

**SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO  
ORDER DETERMINING DISPOSITION OF EX PARTE APPLICATION**

Case Name <i>The California Republican Party vs. Newsom</i>	Case Number <b>34-2020-00277751</b>
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Type of Application <i>X-Pre: dec. relief</i>	By <i>Plaintiff</i>	Application Date <b>APR 29 2020</b>
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Names of Appearing Party <i>Harmeet Dhillon</i>	Representing <i>Plaintiff (415) 830-7400 harmeet@dhillonlaw.com</i>
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<i>Mark Meuser</i>	<i>Plaintiff (415) 577-2850 mmeuser@dhillonlaw.com</i>
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<i>John Killeen</i>	<i>Defendant (916) 210-6045 john.killeen@doj.ca.gov</i>
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*Pent. Glickman* ▲  
 The Court, having considered the above entitled ex parte application  without a hearing  after hearing with appearance as noted above, rules as follows:

The application is granted.

**FILED/ENDORSED**

MAY - 5 2020

By: G. Toda

The application is denied on the merits of the papers presented to the Court.

The application is denied without prejudice to its resubmission for the following reason(s):

*See order, attached*

The moving party may not proceed except by noticed motion.

Other  
*Ms. Lehman, or Matt Lee (absent); (AGOP C. Bryant)*

Counsel for the \_\_\_\_\_ is ordered to prepare formal order.

**MAY - 5 2020**  
DATE


  
*David F. Brown*  
 JUDGE OF THE SUPERIOR COURT

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE**

**MINUTE ORDER**

DATE: 05/05/2020

TIME: 02:08:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: G. Toda

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2020-00277751-CU-CR-GDS** CASE INIT.DATE: 05/01/2020

CASE TITLE: **The California Republican Party vs. Gavin Newsom, in his official capacity as the Governor of California**

CASE CATEGORY: Civil - Unlimited

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**APPEARANCES**

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**Nature of Proceeding: 5/5/20 Ex Parte Minute Order**

Having conducted the ex parte conference, heard the argument of the parties and reviewed the briefs of the parties, the Court now rules on the Application.

The instant application arises in unusual circumstances occasioned by the COVID-19 pandemic. For ex parte matters, generally, the adequacy of the application for temporary relief will be determined on the papers submitted. Local Rule 2.35 Ex parte relief is reserved for emergency situations that could not have been reasonably anticipated. With a few exceptions, ex parte motions are for those matters that cannot be heard on regular notice due to factors beyond the control of the party seeking relief. The moving party must present admissible evidence that, unless relief is granted, the party will suffer irreparable harm or be placed in immediate danger. CRC Rule 3.1203(c). Absent truly extraordinary circumstances, established by admissible evidence, the Court will not order substantive relief in a contested matter at the ex parte conference.

As argued by Plaintiff, CAGOP initiated this action for declaratory judgment pursuant to California Code of Civil Procedure Section 1060, which provides that "any person interested under a written instrument ... who desires a declaration of his or her rights ... may, in cases of actual controversy ... bring an original action ... in superior court for a declaration of his or her rights ...." (Code Civ. Proc., § 1060.) "The powers of a court acting under this section in granting declaratory relief are as broad and extensive as those exercised by such court in any ordinary suit in equity." (Adams v. Cook (1940) 15 Cal.2d 352, 362). Generally, prospective declaratory relief requests are those that seek to resolve "prospective" (i.e., anticipated or future) disputes and "should not be sought to correct past wrongs where other remedies exist." Kim v. City of Belmont, Case No. 17-cv-02563-JST, 2018 U.S. Dist. LEXIS 9946, 2018 WL 500269, at \*14 (N.D. Cal. Jan. 22, 2018); see, e.g., Wilkinson v. Dotson, 544 U.S. 74, 80 (2005) 80, 125 S. Ct. 1242, 161 L. Ed. 2d 253. The Eleventh Amendment does not bar suits for prospective declaratory relief against state officials in their official capacity. Idaho v. Coeur d'Alene Tribe, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997); Doe v. Lawrence Livermore Nat'l Lab., 131 F.3d 836, 839 (9th Cir. 1997). It is clear that the Court is only asked to "clarify" what the various Orders and statute, taken together, mean for ballot collection under § 3017.

