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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA

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ELECTION INTEGRITY PROJECT
CALIFORNIA, INC., JAMES P.

Case No. 2:21-cv-32

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BRADLEY, AJA SMITH, ERIC
EARLY, ALISON HAYDEN,

13

JEFFREY GORMAN, MARK
REED, BUZZ PATTERSON, MIKE

**PLAINTIFFS' APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND FOR ORDER TO SHOW CAUSE
WHY PRELIMINARY INJUNCTION
SHOULD NOT ISSUE;
MEMORANDUM OF POINTS AND
AUTHORITIES**

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CARGILE, KEVIN COOKINGHAM,

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GREG RATHS,

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Plaintiffs,

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v.

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ALEX PADILLA, CALIFORNIA

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SECRETARY OF STATE, XAVIER
BECERRA, CALIFORNIA

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ATTORNEY GENERAL, GAVIN
NEWSOM, GOVERNOR OF THE

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STATE OF CALIFORNIA,

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RIVERSIDE COUNTY
REGISTRAR OF VOTERS

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REBECCA SPENCER, LOS

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ANGELES COUNTY REGISTRAR
OF VOTERS DEAN LOGAN,

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VENTURA COUNTY REGISTRAR

27

OF VOTERS MARK A. LUNN,

28

APPLICATION FOR TRO AND PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND AUTHORITIES

1   SAN BERNARDINO COUNTY
2   REGISTRAR OF VOTERS BOB
    PAGE, MONTEREY COUNTY
3   REGISTRAR OF VOTERS
    CLAUDIO VALENZUELA,
4   SACRAMENTO COUNTY
5   REGISTRAR OF VOTERS
    COURTNEY BAILEY-KANELO,
6   ALAMEDA COUNTY REGISTRAR
7   OF VOTERS TIM DUPUIS,
    CONTRA COSTA COUNTY
8   REGISTRAR OF VOTERS
9   DEBORAH R. COOPER, SANTA
    CLARA COUNTY REGISTRAR OF
10 VOTERS SHANNON BUSHEY,
11 SAN BENITO COUNTY
    REGISTRAR OF VOTERS JOE
12 PAUL GONZALES, SANTA CRUZ
13 COUNTY REGISTRAR OF
    VOTERS GAIL L. PELLERIN,
14 FRESNO COUNTY REGISTRAR
    OF VOTERS BRANDI ORTH,
15 ORANGE COUNTY REGISTRAR
16 OF VOTERS NEAL KELLEY,
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        Defendants.
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APPLICATION FOR TRO AND PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND AUTHORITIES

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2 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY OF RECORD:**

3   PLEASE TAKE NOTICE that Plaintiffs Election Integrity Project California,

4 Inc., James P. Bradley, Aja Smith, Eric Early, Alison Hayden, Jeffrey Gorman, Mark

5 Reed, Buzz Paterson, Mike Cargile, Kevin Cookingham, and Greg Raths ("Plaintiffs"),

6 by and through counsel, will and hereby do apply to this Court pursuant to Fed. R. Civ.

7 P. 65(b) and Local Rule 65-1 for a temporary restraining order against Defendants

8 Alex Padilla, in his official capacity as California Secretary of State, Xavier Becerra,

9 in his official capacity as California Attorney General, Gavin Newsome, in his official

10 capacity as Governor of the State of California, Rebecca Spencer, in her official

11 capacity as Riverside County Registrar of Voters, Dean Logan, in his official capacity

12 as Los Angeles County Registrar of Voters, Mark A. Lunn, in his official capacity as

13 Ventura County Registrar of Voters, Bob Page, in his official capacity as San

14 Bernardino County Registrar of Voters, Claudio Valenzuela, in his official capacity as

15 Monterey County Registrar of Voters, Courtney Bailey-Kanelo, in her official capacity

16 as Sacramento County Registrar of Voters, Tim Dupuis, in his official capacity as

