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16 **SUPERIOR COURT OF CALIFORNIA**
17 **COUNTY OF SACRAMENTO**

18 CALIFORNIANS FOR EQUAL RIGHTS
19 FOUNDATION; LARRY CHEN; ANDREW
20 GROSS; and MICHELLE GROSS,

21 Petitioners/Plaintiffs,

22 v.

23 ERICA PAN, in her official capacity as Director
24 of the California Department of Public Health;
25 and DOES 1-10,

26 Respondents/Defendants.

Case No.: **26WV000113**

**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, Larry Chen,
3 Andrew Gross, and Michelle Gross bring this lawsuit to halt the illegal use of government resources
4 and public funds to provide benefits on a discriminatory basis.

5 2. Respondent and Defendant California Department of Public Health (“CDPH”) is
6 participating in a so-called “health equity” program that unlawfully chooses its beneficiaries based
7 on race and ethnicity. This express use of prohibited classifications in distributing government
8 benefits violates the principle of equal protection that is guaranteed by the United States and
9 California Constitutions and enshrined in federal anti-discrimination law.¹

10 3. This case challenges CDPH’s funding and support of the “Black Infant Health”
11 program, a program designed to select beneficiaries using criteria that unlawfully favor applicants
12 based on their race. This is unconstitutional. “‘Distinctions between citizens solely because of their
13 ancestry are by their very nature odious to a free people,’ and therefore ‘are contrary to our [Nation’s]
14 traditions and hence constitutionally suspect.’” *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 309
15 (2013) (quoting *Rice v. Cayetano*, 528 U.S. 495, 517 (2000), and *Bolling v. Sharpe*, 347 U.S. 497,
16 499 (1954)). And because Defendant’s conduct violates the Equal Protection Clause, it likewise
17 violates federal antidiscrimination statutes, including Title VI of the Civil Rights Act of 1964, which
18 applies to CDPH because it receives federal funding. *See Gratz v. Bollinger*, 539 U.S. 244, 276 n.23
19 (2003).

20 4. Plaintiffs seek relief to ensure that CDPH ceases using government resources or
21 public funds to support this unlawful program so long as it discriminates on the basis of race and
22 ethnicity.

23 **THE PARTIES**

24 5. Petitioner and Plaintiff Californians for Equal Rights Foundation (“CFER”) is a
25 California non-profit public benefit corporation headquartered in San Diego, California. CFER is a
26 non-partisan and non-profit organization established following the defeat of Proposition 16 in 2020,

27 _____
28 ¹ Although the parties have dual roles, for clarity this petition and complaint refers to Petitioners and
Plaintiffs as “Plaintiffs,” and refers to Respondent and Defendant CDPH as a “Defendant.”

1 with a mission to defend and raise public awareness on the cause of equal rights through litigation,
2 public education, civic engagement, and community outreach. CFER is dedicated to educating the
3 public on the essential constitutional principle of equality. It has coalition members throughout the
4 State of California that pay state and local taxes, including such members who are residents and
5 taxpayers of the City and County of Sacramento.

6 6. Petitioner and Plaintiff Larry Chen is an individual residing in Sacramento who has
7 paid taxes to the State of California. Petitioner and Plaintiff Larry Chen is a member of CFER.

8 7. Petitioner and Plaintiff Andrew Gross is an individual residing in Alameda County
9 who has paid taxes to the State of California. Petitioner and Plaintiff Andrew Gross is a member of
10 CFER.

11 8. Petitioner and Plaintiff Michelle Gross is an individual residing in Alameda County
12 who has paid taxes to the State of California. Petitioner and Plaintiff Michelle Gross is a member of
13 CFER.

14 9. Respondent and Defendant Erica Pan is the Director of the California Department of
15 Public Health. CDPH is a department within the California Health and Human Services Agency
16 (“HHSA”), which is the state agency tasked with administration and oversight of California’s state
17 and federal programs for health care, social services, public assistance, and rehabilitation. HHSA
18 oversees several subsidiary arms of the state government, including the CDPH, through which the
19 state government has directed government resources and public funds to support the Black Infant
20 Health program as set forth below. Pan is sued in her official capacity.

