

No. 220155, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE
OF GEORGIA, STATE OF MICHIGAN, AND STATE
OF WISCONSIN,

Defendants.

On Motion for Leave to File Bill of Complaint

**BRIEF OF STATE OF NEW CALIFORNIA
AND NEW NEVADA STATE AS *AMICI
CURIAE* IN SUPPORT OF PLAINTIFF'S
MOTION FOR LEAVE TO FILE BILL OF
COMPLAINT**

ROBERT E. THOMAS, III
Attorney for New California State and for New Nevada
State
150 South Hwy 160, #310
Pahrump, Nevada 89048
(530) 828-1234 California Bar # 60098
*Counsel for Amici Curiae New California State and New
Nevada State*

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Other References

- U.S. Department of Justice Publication, *Federal Prosecution of Election Offenses* (8th ed., Dec. 2017) at p. 28 (“DOJ Manual”) 7
- Las Vegas Sun Times* Man Found With Stolen Ballots
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STATEMENT OF INTEREST OF *AMICI*

The arbitrary changing of election laws is not confined to the Defendant States. We agree with *Amici* State of Missouri and its co-*Amici* States concerning the unique importance of Presidential elections and the three importance of their three strong interests set forth in their brief on pages 1 and 2.¹ We adopt their reasoning completely as though fully set forth herein.

Because of the Emergency Nature of this Action, this *Amici* has not been able to secure the consent of all parties.

New California State and New Nevada State are directly impacted by the arbitrary and capricious changes in election laws and procedures occur with unfortunate regularity in the current States of California and Nevada.

Part of the reason for the formation of New California State and New Nevada State is to stop the lawless actions of Governors Newsome (California) and Sisolak (Nevada). An opinion by this Court affirming a national, uniform rule of law re-establishing the supremacy of The Electors Clause of Article II, § 1 of the United States Constitution will resolve some of the complaints causing the establishment of these new States.

Additionally, there is a violation of the Equal Protection Clause of the Fourteenth Amendment (§ 1) for those who vote after receiving an unsolicited mail-

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This brief is filed under Supreme court Rule 37.4, and all counsel of record and the Attorney General of California have received timely notice of the intent to file this *amicus* brief under Rule 37.2.

in ballot compared to those who register and ask for an absentee ballot in the existing States of California and Nevada.

Further, within Nevada, the Registrar of Voters for Clark County (encompassing the City Las Vegas) changed how his Department was going to process votes (accepting ballot envelopes without postmarks after the election) without Legislative authorization or approval. This action was in stark contrast to how the other 16 Nevada Counties handled their ballots, which was in accordance with the law established by the Legislature.

SUMMARY OF ARGUMENT

We agree with the State of Texas and its *Amici* that the Bill of Complaint raises constitutional questions of great public importance that warrant this Court's review. For those reasons, we adopt the arguments of the Bill of Complaint and *Amici* as though fully set forth herein.

New California State and New Nevada State are impacted because both in-person voters and absentee ballot voters are handled differently county-to-county within the States of California and Nevada, and differently between how voters are treated in California compared to how voters in Nevada are treated. This disparate treatment is a violation of the Equal Protection Clause of the Fourteenth Amendment.

Both California and Nevada also allow same-day voter registration and voting, and those who register and vote on Election Day are treated differently from those who have registered 30 or more days before Election Day. This disparate treatment is

also a violation of the Equal Protection Clause.

Moreover, before Election Day, the lawsuit *Kevin Gallagher and Kevin Kiley v Gavin Newsome*, CVCS20-0912 [Sutter Superior Court] decided California Governor Gavin Newsome's arbitrary change in how Californians vote was unconstitutional.

The Sutter County Superior Court ruled, "The Governor may not exercise legislative powers unless permitted by the Constitution. *Harbor v Deukmejian* (1987) 43 Cal. 3d 1078, 1084." While the California Constitution *may* authorize the California Governor to exercise certain legislative powers, due to the Supremacy Clause of the US Constitution, Article VI, Paragraph 2, the California Constitution can not delegate powers the United States Constitution reserves to the State's Legislature.