17 Alameda County Registrar of Voters, Deborah R. Cooper, in her official capacity as

18 Contra Costa County Registrar of Voters, Shannon Bushley, in her capacity as Santa

19 Clara County Registrar of Voters, Joe Paul Gonzalez, in his official capacity as San

20 Benito County Registrar of Voters, Gail L. Perrin, in her official capacity as Santa

21 Cruz County Registrar of Voters, Brandi Orth, in her official capacity as Fresno

22 County Registrar of Voters, and Neal Kelley, in his official capacity as Orange County

23 Registrar of Voters ("Defendant").

24   Plaintiffs request that Defendants, as well as their agents, employees, and

25 successors in office, be ordered to preserve and not destroy, modify or alter the

26 following:

27   a) All paper Vote-by-mail ("VBM") ballots, VBM voter identification
                        envelopes, Remote Access Vote-by-mail ("RAVBM") ballots,
28   RAVBM envelopes, records of RAVBM requests, remade or

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duplicated ballots prepared under California Elections Code section 15210, provisional voter ballots, spoiled ballots, cancelled ballots, unused vote-by-mail ballots surrendered by the voter pursuant to California Elections Code section 3015, voted polling place ballots, and Paper record copies as defined by Elections Code 19271, if any, of voted polling place ballots; ballot receipts, and other documents or papers treated as ballots or ballot envelopes for the purposes of the November 2020 election in California.

b) Documents and information showing the exact hardware system configuration of the Election System Main Computer (including any Election Management Systems) ("ESMC") used in the November 2020 election in California, include all peripheral equipment, connectivity, input and output ports.

c) Documents and information showing the exact software system configuration of the ESMC systems used in the November 2020 election in California, include diagrams, supporting software tools, and utilities.

d) All memory sticks or similar technology delivered to or used by Defendants that contain software and/or data used in the November 2020 election in California.

e) All updates to the ESMC systems and tabulators used in the November 2020 election in California, include all date and time stamps when software and software updates were installed.

f) All forensic images of each internal hard drive in the ESMC and in the data repository subsystem (including any Network Attached Server) and tabulator memory cards used in the November 2020 election in California.

g) All ESMC operating system logs for the computer terminals used in the November 2020 election in California.

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APPLICATION FOR TRO AND PRELIMINARY INJUNCTION;
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h) All ESMC voting system topology specifying all interconnects and all switches used in the November 2020 election in California.

i) Documents and information showing all ESMC configuration changes, including date and time stamp and approval authority chains/chains of custody for all ESMCs used in the November 2020 election in California.

j) Electronic and hard copies of all adjudication log histories that identify changes made and by whom for all ESMCs used in the November 2020 election in California.

k) Electronic and hard copies of all Ranked Choice Voting (RCV) algorithm logs used in the November 2020 election in California, including date and time stamps.

l) Electronic and hard copies of all software configuration logs Divert Options used in the November 2020 election in California, including date and time stamps.

m) Electronic and hard copies of all Election Event Designer Logs used in the November 2020 election in California, including all updates with date and time stamps.

n) Electronic and hard copies of all Tabulator Machine Reports for each tabulator used in the November 2020 election in California, including specified tabulator/reports for voting totals and historical reporting of this election.

o) All signature verification traverse chains for validating signatures, including databases and access trees used in the November 2020 election in California.

p) All VBM envelope scanning signature acceptance threshold settings, including software used in the November 2020 election in California, including source code.

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q) Electronic and hard copies of all test ballots used for certification and re-certification, and all documentation regarding these efforts for the November 2020 election in California.

r) Electronic and hard copies of all testing results for the voting systems which were performed by a federally accredited laboratory for the November 2020 election in California.

s) Electronic and hard copies of all QR Codes "App" that renders the data encoded messages used in the November 2020 election in California.

t) The error rates history and all error files and performance history for tabulators used in the November 2020 election in California.

u) Electronic and hard copies of each Tabulator's log error rates and error rates summary for the duration of the November 2020 election in California.

v) The approved Security Plan for the Election Division Operations for the November 2020 election in California including all entry/exit logs, RF intrusion detections and security safeguards checks.

w) Electronic and hard copies of all Superuser (RTR Admin) administrator account histories for the November 2020 election in California.

x) All native ballot scanned images collected or used in the November 2020 election in California.

