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GAUTAM DUTTA (State Bar No. 199326)
BUSINESS, ENERGY, AND ELECTION LAW, PC
1017 El Camino Real # 504
Redwood City, CA 94063
Telephone: 415.236.2048
Email: Dutta@BEELawFirm.com
Fax: 213.405.2416

Attorneys for Plaintiffs
DONALD BLANKENSHIP and DENISE PURSCHE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONALD BLANKENSHIP and DENISE
PURSCHE

Plaintiffs,

vs.

GAVIN NEWSOM, in only his official
capacity as Governor of California; and
ALEX PADILLA, in only his official
capacity as Secretary of State of California;

Defendants.

CASE NO. 3:20-cv-04479-RS

**PLAINTIFFS' REPLY IN FURTHER
SUPPORT OF THEIR MOTION FOR
TEMPORARY RESTRAINING ORDER
AND / OR PRELIMINARY INJUNCTION**

JUDGE: Hon. Richard Seeborg

Hearing Date: TBD

MEMORANDUM OF POINTS AND AUTHORITIES

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2
3 *[Plaintiffs] appear to have ignored the phased reopening California has entered.*

4 -- Defendants' Opposition¹

5 **I. Introduction**

6 Yesterday, due to a troubling surge of COVID-19 cases and deaths, the Governor
7 dramatically ordered all counties to “*immediately close* indoor dining, bars, movie
8 theaters, zoos and museums.”² Yet at a time when California’s COVID-19 cases have
9 rocketed past 330,000 and COVID-19 deaths approach 7,100,³ Defendants have doubled
10 down on disregarding the rights – and health – of Mr. Blankenship, Ms. Pursche, and
11 other supporters of Mr. Blankenship.

12 Although the weight of the law entitles Plaintiffs to swift relief, Defendants (1)
13 ignore on-point precedent (including a recently published case that Defendants did not
14 even cite),⁴ and (2) desperately resort to inapplicable law and evidence. Because they are
15 threatened with looming, irreparable harm, Mr. Blankenship and Ms. Pursche urge the
16 Court to swiftly issue a TRO and an Order to Show Cause why a preliminary injunction
17 should not issue.

18 **II. The Weight of the Law Entitles Plaintiffs to Swift Relief**

19 As their Moving Papers have shown, the weight of the law entitles Mr.
20 Blankenship and Ms. Pursche to swift relief. Despite Defendants’ protestations, *every*
21 federal court to date (including one just days ago)⁵ has held that, unless the government

22 ¹ Defendants’ July 10, 2020 Opposition, at 10:28-11:1 (underlining added).

23 ² “Governor orders statewide closures of indoor activities to fight coronavirus surge”,
24 *Mercury News*, Wes Goldberg & Maggie Angst, available at
<https://www.mercurynews.com/2020/07/13/gov-newsom-announces-closure-of-indoor-reopening-across-california/> (italics added) (last visited July 13, 2020).

25 ³ *Id.*

26 ⁴ *Cooper v. Raffensperger*, __ F.Supp.3d __, No. 1:20-CV-01312-ELR, 2020 WL 3892454,
27 at *2, *9 (N.D. Ga. July 9, 2020) (reducing the signature requirement for independent Presidential
28 candidates, who are classified as “political body candidates” under Georgia law, by 30 percent,
from 7,500 signatures to 5,250 signatures).

⁵ See note 4 *supra*.

1 grants adequate ballot-access relief,⁶ signature requirements for *candidates*
 2 unconstitutionally burden candidates' rights during the COVID-19 pandemic.⁷

3 For example, *Pritzker* slashed the number of signatures required for minor party
 4 and independent candidates in Illinois by **90 percent** of the statutory requirement, where
 5 the short "window" for gathering signatures had begun "at nearly the same time" that the
 6 Governor "first imposed" shelter-in-place restrictions.⁸ In the same vein, *Cooper* reduced
 7 the signature requirement for independent Presidential candidates in Georgia from 7,500
 8 signatures to **5,250** signatures, where the petitioning period had "opened *nearly two (2)*
 9 *months prior* to the onset of any of the Governor's Orders stemming from COVID-19."⁹
 10 In the wake of the crippling combination of the COVID-19 pandemic and the Governor's
 11 *continuing* Stay-at-Home Order, there can be no doubt that Mr. Blankenship and Ms.
 12 Pursche are entitled to swift relief.

