

Getting a New Party on California’s Ballot During a Pandemic

Kishore v. Newsom (Dolly M. Gee, C.D. Cal. 2:20-cv-5859)

A complaint challenged the signature requirements to get a new party on the ballot during an infectious pandemic. Because gathering signatures was not the only way to get on the ballot, the district court denied the party relief. Voters could register as members of the new party, and registrations could be recruited by email or social media.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; Covid-19; laches; interlocutory appeal.

A minor party’s candidates for president and Vice President filed a federal complaint in the Central District of California on June 30, 2020, seeking relaxation of California’s ballot-petition signature requirements to become independent candidates in the November 3 general election in light of social distancing made necessary by the global Covid-19 infectious pandemic.¹ With their complaint, the candidates filed an application for a temporary restraining order and a preliminary injunction.²

The court assigned the case to Judge Dolly M. Gee,³ who denied the plaintiffs a temporary restraining order on the day that they requested one for want of proper service on the defendants.⁴ On July 6, Judge Gee denied a properly served July 1 application for a temporary restraining order⁵ so that she could afford “Defendants the chance to fully brief the issues that Plaintiffs raise.”⁶ Judge Gee set the case for a hearing by videoconference on July 21,⁷ later moved to July 20.⁸

The hearing was open to the public, including news media.⁹ During the pandemic, if the courthouse was open to the public, videoconference proceedings could be observed in the court’s ceremonial courtroom.¹⁰ When the courthouse was closed to the public because of a pandemic surge, members of the public, including the news media, could obtain from the clerk’s office contact information for the videoconference.¹¹

After the hearing, Judge Gee issued a written opinion denying the plain-

1. Complaint, *Kishore v. Newsom*, No. 2:20-cv-5859 (C.D. Cal. June 30, 2020), D.E. 1.

2. Application, *id.* (June 30, 2020), D.E. 4.

3. Notice, *id.* (June 30, 2020), D.E. 5.

Tim Reagan interviewed Judge Gee for this report by telephone on October 8, 2020.

4. Minutes, *Kishore*, No. 2:20-cv-5859 (C.D. Cal. June 30, 2020), D.E. 9.

5. Renewed Application, *id.* (July 1, 2020), D.E. 11.

6. Minutes, *id.* (July 6, 2020), D.E. 13.

7. *Id.*

8. Order, *id.* (July 8, 2020), D.E. 15; *see* Minutes, *id.* (July 20, 2020), D.E. 21.

9. Interview with Hon. Dolly M. Gee, Oct. 8, 2020.

10. *Id.*

11. *Id.*

tiffs immediate relief.¹² Gathering signatures was not the only way to get on the ballot; the candidates could have qualified by having a sufficient number of voters register as members of their party.¹³ “There are many ways to drum up voter registration, several of which do not require in-person contact, appearing in public, leaving the home, or the use of the mails, which Plaintiffs decry as prohibitively expensive.”¹⁴

Judge Gee quoted a June 26 opinion by Eastern District of California Judge Morrison C. England, Jr., who presided over a case seeking relief from the voter-registration requirements for a different new party to appear on the November general-election ballot.¹⁵ Denying immediate relief, Judge England observed that email and social media provided ways for parties to recruit new registrants.¹⁶

Judge England's case was not as fast paced as Judge Gee's. The political party filed its complaint on May 29.¹⁷ It did not seek a temporary restraining order or a preliminary injunction until nearly a week later.¹⁸ Judge England ordered the matter briefed by June 19, to be followed by a possible videoconference hearing on June 25.¹⁹ Judge England determined on June 22 that a hearing was not necessary.²⁰

In Judge England's case, the court of appeals denied the plaintiffs mandamus relief on July 2.²¹ On January 21, 2021, the court of appeals dismissed an interlocutory appeal as moot.²² The plaintiffs dismissed their action voluntarily on March 19.²³

The court of appeals denied a motion to expedite an appeal in Judge Gee's case on July 27, 2020,²⁴ and it denied reconsideration of that decision on August 5.²⁵ The plaintiffs dismissed their appeal and their complaint voluntarily on August 7.²⁶

12. Opinion, *Kishore*, No. 2:20-cv-5859 (C.D. Cal. July 20, 2020), D.E. 22, 2020 WL 5983922.

13. *Id.* at 4–5.

14. *Id.* at 5.

15. *Id.*

16. *Common Sense Party v. Padilla*, 469 F. Supp. 3d 951, 954 (E.D. Cal. 2020).

17. Complaint, *Common Sense Party v. Padilla*, No. 2:20-cv-1091 (E.D. Cal. May 29, 2020), D.E. 1; *Common Sense Party*, 469 F. Supp. 3d at 953.

18. Motion, *Common Sense Party*, No. 2:20-cv-1091 (E.D. Cal. June 4, 2020), D.E. 5; *Common Sense Party*, 469 F. Supp. 3d at 953.

19. Docket Sheet, *Common Sense Party*, No. 2:20-cv-1091 (E.D. Cal. May 29, 2020) (D.E. 6).

20. *Id.* (D.E. 18).

21. Order, *Common Sense Party v. U.S. Dis. Ct. E.D. Cal. (Padilla)*, No. 20-71888 (9th Cir. July 2, 2020).

22. *Common Sense Party v. Padilla*, 834 F. App'x 335 (9th Cir. 2021).

23. Notice, *Common Sense Party*, No. 2:20-cv-1091 (E.D. Cal. Mar. 19, 2021), D.E. 33.

24. Order, *Kishore v. Newsom*, No. 20-55748 (9th Cir. July 27, 2020), D.E. 4.

25. Order, *id.* (Aug. 5, 2020), D.E. 12.

26. Order, *id.* (Mar. 1, 2021), D.E. 14; Voluntary Dismissal, *id.* (Aug. 7, 2020), D.E. 13; Voluntary Dismissal, *Kishore v. Newsom*, No. 2:20-cv-5859 (C.D. Cal. June 30, 2020), D.E. 30.