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

28

1 <https://admin.publichealth.lacounty.gov/mch/BIH/bih.htm>. It started as a pilot project in four sites
2 with a primary focus on getting Black women into prenatal care. City of Pasadena Pub. Health Dep't,
3 *Black Infant Health Program*, [https://www.cityofpasadena.net/public-health/black-infant-health-](https://www.cityofpasadena.net/public-health/black-infant-health-program)
4 [program](https://www.cityofpasadena.net/public-health/black-infant-health-program).

5 16. Today, BIH operates with a mission “to improve health among Black mothers and
6 babies by empowering pregnant and mothering Black women to make healthy choices for a brighter
7 future.” Black Infant Health, *About Us*, <https://blackinfanthealth.org/about-us>. The program
8 “focuses exclusively on empowering Black/African American women by connecting them with the
9 vital care and support needed to promote healthy behaviors during pregnancy and continuing after
10 her baby is born.” *Id.*

11 17. BIH has also expanded to 15 Local Health Jurisdictions (“LHJs”):

- 12 • Alameda County
- 13 • Contra Costa County
- 14 • Fresno County
- 15 • Kern County
- 16 • City of Long Beach
- 17 • Los Angeles County
- 18 • Orange County
- 19 • City of Pasadena
- 20 • Riverside County
- 21 • Sacramento County
- 22 • San Bernardino County
- 23 • San Diego County
- 24 • San Francisco County
- 25 • San Joaquin County
- 26 • Santa Clara County

27 Black Infant Health, *Where We Are*, <https://blackinfanthealth.org/where-we-are>; Cal. Dep't of Pub.
28 Health, Maternal, Child & Adolescent Health Div., *Allocations*,

1 <https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/Allocations.aspx>. Some LHJs have up to
2 six sub-county service areas.²

3 18. As the name of the program (Black Infant Health) suggests, eligibility for
4 participation in BIH is explicitly tied to race, and non-Black women are not eligible. The primary
5 program website states that BIH serves only “Black women who are 16 years or older [and] pregnant
6 or up to six months postpartum at the time of enrollment regardless of income.” Black Infant Health,
7 *About Us*, <https://blackinfanthealth.org/about-us>. BIH’s website celebrates the program’s exclusion
8 of non-Black participants: BIH “participants get to meet, interact, and build a sisterhood with other
9 Black women,” and the program’s goal is to “impact[] not only participants themselves, but future
10 generations of Black women, infants and families.” *Id.* The website attributes “poor birth outcomes
11 ... for Black women” to “[a]nti-Black Racism, as well as social and economic stressors.” *Id.*

12 19. The Alameda County program’s FAQ explains the exclusion of non-Black women
13 this way:

14 Black Infant Health only for Black women?

15 Yes, babies born to Black women die at three to four times the rate of other babies in
16 all populations within the first year of life. Black women die in childbirth at three
17 times the rate of other women in all populations. Black Infant Health’s mission is
intended to address the poor birth outcomes and health disparities that affect Black
women and their babies.

18 Alameda County Pub. Health Dep’t, *Black Infant Health Program—Frequently Asked Questions*,
19 <https://acphd.org/programs-and-services/black-infant-health/faq>. Pasadena’s BIH website similarly
20 states that “[e]xperts believe that social, economic and racial stresses play an important role in poor
21 birth outcomes—babies born too early and too small—for African-American women.” City of
22 Pasadena Pub. Health Dep’t, *Black Infant Health Program*, <https://www.cityofpasadena.net/public->

23
24 ² Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *Notice of Intent to Award:*
25 *Updated Annual Allocations for the Black Infant Health Program for State*
26 *Fiscal Years 2024/25 and 2025/26* (Apr. 19, 2024),
[https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/Notice-of-Intent-to-Award-24-](https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/Notice-of-Intent-to-Award-24-26.aspx)
27 [26.aspx](https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/Notice-of-Intent-to-Award-24-26.aspx). A service area is defined as “a contiguous geographical area with a minimum of 440 eligible
28 Black women and/or birthing people.” Fresno County Dep’t of Pub. Health,
FY 2025–26 Agreement Funding Application, Exhibit A—Scope of Work 3,
[https://fresnocounty.legistar.com/View.ashx?M=F&ID=15029272&GUID=0E67B9AF-BCA6-](https://fresnocounty.legistar.com/View.ashx?M=F&ID=15029272&GUID=0E67B9AF-BCA6-478E-A1CA-7A661DF248E0)
[478E-A1CA-7A661DF248E0](https://fresnocounty.legistar.com/View.ashx?M=F&ID=15029272&GUID=0E67B9AF-BCA6-478E-A1CA-7A661DF248E0).

