178/ybca-sf-gipa-guaranteed-income-artists-phase-two>.

26 <sup>6</sup> Expecting Justice, *Abundant Birth Project, Cash During Pregnancy: A promising approach*  
27 *for reducing inequities in San Francisco*, available at <https://www.expectingjustice.org/about-abp/>.

28 <sup>7</sup> Kim Johnson, Order of the Director, San Francisco “Abundant Birth Project” (ABP)  
CalWORKs Waiver (Sept. 23, 2021), <https://www.cdss.ca.gov/Portals/9/FEED/SF-Abundant-Birth-Project.pdf>.

1 Islander pregnant women in San Francisco.”<sup>8</sup> HHSa has expressly recognized that, throughout the  
2 life of the ABP, “[t]he recipient selection process and evaluation of ABP will be led by[,]” among  
3 others, UCSF and UC Berkeley.<sup>9</sup>

4 24. In November 2022, the California Department of Social Services—an arm of  
5 HHSa—announced that, as part of the California Guaranteed Income Pilot Program, it had selected  
6 the Abundant Birth Program as a recipient of a \$5 million FY 2022-2023 grant.<sup>10</sup> To that end, the  
7 agency awarded a \$5 million grant of state funding that will be used to “provide Black mothers with  
8 monthly incomes of \$600 to \$1,000 for 12 months” in San Francisco and through similar programs  
9 in the Bay Area and Los Angeles.<sup>11</sup>

10 25. Furthermore, Mayor Breed has stated that San Francisco, too, has extended the  
11 program additional funding: “I committed to investing \$1.5 million over the next two years to grow  
12 the program in our City and neighboring counties.”<sup>12</sup>

13 26. Thus, under the ABP, Respondents and Defendants are picking recipients of public  
14 funds based on race. If not enjoined, the ABP is slated for years of additional distributions of public  
15 money on a racially discriminatory basis.

16 **C. Black Economic Equity Movement (BEEM).**

17 27. In November 2022, Defendants San Francisco, UCSF, and UC Berkeley launched  
18 another guaranteed-income program in the San Francisco area, naming this joint pilot program the  
19 Black Economic Equity Movement (“BEEM”). According to BEEM’s website, “The BEEM project  
20 is being advised and co-designed by 15 community members . . . who have deep roots in the

21 \_\_\_\_\_  
22 <sup>8</sup> Expecting Justice, Abundant Birth Project, *Cash During Pregnancy: A promising approach for reducing inequities in San Francisco*. at 2.

23 <sup>9</sup> Kim Johnson, Order of the Director, San Francisco “Abundant Birth Project” (ABP) CalWORKs Waiver (Sept. 23, 2021).

24 <sup>10</sup> State of Cal. Health & Human Servs. Agency, Dep’t of Social Services, Nov. 21, 2022 Notice  
25 of Intent to Award – California Guaranteed Income Pilot Program FY 2022/23–2025/26,  
<https://www.cdss.ca.gov/Portals/9/CalWORKs/GBIP/GINoticeofIntenttoAward-112122.pdf>.

26 <sup>11</sup> City & County of San Francisco, Press Release, *Program Providing Basic Income To Black*  
27 *Pregnant Women Expands To Help Mothers Across The State* (Dec. 6, 2022),  
<https://sf.gov/news/program-providing-basic-income-black-pregnant-women-expands-help-mothers-across-state>.

28 <sup>12</sup> *Id.*



1 community,” including “representatives from” (among others): (a) the San Francisco Mayor’s  
2 Office of Housing and Community Development; (b) the San Francisco Juvenile Probation  
3 Department; (c) UCSF; and (d) the University of California, Berkeley.<sup>13</sup> Additionally, BEEM  
4 advisors and co-designers include “representatives from” a number of organizations that receive  
5 public funds from the State of California, its subdivisions, and/or the federal government. The  
6 BEEM website also discloses that the BEEM “project is financed by a cooperative agreement with  
7 the National Institute [SIC] of Health’s Common Fund for Transformative Research to Address  
8 Health Disparities and Advance Health Equity Initiative[.]” Since September 2022, HHSA has  
9 described BEEM as a project that UCSF and UC Berkeley (among others) are “conducting” “in  
10 conjunction” with each other.<sup>14</sup> HHSA has expressly recognized both that “UCSF” and others “will  
11 oversee the research evaluation” for BEEM and that “[t]he recipient enrollment process and  
12 evaluation of BEEM will be led by[.]” among others Sherri Lippman at UCSF.<sup>15</sup>

