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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION

12 JUDICIAL WATCH, INC.,

13 Plaintiff,

14 v.

15 SHIRLEY WEBER, in her official
16 capacity as Secretary of State of the
17 State of California,

18 Defendants.

Case No. 2:22-cv-6894

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

19 Plaintiff JUDICIAL WATCH, INC. (“JUDICIAL WATCH”) brings this action
20 against Defendant SHIRLEY WEBER (“WEBER”), in her official capacity as
21 Secretary of State of the State of California, for violating Plaintiff’s rights under the
22 First and Fourteenth Amendments to the Constitution of the United States and article
23 I, sections 2(a) and 3(a) of the California Constitution. As grounds therefor, Plaintiff
24 alleges as follows:

25 **JURISDICTION AND VENUE**

26 1. The Court has jurisdiction over Plaintiff JUDICIAL WATCH’s federal
27 civil rights claims pursuant to 28 U.S.C. §§ 1331 and 1343(a). The Court has
28 jurisdiction over Plaintiff JUDICIAL WATCH’s California Constitution claim

1 pursuant to 28 U.S.C. § 1367.

2 2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because
3 Defendant WEBER resides in this judicial district.

4 **PARTIES**

5 3. Plaintiff JUDICIAL WATCH, INC. is a not-for-profit, educational
6 organization incorporated under the laws of the District of Columbia and
7 headquartered at 425 Third Street SW, Suite 800, Washington, DC 20024. Plaintiff
8 seeks to promote transparency, accountability, and integrity in government and
9 fidelity to the rule of law. As part of this public education mission, Plaintiff regularly
10 monitors developments in election law, brings lawsuits to promote election integrity,
11 and publicly comments on and criticizes government actions that, in Plaintiff’s view,
12 undermine election integrity.

13 4. Defendant SHIRLEY WEBER is the Secretary of State of the State of
14 California. As Secretary of State, Defendant is California’s chief elections officer
15 and is responsible for administering provisions of the Election Code, including
16 section 10.5 of the California Election Code. Cal. Gov. Code § 12172.5; Cal. Elec.
17 Code § 10.5. As the Secretary of State, Defendant also oversees the Office of
18 Elections Cybersecurity (“OEC”) and acts through OEC officials and employees.
19 Cal. Elec. Code §10.5(a). She is being sued in her official capacity.

20 **STATEMENT OF FACTS**

21 5. It is not the role of the state to police the opinion of citizens, yet OEC
22 did just that when she monitored Plaintiff’s YouTube channel, purportedly assessed
23 the contents of a video Plaintiff posted on the channel as being “misleading,” and
24 caused the video to be removed from YouTube’s video sharing and social media
25 platform.

26 6. Plaintiff has maintained a YouTube channel since May 16, 2006.
27 Among Plaintiff’s other social media presences, Plaintiff’s YouTube channel is an
28 important means of communicating with its followers and supporters and

1 disseminating information to the public in furtherance of the organization’s public
2 education mission.

3 7. Plaintiff has posted over 4,200 videos on its YouTube channel that, as of
4 the date of this complaint, have garnered nearly 94 million views. Plaintiff’s
5 YouTube channel has more than 502,000 subscribers.

6 8. On September 22, 2020, Plaintiff posted on its YouTube channel a video
7 entitled “**ELECTION INTEGRITY CRISIS** Dirty Voter Rolls, Ballot Harvesting
8 & Mail-in-Voting Risks!”

9 9. The 26-minute video featured Judicial Watch President Tom Fitton
10 discussing vote-by-mail processes, changes to states’ election procedures, ballot
11 collection (sometimes referred to as “ballot harvesting”), and states’ failures to clean
12 up their voter rolls, among other topics. Mr. Fitton’s comments were informed by
13 successful lawsuits brought by Plaintiff against Los Angeles County and Defendant
14 in 2017 to compel the county and State to comply with the National Voter
15 Registration Act’s voter list maintenance requirements (*Judicial Watch, Inc., et al. v.*
16 *Logan, et al.*, Case No. 2:17-08948 (C.D. Cal. Dec. 13, 2017)), and against Governor
17 Gavin Newsom and Defendant in 2020 challenging the Governor’s attempt to
18 unilaterally change the State’s 2020 election procedures to an all vote-by-mail system
19 (*Issa, et al. v. Newsom, et al.*, Case No. 2:20-cv-01044) (C.D. Cal. May 21, 2020).
20 The former resulted in a Consent Decree that compelled Defendant and Los Angeles
21 County to implement several new practices and procedures to clean up state and
22 county voter registration rolls. The latter compelled the State of California to comply
23 with the Elections Clause (art. I, sec. 4) and the Electors Clause (art. II, sec. 1) of the
24 U.S. Constitution to change its 2020 voting procedures to an all vote-by-mail system.
25 Plaintiff received a substantial fee award in *Issa*.

