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The California Republican Party

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO–UNLIMITED JURISDICTION

THE CALIFORNIA REPUBLICAN PARTY,

Plaintiff,

v.

GAVIN NEWSOM, in his official capacity as the Governor of California; **XAVIER BECERRA**, in his official capacity as the Attorney General of California; and **ALEX PADILLA**, in his official capacity as the California Secretary of State

Defendants.

Case Number: 34-2020-00277751

COMPLAINT FOR DECLARATORY JUDGMENT

BY FAX

Plaintiff, the California Republican Party ("CAGOP"), through its attorneys, Dhillon Law Group, Inc., files this Complaint for Declaratory Judgment against Gavin Newsom ("Newsom"), in his official capacity as the Governor of the State of California; Xavier Becerra ("Becerra"), in his official capacity as the Attorney General of California; and, Alex Padilla ("Padilla"), in his official capacity as the California Secretary of State (Newsom, Becerra, and Padilla are collectively referred herein as "Defendants"), and alleges as follows:

INTRODUCTION

1. This case concerns the urgent question of whether a campaign ballot gatherer (also referred to as a "ballot harvester") is a nonessential worker subject to Governor Newsom March 19, 2020 Executive Order that nonessential workers are to stay home (hereinafter "Stay Home Order"). On May 12, 2020, there is a special election to fill vacancies in both Congressional District 25 and State Senate District 28. Starting with the June, 2018 election, California campaigns have deployed volunteers and/or paid staff to pick up and deliver mail-in ballots to help ensure the return for as many ballots as possible for the cause or candidate they are advancing.

2. The CAGOP has a material interest in ensuring that as many ballots are returned for its candidates as possible, using all legal means to meet this goal. However, because of public statements by California officials that appear to contradict the Stay Home Order, it is impossible to ascertain for certain that ballot harvesting is prohibited for these special elections under the Stay Home Order.

3. Various county public health and law enforcement officials have been enforcing the state and local stay-at-home orders with zeal, ticketing and threatening to criminally prosecute violators. At the same time, the California Election Code permits ballot harvesting as a legal election activity.

4. The Governor's Stay Home Order uses terminology relating to the election that is inconsistent with the Election Code. Though the CAGOP has sought written guidance from the Governor and has looked at the Secretary of State's website to clarify the permissibility of ballot harvesting in these special elections, under the current COVID-19 shutdown circumstances, these officials have refused to clarify the law, putting CAGOP workers at risk of criminal prosecution if they seek to collect and return ballots from voters, an activity Defendant Padilla seems to suggest is

perfectly healthy and safe. This vagueness, uncertainty, and contradictory nature of Defendants' Executive Orders and public statements chill the CAGOP's ability to perform normal campaign activities during the upcoming special election. If all candidates and their supporters are not abiding by the same rules, these disparities could have a devastating impact on the integrity of the May 12 election.

PARTIES

5. Plaintiff CAGOP is a political party in California with its principal place of business located at 1001 K. Street 4th Floor, Sacramento, CA 95814. The Republican State Central Committee (the "RSCC") is the CAGOP's governing body. (Cal. Elec. Code §§ 7400, *et seq.*) As set forth in Section 1.04.01 of the CAGOP Bylaws, RSCC and the CAGOP exercise their "federal and state constitutional rights, as set forth in the First and Fourteenth Amendments to the United States Constitution, and Article IV, Section 5 ... to represent and speak for [their] members [and] to endorse and to nominate candidates for all partisan elective offices."

6. The CAGOP represents over 4.9 million registered Republican voters in the State of California.

7. Defendant Gavin Newsom is made a party to this Action in his official capacity as the Governor of California. The California Constitution vests the "supreme executive power of the State" in the Governor, who "shall see that the law is faithfully executed." (Cal. Const. Art. V, § 1.) Governor Newsom signed the State Order.

8. Defendant Xavier Becerra is made a party to this Action in his official capacity as the Attorney General of California. Under California law he is the chief law enforcement officer with supervision over all sheriffs in the state. (Cal. Const. Art. V, § 13.)

9. Defendant Alex Padilla is made a party to this Action in his official capacity as the Secretary of State of the State of California. He is the chief election officer of the state and "shall administer the provisions of the Elections Code." (Cal. Gov. Code § 12172.5; Cal. Elec. Code § 10.)

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except

those given by statute to other courts."

11. This Court has jurisdiction over all Defendants, because each Defendant is a citizen of California.

12. Venue is proper in this Court, because Defendants maintain offices, exercise their authority in their official capacities, and it is the County in which the signing of the Executive Orders by Governor Newsom. (Code Civ. Proc., § 395(a).)