13 **III. Defendants' Recital of Inapplicable Ballot-Access Law**

14 Troublingly, Defendants misstate the applicable law, when they disingenuously
 15 insist that "Plaintiffs are clearly wrong" as to whether or not ballot-access requirements
 16 are constitutional, as applied to the present, extraordinary circumstances.¹⁰ Specifically,
 17 Defendants selectively proffering inapposite ballot-access cases where the courts had

18 ⁶ See *Murray v. Cuomo*, ___ F.Supp.3d ___, No. 1:20-cv-03571-MKV, 2020 WL 2521449, at
 19 * 12, *14 (S.D.N.Y. May 18, 2020) (denying relief where (1) government had slashed the number
 20 of required signatures by **70 percent** in light of the COVID-19 pandemic), and (2) candidate's
 nomination petition was invalid *not for lack of signatures*, but because the candidate had "hired a
 campaign employee to collect signatures who was *ineligible to do so*") (italics added).

21 ⁷ E.g., *Esshaki v. Whitmer* ("*Esshaki I*"), ___ F.Supp.3d ___, 2:20-CV-10831-TGB, 2020
 22 WL 1910154, at *4 (E.D. Mich. Apr. 20, 2020), *aff'd in relevant part* ("*Esshaki IP*"), No. 20-
 23 1336, 2020 WL 218553 (6th Cir. May 5, 2020)); *Libertarian Party of Ill. v. Pritzker*, Civ. No.
 1:20-cv-2112, 2020 WL 1951687 (N.D. Ill. Apr. 23, 2020); *Garbett v. Herbert*, No. 2:20-cv-
 00245-RJS, 2020 WL 2064101, at *12 (D. Utah Apr. 29, 2020); *Cooper*, 2020 WL 3892454.

24 See also *Fla. Democratic Party v. Scott*, 215 F.Supp.3d 1250, 1257-58 (N.D. Fla. 2016)
 25 (in the wake of Hurricane Matthew, extending deadline to register to vote for the 2016
 Presidential election); *Jones v. McGuffage*, 921 F.Supp.2d 888, 899 (N.D. Ill. 2013) (in special
 26 election, reducing statutory signature-gathering requirements during the peak of Chicago's bone-
 chilling winter).

27 ⁸ *Pritzker*, 2020 WL 1951687.

28 ⁹ *Cooper*, 2020 WL 3892454, at *2, *6, *9 (italics added).

¹⁰ See Defendants' Opposition, at 13:16-13:18.

1 ruled in the government’s favor.

2 At the outset, *Thompson v. DeWine*¹¹ and *Common Sense Party v. Padilla*¹² are
3 distinguishable for two main reasons. *First*, at the time both cases were decided, both Ohio and
4 California were beginning to lift their stay-at-home orders – and both courts *expressly*
5 *distinguished* the holdings from *Esshaki* and *Pritzker* based on those circumstances.¹³ That set of
6 circumstances no longer holds true: yesterday, the Governor pulled the plug on California’s re-
7 opening.¹⁴

8 Moreover, unlike in Ohio, California’s Stay-at-Home Order does not “*specifically exempt*
9 *First Amended protected activity*.”¹⁵ According to Defendants, one of the State’s health orders
10 exempted “*Elections Personnel*” from the Stay-at-Home Order, but made no reference to
11 *volunteers*.¹⁶ Seeking to compensate for this legal shortcoming, Defendants proffer “FAQs” from
12 the Secretary of State’s website that purportedly exempt all election-related activity.¹⁷ However,
13 as *Thompson* admonished, putting information in FAQs does not constitute a “specific
14 exemption” as a matter of law – because it is “*not the same*” as putting that information “in the
15 [stay-at-home] order *itself*”.¹⁸

16 *Second*, both cases did not involve ballot-access regulations for *candidates*. *Common*
17 *Sense* addressed a challenge brought by a *political party* that was seeking to qualify for ballot-
18 qualified status. In fact, unlike Mr. Blankenship (who was banned from gathering signatures until
19 *after* the Stay-at-Home Order), the political party in *Common Sense* had had “many months”
20 before the Stay-at-Home Order “to attempt to collect the requisite *new voter registrations*” before
21 the July 3, 2020 deadline to qualify for the Nov. 3, 2020 ballot.¹⁹

22 ¹¹ *Thompson v. DeWine*, 959 F.3d 804, 809-10 (6th Cir. 2020).

23 ¹² *Common Sense Party v. Padilla*, No. 2:20-cv-01091-MCE-EFB, 2020 WL 3491041, at *3
(E.D. Cal. June 26, 2020).

