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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 **JOSEPH KISHORE**, Socialist Equality
Party candidate for U.S. President; and
15 **NORISSA SANTA CRUZ**, Socialist
Equality Party candidate for U.S. Vice
16 President,

17 Plaintiffs,

18 v.

19 **GAVIN NEWSOM**, Governor of
California; and
20 **ALEX PADILLA**, Secretary of State of
California, in their official capacities,
21

22 Defendants.
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Case No.: 2:20-cv-05859

Hon. Dolly M. Gee

**PLAINTIFFS' REPLY TO
DEFENDANTS' OPPOSITION TO
RENEWED APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The state of California might as well have a law that states: “Independent
4 candidates for president shall not be allowed on the November 2020 ballot.” That is
5 the effect of the current state of the law, which would require such candidates to
6 gather and submit nearly 200,000 physical signatures between April 24, 2020 and
7 August 7, 2020, in the midst of the deadly coronavirus pandemic.

8 On July 1, 2020, Plaintiffs Joseph Kishore and Norissa Santa Cruz
9 (“Plaintiffs”), who are the candidates of the Socialist Equality Party (“SEP”) for
10 President and Vice President of the United States, applied for preliminary injunctive
11 relief against Defendants Gavin Newsom, the governor of California, and Alex
12 Padilla, the California Secretary of State (collectively, “Defendants”) (Doc. No. 11).
13 This application constituted a renewal of the application that had been made the
14 previous day but which was denied without prejudice (Doc. No. 9). The same day,
15 Defendants submitted a 6-page opposition requesting additional time (Doc. No. 10).
16 Since that time, Defendants have submitted no further or substantive opposition on
17 the merits. For the reasons below, in addition to the grounds stated in the original
18 application, Plaintiffs’ application should be granted.

19 **II. DISCUSSION**

20 **A. The Defendants have made little substantive response.**

21 It is significant that Defendants have made little substantive response to the
22 request. Indeed, it is unclear how Defendants could possibly justify the existing
23 ballot access regime. The state of California cannot require voters and candidates to
24 risk serious illness and even death to exercise their most fundamental democratic
25 rights. No interest asserted by the state is worth the sacrifice of human life.

26 In their opposition, Defendants suggest that service may not be effective.
27 Defendants state that it is not “entirely clear whether or when service has been
28 effected,” filing an opposition “out of an abundance of caution.” *See* Opp’n, at 1, n.

1 1. Later that same day, Plaintiffs filed a declaration that should put the issue of
2 service to rest as to each defendant: Defendant Padilla (Seabaugh Decl., ¶ 2; Exhibit
3 “A”), Defendant Newsom (Seabaugh Decl., ¶ 3; Exhibit “B”), and the California
4 Attorney General’s office (Seabaugh Decl., ¶ 4; Exhibit “C”). The Federal Rules
5 state that preliminary injunctive relief is effective as to the parties “who receive
6 actual notice of it,” Fed. R. Civ. P. 65(d)(2), and here all of the parties have actual
7 notice.

8 Defendants’ opposition does little to address the merits of the Plaintiffs’
9 application. Defendants’ central theme is that “Plaintiffs have not been diligent in
10 seeking relief.” Opp’n, at 1. Plaintiffs allegedly “waited to file their complaint and
11 application for a TRO—which, along with supporting declarations and exhibits,
12 total more than 100 pages of pleadings, declarations, and exhibits—until June 30,
13 2020. . . .” Opp’n, at 4. Defendants point to the “striking delay and lack diligence
14 [sic]” on the part of Plaintiffs.

15 **B. It is not Plaintiffs but Defendants who failed to exercise adequate**
16 **diligence.**

17 It is not the Plaintiffs who have failed to exercise adequate diligence, but
18 Defendants. It is Defendants who have failed over a protracted period to take
19 effective action to ensure that the elections remain free, open, and fair, despite the
20 pandemic. Specifically, the conduct of the elections is Defendant Padilla’s
21 affirmative responsibility. *See* Cal. Gov’t Code § 12172.5 (“The Secretary of State
22 is the chief elections officer of the state, and shall administer the provisions of the
23 Elections Code. The Secretary of State shall see that elections are efficiently
24 conducted and that state election laws are enforced.”).