Plaintiffs further request that the Court order that Defendants make the information and documents described in subparagraphs a-x above accessible to Plaintiffs' experts to audit, and that Defendants cooperate with Plaintiffs in the conduct of any such audit, including by providing any and all security access tokens, fobs, passwords, and any other information or device needed to gain authorized access to the
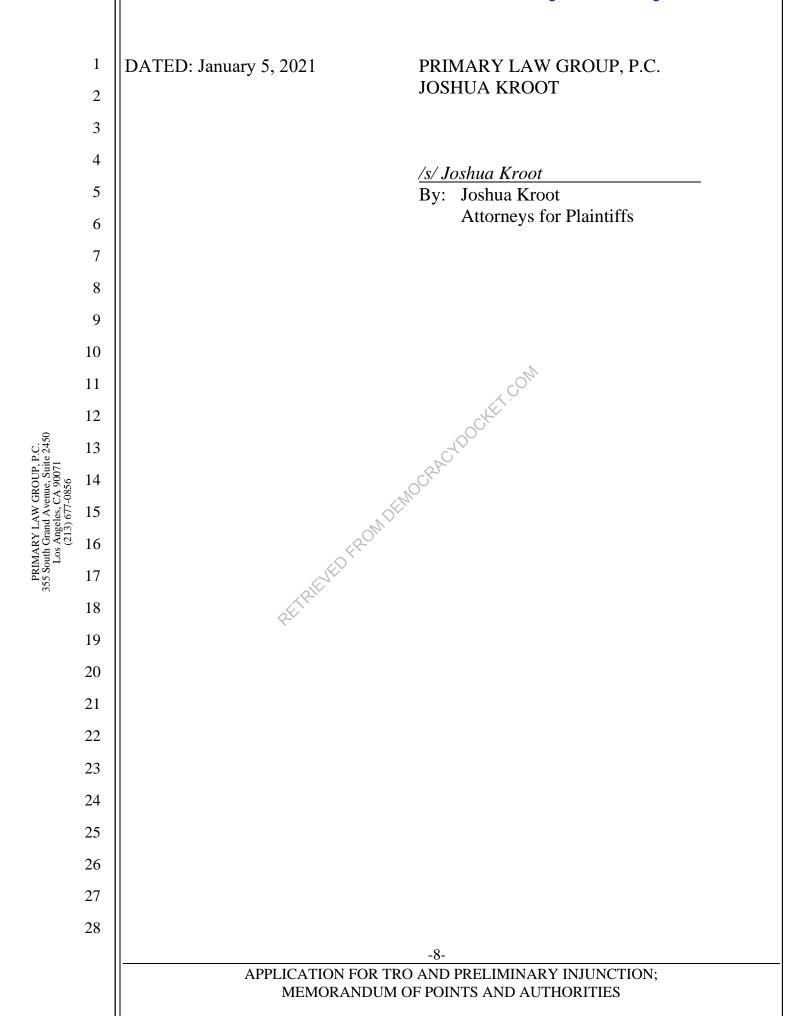
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1   voting equipment, servers, and other devices, in order to provide access to create

2   forensic images, access audit logs, or memory cards, or any other piece of electronic

3   election equipment necessary for such an audit.

4   Plaintiffs further request that Defendants show cause, at a time and place to be

5   directed by the Court, why a preliminary injunction should not issue requiring

6   Defendants to act as described above, and that the temporary restraining order remain

7   effective until such time as the Court has ruled on whether a preliminary injunction

8   should issue.

9   This Application is made on the grounds that Plaintiffs are likely to succeed on

10   the merits of this case, they will suffer irreparable harm without injunctive relief, the

11   balance of equities tips sharply in their favor, and the relief sought is in the public

12   interest.

13   Good cause exists to issue the requested Order to preserve Plaintiffs' rights

14   under the Constitution of the United States and the Constitution of the State of

15   California, and to avoid irreparable harm to those rights. This Application is supported

16   by the accompanying Memorandum of Points and Authorities, by Plaintiffs'

17   Complaint, by the declarations of Ruth Weiss, Ellen Swensen, Mary Gallegos and

18   Joshua Kroot, and all exhibits attached thereto, and by such further argument and

19   evidence as may be adduced at any hearing on this matter or of which the Court may

20   take judicial notice.

21   The Complaint in this action was filed on January 4, 2021; this Application

22   followed. All papers relating to this Application will be delivered by email to the

23   Defendants' counsel by 4:00 p.m. on January 5, 2021. As reflected in the

24   accompanying declaration of Joshua Kroot, Plaintiffs have notified or attempted to

25   notify Defendants of Plaintiffs' intention to file this Application and to seek a

26   temporary restraining order of the nature described above, and order to show cause

27   why a preliminary injunction should not issue.