CAGOP argues "The Defendants have forced the CAGOP and its campaign workers to guess at the import of their conflicting statements, forcing the CAGOP to choose between engaging in an otherwise legal activity [ballot collecting] and risking arrest, criminal citation, and other consequences; or staying at home as Governor Newsom has urged, and risking those reading the contradictory Executive Orders

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DATE: 05/05/2020

MINUTE ORDER

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and statements differently and gaining an electoral advantage, thereby throwing the integrity of the election into doubt. In general, there are no "do-overs" in elections - the time to set the rules and answer these questions is now, not after the election."

The instant case purports to present an issue implicating the right to vote, which is not to be denied. (See section 1 of Article II of the California Constitution) The right of suffrage, everywhere recognized as one of the fundamental attributes of our form of government, is guaranteed and secured by the Constitution of this state to all citizens who are within the requirements therein provided. (Const. of Cal., art. II, § 1; Spier v. Baker, 120 Cal. 370, 374; Britton v. Board of Election Comms., 129 Cal. 337, 340; People v. Elkus, 59 Cal. App. 396, 398.) This constitutional right of the individual citizen includes the right to vote "at all elections which are now or may hereafter be authorized by law," (Const. of Cal., art. II, § 1), Communist Party of United States v. Peek, (1942) 20 Cal. 2d 536. Ballot access laws like those at issue here "place burdens on two different, although overlapping, kinds of rights-the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively." Williams v. Rhodes, 393 U.S. 23, 30, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968). The United States Supreme Court has recognized that "the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." Anderson v. Celebrezze, 460 U.S. 780, 786, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983) (quoting Bullock v. Carter, 405 U.S. 134, 143, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972)).

Defendants have each collectively filed an opposition to the Application for ex parte relief. As argued declaratory relief cannot be used to compel a public official to exercise his or her discretion; the only method of compelling such is a writ of mandate, which CAGOP has not sought. (Opp. p. 4.) Defendants then state that it is unnecessary to reach this issue, because CAGOP's claim is moot and there is no actual controversy; "[w]hile CAGOP seeks to require the Governor to clarify whether ballot collection remains permissible under Executive Order N-33-20, the stay-at-home order, it is in fact perfectly clear that ballot collection is permitted." As argued, "The day after issuing the stay-at-home order, governor Newsom issued another order, Executive Order N-34-20, which set procedures for special elections to fill vacancies in the 28th State Senate District and the 25th Congressional District,...That order directed that these elections be 'conducted according to those provisions of the Elections Code that govern all-mail ballot elections, including but not limited to Elections Code sections 3000-3026 and 4100'" [emphasis in original] (Id.) Even more clearly, it is stated "Thus, under the plain language of the Executive Order, Elections Code section 3017...remains in effect for the upcoming elections, and ballot collection and delivery are permitted." (Id.) Perhaps even more importantly to the issue presented, the defendants argue "Moreover, any possible doubt on this score was dispelled on May 1, 2020, when state public health directives were updated to confirm that, in the elections context 'permissible activity' outside the home includes 'the collection and dropoff of ballots.'" [emphasis added] (See, e.g. <https://covid19.ca.gov/stay-at-home-except-for-essential-needs> (FAQ) ["Elections are an essential activity, and the Governor has issued executive order specifically addressing election procedures...**Of course, whenever you engage in any permissible activity-including the collection and dropoff of ballots, or other election related activities-be mindful of physical distancing and other measure to protect yourself and those around you.**"])(emphasis added) At oral argument, defendants concede that the FAQ relates to activities under Elections Code § 3017.

#### Factual Background

On April 29, 2020, the California Republican Party (CAGOP) filed its complaint for "Declaratory Judgment" against 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

The complaint contains numerous factual allegations and the nature of the emergency relief sought within a compressed time frame makes it impossible for the Court to address each in this Order. Saliiently, it is alleged that the case "concerns the urgent question of whether a campaign ballot gatherer (also referred to as a "ballot harvester" or "collector") 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. (Complaint para. 1.) It is further alleged "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." (Complaint para. 2). And, the complaint alleges: "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." (para.3) It is not alleged that any ballot harvester has been prosecuted, to date. The complaint does allege "The Governor's Stay Home Order uses terminology relating to the election that is inconsistent with the Election Code." And, that despite requests for written guidance from the Governor, and the Secretary of State, 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." (Complaint, para. 4)

It is further alleged 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. Canst. Art. V, § 1.) Governor Newsom signed the State Orders. It is alleged that 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. Canst. Art. V, § 13.) 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.) (Complaint paras. 7-9.)

Additional factual antecedents are set forth and provide further context for the instant application for relief. It is stated: 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, 2020 Presidential Primary Election. 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. It is alleged that Congressional District 25 is located within Los Angeles and Ventura counties and that State Senate District 28 is located entirely within Riverside County. (paras. 15-18.)