1 [health/black-infant-health-program](#). Other LHJs also explicitly state that eligibility is limited by
2 race.³

3 20. BIH primarily offers services through a “group model,” which comprises both
4 prenatal and postpartum components.⁴ Each component includes ten 2.5-hour sessions led by two
5 trained facilitators, in groups of eight to twelve participants. Group sessions include activities
6 designed to “address internalized racism,” including discussions of a “‘Black icon,’ which is a Black
7 person who has made significant contributions to society.”⁵ BIH sites provide participants with
8 “transportation to and from group sessions,” “food and child care during group sessions,” and
9 “motivators for participation.”⁶

10 _____
11 ³ See, e.g., Fresno County Dep’t of Pub. Health, *Black Infant Health (BIH)*,
12 <https://www.fresnocountyca.gov/Departments/Public-Health/Public-Health-Nursing/Black-Infant-Health-BIH> (stating that the program serves “[a]ll pregnant African American women”); Kern
13 County Pub. Health, *Black Infant Health Program*, <https://www.kernpublichealth.com/healthy-community/women-s-health/black-infant-health-program> (“Who can join?—Black women”); City
14 of Long Beach Health & Human Servs., *Black Infant Health*,
15 <https://www.longbeach.gov/health/services/directory/black-infant-health/> (listing one requirement
16 as being a “Black woman/birthing person”); County of Los Angeles Dep’t of Pub. Health, *Black
17 Infant Health (BIH) Program*, <https://admin.publichealth.lacounty.gov/mch/BIH/bih.htm>
18 (eligibility limited to “African American women”); Riverside University Health System, *Black
19 Infant Health*, <https://www.ruhealth.org/public-health/black-infant-health> (“To Enroll in this free
20 service you must be an African American woman”); Sacramento County Dep’t of Human Servs.,
21 *Black Infant Health Program*, [https://dhs.saccounty.gov/PUB/Program/Pages/SP-Black-Infant-
22 Health-Program.aspx](https://dhs.saccounty.gov/PUB/Program/Pages/SP-Black-Infant-Health-Program.aspx) (“Program services are provided to African American women”) San Diego
23 County Health & Human Servs. Agency, *Black Infant Health Program (BIH)*,
24 [https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/black_infant_health_program.ht
25 ml](https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/black_infant_health_program.html) (limiting eligibility to “[p]regnant African-American women”); San Bernardino County Dep’t of
26 Pub. Health, *Black Infant Health*, <https://dph.sbcounty.gov/bih> (“Ways to qualify: Self-identify as
27 Black or African-American”); San Francisco Dep’t of Pub. Health, *San Francisco Black Infant
28 Health Program*, <https://www.sf.gov/departments--san-francisco-black-infant-health-program>
29 (“We provide services for Black or African American pregnant people.”); County of Santa Clara
30 Pub. Health, *Black Infant Health (BIH) Program*,
31 <https://publichealth.santaclaracounty.gov/programs-and-services/black-infant-health-bih-program>
32 (limiting eligibility to “Pregnant African/African American women”).

33 ⁴ Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *BIH Group Model
34 Components*, [https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/BIH-Group-Model-
35 Components.aspx](https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/BIH-Group-Model-Components.aspx).

36 ⁵ Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *Black Infant Health
37 Program*, <https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/default.aspx>.

38 ⁶ Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *BIH Group Model
39 Components*, [https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/BIH-Group-Model-
40 Components.aspx](https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/BIH-Group-Model-Components.aspx); see also San Bernardino County Dep’t of Pub. Health, *Black Infant Health*,
41 <https://dph.sbcounty.gov/bih> (stating that participants can “[e]arn incentives in the course of the
42 program through graduation”).