26 10. The views that Mr. Fitton shared in the September 22, 2020 video were
27 supported not just by Judicial Watch’s own substantial experience advancing election
28 integrity and successful litigation against Defendant, but also by nonpartisan and

1 bipartisan studies and reports and numerous other sources. Mr. Fitton’s comments
2 were neither false nor misleading, nor was there any evidence that Mr. Fitton’s
3 comments “may suppress voter participation or cause confusion and disruption of the
4 orderly and secure administration of elections.” Cal. Elec. Code § 10.5(b)(2).

5 11. On or about September 25, 2020, YouTube informed Plaintiff that it had
6 removed Plaintiff’s video. The video has not been available on YouTube since that
7 date.

8 12. Plaintiff subsequently learned through a California Public Records Act
9 (“PRA”) request directed to Defendant’s office that OEC had purportedly assessed
10 Plaintiff’s video to be misleading and caused the video to be removed from
11 YouTube’s video sharing platform.

12 13. Specifically, according to records obtained by Plaintiff in response to
13 Plaintiff’s December 30, 2020 PRA request, on or about September 22, 2020, OEC
14 listed the video on its “Misinformation Tracking Sheet” or “Misinformation Tracker.”

15 14. Under the column entitled “Screenshots/Text/Link,” followed by a link
16 to Plaintiff’s video on YouTube, OEC wrote:

17 The states are taking reasonable steps to clean up the rolls and that led in
18 part to a settlement with Los Angeles county in Californian Michigan
19 they chant the court uh one court judge changed the rules to allow them
20 to count ballots 14 days after the election and mandated ballot harvesting
21 and what is ballot harvesting it basically means anybody can take
22 anyone’s ballot and bring it to the polling place again more opportunity
23 (sic).

24 15. Under the column entitled “Misinformation,” OEC copied the text under
25 the “Screenshots/Text/Link” column, then wrote:

26 Ballot Collection/Harvesting; Voter Rolls. Head of conservative group
27 Judicial Watch hosts video alleging Democrats benefit from incorrect
28 voter rolls and ballot collection. Has 2,398 views as of 4:07pm 9/22.

16. Under the column entitled “Indicator,” OEC wrote, “Ballot Collection.”

17. Under the column entitled “Social Media Action Taken,” OEC wrote,

1 “Video was removed from YouTube.”

2 18. Under the column entitled “Result,” OEC wrote, “Removed.”

3 19. Also according to records obtained through the PRA, OEC
4 communicated with YouTube and/or Google, which are subsidiaries of Alphabet,
5 Inc., to have Plaintiff’s video taken down.

6 20. Specifically, on or about on September 24, 2020, OEC Social Media
7 Coordinator Akilah Jones emailed “civics-outreach@google.com” and copied four
8 YouTube employees with the subject line, “REPORT VIDEO: **ELECTION
9 INTEGRITY CRISIS** Dirty Voter Rolls, Ballot Harvesting & Mail-in-Voting
10 Risks!” In the email, Jones wrote:

11 Hi YouTube Reporting Team,

12 I am reporting the following video because it misleads community
13 members about elections or other civic processes and misrepresents the
14 safety and security of mail-in ballots. Thank you for your time and
15 attention on this matter.

16 All the best, Akilah.

17 21. At or about 11:16 a.m. (ET) on September 25, 2020, YouTube and/or
18 Google representative Andrea Holtermann replied to Jones:

19 Hi Akilah,

20 Thanks for reaching out. We will look into this and get back to you as
21 soon as we can.

22 22. Later that same day, Plaintiff noticed that the video had been taken
23 down.

24 23. On September 27, 2020, YouTube and/or Google’s Holtermann
25 confirmed to Jones that Plaintiff’s video had been removed:

26 Hi Akilah,

27 Circling back on this. Thank you for raising this content to our attention,
28 this has been removed from the platform for violating our policies.

Please do not hesitate to reach out if there are any other questions or
concerns you may have.

1 24. On information and belief, OEC did not make a finding that Plaintiff's
2 video "may suppress voter participation or cause confusion and disruption of the
3 orderly and secure administration of elections" (Cal. Elec. Code § 10.5(b)(2)), nor
4 would any such finding have been warranted or otherwise supported by evidence.

5 25. Notably, the censored video is a portion of a longer video posted by
6 Plaintiff on Plaintiff's YouTube channel that addressed issues in addition to election
7 integrity. The longer video, which OEC did not bring to YouTube's attention,
8 remains available on Plaintiff's YouTube channel.

9 26. By assessing Plaintiff's video to be misleading and causing the video to
10 be removed from YouTube, OEC injured Plaintiff's public education mission. When
11 Plaintiff's video was removed on September 25, 2022, it had only 5,531 views.
12 OEC's actions prevented Plaintiff from reaching tens of thousands of viewers with
13 Plaintiff's message.

14 27. In an email from OEC Senior Public Information Officer Jenna Dresner
15 to CalMatters reporter Freddy Brewster, Dresner detailed the interconnected
16 relationship between OEC and YouTube and other social media companies, stating,
17 ". . . our priority is working closely with social media companies to be proactive so
18 when there's a source of misinformation, we can contain it." Dresner further
19 explained:

20 We have working relationships and dedicated pathways at each social
21 media company. When we receive a report of misinformation on a
22 source where we don't have a pre-existing pathway to report, we find
23 one. . . . We worked closely and proactively with social media
24 companies to keep misinformation from spreading, take down sources of
misinformation as needed, and promote our accurate, official election
information at every opportunity.

