

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

LEAGUE OF WOMEN VOTERS OF CALIFORNIA, ACCE INSTITUTE, CALIFORNIA COMMON CAUSE, and NATIONAL COUNCIL OF LA RAZA,

Plaintiffs,

v.

BRIAN P. KELLY, Secretary of the California Transportation Agency, JEAN SHIOMOTO, Director of the California Department of Motor Vehicles, and ALEX PADILLA, California Secretary of State,

Defendants.

Case No. [17-cv-02665-LB](#)

**ORDER DENYING THE DEFENDANTS’ MOTION TO DISMISS ON THE GROUND OF RES JUDICATA**

Re: ECF No. 21

**INTRODUCTION**

The plaintiffs — all non-profit organizations — challenge California’s implementation of the National Voter Registration Act of 1993 (“NVRA” or “Act”). 52 U.S.C. § 20501 *et seq.*<sup>1</sup> The court previously deferred ruling on whether res judicata bars (1) the claims of League of Women

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<sup>1</sup> See generally Compl. – ECF No. 1; First Amended Complaint (“FAC”) – ECF No. 41. Record citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 Voters and California Common Cause, who were parties to an earlier lawsuit that settled, and  
2 (2) the claims of ACCE Institute to the extent that it asserts claims on behalf of individual  
3 members.<sup>2</sup> The court now denies the defendants’ motion to dismiss on the ground of res judicata.

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5 **ANALYSIS**

6 This order supplements the prior order, incorporates it by reference, and finishes the court’s  
7 deferred res judicata analysis.

8 The defendants argue that the plaintiffs’ claims are barred by res judicata (or claim  
9 preclusion).<sup>3</sup> They do not argue that the doctrine kills the case: they advance the argument only  
10 against the common plaintiffs to the two lawsuits (League of Women Voters and California  
11 Common Cause) and to the extent that the entity defendants seek to vindicate individual rights.<sup>4</sup>  
12 The parties define the issue now as follows: the court “deferred ruling on defendants’ contention  
13 that res judicata bars the claims of plaintiffs League of Women Voters and California Common  
14 Cause, and also bars claims of plaintiff ACCE Institute to the extent it seeks to sue on behalf of  
15 individual members.”<sup>5</sup> The parties stipulate that the court will decide the res judicata issue “based  
16 on the first amended complaint” and the earlier briefing.<sup>6</sup>

17 A defendant may raise the affirmative defense of res judicata in a motion to dismiss under  
18 Rule 12(b)(6). *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984). Claim preclusion bars  
19 parties from relitigating claims that they raised or could have raised in a prior lawsuit between the  
20 same parties. *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2305 (2016); *Taylor v.*

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23 <sup>2</sup> Order – ECF No. 32 at 16–17.

24 <sup>3</sup> Motion – ECF No. 22 at 18–21.

25 <sup>4</sup> *Id.*; see also Order – ECF No. 32 at 16. The court previously took judicial notice of the public records  
26 from the prior lawsuit. *Id.* at 5 n.12.

27 <sup>5</sup> Stipulation – ECF No. 53 at 2.

28 <sup>6</sup> *Id.* The court mostly denied the defendants’ motion to dismiss in an earlier order, granting only the  
motion to dismiss for lack of associational standing. Order – ECF No. 32 at 14. Because the plaintiffs  
did not establish associational standing, the court did not reach the issue of res judicata. *Id.* at 16. It  
does so now and construes the parties’ stipulation to mean that the claims in the original complaint and  
the amended complaint are equivalent for the court’s res judicata inquiry. Compl. – ECF No. 1; FAC –  
– ECF No. 41. The plaintiffs filed their amended complaint to plead associational standing.

1 *Sturgell*, 553 U.S. 880, 892 (2008); *C.D. Anderson & Co. v. Lemos*, 832 F.2d 1097, 1100 (9th Cir.  
2 1987). There must be (1) an identity of claims, (2) a final judgment on the merits, and (3) privity  
3 among the parties. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Planning Agency*, 322  
4 F.3d 1064, 1077 (9th Cir. 2003).