25 Defendants point to, and request judicial notice of, a statewide emergency
26 proclamation dated March 4, 2020. *See* Opp’n, at 3, n. 3. But Defendants fail to
27 explain how, with all of the resources of the state at their disposal, they failed to take
28 action for months after their own acts, in combination with the pandemic, rendered

1 the gathering of hundreds of thousands of signatures for all practical purposes
2 impossible. Indeed, Defendants took no action even after it became clear that the
3 large signature-gathering requirement had become a public health risk on its face, as
4 any efforts to gather the required signatures would necessarily spread the deadly
5 infection that has already claimed hundreds of thousands of lives worldwide.

6 Defendants claim that Plaintiffs should have made “reasonably diligent
7 efforts” to comply with state law, citing *Angle v. Miller*, 673 F.3d 1122, 1134 (9th
8 Cir. 2012). But no “reasonably diligent” candidates would have placed the health
9 and lives of their supporters in danger to comply with the state’s burdensome
10 signature requirement. The Plaintiffs “should not be denigrated for making the
11 conscientious choice.” *SawariMedia, LLC v. Whitmer*, 2020 WL 3097266 at *25
12 (E.D. Mich. June 11, 2020) (rejecting the same argument, which was made by
13 Michigan authorities).

14 It is not Plaintiffs that require the signatures, but Defendants. Plaintiffs are
15 simply asking to be on the ballot. It is Defendants who “waited . . . until June” to
16 take action—and it does not appear that Defendants intended to take any action at all
17 until November.

18 **C. Plaintiffs are irreparably harmed by every day of uncertainty**
19 **as to their ballot access status.**

20 Defendants raise the “irreparable harm” standard but fail to address the
21 substantive points made by Plaintiffs in their application, claiming instead that there
22 is a “lack of emergency.” *See* Opp’n, at 1. On the contrary, the infringement of the
23 First Amendment freedoms of candidates and voters in an election year is an
24 emergency requiring immediate Court intervention.

25 “The loss of First Amendment freedoms, for even minimal periods of time,
26 unquestionably constitutes irreparable injury.” *See Elrod v. Burns*, 427 U.S. 347,
27 373-74 (1976); *citing New York Times Co. v. United States*, 403 U.S. 713 (1971).

1 Restrictions on access to the ballot impinge on the fundamental right to associate for
2 the advancement of political beliefs and the fundamental right to vote. *See Illinois*
3 *State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184; *Williams v.*
4 *Rhodes*, 393 U.S. 23, 30, 89 (1968).

5 The harm is particularly irreparable where, as here, a plaintiff seeks to engage
6 in First Amendment political activity, as “timing is of the essence in politics.” *See*
7 *Long Beach Area Peace Network v. City of Long Beach*, 522 F.3d 1010, 1020 (9th
8 Cir. 2008) (quoting *NAACP v. City of Richmond*, 743 F.2d 1346, 1356 (9th Cir.
9 1984)); *see also Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009).
10 With each day that passes towards the election, Plaintiffs are irreparably harmed by
11 California’s unconstitutional ballot access regime, and by the shadow of uncertainty
12 it casts over their campaign.

13 **D. California effectively has no way for independent candidates to**
14 **access the ballot; injunctive relief is necessary to remedy this**
15 **unconstitutional state of affairs.**

16 At this point, the state of California effectively has zero methods for
17 independent presidential candidates to access the ballot. The only method existing
18 on paper—gathering 200,000 physical signatures in the midst of a deadly global
19 pandemic—is effectively impossible to satisfy. This state of affairs is functionally
20 equivalent to a state law providing that independent candidates are not allowed on
21 the ballot at all.