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APPLICATION FOR TRO AND PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND AUTHORITIES

1   DATED: January 5, 2021   PRIMARY LAW GROUP, P.C.

2   JOSHUA KROOT

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5   */s/ Joshua Kroot*

                                       By: Joshua Kroot

6   Attorneys for Plaintiffs

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APPLICATION FOR TRO AND PRELIMINARY INJUNCTION;
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APPLICATION FOR TRO AND PRELIMINARY INJUNCTION;
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INTRODUCTION

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The November 2020 elections were marred by mass irregularities and evidence

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of apparent voter fraud, coupled with the violations of California citizens' rights to

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observe the processing of ballots and tabulation of votes. Now, much of the evidence

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of these irregularities and apparent fraud stands to be lost if emergency relief is not

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granted ordering Defendants to preserve the evidence and allow access for Plaintiffs

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experts to perform an audit it.

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The problems with the election are the result of a decades-long systemic attack

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on election integrity in California through unconstitutional laws and regulations,

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including most recently Defendant Padilla's emergency regulations, purportedly in

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response to COVID-19. The laws and regulations provided for every active registered

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voter on California's voter rolls, including 440,000 questionable ballots that should

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have been moved to inactive status while being reviewed, to be mailed a vote-by-mail

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("VBM") ballot, eviscerated VBM protections including signature verification and

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sworn statements under penalty of perjury, allowed widespread ballot harvesting (one

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person collecting and turning in multiple ballots from other voters, often for pay) with

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no effective chain-of custody, allowed ballot stuffing (multiple ballots placed in a

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single VBM envelope), and allowed virtually any piece of paper to be treated as a

ballot in clear violation of California law.

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Most counties in California also processed and tabulated their votes using

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Dominion and Smartmatic voting machines, which contain extensive vulnerabilities

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including "proprietary" software obscuring the method used to process ballots and

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tabulate votes, the ability for election workers to change votes and run the same ballots

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through the systems multiple times, and the ability to manipulate the systems both

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offsite through an internet connection and onsite through flash drives and other storage

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media.

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The cumulative effect was to disenfranchise citizens of California, breaching

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their constitutional rights to equal protection and due process under the 14th

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1   Amendment, violating the Elections Clause by overriding the California Legislature

2   through emergency regulations, and violating the Guarantee Clause by failing to

3   provide California citizens a republican form of government and allowing foreign

4   interference in the November 2020 election.

5   Plaintiffs' Complaint seeks injunctive and declaratory relief preserving VBM

6   ballots and envelopes, and Dominion and Smartmatic equipment, software and data,

7   and allowing Plaintiffs' experts to audit the results to determine the extent of the fraud

8   and irregularities that occurred.

9   Plaintiff Election Integrity Project California, Inc. ("EIPCa") has compiled its

10 extensive evidence through great effort, in order to bring this case as quickly as

11 possible. However, much of the evidence remains hidden due to Defendants'

12 obstruction of citizen election process observers. Every day that goes by increases the

13 opportunity for spoliation of the evidence necessary to perform an audit.

14   Defendants will not suffer harm by preserving and allowing access to the

15 evidence in question. Plaintiffs (and all citizens of California), by contrast, will suffer

16 irreparable harm if emergency relief is not granted and evidence is permanently lost.

17   **STATEMENT OF FACTS**

18   The facts establishing the Plaintiffs' right to the relief sought herein are set forth

19 in detail in the Complaint, which is incorporated herein by reference. We present only

20 a summary of certain highlighted facts for the convenience of the Court.

21 **I.   Prior to the November 2020 Election, California's Voting Practices Were**

22 **Systematically Undermined Through Unconstitutional Laws and**

23 **Regulations.**

24   For the past three decades, California's election integrity laws and regulations

25 have been under systematic attack under the guise of increasing voter participation. In

26 truth, changes have been made to allow widespread fraud and election interference to

27 proceed unchecked. These changes have massively expanded voting by mail, legalized

28 unrestrained and unrestricted ballot harvesting and exploitation of vulnerable

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populations, and undermined protections on in-person voting. Cumulatively, these changes in the law and other administrative neglect have allowed voter rolls to encompass large numbers of deceased persons, non-citizens, non-residents, and other ineligible voters who, nonetheless, receive VBM ballots and state elections data show, have often voted in elections.

