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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 PATRICK ALLEN CANNAVAN,
20 *Plaintiffs,*

21 vs.

22 COUNTY OF VENTURA,
23 VENTURA COUNTY SHERIFF
24 BILL AYUB, and DOES 1-10,
25 inclusive,

26 *Defendants*

**[Emergency filing for November 3, 2020
election needs to be heard by November 2,
2020]**

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF FILED
CONCURRENTLY WITH
DECLARATIONS OF PATRICK
CANNAVAN, BRIAN A. VOGEL,
DAVID S. MCLANE; [PROPOSED]
ORDER**

1 Plaintiffs Patrick Allen Cannavan and the putative class members hereby apply
2 *ex parte* to the Court pursuant to Federal Rule of Civil Procedure 65 and Local Rule
3 65-1 for a Temporary Restraining Order restraining Defendants as follows:
4

5 Because the election is November 3, 2020, and counsel for Plaintiff only
6 learned of the facts that form the basis of this action on October 29, 2020, Plaintiffs
7 see immediate relief and a hearing on the TRO by November 2, 2020, or else Plaintiff
8 and the putative class members will be irreparably harmed.

9 The grounds for this Application are more fully set forth in the Verified
10 Complaint, Declarations, Exhibits and Memorandum in support of this application.

11 Good cause exists to issue the requested relief as follows:

12 That this Court order the County to 1) obtain Plaintiff's and all eligible
13 voters in VCJ custody absentee ballots immediately, 2) notify all inmates
14 in VCJ who have requested an absentee ballot or are eligible to vote that
15 they can vote in the November 3, 2020 election, 3) deliver an absentee
16 ballot to Plaintiff and any inmates in VCJ who have requested a ballot
17 after being informed by VCJ officials that they can vote, no later than
18 Monday, November 2, 2020 so that Plaintiff and other VCJ detainees
19 can fill out their absentee ballot, and 4) after completion, deliver to the
20 Ventura County Voter's registrar Plaintiff's ballot and every other
21 eligible VCJ detainee ballot no later than 5:00 p.m. on November 3,
22 2020, so that all eligible VCJ detainees who desire to vote and fill out an
23 absentee ballot are timely counted in this year's election.
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1 Pursuant to L.R. 7-19, the contact information for Defendants is the County
2 Counsel, Ventura County, 800 S. Victoria Avenue, Ventura, CA 93009. Plaintiff's
3 counsel will advise County Counsel of this complaint and request for a TRO.

4 Respectfully Submitted:

5 Respectfully Submitted,

6 Dated: OCTOBER 30, 2020

Kaye, McLane, Bednarski & Litt, LLP

7
8 By: /s/ David S. McLane

9 David S. McLane

10 Attorneys for Petitioners/Plaintiffs

11
12 Dated: OCTOBER 30, 2020

The Law Offices of Brian A. Vogel, PC

13
14 By: /s/ Brian A. Vogel

15 Brian A. Vogel

16 Attorneys for Petitioners/Plaintiffs
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1 **I. ARGUMENT**

2 Plaintiff and the putative class rely on the Verified Complaint which sets forth
3 the relevant facts and establish that Plaintiff, and putative class members, who all
4 have requested ballots to vote in the November 3, 2020 election, and are elibilbe
5 to vote, are being denied their fundamental right because they have not been
6 provided absentee ballots in time for the November 3, 2020 election.

7 As detailed in the complaint, a TRO is necessary, and must be issued by
8 November 2, 2020, so that the following relief may be issued by this Court on a
9 timely basis before the November 3, 2020 election:

10 That this Court order the County to 1) obtain Plaintiff's and all
11 eligible voters in VCJ custody absentee ballots immediately, 2) notify
12 all inmates in VCJ who have requested an absentee ballot or are
13 eligible to vote that they can vote in the November 3, 2020 election,
14 3) deliver an absentee ballot to Plaintiff and any inmates in VCJ who
15 have requested a ballot after being informed by VCJ officials that they
16 can vote, no later than Monday, November 2, 2020 so that Plaintiff
17 and other VCJ detainees can fill out their absentee ballot, and 4) after
18 completion, deliver to the Ventura County Voter's registrar Plaintiff's
19 ballot and every other eligible VCJ detainee ballot no later than 5:00
20 p.m. on November 3, 2020, so that all eligible VCJ detainees who
21 desire to vote and fill out an absentee ballot are timely counted in this
22 year's election.
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24 The basis for relief and the law supporting the requested relief is fully set out
25 in the verified complaint, and more than justify the emergency relief requested,
26 because Plaintiffs' first amendment rights, equal protection rights, rights under the
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1 California State constitution are being violated by Ventura County and Sheriff Bill
2 Ayub, defendants in this action.