22 An important point of reference is the decision in *Hall v. Austin*, 495 F. Supp.
23 782, 784 (E.D. Mich. 1980). In that case, it was undisputed that Michigan had no
24 statutory method by which independent candidates for president and vice-president
25 could gain access to the Michigan general election ballot. The plaintiffs were Gus
26 Hall and Angela Davis, the Communist Party’s presidential and vice-presidential
27 candidates, who sought ballot access as independent candidates. The district court
28 found that, notwithstanding the interests asserted by the state with respect to

1 promoting efficiency and avoiding ballot clutter, Michigan's ballot access regime
2 was unconstitutional:

3 The Court is certain that placing Hall and Davis on the Michigan
4 ballot will not impair these legitimate public interests. The Michigan
5 ballot lists only five presidential candidates. Hall and Davis can hardly
6 be compared to the defendants' examples of frivolous candidates who
7 have attempted to qualify as independent candidates. They are earnest
8 and experienced politicians who are recognized, interviewed and
9 written about by the news media and invited to speak and participate by
10 many organizations. They espouse a serious political program and
11 address important issues pertaining to race, economics, and
government. In short, there is no indication that the addition of Hall
and Davis will in any way impair the ability of the electorate to make
rational decisions at the polling booth. On the contrary, their
participation as candidates may well assure that the electorate is better
informed as to crucial issues and alternative positions which the voter
may accept, reject or utilize for comparison. After all, this is the
meaning and strength of democracy and the formula for its perpetuation
and growth.

12 *See Hall*, 495 F. Supp at 792.

13 Likewise in this case, as demonstrated by the declarations submitted together
14 with this application, Plaintiffs Kishore and Santa Cruz are far from frivolous
15 candidates. They are experienced politicians who are recognized throughout the
16 country and who have each written extensively on a broad range of political issues.
17 The political newspaper of their organization, the *World Socialist Web Site*
18 (wsws.org) is read by millions of people around the world.¹ The declarations that
19 were filed together with the application point to the political ideas that have won
20 them support among teachers, health care workers, students, and other sections of
21 the state's population. As in the *Hall* case, the fact that Plaintiffs Kishore and Santa
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23 ¹ On the day this brief is being filed, the *World Socialist Web Site* celebrated the
24 244th anniversary of the Declaration of Independence with an online meeting that
25 was attended by thousands of people from dozens of countries around the world.
26 The online event, *The Place of the Two American Revolutions in the Past, Present*
27 *and Future*, featured five of the most eminent historians on these subjects: Victoria
28 Bynum, Clayborne Carson, Richard Carwardine, James Oakes and Gordon Wood.
Accessible at: <https://www.youtube.com/watch?v=kIo0PLWFIxY>.

1 Cruz espouse a serious political program militates strongly in their favor. Just as in
2 *Hall*, including their names on the ballot will not in any way impair the ability of the
3 electorate to make rational decisions at the polling booth. Indeed, placing these
4 socialist candidates with their distinct program on the ballot will inform rather than
5 confuse voters as to important issues, including those who otherwise might not vote.

6 Concluding that it was “necessary to emphasize again that the rights at stake
7 here . . . are crucial to our democracy,” *Hall*, 495 F. Supp. at 792, the court in *Hall*
8 ultimately awarded injunctive relief, ordering Michigan to place Hall and Davis on
9 the ballot. The Court should do likewise here.

10 **III. CONCLUSION**

11 Plaintiffs should be able to exercise their most fundamental democratic rights
12 without exposing themselves and their supporters to the danger of infection and
13 death in fulfilling the administrative requirements established and enforced by
14 Defendants. Given the unprecedented if not unique circumstances presented by the
15 ongoing pandemic, the usual considerations a state may give for limiting ballot
16 access have little weight. Nor will California be burdened by adding Plaintiffs to
17 the ballot. Since California has failed to provide any practical way for independent
18 presidential candidates to access the ballot in light of the pandemic, the Court should
19 directly order that Plaintiffs’ names be printed on the November ballot.

20 In the alternative, Plaintiffs request that their application for a preliminary
21 injunction be heard on shortened notice as provided by Local Rule 65-1.

22 Respectfully Submitted,

23 Dated: July 4, 2020

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