13 28. The BEEM program is designed to transfer to participants “\$500 per month for one  
14 year[,] either immediately upon enrolling in the program or after a 12-month waiting period.” Its  
15 eligibility criteria are expressly racial: “To participate” in BEEM “you must be Black, between the  
16 ages of 18 and 24, and live in certain areas within Oakland or San Francisco.”<sup>16</sup> Indeed, if an  
17 applicant selected only “White” as their “race/ethnicity” in BEEM’s “Interest and Screening”  
18 section, the online application returns a message confirming that they are ineligible for payments  
19 from the project: “Thank you for your interest in BEEM. It looks like you are not eligible for this  
20 project, but we really appreciate your interest.” Thus, from its inception, defendants and respondents  
21 San Francisco, HHSA, and Regents have designed and operated BEEM to use public funds to  
22 provide benefits on a racially discriminatory basis.

23 <sup>13</sup> BEEM, *Partners*, <https://beemproject.org/partners/>.

24 <sup>14</sup> Kim Johnson, Order of the Director, Black Economic Equity Movement CalWORKs and  
CalFresh Income Exemption Waiver (Sept. 7, 2022).

25 <sup>15</sup> *Id.*

26 <sup>16</sup> The clinical study records at the U.S. National Library of Medicine and UCSF both confirm  
27 BEEM’s racially exclusionary focus. Black Economic Equity Movement (BEEM),  
<https://clinicaltrials.gov/ct2/show/NCT05609188>; UCSF, *Black Economic Equity Movement*,  
28 <https://clinicaltrials.ucsf.edu/trial/NCT05609188> (participants must “Self-Identify as African  
American or Black”).

1           **D.     Guaranteed Income For Transgender People (GIFT).**

2           29.     Most recently, San Francisco launched a fourth guaranteed income program: the  
3     Guaranteed Income for Transgender People program or “GIFT[.]”<sup>17</sup> San Francisco designed GIFT  
4     to transfer “\$1,200 a month in guaranteed income for a year and a half” to its participants. GIFT is  
5     designed to select as participants only those who are “Transgender, Non-Binary, Gender Non-  
6     Conforming, and Intersex.” In choosing those beneficiaries, however, the GIFT program further  
7     discriminates on the basis of race, since it has been designed to ““prioritize enrollment of ... Black,  
8     Indigenous, or People of Color (BIPOC) . . . and those who are legally vulnerable such as TGI people  
9     who are undocumented....”

10          30.     GIFT is operated through and in conjunction with several arms of the San Francisco  
11     government, including the City’s Office of Transgender Initiatives, the Mayor’s Office of Housing  
12     and Community Development, and the Office of the San Francisco Treasurer and Tax Collector.  
13     The program’s materials confirm that the funding is provided by the City and County of San  
14     Francisco. GIFT, *Guaranteed Income for Trans People (GIFT) Program Application*,  
15     <https://www.giftincome.org/apply> (click link to “G.I.F.T. Application”); GIFT, FAQ,  
16     <https://www.giftincome.org/faq>.

17          31.     Therefore, the GIFT program, as implemented, uses public funds to distribute money  
18     to recipients who are selected based on (and excluded based on) race, ethnicity, sex, national origin,  
19     gender/gender identity, and sexual orientation.

20           **II.     Defendants’ Use Of Race, Ethnicity, Gender/Gender Identity, And Sexual Orientation**  
21           **To Distribute Government Benefits Is Unconstitutional And Unlawful.**

22          32.     By relying on prohibited classifications to distribute government benefits,  
23     Defendants have violated the equal protection guarantees of both the United States Constitution and  
24     the California Constitution; they have likewise violated Title VI of the Civil Rights Act of 1964.

