

1 DAVID S. McLANE, SBN 124952
2 dmclane@kmbllaw.com
3 KAYE, McLANE, BEDNARSKI & LITT
4 975 East Green Street
5 Pasadena, California 91106
6 Telephone: (626) 844-7600
7 Facsimile: (626) 844-7670

8 BRIAN A. VOGEL, SBN. 167413
9 Email: brian@bvogel.com
10 THE LAW OFFICES OF
11 BRIAN A. VOGEL, PC
12 770 County Square Drive, Suite 104
13 Ventura, California 93003
14 Telephone: (805) 654-0400
15 Facsimile: (805) 654-0326

16 Attorneys for Plaintiffs

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*

Case No.: 2:20-cv-10012-FMO-PVCx

**PLAINTIFFS' OBJECTIONS TO
COUNTY'S RESPONSE TO TRO, AND
EX PARTE APPLICATION FOR
ORDER TO INFORM ELIGIBLE
VOTERS NOT JUST REGISTERED
VOTERS AND PROVIDE BALLOTS
TO ELIGIBLE VOTERS IN ADDITION
TO REGISTERED VOTERS;
[PROPOSED] ORDER FILED
CONCURRENTLY**

**[Emergency application requesting relief
as soon as practicable on November 3,
2020]**

**OBJECTIONS AND EX PARTE APPLICATION TO REQUEST
DEFENDANT COUNTY TO PROVIDE BALLOTS TO ALL ELIGIBLE
VOTERS NOT JUST REGISTERED VOTERS**

Plaintiffs Patrick Allen Cannavan and Class members hereby file the following objections, and ex parte application to require County to inform all eligible, not just registered voters, of their right to vote and provide ballots to them. Because the election is tomorrow, we request that the Court enter an order right away to require the County to inform all eligible Ventura County inmate voters who have requested ballots of their right to vote and provide them ballots, pursuant to the procedures the County followed as outlined in the declaration of Ventura County Assistant Sheriff Eric Dowd, Dkt. 24-1.

In the Court's order, the Court ordered that the County immediately obtain absentee ballots for Plaintiff and Class members no later than November 2, 2020, by 5:00 p.m. Dkt. 21. The TRO order defined class members in the order provisionally certifying the Class, Dkt. 20, as those in the County jail who are "**eligible voters** who have requested ballots." The declaration of Eric Dowd indicates that the announcement made to detainees stated:

"Anyone who is **registered to vote**, has requested a ballot, and has not received a ballot, please make yourself known." Dowd decl., ¶ 2a. Emphasis added.

The TRO requires any Ventura County detainee who is eligible not just registered be informed of their right to receive a ballot who has requested a ballot. Thus, the procedures outlined by Dowd constrict the number of voters since the class of registered voters is less than that of eligible voters. We agree with the Assistant Sheriff Dowd's declaration not "require that an inmate confirm or otherwise state that he or she had previously requested a ballot but had not

1 received one,” Dowd, decl., ¶ 4, because otherwise that would impose an undue
2 burden that an inmate prove he made such a request and lead to delay and
3 unwarranted denials of ballots, and Dowd’s procedure should remain in place.

4 Plaintiffs request that the Court order immediately that the County follow
5 the procedures outlined in the Dowd declaration, except that they inform detainees
6 instead,

7 “Anyone who is **eligible to vote**, [who] has requested a ballot, and has not
8 received a ballot, please make yourself known.”

9 This is necessary because based on Dowd’s declaration, only 79 inmates
10 from Pre-Trial Detention Facility (“PTDF”) and Todd Road Jail (“TRJ”) requested
11 ballots, which appears to be a very low request rate. Based on an article written by
12 Megan Diskin, Ventura Star newspaper, March 25, 2020,

13 [https://www.vcstar.com/story/news/local/2020/03/25/coronavirus-ventura-county-](https://www.vcstar.com/story/news/local/2020/03/25/coronavirus-ventura-county-jail-population-reduced/2904511001/)
14 [jail-population-reduced/2904511001/](https://www.vcstar.com/story/news/local/2020/03/25/coronavirus-ventura-county-jail-population-reduced/2904511001/)

15 there were approximately 1,313 people housed in the Ventura County jail. 79
16 inmates would be six percent of that population. Let’s assume due to COVID-19
17 the population was reduced to about 1,000 inmates, that would be a return ballot
18 rate of 7.9 percent, which is extremely low and Plaintiffs would submit is a low
19 return rate that does not capture all eligible Ventura detainee voters.

20 It is also necessary, because as established in the Reply brief, one does not
21 have to be registered to vote prior to the election because California law allows for
22 same day registration on election day even if one is not registered because on the
23 day of the election one can vote and register at the same time. Reply brief, Dkt.
24 17. Plaintiffs made clear they were requesting relief for those inmates who were
25 eligible and had not registered because under California State Law, as established
26 in the Reply Brief, under SB 72 made into law in 2019, voters could cast ballots
27 and register on the day of the election. It was made crystal clear the TRO applied
28

1 to not just registered voters, but eligible voters. Further, the fact the County was
 2 not in compliance by failing to register detainee voters who requested ballots
 3 should not prevent otherwise eligible voters from voting.

4 For these reasons, in order to prevent irreparable harm to Plaintiffs Class so
 5 they can vote in the November 3, 2020 election, we request the Court issue an
 6 immediate order requiring that the County follow the procedures outlined in the
 7 Dowd declaration, on the morning of November 3, 2020, and provide all eligible
 8 voters who requested ballots a ballot for the November 3, 2020 election (who have
 9 not already been provided one), by telling them:

10 “Anyone who is **eligible to vote**, [who] has requested a ballot, and has not
 11 received a ballot, please make yourself known.” The County should also be
 12 ordered to follow the same procedures in the Dowd declaration, paragraphs 2a.-e.
 13 and 4, including that the County does not “require that an inmate confirm or
 14 otherwise state that he or she had previously requested a ballot but had not
 15 received one,” Dowd, decl., ¶ 4.

16
 17 Respectfully Submitted,

18 Dated: November 2, 2020

Kaye, McLane, Bednarski & Litt, LLP

19
 20 By: /s/ David S. McLane

21 DAVID S. MCLANE

22 Attorneys for Petitioners/Plaintiffs

23
 24 Dated: November 2, 2020

The Law Offices of Brian A. Vogel, PC

25
 26 By: /s/ Brian A. Vogel

27 BRIAN A. VOGEL

28 Attorneys for Petitioners/Plaintiff