It is also alleged that "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." ("Stay Home Order"). 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>. " The public health directive provides that its directives "shall stay in effect until further notice." (Complaint, paras. 21-22.)

Parenthetically, the complaint (fn.6) directs the reader to the list of Essential Critical Infrastructure

Workers that "can be found online

at: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>." In pertinent part, Section 8 of this document states:

**8. GOVERNMENT OPERATIONS AND OTHER COMMUNITY-BASED ESSENTIAL FUNCTIONS**

Essential Workforce, if remote working is not practical.

1. Critical government workers, as defined by the employer and consistent with Continuity of Operations Plans and Continuity of Government plans.
2. County workers responsible for determining eligibility for safety net benefits
3. The Courts, consistent with guidance released by the California Chief Justice
4. Workers who support administration and delivery of unemployment insurance programs, income maintenance, employment service, disaster assistance, workers' compensation insurance and benefits programs, and pandemic assistance
5. Workers to ensure continuity of building functions, including but not limited to security and environmental controls, the manufacturing and distribution of the products required for these functions, and the permits and inspection for construction.
6. *Elections personnel* (emphasis added)

It is further alleged in the Complaint that "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." (Complaint para. 28.) As alleged "According to Newsom's March 20th Executive Order, the two May 12th Special General Elections are to be conducted pursuant to Elections Code §§ 3000-3026." (Complaint, para. 29.)

The complaint then proceeds to address additional facts relevant to the Registrar of voters of Los Angeles, Ventura, and Riverside counties (paras. 30-33) and turns to Cal. Elections Code § 3017, *inter alia*. A separate section is addressed to this, *infra*.

Finally, it is alleged: 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. Based on daily, dire health warnings by Governor Newsom, some CAGOP workers are reluctant to violate the Governor's directives." (Complaint paras. 48-49.) It is also alleged: "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." (Complaint para. 53.) It is not, however, alleged that there have been any enforcement actions directed at ballot harvesters, or that such actions have been inconsistently enforced, e.g. enforced against the CAGOP but not enforced, say, against the California Democratic Party.

The single cause of action for declaratory relief asserts that "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. (Complaint para. 55.) 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." (Complaint para. 56.)

The prayer of the complaint is also of relevance. While the prayer is no part of the complaint, it may properly be consulted in determining whether a pleading was intended to include any specific character of relief and may well serve to show what kind of case the plaintiff supposes he has made. *McPheeters v. McMahon* (1933) 131 Cal. App. 418, 424. Here, the prayer is couched in the alternative. It seeks either 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..." (Complaint p. 13-14.) Of note, the Order provided with the Application is couched in different language. The proposed Order seeks, in the alternative, either "That Executive Order N-33-20 prohibits in-person campaign activities, including but not limited to those in-person activities that are conducted pursuant to Cal. Elec. Code § 3017 during the duration of the Special General Elections held on May 12, 2020, OR That Executive Order N-33-20 does not prohibit traditional in-person campaign activities, including but not limited to those in-person campaign activities conducted pursuant to Cal. Elec. Code § 3017, during the duration of the Governor's Proclamation of a State of Emergency." (Order, Ex Parte Application p. 17.)

In its application papers, CAGOP's memorandum is largely consistent with its complaint, and argues: As articulated by CAGOP, "CAGOP respectfully requests that this Court exercise its broad equitable powers to declare whether ballot harvesting-at least in the first instance-is permitted or prohibited under the Stay." (MPA, p. 9 , ll. 10-12.) It further argues "The plain language of [the Orders] appears to prohibit ballot harvesting, exempting only 'elections personnel.'" (pp. 9-10.) "While normally permissible under California law [Elections Code 3017], the Governor's Stay Home Order appear to prohibit these actions during the current pandemic because they are not essential." (MPA p. 2, ll. 25-26; p. 3, l. 1) It is further argued "The CAGOP intends to use all legally available activities in order to assist its candidates for these Special General Elections. However, the continued uncertainty as to whether in-person campaign activities are essential or nonessential has a chilling effect on the CAGOP's ability to put all available resources into the field to contest this election. (Id. p. 4, ll. 4-7.) As argued, "According to Newsom's March 20th Executive Order, the two May 12th Special Elections are to be conducted pursuant to Cal. Elec. Code §§ 3000-3026. (Meuser Decl., Ex. 3.)" (MPA, p. 3, ll. 17-18.) It is also argued, in part "...the CAGOP is concerned that if it encourages its volunteers and staff to participate in traditional in-person campaign activities in the days leading up to the May 12, 2020 Special General Elections, law enforcement could cite its volunteers and staff for violating the Stay Home Order. (Watkins Decl. ¶ 7.) "Because of the Governor's silence and the Secretary of State's seemingly contradictory statements, the CAGOP does not know if its planned in-person election activities are permitted under the Order. (Watkins Decl., ¶ 5)." (Id. p. 5, ll. 2-4.) This presents core of the relief sought.