Governor Newsome has refused and continues to refuse to comply with the Order of the Sutter County Superior Court as shown by the appeal and show cause now pending in California's Third District Court of Appeal, *Gavin Newsome v Superior Court of the State of California for the County of Sutter, James Gallagher and Kevin Kiley, Real Parties in Interest*, Case # C093006.

If this Court rules as requested by the State of Texas and its supporting *Amici*, this Court's Order will efficiently resolve the case pending before California's Third District Court of Appeal.

ARGUMENT

- I. **The Separation of Powers Provision of Article II, § 1, cl. 4, is a Structural Check against Usurpation by one branch of Government, a check that Safeguards**

Liberty.

As stated in other briefs, the Electors Clause provides that each State “shall appoint” its Presidential electors “in such Manner as the *Legislature thereof* may direct.” U.S. Constitution, Article II, § 1, cl. 4 [Emphasis Added].

New California State and New Nevada State join in the arguments of the State of Texas and the *Amici* and incorporate them as though fully set forth herein.

New California State and New Nevada State are impacted because both in-person voters and absentee ballot voters are handled differently county-to-county within the States of California and Nevada, and differently between how voters are treated in California compared to how voters in Nevada are treated. This disparate treatment is a violation of the Equal Protection Clause of the Fourteenth Amendment [14th Amendment, § 1].

Both California and Nevada also allow same-day voter registration and voting, and those who register and vote on Election Day are treated differently from those who have registered 30 or more days before Election Day. This disparate treatment is also a violation of the Equal Protection Clause.

Moreover, before Election Day, the Sutter Superior Court lawsuit *Kevin Gallagher and Kevin Kiley v Gavin Newsome*, CVCS20-0912 decided California Governor Gavin Newsome’s arbitrary change in how Californians vote was unconstitutional, decided the emergency order Governor Newsome used to shut down the State of California was unconstitutional because it usurped the legislative

function, and ordered the governor to stop acting unconstitutionally.

The Sutter County Superior Court ruled, “The Governor may not exercise legislative powers unless permitted by the Constitution. *Harbor v Deukmejian* (1987) 43 Cal. 3d 1078, 1084.” The California Constitution does not authorize the governor to unilaterally change voting laws.

While this ruling may appear to impact California voters as a “state issue,” and therefore not appropriate for this Honorable Court to consider, the subject matter - changes in voting laws and procedures by a branch of the government other than the Legislature, that topic is directly addressed by the U.S. Constitution in Article II, § 1, cl. 4.

While the California Constitution *may* authorize the California Governor to exercise certain legislative powers, due to the Supremacy Clause of the US Constitution, Article VI, Paragraph 2, the California Constitution can *not* delegate powers the United States Constitution reserves to the State’s Legislature.

What makes this thus-far-successful usurpation of Legislative prerogative so egregious to California voters is that Governor Newsome has refused and continues to refuse to comply with the Order of the Sutter County Superior Court as shown by the appeal and show cause now pending in California’s Third District Court of Appeal, *Gavin Newsome v Superior Court of the State of California for the County of Sutter, James Gallagher and Kevin Kiley, Real Parties in Interest*, Case # C093006.

If this Court rules as requested by the State of

Texas and its supporting *Amici* that alteration of voting procedure is an exclusive Legislative prerogative, this Court's Order will efficiently resolve the case pending before California's Third District Court of Appeal because of the Supremacy Clause of the U.S. Constitution, Article VI, clause 2.

New California State and New Nevada State are requesting this Court reaffirm several important constitutional points: (1) the important separation of powers contained in the U.S. Constitution, Article II, § 1, clause 4, and (2) this Court's important Constitutional precedents contained in *Bush v Palm Beach City Canvassing Board*, 531 U.S. 70, 76 (2000) and *Bush v Gore*, 531 U.S. 98, 104 (2000).