1 21. In addition to these sessions, group model participants receive “1:1 support meetings
2 with an assigned family health advocate or public health nurse.”⁷ Individualized support includes
3 “connecting the participant to other services,” “identifying the strengths, challenges, and resources
4 to conduct life and family planning,” and “preparing a birth plan and conducting a home safety
5 checklist.”⁸ Individual sessions are also available for 16- and 17-year-old participants (who are
6 ineligible for the group model) and others who are unable to attend group sessions.⁹

7 22. There is no question that CDPH and the participating LHJs use significant public
8 resources to implement the BIH program. The BIH website states that funding for the program comes
9 from “Federal Title V MCH Block Grant Funds, Federal Title XIX (Medicaid) Funds and State
10 General Funds.”¹⁰ The Maternal, Child and Adolescent Health Division (“MCAH”) of CDPH, of
11 which BIH is a part, applies annually for grants through the Title V Maternal and Child Health
12 Services Block Grant administered by the federal Health Resources and Services Administration.¹¹
13 In CDPH’s 2026 fiscal year application, CDPH represented that BIH “was designed explicitly for
14 Black mothers.”¹² The funds obtained from Title V grants are used in part to reimburse BIH program
15 expenses. MCAH Policies and Procedures at 13.

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17
18 ⁷ Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *BIH Group Model*
19 *Components*, <https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/BIH-Group-Model-Components.aspx>.

20 ⁸ *Id.*

21 ⁹ Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *Black Infant Health*
22 *Program*, <https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/default.aspx>.

23 ¹⁰ Black Infant Health, *About Us*, <https://blackinfanthealth.org/about-us>.

24 ¹¹ Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *Local MCAH Programs Policies and Procedures* 13 (June 2024),
25 <https://www.cdph.ca.gov/Programs/CFH/DMCAH/LocalMCAH/CDPH%20Document%20Library/MCAH-Policies-and-Procedures.pdf> (“MCAH Policies and Procedures”).

26 ¹² *California Maternal and Child Health Services Title V Block Grant FY 2026 Application/FY 2024*
27 *Annual Report—Supporting Document 2. Title V and MCAH Division Program Descriptions 1*,
28 <https://mchb.tvিসdata.hrsa.gov/Admin/FileUpload/DownloadStateUploadedPdf?fileType=2&state=CA&year=2026>;
see also *California Maternal and Child Health Services Title V Block Grant FY 2026 Application/FY 2024 Annual Report* 64,
<https://mchb.tvিসdata.hrsa.gov/Admin/FileUpload/DownloadStateUploadedPdf?filetype=PrintVersion&state=CA&year=2026> (stating that BIH “[o]ffers individual and group support to pregnant and post-partum Black mothers”).

1 23. BIH also uses Title XIX Medicaid funding to connect Black pregnant and parenting
2 women to health services.¹³ Each local BIH program maintains a public health nurse and social
3 worker on their staff to assess medical and mental health needs throughout a Black woman’s time
4 in the program. The remaining funding comes from state sources.¹⁴

5 24. CDPH allocates money for BIH by individual LHJs. For each of state fiscal years
6 2024/25 and 2025/26, CDPH allocated a total of \$3,916,289 of Title V funds and \$20,927,711 from
7 the state general fund, for an annual total of \$24,844,000.¹⁵ To participate in BIH and receive
8 funding, LHJs must submit a packet containing certain informational forms and certifications, as
9 well as a scope of work and budget.¹⁶ These scopes of work reiterate that eligibility for both group
10 and individual BIH services is limited to Black women.¹⁷ Once approved, LHJs can submit quarterly
11 invoices for reimbursement of program-related expenses from CDPH, up to the LHJ’s allocated
12 amount.

13 **II. California’s Use Of Race To Distribute Government Benefits Is Unlawful.**

14 25. CDPH should be restrained from participating in and providing any further support
15 (financial or otherwise) to the racially-discriminatory Black Infant Health program. By relying on
16 prohibited classifications to distribute government benefits, California has violated the equal
17

18 ¹³ U.S. Dep’t of Health & Human Servs., *III.E.2.b.v.b. Title V MCH –*
19 *Title XIX Medicaid Inter-Agency Agreement (IAA)—California—2022*,
20 [https://mchb.tvisdata.hrsa.gov/Narratives/Title%20V%20MCH%20%E2%80%93%20Title%20XIX%20Medicaid%20Inter-Agency%20Agreement%20\(IAA\)/8ef44ee0-f13e-45f8-bf4a-02938593d296](https://mchb.tvisdata.hrsa.gov/Narratives/Title%20V%20MCH%20%E2%80%93%20Title%20XIX%20Medicaid%20Inter-Agency%20Agreement%20(IAA)/8ef44ee0-f13e-45f8-bf4a-02938593d296).