GENERAL ALLEGATIONS

13. On or about March 13, 2020, President Donald J. Trump proclaimed a National State of Emergency as a result of the threat of the emergence of a novel coronavirus, COVID-19.[1]

14. Since the initial outbreak of COVID-19 in the United States in February and March 2020, Defendants have increasingly restricted—where not outright banned—Californians' engagement in constitutionally-protected activities.[2]

15. On November 15, 2019, the Governor called a Special General Election for May 12, 2020 for both Congressional District 25 and State Senate District 28 to fill vacancies because the incumbents voluntarily resigned from office. The Special Primary Election was consolidated with the March 3 Presidential Primary Election.

16. On March 3, 2020, the Special Primary Elections were held for both Congressional District 25 and State Senate District 28. The two candidates with the most votes in each of these races moved on to the May 12, 2020 Special General Election.

17. Congressional District 25 is located within Los Angeles and Ventura counties.

18. State Senate District 28 is located entirely within Riverside County.

19. On or about March 4, 2020, California Governor Gavin Newsom proclaimed a State of

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[1] As of the date of this filing, the Proclamation of a National Emergency can be found online at: https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/.

[2] *See, e.g.*, https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-deaths-u-s-could-closer-60-k-new-model-shows/5122467002/

Emergency as a result of the threat of COVID-19.[3]

20. On or about March 19, 2020, Newsom issued Executive Order N-33-20 in which he ordered "all residents . . . to immediately heed the current State public health directives."[4] ("Stay Home Order").

21. The state public health directive requires "all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors as outlined at https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19."[5]

22. The public health directive provides that its directives "shall stay in effect until further notice."[6]

23. As a result of the Stay Home Order, campaigns and political parties have not been able to conduct in-person campaign activities during this campaign. For example, candidates have been unable to host or attend community events.

24. On or about March 22, 2020, the California Public Health Officer designated a list of "Essential Critical Infrastructure Workers."[7] Included on the list of the "essential workforce" are "Elections personnel." This list was produced by the State Public Health Officer in accordance with Newsom Executive Order N-33-20.[8]

25. The term "Elections personnel" does not appear anywhere in any California Election

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[3] As of the date of this filing, the Proclamation of a State of Emergency can be found online at: https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf.

[4] As of the date of this filing, Executive Order N-33-20 can be found online at: https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf

[5] The State Public Health Directive was included in the text of Executive Order N-33-20.

[6] *Id.*

[7] As of the date of this filing, the list of Essential Critical Infrastructure Workers can be found online at: https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf.

[8] *Id.*

Code, or any California statute.

26. The term "Elections personnel" is not a term defined by any California Court case.

27. California has utilized the federal government's designation of various critical infrastructure sectors which includes the Election Infrastructure subsector of the Government Facilities sector when determining what employees are essential.[9] Relevant guidance from the federal government's Cybersecurity and Infrastructure Security Agency's ("CISA") Essential Critical Infrastructure Workforce document utilizes the term "Elections personnel" and deems them essential.[10] U.S. Department of Homeland Security guidance makes clear that the Election Critical Infrastructure is intended to apply to election administration personnel like those responsible for setting up or maintaining voting systems and those managing the election process and not to "political action committees," "[c]ampaigns", "[o]r any other non-state or local government election related group."[11] Accordingly, essential "Elections personnel" would not include campaign workers or others engaged in ballot harvesting.

28. On or about March 20, 2020, California Governor Newsom issued Executive Order N-34-20 in which he ordered that:

> [The] Special General Election to be held within the 25th Congressional District of the State; and the May 12, 2020, Special General Election to be held within the 28th Senate District of the State shall each be held as an all-mail ballot election and conducted according to those provisions of the Elections Code that govern all-mail ballots elections, including but not limited to Elections Code sections 3000-3026 and 4100.[12]

29. According to Newsom's March 20th Executive Order, the two May 12th Special

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[9] Executive Order N-33-20 at 1-2.

[10] As of the date of this filing, the Essential Critical Infrastructure Workforce can be found online at: https://www.cisa.gov/sites/default/files/publications/Version_3.0_CISA_Guidance_on_Essential_Critical_Infrastructure_Workers_1.pdf

[11] U.S. Department of Homeland Security Election Security explanation at: https://www.dhs.gov/topic/election-security

[12] As of the date of this filing, Executive Order N-33-20 can be found online at: https://www.gov.ca.gov/wp-content/uploads/2020/03/3.20.20-EO-N-34-20-COVID-19-Elections.pdf

General Elections are to be conducted pursuant to Elections Code §§ 3000-3026.