New California State and New Nevada State are suffering under many governmental usurpations, this usurpation by the Executive Branch being one of many. However, as noted in the *Amici* brief on pages 5 and 6, "Without a secure structure of separated powers, our Bill of Rights would be worthless . . ." *Morrison v Olson* 487 U.S. 654, 697 (1988)(Scalia, J., dissenting).

II. The Risk of Fraud is Increased when the Usurping Executive Branch Strips Away Safeguards from Voting By Mail.

A. The Handling of the Unsolicited Mail-In Ballots themselves Open the Door Wide to Fraud.

The Executive Branch at the State level and at the County level have stripped away Legislatively-imposed safeguards from voting by mail.

The Executive Branch in both California and Nevada authorized the sending of unrequested ballots

to all voters resulting in stacks of ballots on the street without a chain of custody. [*Las Vegas Sun*: Man Found With Stolen Ballots <https://lasvegassun.com/news/2020/nov/20/las-vegas-man-found-meth-stolen-mail-ballots/>; *Washington Post*: Mailing of ballots to all voters in Las Vegas area puts sharp focus on election safeguards, https://www.washingtonpost.com/politics/mailing-of-ballots-to-all-voters-in-las-vegas-area-puts-sharp-focus-on-election-safeguards/2020/05/28/912c099a-9f63-11ea-b5c9-570a91917d8d_story.html].

In the latter article, the writer noted, “Roughly 200,000 more inactive voters — those who did not reply to a postcard sent to verify their address within 30 days, after it was determined they moved — also received ballots in the mail after Democrats sued to make voting in the primary more accessible.” Here, again, is a usurpation of Legislative prerogatives by the third branch of government, the Court system and a violation of Federal Law designed to clean up the voter rolls so that all voters have confidence in the integrity of the voter rolls. [*Help America Vote Act*, Public Law 107-252, Codified as 42 U.S.C. § 15301 *et seq.*]

Vote-by-Mail safeguards, whether imposed by Congress or by a State’s Legislature can *not* be swept away by some Executive’s order because “Absentee ballots re particularly susceptible to fraudulent abuse . . .” [U.S. Department of Justice, *Federal Prosecution of Election Offenses* (8th ed., Dec. 2017) at. p. 28 (“DOJ Manual”).²

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Available at <https://www.justice.gov/criminal/file/1029066/download>.

B. The Registrar's Unauthorized Decision Concerning Which Ballots to Accept Is Unconstitutional

New Nevada State notes that the Clark County (Nevada) Registrar of Voters, without Legislative authorization or guidance decided to accept all mail-in ballots [i.e., both Absentee Ballots and Unsolicited Ballots] with or without postmarks, until Friday, November 6.

The Bill of Complaint alleges usurpation of Legislative prerogative by the Pennsylvania Supreme Court at pages 48 and 55. In like manner, the Clark County Registrar of Voters usurped the exclusive Legislative prerogative in a manner that stripped away all vote-by-mail safeguards by unilaterally deciding which ballot envelopes to accept and for how long. As previously stated, "These changes created needless vulnerability to actual fraud and undermined public confidence in the election." [*Amici* brief, p. 21]

CONCLUSION

The Allegations in the Bill of Complaint raise important Constitutional issues under the Electors Clause of Article II, § 1. They also raise serious concerns relating to election integrity and public confidence in elections.

These issues are questions of great public importance that warrant this Court's attention.

This Court should not only grant the Plaintiff's Motion for Leave to File a Bill of Complaint, but also grant Plaintiff's requested relief.

PRAYER FOR RELIEF

A. Grant New California State and New Nevada

State status as *Amici*;

- B. Grant the Petition of the State of Texas;
- C. Award costs to this *Amici* in Intervention; and
- D. Grant such other Relief as this Court deems just and proper.

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Respectfully submitted,
Robert E. Thomas, III
Attorney for Amici
New California State and
New Nevada State
150 South Hwy 160, #310
Pahrump, Nevada 89048
(530) 828-1234
California Bar # 60098