21 ¹⁴ Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *Allocations*,
22 <https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/Allocations.aspx>.

23 ¹⁵ Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *Notice of Intent to Award:*
24 *Updated Annual Allocations for the Black Infant Health Program for State Fiscal Years 2024/25*
25 *and 2025/26*, <https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/Notice-of-Intent-to-Award-24-26.aspx>.

26 ¹⁶ Cal. Dep’t of Pub. Health, Maternal, Child & Adolescent Health Div., *State Fiscal Year (SFY) 2025-2026 Agreement Funding Application (AFA) Announcement*,
27 <https://www.cdph.ca.gov/Programs/CFH/DMCAH/Pages/Fiscal/Agreement-Funding-Application-Announcement-2025-26.aspx>.

28 ¹⁷ *See, e.g., Fresno County Dep’t of Pub. Health, FY 2025–26 Agreement Funding Application, Exhibit A—Scope of Work 3*,
<https://fresnocounty.legistar.com/View.ashx?M=F&ID=15029272&GUID=0E67B9AF-BCA6-478E-A1CA-7A661DF248E0>.

1 protection guarantees of both the United States Constitution and the California Constitution; they
2 have likewise violated Title VI of the Civil Rights Act of 1964.

3 **A. The BIH Violates the Federal Equal Protection Clause.**

4 26. The U.S. Constitution forbids public entities from engaging in intentional racial
5 discrimination. And yet by funding and supporting the BIH, the California Department of Public
6 Health is engaging in precisely the kind of intentional racial discrimination the Constitution forbids.
7 The Equal Protection Clause provides that, “No State shall ... deny to any person within its
8 jurisdiction the equal protection of the laws.” U.S. Const., Amdt. 14, § 1. The Equal Protection
9 Clause is “essentially a direction that all persons similarly situated should be treated alike,” *City of*
10 *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985), and “simply keeps governmental
11 decisionmakers from treating differently persons who are in all relevant respects alike,” *Nordlinger*
12 *v. Hahn*, 505 U.S. 1, 10 (1992).

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

26 28. “[A]ll racial classifications, imposed by whatever federal, state, or local
27 governmental actor, must be analyzed by a reviewing court under strict scrutiny.” *Adarand*
28 *Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Indeed, the same is true “not just when

1 [adopted] policies contain express racial classifications, but also when, though race neutral on their
2 face, they are motivated by a racial purpose or object.” *Miller v. Johnson*, 515 U.S. 900, 913 (1995).
3 Under strict scrutiny, the government has the burden of proving that racial classifications “are
4 narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors*,
5 515 U.S. at 227. “The reasons for strict scrutiny are familiar. Racial classifications raise special fears
6 that they are motivated by an invidious purpose. Thus, [the Supreme Court has] admonished time
7 and again that, ‘[a]bsent searching judicial inquiry into the justification for such race-based
8 measures, there is simply no way of determining ... what classifications are in fact motivated by
9 illegitimate notions of racial inferiority or simple racial politics.’” *Johnson v. California*, 543 U.S.
10 499, 505–06 (2005) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989)).

11 29. California’s use of race as an essential factor in distributing government benefits in
12 the BIH fails strict scrutiny.

13 30. California must identify a “compelling” interest to justify the program under strict
14 scrutiny. There is no question that protecting the health of all pregnant women and all newborns—
15 of all races—is a worthy social goal. As a matter of constitutional law, however, advancing the
16 health and safety of only pregnant women and newborns of a single race to the exclusion of others
17 is not sufficiently compelling to comply with the requirements of equal protection. The United States
18 Supreme Court recognizes only two interests as sufficiently compelling to allow differential
19 treatment based on race. *Students for Fair Admissions, Inc. v. Harvard*, 600 U.S. 181, 207 (2023)
20 (“*SFFA*”) (“[O]ur precedents have identified only two compelling interests that permit resort to race-
21 based government action. One is remediating specific, identified instances of past discrimination
22 that violated the Constitution or a statute. The second is avoiding imminent and serious risks to
23 human safety in prisons, such as a race riot.” (citations omitted)).