25 28. On information and belief, OEC was acting under Section 10.5 of the
26 California Election Code, which among other things purportedly requires it to
27 "assess" and "mitigate" "false or misleading information regarding the electoral
28 process" that "may suppress voter participation or cause confusion and disruption of

1 the orderly and secure administration of elections.” Cal. Elec. Code §§ 10.5(b)(2)
2 and (c)(8).

3 29. Before purportedly assessing Plaintiff’s video to be misleading and
4 causing the video to be removed from YouTube, OEC and perhaps other officials in
5 Defendant’s office, had been monitoring Plaintiff’s social media activity since at least
6 August 31, 2020, in part through a partisan public affairs and consulting firm
7 SKDKnickerbocker LLC (“SKDK”). During this time period, SKDK regularly sent
8 Dresser, Jones, and other OEC officials “Misinformation Daily Briefings.” SKDK
9 specialized in working for Democratic Party politicians and employed notable figures
10 like former Obama White House Communications Director Anita Dunn, and Hilary
11 Rosen. In September 2020, the firm was advising the Biden campaign.

12 30. On information and belief, OEC continues to assess and mitigate
13 citizens’ allegedly false and misleading information, including Plaintiff’s postings on
14 its YouTube channel and other social media activity.

15 31. YouTube and other social media platforms remain an important means
16 for Plaintiff to communicate with followers and supporters and disseminate
17 information to the public in furtherance of its public education mission. Plaintiff
18 intends to continue to maintain and post content on its YouTube channel and other
19 social media platforms for the foreseeable future, including content that comments on
20 and criticizes election procedures and actions of government officials that, in
21 Plaintiff’s view, undermine election integrity.

22 **COUNT I**

23 **(42 U.S.C. § 1983 – Violation of the 1st and 14th Amendments)**

24 32. Plaintiff realleges paragraphs 1 through 31 as if fully stated herein.

25 33. Plaintiff enjoys the right to Freedom of Speech, as protected by the First
26 Amendment to the United States Constitution, which has been made applicable to the
27 States through the Fourteenth Amendment to the United States Constitution.

1 34. Plaintiff was engaged in constitutionally protected speech when it posted
2 its September 22, 2020 video on YouTube’s video sharing platform.

3 35. Defendant’s actions against Plaintiff, including (i) Defendant’s
4 monitoring of Plaintiff’s protected speech; (ii) erroneous if not knowingly false
5 assessment that Plaintiff’s speech was misleading or otherwise subject to regulation
6 under Cal. Elec. Code §§ 10.5; and (iii) reporting Plaintiff’s protected speech to
7 YouTube with the expectation that YouTube would remove the speech from its video
8 sharing platform would chill a person of ordinary firmness from continuing to engage
9 in the protected speech.

10 36. Plaintiff’s protected speech was a substantial or motivating factor in
11 Defendant’s conduct.

12 37. At all relevant times Defendant acted under color of law, including but
13 not limited to Cal. Elec. Code §§ 10.5(b)(2) and (c)(8).

14 38. Defendant’s adverse action caused Plaintiff to suffer an injury, namely
15 harm to Plaintiff’s ability to carry out its public education mission.

16 39. Plaintiff’s injury is irreparable, and Plaintiff has no adequate remedy at
17 law.

18 **COUNT II**

19 **(42 U.S.C. § 1983 – Unconstitutional Regulation of Speech;**

20 **1st and 14th Amendments)**

21 40. Plaintiff realleges paragraphs 1 through 39 as if fully stated herein.

22 41. Defendant’s actions towards Plaintiff and application of Cal. Elec. Code
23 § 10.5 to Plaintiff’s protected speech constitute content-based and/or viewpoint-based
24 regulation of Plaintiff’s speech.

25 42. Defendant’s content-based and/or viewpoint-based regulation of
26 Plaintiff’s speech is presumptively unconstitutional and cannot satisfy strict scrutiny
27 as it is not narrowly tailored to further a compelling government interest.
28

COUNT III

(Violation of the Free Speech Clause of the California Constitution

Cal. Const. art. I, §§ 2(a) and 3(a))

43. Plaintiff realleges paragraphs 1 through 42 as if fully stated herein.

44. Defendant’s conduct violated Plaintiff’s rights under article I., sections 2(a) and 3(a) of the California Constitution.

45. Defendant’s actions entitle Plaintiff to equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court (1) declare Defendant’s actions to be unconstitutional; (2) permanently enjoin Defendant from violating Plaintiff’s constitutional rights and/or unconstitutionally regulating Plaintiff’s speech; (3) award Plaintiff costs of suit, including attorney’s fees and costs under 42 U.S.C. § 1988 and all other applicable law; and (4) grant any and all further relief to which Plaintiff may be justly entitled.

September 23, 2022

Respectfully submitted,

JUDICIAL WATCH, INC.

By: /s/ Robert Patrick Sticht.
ROBERT PATRICK STICHT

Attorneys for Plaintiff