3 As set forth in the verified complaint, the right to vote is the “fundamental
4 political right, because [it is] preservative of all rights.” *Yick Wo v. Hopkins*, 118
5 U.S. 356, 370 (1886). “Undoubtably, the right of suffrage is a fundamental matter
6 in a free and democratic society.” *Reynolds v. Sims*, 377 U.S. 533, 561-62 (1964).

7 A prison official’s objective deliberate indifference to a substantial risk of
8 harm to a prisoner awaiting trial violates the Fourteenth Amendment. *Gordon v.*
9 *Cty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018).

10 And when a case “calls[s] upon” the Court “to consider the constitutionality
11 of [a burden on the right to vote] as applied [.]. . . [t]here is no ‘litmus-paper test’
12 to answer the[e] question” of constitutionality. *Yan v. Kosinski*, 960 F.3d 119,
13 129 (2nd Cir. 2020), *quoting Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983).
14 Rather, the Court “conduct[s] a two-step inquiry that applies to election-related
15 restrictions.” *Id.* In the first step, the Court evaluates the burden the restriction
16 place on voters and in the second applies the sliding-scale, “*Anderson-Burdick*
17 balancing test” if the restriction is not severe and “the more familiar test of ‘strict-
18 scrutiny if the restriction is severe. *Id.*

19 The burden on detainees who are dependent on County officials to obtain
20 their ballots for them, and County defendants’ failure to do so, is severe because
21 Plaintiff and putative class members are detained and cannot obtain absentee
22 ballots on their own, and Defendants failure to do so causes the ultimate sanction,
23 preventing Plaintiffs from voting. Thus, the deprivation is severe and subject to
24 strict scrutiny. Where the County Defendants are in a position to obtain absentee
25 ballots and fail to do so without justification, there is no compelling interest
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1 achieved by not honoring Plaintiffs' fundamental rights to vote and therefore
2 unless they provide ballots immediately to all eligible detained voters in Ventura
3 County custody, they will have irreparably caused damage to Plaintiffs.

4 As a result of Defendants' unconstitutional actions, Plaintiffs are suffering
5 irreparable injury and are entitled to injunctive relief.

6 Accordingly, Defendants, as supervisors, direct participants, and policy
7 makers for Los Angeles County, have violated the rights of the Class under First
8 Amendment.

9 The principle of "one person, one vote" requires that courts seek to "[e]nsure
10 that each person's vote counts as much, insofar as it [i]s practicable, as any other
11 person's" *Hadley v. Junior Coll. Dist. Of Metro. Kan. City*, 397 U.S. 50, 54
12 (1970).

13 And the Equal Protection Clause of the Fourteenth Amendment requires
14 "that all persons similarly situated [] be treated alike." *City of Cleburne v.*
15 *Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Indeed, "[a]n early case in our
16 one person, one vote jurisprudence arose when a State accorded arbitrary and
17 disparate treatment to voters in is difference counties [and t]he [Supreme] Court
18 found a constitutional violation. *Bush v. Gore*, 531 U.S. 98, 107 (2000),
19 describing *Gray v. Sanders*, 372 U.S. 368 (1963).

20 The Supreme Court has also already ruled that, once absentee voting is part
21 of the scheme for elections, all absentee votes must have similar guarantees that
22 their votes count as much as possible, the same as any other person's. *O'Brien v.*
23 *Skinner*, 414 U.S. 524, 530 (1974).

24 Plaintiffs are dependent on absentee ballots since they are detained against
25 their will on jail, and particularly dependent on official actors, Defendant Sheriff
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1 and County, to ensure that their votes will counts as much as possible, the same as
 2 any other person's. Without being provided their ballots by the County, they will
 3 not be able to vote at all, and they are "simply not allowed to use the absentee
 4 ballot and are denied any alternative means of casting their vote," and thus the
 5 Defendants' actions are unconstitutional. *O'Brien v. Skinner*, 414 U.S. 524, 430
 6 (1974)(failure to provide absentee voter registration to people held in jail awaiting
 7 trial is unconstitutional).

8 Under the *Obrien v. Skinner* rule, the Defendants have violated Plaintiffs'
 9 rights, the Plaintiffs are more than likely to succeed on the merits, they will be
 10 irreparably harmed, thus injunctive and declaratory relief must issue immediately
 11 before the election by November 2, 2020, so that Plaintiffs are provided absentee
 12 ballots by November 2, 2020, and the Defendants collect those ballots and ensure
 13 they are timely delivered to the County Registrar by November 3, 2020.

14 **II. CONCLUSION**

15 For the foregoing reasons, the Plaintiffs request that this TRO be granted by
 16 November 2, 2020.
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 19 Respectfully Submitted,

20 Dated: OCTOBER 30, 2020

Kaye, McLane, Bednarski & Litt, LLP

21
 22 By: /s/ David S. McLane

23 David S. McLane

24 Attorneys for Petitioners/Plaintiffs
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 26
 27
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1 Dated: OCTOBER 30, 2020

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2 PC

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