24 31. Instead, this discriminatory scheme fits the classic profile of attempts to address
25 generalized or societal discrimination. *See, e.g.*, Black Infant Health, *About Us*,
26 <https://blackinfanthealth.org/about-us> (explaining how BIH is designed to remedy adverse infant
27 health outcomes caused by, among other things, “Anti-Black Racism”); Contra Costa Health, *Black*
28 *Infant Health Support*, <https://www.cchealth.org/services-and-programs/support-for-families/black->

1 [infant-health-support](#) (same); Alameda County Pub. Health Dep't, *Black Infant Health Program—*
2 *Frequently Asked Questions*, <https://acphd.org/programs-and-services/black-infant-health/faq>
3 (“Black Infant Health’s mission is intended to address the poor birth outcomes and health disparities
4 that affect Black women and their babies.”). Indeed, CDPH’s website explains that “BIH was created
5 in recognition that anti-Black racism, social and economic stressors, and neighborhood conditions
6 contribute to poor birth outcomes for Black mothers, birthing people, and infants.” Cal. Dep’t of
7 Pub. Health, Maternal, Child & Adolescent Health Div., *Black Infant Health Program*,
8 <https://www.cdph.ca.gov/Programs/CFH/DMCAH/BIH/Pages/default.aspx>.

9 32. But the Supreme Court has stated repeatedly that addressing past societal
10 discrimination is not a compelling interest. “[G]eneralized assertion[s]” of discrimination cannot
11 justify remedial race-based action because they “provide[] no guidance for a legislative body to
12 determine the precise scope of the injury it seeks to remedy. It ‘has no logical stopping point.’” *J.A.*
13 *Croson Co.*, 488 U.S. at 498 (quoting *Wygant v. Jackson Bd. Of Educ.*, 476 U.S. 267, 275 (1986)).
14 Likewise, “[a] generalized assertion of past discrimination in a particular ... region is not adequate,”
15 and “an effort to alleviate the effects of societal discrimination is not a compelling interest.” *Shaw*
16 *v. Hunt*, 517 U.S. 899, 909 (1996) (citations omitted) (“*Hunt*”); *see also J.A. Croson Co.*, 488 U.S.
17 at 499 (“an amorphous claim” of past discrimination insufficient to justify race-based quota system).
18 Rather, the Equal Protection Clause requires the government to identify discrimination with
19 specificity, have actual evidence of discrimination that demonstrates race-based action is necessary,
20 and tailor any race-conscious action to the remediation of that discrimination. *Hunt*, 517 U.S. at 909;
21 *see also J.A. Croson Co.*, 488 U.S. at 500, 504.

22 33. Precisely because “[r]acial classifications are antithetical to the Fourteenth
23 Amendment,” the Supreme Court has placed strict constraints on government entities’ use of racial
24 distinctions. *Hunt*, 517 U.S. at 907. When any government seeks to “remedy[] the effects of past or
25 present racial discrimination,” it “must satisfy two conditions” to establish a “compelling state
26 interest.” *Id.* at 909. First, “[s]ome showing of prior discrimination *by the governmental unit involved*
27 [must be made] before [that government would be] allow[ed] limited use of racial classifications[.]”
28 *Associated Gen’l Contr., Inc. v. San Francisco*, 813 F.2d 922, 930 (9th Cir. 1987) (emphasis in

1 original) (citing *Wygant*, 476 U.S. at 274). The state or local government “must identify” the relevant
2 discrimination “with some specificity.” *Hunt*, 517 U.S. at 907 (quoting *J.A. Croson Co.*, 488 U.S. at
3 504). Second, the government “must have had a ‘strong basis in evidence’ to conclude that remedial
4 action was necessary, ‘before it embarks’” on race-conscious action. *Hunt*, 517 U.S. at 910 (citations
5 omitted; emphasis in *Hunt*); *J.A. Croson Co.*, 488 U.S. at 500 (there must be a “strong basis in
6 evidence” to demonstrate the necessity of racial classifications, and “simple legislative assurances
7 of good intention cannot suffice”). Here, of course, it would be impossible for the State to
8 specifically identify discrimination this program attempts to remedy. Indeed, for at least 50 years,
9 the State of California has been on the vanguard of prohibiting and punishing discrimination against
10 its Black citizens; California has maintained the BIH program itself for 37 years.