30. The Los Angeles County Registrar of Voters has published a guide to the May 12, 2020 Congressional District 25 Special General Election. This guide provides: "In compliance to the Governor's Executive Order related to COVID-19, all registered voters eligible for this election were mailed a Vote by Mail ballot."[13]

31. Even though "L.A. County is encouraging voters to stay at home and vote. In-person voting is offered in a limited capacity ...."[14]

32. Ventura County Registrar of Voters has published a guide titled "Vote By Mail Election." This guide states that "This election will be conducted by mail only. There will be NO polling locations."[15]

33. Riverside County Registrar of Voters has published a guide titled "May 12, 2020 Special Vacancy Mail Ballot Election In-Person Voting Opportunities." This guide provides that the "generalized use of in-person voting may present risks to public health and safety in light of the COVID-19 pandemic. The Riverside County Registrar of Voters recommends that voters only use the below in-person voting opportunities if absolutely necessary."[16]

34. Within Cal. Elec. Code §§ 3000-3026 is Cal. Elec. Code § 3017 which provides the following:

> A vote by mail voter who is unable to return the ballot may designate another person to return the ballot to the elections official who issued the ballot, to the precinct board at a polling place or vote center within the state, or to a vote by mail ballot dropoff location within the state that is provided pursuant to Section 3025 or 4005. The person designated shall return the ballot in person, or put the ballot in the mail, no later than

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[13] As of the date of this filing, the guide can be found online at: https://lavote.net/docs/rrcc/media/Factsheet-05122020.pdf

[14] *Id.*

[15] As of the date of this filing, the guide can be found online at: https://recorder.countyofventura.org/wp-content/uploads/2020/04/CD-25-VBM-Information-For-Web-1.pdf

[16] As of the date of this filing, the guide can be found online at: https://www.voteinfo.net/Elections/20200512/docs/In-PersonVotingOpportunities.pdf

> three days after receiving it from the voter or before the close of the polls on election day, whichever time period is shorter.

(Cal. Elec. § 3017.)

35. Pursuant to Cal. Elec. Code § 3017, ballot harvesting may be used legally in elections throughout California.

> "Ballot harvesting" is political jargon for a practice in which organized workers or volunteers collect absentee ballots from certain voters and drop them off at a polling place or election office. [17]

36. Since the amendments of Cal. Elec. Code § 3017 in 2016, it has now become the practice for volunteers or campaign staffers to collect and drop off "maybe 100 or 200 ballots."[18]

37. On April 15, 2020, the CAGOP sent a letter to Newsom specifically asking him to clarify application of his Executive Order so that all candidates could know whether the "Stay-at-Home Order prohibits collection of ballots by persons who do not live in the same household as the voter."[19]

38. In its letter, the CAGOP wrote:

> For the health and safety of voters in the 25th Congressional District and the 28th Senate District, and any other voters casting a ballot in the near future, we request that you make it clear that the existing Stay-at-Home Order prohibits collection of ballots by persons who do not live in the same household as the voter.

39. As of the date of this filing, the CAGOP has received no written response to the letter.

40. The CAGOP is aware that an April 28, 2020 POLITICO article reported:

> Newsom's office referred questions to Padilla. The state elections chief, a former Democratic state senator, said that the practice presents no danger to voters — and may

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[17] *See*, https://www.sandiegouniontribune.com/opinion/the-conversation/sd-what-is-ballot-harvesting-in-california-election-code-20181204-htmlstory.html

[18] *Id.*

[19] As of the date of this filing, the April 15, 2020 letter can be found online at: http://image.victory.cagop.org/lib/fe3215717564047873137 9/m/1/f65cd88a-5c9b-4471-8b6e-7dba4d31e2b0.pdf?

actually be a boon for many voters during the current pandemic, even in an election that will be all vote-by-mail.

"While traditional polling locations are harder to come by during the Covid-19 pandemic, voters must increasingly rely upon vote-by-mail ballots. California law gives citizens a variety of options for casting their vote-by-mail ballots — including the freedom to designate someone they trust to return their ballot," Padilla spokesperson Sam Mahood told POLITICO. "A pandemic is no time to make it harder for citizens to cast their vote-by-mail ballots."[20]

41. Padilla's statement ignores the terms of the Stay Home Order and is completely out of step with other government officials' pronouncements. Defendant Governor Newsom's stated purpose for ordering vote-by-mail ballots was to decrease the need for public interaction.[21]

42. Officials claim that they have had to close parks because Californians ignored stay-at-home orders,[22] yet Defendant Padilla is encouraging people to go door-to-door to pick up vote-by-mail ballots—an activity in which two individuals, often strangers, come into physical contact to transfer an envelope typically sealed with the aid of human saliva, often freshly applied.