24 ¹³ *Thompson*, 959 F.3d at 809-10 (“What’s more, Ohio is *beginning to lift* their [sic] stay-at-
25 home restrictions” (italics added); *Common Sense*, 2020 WL 3491041, at *3, *8.

26 ¹⁴ *See* note 4 *supra*.

27 ¹⁵ *See Thompson*, 959 F.3d at 809 (italics added).

28 ¹⁶ Opposition, at 5:2-5:5.

¹⁷ Quirarte Decl. ¶¶5-9.

¹⁸ *See id.* at 809-10 (italics added).

¹⁹ *Common Sense*, 2020 WL 3491041, at *1, *8 (italics added).

1 Thompson addressed an appeal brought by proponents of *initiatives*. A violation
 2 of the right to place an initiative on the ballot does not involve the same analysis as that
 3 regarding a violation of one’s voting rights (e.g., Denise Pursche’s right to vote for Mr.
 4 Blankenship). As election-law scholar Richard L. Hasen recently noted in the *University*
 5 *of Chicago Law Review Online*, “for the most part” during the COVID-19 pandemic,
 6 “courts have been *unsympathetic* to the claims of *ballot measure proponents* even while
 7 other courts have granted relief to minor political parties and candidates who also need to
 8 remain on the ballot.”²⁰

9 Moreover, a California proponent of a statewide ballot initiative has *75 more days*
 10 to gather signatures than an independent Presidential candidate like Mr. Blankenship.²¹ In
 11 any event, it is irrelevant that certain statewide initiatives have already qualified for the
 12 Nov. 3, 2020 ballot, for the 180-day window for each of those initiatives began *before* the
 13 Governor’s Stay-at-Home Order was issued.²² Accordingly, Defendants’ invocation of
 14 inapplicable law must be disregarded.

15 **IV. Conclusion**

16 Time is of the essence. Unless this Court swiftly intercedes, the voices of Presidential
 17 candidate Donald Blankenship, Denise Pursche, and many other Californians will be silenced in
 18 the upcoming general election. Accordingly, Mr. Blankenship and Ms. Pursche implore the Court
 19 to (1) issue a TRO prohibiting enforcement of California’s filing deadline and signature
 20 requirements for Presidential candidates for California’s Nov. 3, 2020 general election, as well as

21 ²⁰ See Richard L. Hasen, “Direct Democracy Denied”, U.Chi. L.R. Online (June 26, 2020)
 22 (italics added), available at [https://lawreviewblog.uchicago.edu/2020/06/26/pandemic-initiative-](https://lawreviewblog.uchicago.edu/2020/06/26/pandemic-initiative-hasen/)
 23 [hasen/](https://lawreviewblog.uchicago.edu/2020/06/26/pandemic-initiative-hasen/) (last visited July 13, 2020). See also *Bambenek v. White*, __ F.Supp.3d __, No. 3:20-cv-
 24 3107, 2020 WL 2123951, at *2 (C.D. Ill. May 1, 2020) (distinguishing constitutional challenge
 based on barriers to “placing *candidates* on the ballot” from that based on “placing a *proposed*
constitutional amendment and various referenda on the ballot”) (italics added).

25 ²¹ Specifically, signatures for a statewide ballot initiative must be gathered within **180 days**
 26 (Cal. Elections Code §9014), while signatures for an independent Presidential candidate must be
 gathered within **105 days** (Cal. Elections Code §8404 & §8400) (signatures to qualify as an
 27 independent Presidential candidate must be gathered between the 193rd day and 88th day before
 the Nov. 3, 2020 Presidential election).

28 ²² See Plaintiffs’ accompanying Objections to the Declaration of Rachele Delucchi ¶2
 (objecting to Paragraphs 14-18 and Exhibits 5-8).

1 any substitute requirements that Defendants may subsequently adopt or promote that violate
2 Plaintiffs' constitutional rights; (2) issue a TRO prohibiting Defendants Governor Gavin Newsom
3 and Secretary of State Alex Padilla from printing the Nov. 3, 2020 Presidential ballot unless they
4 agree to extend the statutory filing deadline and decrease the signature requirement to an
5 achievable number in light of the COVID-19 public-health emergency; and (3) issue an Order to
6 Show Cause why a preliminary injunction should not issue.

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9 DATED: July 14, 2020

10 BUSINESS, ENERGY, AND ELECTION
11 LAW, PC

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13
14 By: /s/ Gautam Dutta

15 GAUTAM DUTTA, ESQ.

16 Attorneys for Plaintiffs

17 DONALD BLANKENSHIP and

18 DENISE PURSCHE
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