11 34. Because the BIH is not linked to specific, “identified discrimination” by California,
12 the State cannot establish that the program furthers a compelling state interest—and it is therefore
13 “almost impossible” to conduct a narrow-tailoring inquiry. *J.A. Croson Co.*, 488 U.S. at 507. But
14 even if the State could identify discrimination with particularity, it still could not meet its burden of
15 showing that the use of race in program eligibility is narrowly tailored. Among other things, narrow
16 tailoring requires “serious, good faith consideration of workable race-neutral alternatives.” *Grutter*
17 *v. Bollinger*, 539 U.S. 206, 339 (2003); *see also J.A. Croson Co.*, 488 U.S. at 507 (minority set-aside
18 program was not narrowly tailored in part because city had not considered “the use of race-neutral
19 means” to achieve its interest). Here, there is no evidence that the State considered race-neutral
20 alternatives before supporting the BIH. Rather, the *entire point* of the program is to tailor it
21 exclusively to Black women. And even if it had engaged in such considerations back in 1989,
22 California would face an additional insurmountable hurdle—even where the Supreme Court has
23 found an interest sufficiently compelling to allow governmental use of race in programs, “[a]t some
24 point ... they must end. This requirement was critical and *Grutter* emphasized it repeatedly. ‘[A]ll
25 race-conscious [policies must] have a termination point’; they ‘must have reasonable durational
26 limits’; they ‘must have a logical end point’; their ‘deviation from the norm of equal treatment’ must
27 be ‘a temporary matter.’” *SFFA*, 600 U.S. at 213 (internal citations omitted). 37 years into the BIH
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1 program, California has no time horizon for its transition away from race-exclusion, promising only
2 ongoing discrimination in the program today, tomorrow, and seemingly forever.

3 35. Accordingly, the BIH's use of racially exclusionary criteria as the basis for
4 distributing government benefits violates the United States Constitution's equal protection
5 guarantee.

6 **B. The BIH Violates Title VI.**

7 36. CDPH is a recipient of federal funding, which means it is subject to the anti-
8 discrimination requirements of Title VI of the Civil Rights Act of 1964:

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

11 42 U.S.C. § 2000d.

12 37. By virtue of the program described above, California is currently, based on race,
13 color, and national origin, collectively: (a) excluding Californians from participation in, (b) denying
14 Californians the benefits of, and (c) subjecting Californians to discrimination in this program and its
15 related activities.

16 38. The Supreme Court has "explained that discrimination that violates the Equal
17 Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal
18 funds also constitutes a violation of Title VI [of the Civil Rights Act of 1964]." *Gratz v. Bollinger*,
19 539 U.S. 244, 276 n.23 (2003). In other words, Title VI imposes on federal funding recipients
20 precisely the same constraints that the federal Equal Protection Clause imposes on state and local
21 governments, so the program violates Title VI because they cannot satisfy strict scrutiny.

22 39. Because CDPH receives substantial federal funding each year, it violates Title VI
23 when it discriminates on the basis of race.

24 **C. The BIH Violates The California Constitution's Equal Protection Guarantee.**

25 40. California law is even less forgiving of the State's discriminatory program. Article I,
26 Section 7 of the California Constitution establishes that "[a] person may not be ... denied equal
27 protection of the laws," and it provides that "[a] citizen or class of citizens may not be granted
28 privileges or immunities not granted on the same terms to all citizens." Cal. Const., art. I, § 7(a).

1 design, sponsor, support, and administer programs that discriminate on the basis of race and
2 ethnicity.

3 46. Petitioners have a beneficial right to seek mandamus to protect the “public right” by
4 compelling Defendant to perform its “public duty” under the constitutional equal protection
5 guarantees and Title VI. *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52 Cal. 4th 155,
6 166 (2011). “Mandamus relief is ... available to ‘correct those acts and decisions of administrative
7 agencies which are in violation of law.’” *Transdyn/Cresci v. City & Cty. of San Francisco*, 72 Cal.
8 App. 4th 746, 752 (1999) (quoting *Bodinson Mfg. Co. v. Cal. Emp’t Comm’n*, 17 Cal. 2d 321, 329
9 (1941)). To that end, California courts have long recognized that mandamus is particularly
10 appropriate to vindicate equal protection principles by testing the validity of discriminatory
11 government programs like the one challenged here. *Connerly*, 92 Cal.App.4th at 30–31.