25     //

26  
27  
28     <sup>17</sup>     Guaranteed Income for Transgender People (G.I.F.T.), <https://www.giftincome.org/>.

1           **A.     The Discriminatory Programs Violate The Federal Equal Protection Clause.**

2           33.     The U.S. Constitution forbids public entities from engaging in intentional racial  
3 discrimination. And yet each of the programs described above is currently engaging in precisely the  
4 kind of intentional racial discrimination the Constitution forbids.

5           34.     The Equal Protection Clause provides that, “No State shall . . . deny to any person  
6 within its jurisdiction the equal protection of the laws.” U.S. Const., Amdt. 14, § 1. The Equal  
7 Protection Clause is “essentially a direction that all persons similarly situated should be treated  
8 alike,” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985), and “simply keeps  
9 governmental decisionmakers from treating differently persons who are in all relevant respects  
10 alike,” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992).

11           35.     Discrimination on the basis of race and ethnicity violates core equal protection  
12 principles. “[T]he central purpose of the Fourteenth Amendment was to eliminate racial  
13 discrimination emanating from official sources in the States.” *Peña-Rodriguez v. Colorado*, 580 U.S.  
14 206, 222 (2017) (quoting *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964)). “Laws that explicitly  
15 distinguish between individuals on racial grounds fall within the core of [the Fourteenth  
16 Amendment’s] prohibition.” *Shaw v. Reno*, 509 U.S. 630, 642 (1993). “[A]t the heart of the  
17 Constitution’s guarantee of equal protection lies the simple command that the Government must  
18 treat citizens as individuals, not as simply components of a racial, religious, sexual or national  
19 class.” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 730 (2007) (plurality  
20 opinion of Roberts, C.J.) (quoting *Miller v. Johnson*, 515 U.S. 900, 911 (1995)) (internal citation  
21 omitted). Put simply, “[d]istinctions between citizens solely because of their ancestry are by their  
22 very nature odious to a free people whose institutions are founded upon the doctrine of equality.”  
23 *Rice v. Cayetano*, 528 U.S. 495, 517 (2000) (citation omitted).

24           36.     “[A]ll racial classifications, imposed by whatever federal, state, or local  
25 governmental actor, must be analyzed by a reviewing court under strict scrutiny.” *Adarand*  
26 *Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Indeed, the same is true “not just when  
27 [adopted] policies contain express racial classifications, but also when, though race neutral on their  
28 face, they are motivated by a racial purpose or object.” *Miller v. Johnson*, 515 U.S. 900, 913 (1995).

1 Under strict scrutiny, the government has the burden of proving that racial classifications “are  
2 narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors*,  
3 515 U.S. at 227. “The reasons for strict scrutiny are familiar. Racial classifications raise special fears  
4 that they are motivated by an invidious purpose. Thus, [the Supreme Court has] admonished time  
5 and again that, ‘[a]bsent searching judicial inquiry into the justification for such race-based  
6 measures, there is simply no way of determining . . . what classifications are in fact motivated by  
7 illegitimate notions of racial inferiority or simple racial politics.’” *Johnson v. California*, 543 U.S.  
8 499, 505–06 (2005) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989)).

9 37. Defendants’ use of race (or – as in the CCCGI – intentional proxies for race) as an  
10 essential factor in distributing government benefits in each of the four programs at issue here fails  
11 strict scrutiny. No compelling interest supports these discriminatory giveaways; indeed, defendants  
12 do not even attempt to identify an interest recognized by the United States Supreme Court as  
13 compelling. As a result, the programs also cannot be considered narrowly tailored to achieving a  
14 compelling interest. *Aderand*, 515 U.S. at 227.