43. At the same time that Los Angeles County, which has nine vote centers, "is encouraging voters to stay at home and vote … [i]n-person voting is offered in a limited capacity …"[23] Padilla is encouraging strangers to go door-to-door to collect vote-by-mail ballots, and calling this practice "safe."

44. The Los Angeles County Registrar of Voters is providing the following protection for an individual to vote in-person:

a. Voters should wear a clean face-covering when visiting the Vote Center
b. Social distancing will be enforced at the check-in and voting process

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[20] https://www.politico.com/states/california/story/2020/04/28/california-republicans-were-prepared-to-match-democrats-on-ballot-harvesting-then-coronavirus-happened-1280474

[21] https://keyt.com/news/california/2020/03/20/governor-newsom-signs-order-to-expand-vote-by-mail-options-and-extend-deadlines-for-upcoming-elections/

[22] https://www.foxnews.com/politics/state-officials-grappling-surge-visitors-parks-trails-despite-coronavirus-stay-at-home-orders

[23] As of the date of this filing, the guide can be found online at: https://lavote.net/docs/rrcc/media/Factsheet-05122020.pdf

c. The Ballot Marking Devices will be sanitized after every voter
d. Gloves will be provided to voters upon request
e. Election Workers will be wearing protective gloves and masks.[24]

45. While the Los Angeles County Registrar of Voters is discouraging people from coming into a vote center even when there are so many health and distancing precautions being taken, Padilla's strikingly cavalier statement that ballot harvesting "presents no danger to voters" is utterly lacking in supporting documentation, and appears to be completely out of step with CDC guidelines and State Public Health Officials recommendations. At a time when Governor Newsom warns of ongoing health risks to the public from everyday activities, Secretary Padilla's position seems to contradict Governor Newsom's Stay Home Order which only deems those election workers actually administering the election to be essential.

46. The CAGOP knows from decades of experience that voter turnout is often very low during a special election.

47. The CAGOP understands the importance of encouraging its members to vote in all elections, and has trained staff and volunteers to implement get out the vote operations to help ensure as many of its members participate in all elections.

48. The CAGOP is deeply concerned that if its staff and volunteers participate in ballot harvesting operations during the May 12, 2020 Special General Elections, law enforcement may cite them for violating various Public Health Officials' stay at home orders, not to mention Governor Newsom's Stay Home Order, and they could be prosecuted pursuant to Cal. Health & Safety Code § 120295 for engaging in this otherwise lawful activity.

49. Based on daily, dire health warnings by Governor Newsom, some CAGOP workers are reluctant to violate the Governor's directives.

50. The CAGOP is unable to ascertain from the contradictory edicts of Governor Newsom, Secretary Padilla, health officials, and election officials, whether ballot harvesting is considered "essential" or "nonessential" under the Stay Home Order.

51. The CAGOP staff have learned of individuals and businesses being cited for violating the Stay Home Order:

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[24] *Id.*

a. April 1, 2020 - "Garcetti authorizes shutting off utilities to nonessential businesses violating Safer at Home."[25]

b. April 2, 2020 - "Paddle boarder arrested at Malibu Pier for flouting state stay at home order."[26]

c. April 4, 2020 - "L.A. files criminal charges against four stores for refusing to close amid coronavirus.[27]

52. The CAGOP staff have heard Governor Newsom making numerous, daily comments throughout the duration of the Stay Home Order about the need for nonessential workers to refrain from traveling for non-essential purposes as defined by the state:

a. March 19, 2020: "We direct a statewide order for people to stay at home. That directive goes into force and effect this evening."[28]

b. March 23, 2020: "But to make it easier for you, we're going to shut down all state parking lots."[29]

c. April 4, 2020: "We cannot allow cabin fever to come in, we cannot allow people to congregate again in pews, on our beaches and in our parks."[30]

d. April 18, 2020: "If you don't care about other strangers, you may care about your loved ones, you may come home after one of these rallies…just be healthy."[31]

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[25] https://www.latimes.com/california/story/2020-04-01/l-a-will-shut-off-water-for-non-essential-businesses-operating-amid-coronavirus-restrictions

[26] https://ktla.com/news/local-news/officials-paddleboarder-arrested-at-malibu-pier-for-flouting-state-stay-at-home-order/

[27] https://www.latimes.com/california/story/2020-04-03/coronavirus-closures-los-angeles-criminal-charges-against-four-stores

[28] 1:30 mark https://www.latimes.com/california/ywo73fx6e38-123

[29] 1:05 mark https://www.latimes.com/california/o-hd9ddeghe-123

[30] https://www.latimes.com/california/story/2020-04-04/gavin-newsom-california-coronavirus-testing-task-force