12 **SECOND CAUSE OF ACTION**

13 **Declaratory and Injunctive Relief**

14 **(Code Civ. Proc. § 1060)**

15 47. Petitioners and Plaintiffs incorporate here by reference paragraphs 1 through 42,
16 *supra*, as if fully set forth herein.

17 48. An actual and judicially cognizable controversy exists between Plaintiffs and
18 Defendant regarding whether Defendant’s use of government resources and public funds has
19 violated and continues to violate: (1) the Equal Protection Clause set forth in the Fourteenth
20 Amendment to the United States Constitution; (2) the equal protection guarantee set forth in Article
21 I, Section 7 of the California Constitution (and, to the extent implicated, Article I, Section 31 of the
22 California Constitution); and (3) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d).

23 49. Plaintiffs assert this claim as taxpayers under the common law, which permits
24 challenges to governmental action as “ultra vires” and when an agency fails “to perform a duty
25 specifically enjoined.” *Silver*, 57 Cal. 2d at 40–41; *see also Gogerty v. Coachella Val. Jr. Coll. Dist.*,
26 57 Cal. 2d 727, 730 (1962) (same). As set forth above, CDPH’s use of government resources and
27 public funds to support the Black Infant Health program violates the United States Constitution,
28 California Constitution, and federal antidiscrimination law. Plaintiffs therefore have taxpayer

1 standing under the common law to seek redress for these unlawful acts. *Cal. Dui Lawyers Ass'n v.*
2 *Cal. Dep't of Motor Vehicles*, 20 Cal. App. 5th 1247, 1264 (2018).

3 50. Plaintiffs seek a declaration that such expenditures were and are illegal, wasteful, and
4 injurious, and request that the Court enter an injunction enjoining Defendant from using government
5 resources or public funds to support the Black Infant Health program so long as it discriminates on
6 the basis of race or ethnicity.

7 **PRAYER FOR RELIEF**

8 1. Wherefore, Petitioners and Plaintiffs pray for judgment as follows:

9 2. For a writ of mandate commanding Respondent to cease using government resources
10 or public funds to support the Black Infant Health program so long as the program discriminates on
11 the basis of race or ethnicity;

12 3. For a declaratory judgment that Defendant's use of government resources and public
13 funds to support the discriminatory BIH violated and continues to violate: (1) the Equal Protection
14 Clause set forth in the Fourteenth Amendment to the United States Constitution; (2) the equal
15 protection guarantee set forth in Article I, Section 7 of the California Constitution (and potentially
16 Article I, Section 31 of the California Constitution); and (3) Title VI of the Civil Rights Act of 1964
17 (42 U.S.C. § 2000d);

18 4. For preliminary and permanent injunctive relief enjoining Defendant from using
19 government resources or public funds to support the discriminatory BIH so long as it discriminates
20 on the basis of race or ethnicity;

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

23 6. For other appropriate relief.

24 Dated: April 21, 2026

BENBROOK LAW GROUP, PC

25
26 By s/ Bradley A. Benbrook
BRADLEY A. BENBROOK
27 Attorneys for Petitioners and Plaintiffs

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VERIFICATION

I, Wenyuan Wu, declare:

I am the Executive Director of Californians For Equal Rights Foundation, and am authorized to make this verification on its behalf. I have read the foregoing Verified Petition for Writ of Mandate and Complaint of Declaratory, Injunctive, or Other Relief and know the contents thereof. The factual matters concerning the organization’s 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 4/8/2026, 2026.

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.

Californians For Equal Rights Foundation

Signed by:
By: Wenyuan Wu
Wenyuan Wu
Executive Director

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VERIFICATION

I, LARRY CHEN, 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 ^{4/7/2026} _____, 2026.

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.

Signed by:
Larry Chen
ACBA8E376890478...
Larry Chen

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VERIFICATION

I, ANDREW GROSS, 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 4/6/2026, 2026.

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.

Signed by:
Andrew Gross
C4C53D98EDDA444

Andrew Gross

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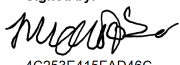
VERIFICATION

I, MICHELLE GROSS, 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 4/6/2026, 2026.

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.

Signed by:

4G253E445FAD46C...
Michelle Gross