15 38. Instead, these discriminatory schemes fit the classic profile of attempts to address  
16 generalized or societal discrimination. See, e.g., BEEM, *About – Project Context*,  
17 <https://beemproject.org/about/> (“Structural racism has limited the opportunities for Black Americans  
18 for generations.”); City & County of San Francisco, *From Pilots to Policy Change*,  
19 *Recommendations from San Francisco’s Guaranteed Income Advisory Group* 8 (April 2022)  
20 (discussing, in connection with the Abundant Birth Project and other pilot programs, “the  
21 demonstrated need to target public and private dollars toward Black households and other  
22 communities of color, based on an urgent imperative to confront systemic racism that has resulted  
23 in deep-rooted disparities and an ever-growing racial wealth gap”). But the Supreme Court has stated  
24 repeatedly that addressing past societal discrimination is not a compelling interest. “[G]eneralized  
25 assertion[s]” of discrimination cannot justify remedial race-based action because they “provide[] no  
26 guidance for a legislative body to determine the precise scope of the injury it seeks to remedy. It  
27 ‘has no logical stopping point.’” *J.A. Croson Co.*, 488 U.S. at 498 (quoting *Wygant v. Jackson Bd.*  
28 *Of Educ.*, 476 U.S. 267, 275 (1986)). Likewise, “[a] generalized assertion of past discrimination in

1 a particular . . . region is not adequate,” and “an effort to alleviate the effects of societal  
2 discrimination is not a compelling interest.” *Shaw v. Hunt*, 517 U.S. 899, 909 (1996) (citations  
3 omitted) (“*Hunt*”); *see also J.A. Croson Co.*, 488 U.S. at 499 (“an amorphous claim” of past  
4 discrimination insufficient to justify race-based quota system). Rather, the Equal Protection Clause  
5 requires the government to identify discrimination with specificity, have actual evidence of  
6 discrimination that demonstrates race-based action is necessary, and tailor any race-conscious action  
7 to the remediation of that discrimination. *Hunt*, 517 U.S. at 909; *see also J.A. Croson Co.*, 488 U.S.  
8 at 500, 504.

9         39. Precisely because “[r]acial classifications are antithetical to the Fourteenth  
10 Amendment,” the Supreme Court has placed strict constraints on a State’s use of racial distinctions.  
11 *Hunt*, 517 U.S. at 907. When any government seeks to “remedy[] the effects of past or present racial  
12 discrimination,” it “must satisfy two conditions” to establish a “compelling state interest.” *Id.* at 909.  
13 First, the discrimination must be “‘identified discrimination’”—a state “must identify”  
14 discrimination “with some specificity.” *Id.* (quoting *J.A. Croson Co.*, 488 U.S. at 504). Second, a  
15 State “must have had a ‘strong basis in evidence’ to conclude that remedial action was necessary,  
16 ‘before it embarks’” on race-conscious action. *Hunt*, 517 U.S. at 910 (citations omitted; emphasis in  
17 *Hunt*); *J.A. Croson Co.*, 488 U.S. at 500 (there must be a “strong basis in evidence” to demonstrate  
18 the necessity of racial classifications, and “simple legislative assurances of good intention cannot  
19 suffice”). Here, of course, it would be impossible for Defendants to specifically identify  
20 discrimination they are attempting to remedy. Indeed, for at least 50 years, the City of San Francisco  
21 and the UC system in particular have been on the vanguard of *eliminating* discrimination in their  
22 ranks.

23         40. Because none of these programs are linked to specific, “identified discrimination,”  
24 Defendants cannot establish that the programs further a compelling state interest—and it is therefore  
25 “almost impossible” to conduct a narrow-tailoring inquiry. *J.A. Croson Co.*, 488 U.S. at 507. But  
26 even if Defendants could identify discrimination with particularity, they still could not meet their  
27 burden of showing that the use of race to distribute grants is narrowly tailored. Among other things,  
28 narrow tailoring requires “serious, good faith consideration of workable race-neutral alternatives.”

