

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 20-5859-DMG (Ex)** Date July 6, 2020

Title ***Joseph Kishore, et al. v. Gavin Newsom, et al.*** Page 1 of 4

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

KANE TIEN

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS—ORDER RE PLAINTIFFS’ RENEWED APPLICATION
FOR TEMPORARY RESTRAINING ORDER [11]**

**I.
FACTUAL AND PROCEDURAL BACKGROUND**

On June 30, 2020, Plaintiffs Joseph Kishore and Norissa Santa Cruz filed a Complaint and Application for Temporary Restraining Order (“TRO Application”) against Defendants Gavin Newsom and Alex Padilla in their official capacities as the Governor of California and Secretary of State of California, respectively. Plaintiffs wish to enjoin California from enforcing its requirement that “independent candidates for president and vice president” of the United States “gather and submit nearly 200,000 physical signatures between April 24, 2020 and August 7, 2020” in order to appear on the 2020 general election ballot. Compl. at ¶ 1 [Doc. # 1].

The Court denied Plaintiffs’ TRO Application due to Plaintiffs’ failure to demonstrate proper service on Defendants. [Doc. # 9.] Plaintiffs filed a Renewed Application for Temporary Restraining Order (“TRO Application 2”) shortly thereafter. [Doc. # 11.] TRO Application 2 is now fully briefed. Opp. [Doc. # 10]; Reply [Doc. # 12]. Since the Court is satisfied that Plaintiffs have properly served Defendants and that Defendants have received actual notice of this TRO Application, the Court proceeds to the merits of Plaintiffs’ request. *See* Seabaugh Decl. [Doc. # 11-11]; Fed. R. Civ. P. 65(d)(2) (injunction orders may bind parties who receive actual notice).

**II.
LEGAL STANDARD**

Litigants seeking interim injunctive relief must show that: (1) they are likely to succeed on the merits of their claim; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Toyo Tire Holdings of Ams. Inc. v. Cont’l Tire N. Am., Inc.*, 609 F.3d 975, 982 (9th Cir. 2010) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). A TRO or

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preliminary injunction is also appropriate when a plaintiff raises “serious questions going to the merits,” demonstrates that “the balance of hardships tips sharply in the plaintiff’s favor,” and “shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (quoting *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

**III.
DISCUSSION**

Plaintiffs request that the Court issue a TRO enjoining California from enforcing its signature requirement against them as a prerequisite for appearing on the ballot in 2020. *See* TRO Application 2. Defendants do not squarely address Plaintiffs’ contentions that Defendants must justify the signature requirement with a rationale that survives strict scrutiny because the requirement severely burdens Plaintiffs’ First and Fourteenth Amendment rights to seek elected office. *See* TRO 2 Application (citing *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992)); Opp. at 4-7. Instead, Defendants argue that, even if Plaintiffs’ complained-of harm is irreparable, it is not yet sufficiently immediate to warrant relief in the form of a TRO. Opp. at 4-7. The Court agrees.

The Ninth Circuit has held that, to obtain interim injunctive relief, litigants must demonstrate “*immediate* threatened injury.” *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (emphasis added); *Henry Schein, Inc. v. Cook*, 191 F. Supp. 3d 1072, 1076 (N.D. Cal. 2016); *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1049 (S.D. Cal. 2006). And the parties agree that Plaintiffs’ deadline for obtaining the signatures that California requires is not until August 7, 2020. TRO Application 2 at 4; Opp. at 5. Defendants also argue that California will not finalize the list of candidates that will appear on general election ballots until August 27, 2020. Opp. at 5 n.5 (citing November 3, 2020, General Election Calendar, <https://elections.cdn.sos.ca.gov/statewide-elections/2020-primary/section-8-general-calendar.pdf> at p. 8-6). According to Defendants, a TRO would do nothing to stop the signature requirement from impacting these events because, even if the Court issued a TRO on this date, it would expire on July 20, 2020.

Plaintiffs cite several Supreme Court and Ninth Circuit cases in their Reply to argue that “timing is of the essence in politics” and that the deprivation of “First Amendment freedoms, for even minimal periods of time,” qualifies as irreparable harm. Reply at 5-6 (citing, *e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976); *Long Beach Area Peace Network v. City of Long Beach*, 522 F.3d 1010, 1020 (9th Cir. 2008); *Klein v. City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009)). They contend that, under these authorities, “each day that passes towards the election”

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casts a “shadow of uncertainty” over their campaign’s ballot-access prospects that constitutes immediate harm. *Id.* But the cases they cite deal with violations of different, more instantaneous First Amendment expression. *Elrod* dealt with county employees who were fired or were in “imminent danger” of being fired for belonging to a different political party than their boss. *Elrod*, 427 U.S. at 350-51. *Long Beach Area Peace Network* concerned municipal censorship of a “spontaneous” protest of United States military action abroad. *Long Beach Area Peace Network*, 522 F.3d at 1015-16. And *Klein* involved a city ordinance that sheriff’s deputies had already enforced to prevent a resident from placing political leaflets on parked cars. *Klein*, 584 F.3d at 1199. In other words, these cases all concern ongoing, immediate, or past suppression of First Amendment activity.

In contrast, the First Amendment violation that Plaintiffs identify is the *de facto* prohibition on their appearance on the 2020 general election ballot. *See* Compl. at ¶ 41. Even assuming that California’s signature requirement would, in fact, bar Plaintiffs from appearing on the ballot, it has not yet done so. Nor will it do so in the immediate future—the signature deadline, though close, is one month away and California will not finalize its ballots until weeks after that.

The Court therefore concludes that it would be inappropriate to grant Plaintiffs the TRO that they seek without giving Defendants the chance to fully brief the issues that Plaintiffs raise. Indeed, Plaintiffs need look no further than the cases they cite to understand the proper timeline for seeking to enjoin California from enforcing the signature requirement. *Elrod*, 427 U.S. at 347 (discussing plaintiffs’ request for preliminary injunction); *Klein*, 584 F.3d at 1199 (same); *Esshaki v. Whitmer*, No. 20-1336, 2020 WL 2185553, at *1 (6th Cir. May 5, 2020) (affirming in part the district court’s grant of a preliminary injunction to prevent enforcement of a similar signature requirement in Michigan).

**IV.
CONCLUSION**

While the circumstances, at this point in the litigation, do not merit relief in the form of a TRO, the Court recognizes the important nature of the rights that Plaintiffs seek to vindicate and the necessity of resolving this dispute before the August 2020 deadlines discussed above. The Court therefore construes Plaintiff’s TRO Application 2 as a Motion for Preliminary Injunction (“MPI”) and sets the following expedited briefing and hearing schedule:

1. Defendants Opposition to the MPI is due no later than July 10, 2020;
2. Plaintiffs Reply in support of the MPI is due no later than July 15, 2020;

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3. The Court shall hold a videoconference hearing on this matter at **2:00 p.m. on July 21, 2020**; and
4. The parties shall meet and confer prior to the hearing in an effort to resolve the issues raised in this action.

IT IS SO ORDERED.