[31] 1:04 mark https://www.latimes.com/politics/r3l5ojb7qp4-123

e. April 21, 2020: "If we all pull back, we could see a second wave that makes this pale in comparison."[32]

f. April 23, 2020: "Yesterday was the deadliest day for this virus in this state. 115 human beings lost their lives, families torn apart," he said. "It's also a reminder we're not out of the woods yet."[33]

53. Due to the relatively low voter turnout anticipated for this election, the effect Defendants' ambiguous Executive Orders may ultimately have on campaigns supported by CAGOP will likely materially impact the final result of the May 12 elections. The CAGOP should not have to risk its workers being criminally penalized for engaging in election activities whose legality is unclear under the Stay Home Order. Nor should the CAGOP have to risk its candidates losing an election because of the chilling effect of unclear and contradictory Executive Orders, which may be interpreted differently by supporters of the other candidates in the race. At the same time the Governor is warning of ongoing health risks and the need to continue to "flatten the curve," Secretary Padilla is deeming the door-to-door collection of strangers' ballots to be safe and indeed desirable.

54. The essence of a fair election is that all candidates and parties operate under the same ground rules, a circumstance that is notably absent in this election and which Defendants have refused to remedy. Indeed, by their statements about public health, contradictory pronouncements about ballot harvesting and "essential workers," and conspicuous silence in the face of the CAGOP's good-faith request for clarification on the ballot harvesting issues, Defendants have injected confusion and uncertainty into an election taking place in this most confusing and uncertain of times in modern history. They may not be able to solve the social, economic, and public health challenges posed by the coronavirus overnight, but they can, with ease, ensure that the fundamental civic endeavor of holding a public election on transparent and even terms, serves as a touchstone of integrity and certainty in these trying times. An election taking place during a health crisis is no time to be applying

[32] 1:15 mark https://www.cbsnews.com/news/coronavirus-california-governor-gavin-newsom-precautions/

[33] https://www.cnbc.com/2020/04/23/california-endures-deadliest-day-yet-due-to-coronavirus-gov-gavin-newsom-says.html.

contradictory, confusing, and counterintuitive standards to the core civil right of free and fair elections.

FIRST CAUSE OF ACTION

For Declaratory Judgment (Cal. Code Civ. Proc., § 1060, *et seq.*)

(By CAGOP against all Defendants)

55. An actual controversy has arisen and now exists between the CAGOP and Defendants concerning their respective rights and duties in relation to Defendants' Stay Home Order. CAGOP believes the Stay Home Order prohibits ballot harvesting, yet Defendants refuse to respond to CAGOP's request to provide clarity as to the scope of the Stay Home Order. Furthermore, State officials, including Defendant Padilla, have made public statements even encouraging the engagement of in-person election activities in advance of the May 12 election, even though such actions would seemingly violate Defendants' Stay Home Order, both in letter and spirit.

56. The CAGOP desires a judicial determination of its rights and duties under the Executive Orders and a declaration as to whether engaging in ballot harvesting is permitted for the upcoming May 12 election.

57. A judicial declaration is necessary and appropriate at this time under the circumstances so that the CAGOP may ascertain its rights and duties under the Executive Orders. Absent such declaratory relief, the CAGOP and its members will suffer irreparable harm and be forced to advocate in the midst of a chaotic, uneven political playing field, all with the knowledge that choosing to proceed in the incorrect manner bears severe consequences – political, criminal, or health.

58. The issuance of declaratory relief identifying whether the Order prohibits ballot harvesting will confer a significant benefit on the general public, including several hundred thousand voters in the special election. As such, in the interests of justice, the CAGOP is entitled to recover reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure Section 1021.5.

PRAYER FOR RELIEF

Plaintiff the California Republican Party respectfully prays for relief and judgment against Defendants as follows, in amounts according to proof:

1. An order and judgment declaring that as long as Governor Newsom's Executive Order N-

33-20, with criminal penalties under Cal. Health & Safety Code § 120295, is in effect, in-person campaign activities, including but not limited to ballot harvesting is not "essential" activities within the meaning of these and any related orders;

2. Alternatively, an order and judgment declaring that as long as Governor Newsom's Executive Order N-33-20, with criminal penalties under Cal. Health & Safety Code § 120295, is in effect, in-person campaign activities, including but not limited to ballot harvesting are "essential" activities within the meaning of these and any related orders;
3. For attorneys' fees and costs pursuant to Cal. Code Civ. Proc., § 1021.5;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court deems just and proper.

Date: April 29, 2020

DHILLON LAW GROUP INC.

By: 

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