1 *Grutter v. Bollinger*, 539 U.S. 206, 339 (2003); *see also J.A. Croson Co.*, 488 U.S. at 507 (minority  
2 set-aside program was not narrowly tailored in part because city had not considered “the use of race-  
3 neutral means” to achieve its interest); *Wygant*, 476 U.S. at 280 n.6 (plurality opinion) (noting that  
4 the term “narrowly tailored” “require[s] consideration” of “lawful alternative and less restrictive  
5 means”). Here, there is no evidence that Defendants considered race-neutral alternatives before  
6 supporting the discriminatory programs. Rather, their entire point is to discriminate.

7 41. Accordingly, the programs’ use of racially exclusionary criteria as the basis for  
8 distributing government benefits violates the United States Constitution’s Equal Protection  
9 guarantee.

10 **B. The Discriminatory Programs Violate Title VI.**

11 42. Defendants are each recipients of federal funding, which means they are subject to  
12 the anti-discrimination requirements of Title VI of the Civil Rights Act of 1964:

13 No person in the United States shall, on the ground of race, color, or national origin,  
14 be excluded from participation in, be denied the benefits of, or be subjected to  
discrimination under any program or activity receiving Federal financial assistance.

15 42 U.S.C. § 2000d.

16 43. By virtue of the programs described above, Defendants are currently, based on race,  
17 color, and national origin (or – as in the CCCGI – intentional proxies for race), collectively: (a)  
18 excluding San Franciscans from participation in, (b) denying San Franciscans the benefits of, and  
19 (c) subjecting San Franciscans to discrimination in these programs and activities.

20 44. The Supreme Court has “explained that discrimination that violates the Equal  
21 Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal  
22 funds also constitutes a violation of Title VI [of the Civil Rights Act of 1964].” *Gratz v. Bollinger*,  
23 539 U.S. 244, 276 n.23 (2003). In other words, Title VI imposes on federal funding recipients  
24 precisely the same constraints that the federal Equal Protection Clause imposes on state and local  
25 governments, so each of the programs violates Title VI because they cannot satisfy strict scrutiny.

26 45. Plaintiffs are informed and believe that each of the Defendants here receives  
27 substantial federal funding each year, so they violate Title VI when they discriminate on the basis  
28 of race.









1           4.       For preliminary and permanent injunctive relief enjoining Defendants from using  
2 government resources or public funds to support the discriminatory programs so long as they  
3 discriminate on the basis of race, ethnicity, gender/gender identity, or sexual orientation;

4           5.       Costs of suit, including reasonable attorneys' fees available pursuant to applicable  
5 law; and

6           6.       For other appropriate relief.

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Dated: May 31, 2023

BENBROOK LAW GROUP, PC

By s/ Bradley A. Benbrook  
BRADLEY A. BENBROOK  
Attorneys for Petitioners and Plaintiffs

1 **VERIFICATION**

2 I, Wenyuan Wu, declare:

3 I am the Executive Director of Californians For Equal Rights Foundation, and am  
4 authorized to make this verification on its behalf. I have read the foregoing Verified Petition for  
5 Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents  
6 thereof. The factual matters concerning the organization’s experience stated in the foregoing  
7 document are true of my own knowledge. The remaining matters are stated on information and  
8 belief, and, as to those matters, I believe them to be true.

9 Executed May \_\_\_\_, 2023.

10 I declare under penalty of perjury under the laws of the State of California and the United  
11 States that the foregoing is true and correct.

12 Californians For Equal Rights Foundation

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14 By: Wenyuan Wu

15 Title: Executive Director

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**VERIFICATION**

I, Ruth Parker, declare:

I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. I am a party to this action. The factual matters concerning my experience stated in the foregoing document are true of my own knowledge. The remaining matters are stated on information and belief, and, as to those matters, I believe them to be true.

Executed May 30, 2023.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

s/ Ruth Parker  
Ruth Parker

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**VERIFICATION**

I, Ellen Lee Zhou, declare:

I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. I am a party to this action. The factual matters concerning my experience stated in the foregoing document are true of my own knowledge. The remaining matters are stated on information and belief, and, as to those matters, I believe them to be true.

Executed May 18, 2023.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

  
Ellen Lee Zhou