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The expansion of VBM ballots and the changes in the law to send VBM ballots to all registered voters created a process where known ineligible voters (including deceased persons, non-citizens, and non-residents) were sent live ballots. (Declaration of Ellen Swensen ("Swensen Decl.") ¶¶ 10-13 and 16-20.) As past elections have shown, deceased persons, non-citizens and non-residents are often recorded as having voted in elections, and that appears to have taken place in the November 2020 election as well, impacting Plaintiffs and the citizens in each of the Congressional Districts at issue. (*Id*. ¶¶ 11-13 and 16-20.)

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In 1993, Congress enacted the National Voter Registration Act ("NVRA") 52 U.S.C. § 20501, et seq., requiring voter registration through state departments of motor vehicles ("DMVs") and all other state and federal agencies, which has led to bloating of voter rolls.

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To balance the potential duplicate and ineligible voter registrations that would be generated through implementation of Section 7 of the NVRA, Section 8 of the same law requires each state to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of" death or a change in the residence of the registrant, and specifies a procedure for doing so. 52 U.S.C. § 20507(a)(4). California, however, has failed to comply with this requirement of the NVRA, massively expanding its voter rolls through DMV registration, but failing to take meaningfully action to maintain accurate voter rolls by removing ineligible registrations. (Swensen Decl. ¶¶ 11-13 and 16-20.)

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In the ensuing years, California undertook a number of measures undermining election integrity, including:

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- Eliminating the absentee ballot, converting what at the time was a one-time VBM ballot that had to be applied for prior to each election, to a permanent VBM ballot that would be sent to voters prior to every election, without further action on their part, and without verification that the voters were eligible to vote. (Declaration of Ruth Weiss ("Weiss Decl." ¶¶ 5-7, 9, 10.) As a result, approximately 75% of voters in California received permanent mail-in ballots even before the most recent "emergency" orders. (*Id.*);

- SB 397, allowing online voter registration without effective controls against ineligible registrations, leading to 6,080 duplicate registrations in the first month alone. (Weiss Decl. ¶¶ 5, 6.);

- AB 60, which allowed issuance of driver licenses to undocumented immigrants and AB 1461, which made voter registration automatic unless the driver (be they citizen or non-citizen) proactively requests not to be registered. The law specifically states that the DMV is not required or expected to determine eligibility for voter registration and voting. (EC § 2262(b).)   EIPCa has also documented thousands of instances in which California's online and DMV voter registration systems change registrants' reported place of birth, including many foreign-born registrants, to "California" or "United States," concealing foreign-born non-citizens who are registered to vote. (Weiss Decl. ¶¶ 6, 7.);

- AB 1921 and AB 306 allowing an unlimited number of VBM ballots to be turned in by anyone, regardless of relationship to the voter. AB 1921 eliminated chain of custody and legalized wholesale ballot harvesting, in which one person can collect an unlimited number of ballots and turn them in, and even be paid to do so. (Weiss Decl. ¶ 5.) Because of the extreme potential for fraud, this practice is restricted or prohibited in most other states, and considered a felony in many. (*Id.* ¶ 5.) In states where

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ballot harvesting is allowed, massive voter fraud operations have been uncovered, including cash payments for votes and ballot harvesters preying upon and deceiving vulnerable populations like the elderly, indigents, non-citizens and young voters. (*Id.* ¶ 5.); and

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- SB 759 and SB 523, extending the "curing" process for missing or challenged VBM ballot envelope signatures first to eight days after election day, and then to two days before certification (i.e., after election day), which could cause fraudulent ballots to be counted while the voters' responses are pending. (Weiss Decl. ¶ 5.)

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II.   In the Run-up to the 2020 Election, Unconstitutional Urgency Legislation and Emergency Orders and Regulations Bypass Normal Legislative Processes and Introduce Massive New Problems with VBM Ballots.