#### California Elections Code §3017

The code section provides:

- (a)  
(1) All vote by mail ballots cast under this division shall be voted on or before the day of the election. After marking the ballot, the vote by mail voter shall do any of the following:

(A) Return the ballot by mail or in person to the elections official who issued the ballot.

(B) Return the ballot in person to a member of a precinct board at a polling place or vote center within the state.

(C) Return the ballot to a vote by mail ballot dropoff location within the state that is provided pursuant to Section 3025 or 4005.

*(2) 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 three days after receiving it from the voter or before the close of the polls on election day, whichever time period is shorter. Notwithstanding subdivision (d), a ballot shall not be disqualified from being counted solely because it was returned or mailed more than three days after the designated person received it from the voter, provided that the ballot is returned by the designated person before the close of polls on election day. (emphasis added)*

(3) The ballot must be received by the elections official who issued the ballot, the precinct board, or the vote by mail ballot dropoff location before the close of the polls on election day. If a vote by mail ballot is returned to a precinct board at a polling place or vote center, or to a vote by mail ballot dropoff location, that is located in a county that is not the county of the elections official who issued the ballot, the elections official for the county in which the vote by mail ballot is returned shall forward the ballot to the elections official who issued the ballot no later than eight days after receipt.

(b) The elections official shall establish procedures to ensure the secrecy of a ballot returned to a polling place and the security, confidentiality, and integrity of any personal information collected, stored, or otherwise used pursuant to this section.

(c) On or before March 1, 2008, the elections official shall establish procedures to track and confirm the receipt of voted vote by mail ballots and to make this information available by means of online access using the county's elections division Internet Web site. If the county does not have an elections division Internet Web site, the elections official shall establish a toll-free telephone number that may be used to confirm the date a voted vote by mail ballot was received.

(d) The provisions of this section are mandatory, not directory, and a ballot shall not be counted if it is not delivered in compliance with this section.

(e)  
(1) A person designated to return a vote by mail ballot shall not receive any form of compensation based on the number of ballots that the person returns and an individual, group, or organization shall not provide compensation on this basis.

(2) For purposes of this paragraph, "compensation" means any form of monetary payment, goods, services, benefits, promises or offers of employment, or any other form of consideration offered to another person in exchange for returning another voter's vote by mail ballot.

(3) A person in charge of a vote by mail ballot and who knowingly and willingly engages in criminal acts related to that ballot as described in Division 18 (commencing with Section 18000), including, but not limited to, fraud, bribery, intimidation, and tampering with or failing to deliver the ballot in a timely fashion, is subject to the appropriate punishment specified in that division.

### Declaratory Relief and Mootness

Code of Civil Procedure section 1060 confers standing upon "[a]ny person interested under a . . . contract" to bring an action for declaratory relief "in cases of actual controversy relating to the legal rights and duties of the respective parties." "Whether a determination is proper in an action for declaratory relief is a matter within the trial court's discretion . . . and the court's decision to grant or deny relief will not be disturbed on appeal unless it be clearly shown . . . that the discretion was abused." ( *Hannula v. Hacienda Homes* (1949) 34 Cal. 2d 442, 448; see also *General of America Ins. Co. v. Lilly* (1968) 258 Cal. App. 2d 465, 471 .) Whether an action is justiciable for purposes of Code of Civil Procedure section 1060 is also a matter entrusted to the sound discretion of the trial court. (See *Tehachapi-Cummings County Water Dist. v. Armstrong* (1975) 49 Cal. App. 3d 992, 998 .) It is important for the analysis to emphasize what is and what is not being sought in the instant application. No peremptory writ of mandate is sought, and there is no cause of action for injunctive relief, nor is injunctive relief sought in the application. As addressed in oral argument, no claim for vagueness is made in the papers. An action for declaratory relief is an appropriate means of challenging, for example, an alleged "overarching" policy or practice of an agency where there is an actual and present controversy over the policy. (*Californians for Native Salmon etc. Assn. v. Department of Forestry* (1990) 221 Cal.App.3d 1419, 1427-1429, citing Code Civ. Proc., § 1062.) A case is considered moot when "the question addressed was at one time a live issue in the case," but has been deprived of life "because of events occurring after the judicial process was initiated." (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 120.) Because " 'the duty of . . . every . . . judicial tribunal . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or . . . to declare principles or rules of law which cannot affect the matter in issue in the case before it[.]" [i]t necessarily follows that when . . . an event occurs which renders it impossible for [the] court, if it should decide the case in favor of plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment . . . ." [Citations.]" (*Consol. etc. Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863 .) The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief. (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 227; see also *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th 1550, 1557 [case moot where contract with county had expired and court could not award it to disappointed bidder].) If events have made such relief impracticable, the controversy has become "overripe" and is therefore moot. (*California Water & Telephone Co. v. County of Los Angeles*, (1967) 253 Cal.App.2d 16, 22-23, fn. 9; see *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 132.)