5 The plaintiffs contend that ACCE's 14,000 members were not all adult California citizens in  
6 1998.<sup>7</sup> That is plainly true. The class was defined as:

7 All United States citizens over the age of eighteen and resident in the State of  
8 California who are not registered to vote, who have moved since their last voter  
9 registration, who may desire to re-register to vote during the pendency of this  
action, who may be subject to removal of their voter registration or who may be  
denied the right to vote in violation of the NVRA.<sup>8</sup>

10 The court does not see why it has to address the issue further. If there is associational standing (an  
11 issue to be addressed in any renewed motion to dismiss for lack of associational standing), then  
12 ACCE can advance at least some portion of its members' interests.<sup>9</sup>

13 Moreover, the plaintiffs also argue that they are advancing NVRA violations now that were  
14 not part of the prior case.<sup>10</sup> The court agrees. The general conduct — the sufficiency of the mail-in  
15 forms — is the same, and certainly the lawsuit challenged the renewal-by-mail forms. But the  
16 facts are different. It is decades later, the technological landscape is different, and fixes that were  
17 not available then — prepopulated forms, for example — exist now.<sup>11</sup> Finality is not meant to  
18 promote intransigency of the process to comply with a federal statute. The point of claim  
19 preclusion, after all, is to prevent “litigation of all grounds for, or defenses to, recovery that were  
20 *previously available* to the parties, regardless of whether they were asserted or determined in the  
21 prior proceeding.” *Brown v. Felsen*, 442 U.S. 127, 131 (1979) (emphasis added). “Under *res*  
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24 <sup>7</sup> Opposition – ECF No. 26 at 18.

25 <sup>8</sup> Order and Injunction, Ex. 2 to Request for Judicial Notice (“RJN”) – ECF No 23-2 at 8.

26 <sup>9</sup> *Riddick by Riddick v. School Bd. of Norfolk* does not change this analysis. 784 F.2d 521, 531–32 (4th  
27 Cir. 1986). The issue-preclusion analysis there is different than the claim-preclusion analysis here. *See*  
28 *Opposition – ECF No. 26 at 17–18.*

<sup>10</sup> Opposition – ECF No. 26 at 18.

<sup>11</sup> *See id.* at 20. The defendant contends that the change in the technological landscape was not pleaded  
in the complaint. Reply – ECF No. 27 at 15. But it is obvious.

1 *judicata*, upon a final judgment on the merits[,] parties to a suit are barred, as to every matter that  
2 was offered and received to sustain or defeat a cause of action, as well to any other matter that the  
3 parties had a full and fair opportunity to offer for that purpose.” *Mahattan Eye Ear & Throat*  
4 *Hosp. v. NLRB*, 942 F.2d 151, 155–56 (2d Cir. 1991) (citing *Montana v. United States*, 440 U.S.  
5 147, 153 (1979)).

6 Here, the changed (current) fact context is relevant to whether principles of finality give  
7 preclusive effect to the first lawsuit. For example, it is relevant to whether the current process  
8 complies with the statute’s requirements of (1) a voter-registration portion of the DMV application  
9 that does not require information that duplicates information on the driver’s license part of the  
10 form and in the DMV’s records, (2) a “simultaneous application to vote,” (3) a single change-of-  
11 address form, and (4) requiring only the minimum amount of information to prevent duplicate  
12 registrations and enable the Secretary to assess voter eligibility and administer voter registration.  
13 52 U.S.C. § 20504(a)(1), (c)(2)(A)–(B), (d).<sup>12</sup> In *Whole Women’s Health*, for example, the Court  
14 held that in a case involving “important human values,” “even a slight change of circumstances”  
15 can avoid the res judicata bar. 126 S. Ct. at 2305–07.<sup>13</sup>

16 On this record, at this stage of the case, the court cannot conclude that res judicata bars the  
17 plaintiffs’ claims.

### 18 CONCLUSION

19 The court denies the motion to dismiss on the ground that res judicata bars the claims of  
20 certain plaintiffs.

21 **IT IS SO ORDERED.**

22 Dated: September 29, 2017



23 LAUREL BEELER  
24 United States Magistrate Judge

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27 <sup>12</sup> See Order – ECF No. 32 at 15.

28 <sup>13</sup> See Opposition – ECF No. 26 at 18–19 (collecting cases and making this analysis).