In short, " '[m]ootness has been described as " 'the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness).' " [Citations.]' " (*Medical Board v. Superior Court* (2001) 88 Cal.App.4th 1001, 1008, quoting *Arizonans for Official English v. Arizona* (1997) 520 U.S. 43, 68, fn. 22 [137 L. Ed. 2d 170, 117 S. Ct. 1055].) When events render a case moot, the court, whether trial or appellate, should generally dismiss it. (See *Lillbask ex rel. Mauclair v. Connecticut Dept. of Education* (2d Cir. 2005) 397 F.3d 77, 84; see also *Consumer Cause, Inc. v. Johnson & Johnson*, supra, 132 Cal.App.4th at p. 1183 [trial court should have refused to decide case upon plaintiff's discovery that allegations of complaint were wrong and defendant was not violating statute at issue].)

As addressed in the opposition papers, "under the plain language of the Executive Order, Section 3017 remains in force for the relevant elections-and there is no actual controversy whether the ballot collection and delivery activities it authorizes remain permissible. ¶ Any possible doubt was removed on May 1, 2020, when the state public health directive were updated", confirming that "permissible activity" for the relevant elections includes the "collection and dropoff of ballots."

Thus the Court need not address the construction of the Executive Orders in coming to the conclusion that there is no present controversy meriting prospective declaratory relief. But even if there were, it is

understood that the construction of an executive order presents an issue akin to an issue of statutory interpretation—one that presumably presents a question of law (City of Morgan Hill v. Bay Area Air Quality Management Dist. (2004) 118 Cal.App.4th 861, 877.) As with statutory interpretation, the Court must avoid an interpretation that would render terms surplusage, but seek to give every word some significance, leaving no part useless or devoid of meaning. And where the language of the executive order is clear and unambiguous, the court must follow its plain meaning. (Id. at p. 878.) The Court must read the words of the executive order to determine its purpose and seek to interpret it in a manner that promotes wise policy, not absurdity. The court must avoid an interpretation that would render terms surplusage, but seek to give every word some significance, leaving no part useless or devoid of meaning. (Bonnell v. Medical Bd. of California (2003) 31 Cal.4th 1255, 1260–1261.) As argued by defendants the meaning is clear, and now even more so. Even if there remained an inconsistency between the Orders [and it does not appear so] it is the task of the court to harmonize the language with the manifest purpose of the orders, consistent with justice. As with statutes, the intention of the Governor [seen in conjunction with section 3017] should not be presumed to include harsh or absurd results. In any event, the court need not go there today. As addressed in the Opposition, at a minimum, plaintiff has the clarification it seeks. Saliiently, defendants are bound by their position. Judicial estoppel applies to such statements, and "prevents a party from "asserting a position in a legal proceeding that is contrary to a position previously taken in the same or some earlier proceeding." ' ' ( Daar & Newman v. VRL International (2005) 129 Cal.App.4th 482, 490–491.) The dual purposes for applying this doctrine are " ' "to maintain the integrity of the judicial system and to protect parties from opponents' unfair strategies." ' ' ( Aguilar v. Lerner (2004) 32 Cal.4th 974, 986.)

Parenthetically, all this said, it bears noting that the State has no authority to impinge on any constitutional right, like the right of association, petition, speech and voting [nor may the State impose a burden on ballot access]. Indeed, "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). If ballot harvesters were cited or arrested, the Court cannot see the viability of such a prosecution over proper constitutional defenses. Yet, this concern is not for this day, under the facts presented and the relief requested.

The application is denied, without prejudice.

The Honorable David I. Brown  
Judge Sacramento Superior Court