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Efforts to unlawfully compromise California elections accelerated in the run-up to the November 2020 election. On May 8 and June 3, 2020, Defendant Newsom issued Executive Orders N-64-20 and N-67-20, directing that "every Californian who is eligible to vote in the November 3, 2020 General Election shall receive a vote-by-mail ballot." On June 18, 2020, California passed AB 860, incorporating this requirement into California law for all active voters.

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As a result, millions of VBM ballots for the November 2020 election were placed in the U.S. Mail with no means to ensure that a particular ballot was actually received by the intended recipient and hundreds of thousands were sent to names on the voter rolls for people who were not eligible to vote as established by prior litigation. (Weiss Decl. ¶ 9, 10.)

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Emergency regulations issued by Defendant Padilla for the November 2020 election further eviscerated the standards for the vetting of VBM ballots. (2 *CCR* §§ 20910, 20960-20962, 20980-20985, and 20990-20993.)

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These emergency regulations not only gut the signature verification process required by statute [EC §§ 3009, 3019], they also directly contradict a number of other

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1 specific other state law requirements intended to ensure that VBM ballots are legally

2 cast. Among other things, they:

3   • "[P]resum[e] that the signature on the petition or ballot envelope is the

4   voter's signature." 2 *CCR* § 20960 subsection (b);

5   • Justify accepting a "match" of two signatures that clearly do not match

6   based on the consideration that "the voter's signature style might have

7   changed over time." 2 *CCR* § 20960 subsection (g)(4).

8   • Provide that a signature match "shall only be rejected if two different

9   elections officials unanimously find beyond a reasonable doubt that the

10   signature differs in multiple, significant, and obvious respects from all

11   signatures in the voter's registration record." This standard cannot be

12   justified by reference to the provision of the *California Election Code*

13   requiring signature verification for VBM ballots. EC §§ 3009, 3019.

14   When combined with the standards of 2 *CCR* § 20960(g) set forth above,

15   the beyond a reasonable doubt standard of § 20960(j) mandates the

16   acceptance of virtually any signature on a VBM ballot return envelope,

17   again without subjecting clear mis-matching signatures to the safeguard

18   of the curing process;

19   • Nullify rejections based on computer signature recognition technology,

20   requiring that any rejection based on such technology be evaluated

21   manually under the virtually nonexistent standards of 2 *CCR* §20960. 2

22   *CCR* §20961;

23   • Promote fraud by allowing the submission of multiple ballots in a single

24   VBM ballot return envelope. Subsections (b)(11) and (b)(12) of 2 *CCR* §

25   20991;

26   • Dispose of state law requirements for what may be considered a valid

27   ballot by allowing the voter to submit virtually any piece of paper as a

28   VBM ballot. Subsections (b)(9) and (10) of 2 *CCR* § 20991. These

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regulations contravene EC § 13200, which provides that ballots not printed according to statutory specifications cannot be cast or counted and EC § 13002, which requires watermarking of printed ballots; and

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- Require the acceptance of VBM ballot envelopes with no reliable indication that the ballot was cast on or before election day. Subsection (b)(8) of 2 *CCR* § 20991.

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Moreover, the legislature amended EC § 3020 to provide that, "for the statewide general election to be held on November 3, 2020, any vote by mail ballot cast under this division shall be timely cast if it is received by the voter's elections official via the United States Postal Service or a bona fide private mail delivery company by the 17th day after election day . . ."

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Thus, under the California Elections Code and the emergency regulations, VBM ballots that cannot reliably be determined to have been cast on or before election day are nevertheless required to be accepted up to 17 days after election day. This creates an open invitation to submit illegal ballots after election day to overturn reported election results, especially election contests decided by margins of very few votes.

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III. EIPCa Warns Defendant Padilla of Serious Irregularities with Voter Rolls Prior to the 2020 Election, but They Go Unremedied.

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In the months prior to the November 2020 election, EIPCa warned Defendant Padilla that EIPCa had "identified in the [State of California's voter registration] file over 22,000 Californians that appear to be registered twice, some registered three or four times" including "almost 5,000 duplicated registrants have been mailed two or more VBM ballots this election," (Swensen Decl. Ex. SS.) EIPCa also warned that it had identified 106,315 voters who appear to be ineligible for a variety of reasons, such as being deceased, having moved out of the state or being below the minimum age to vote. (*Id.* Ex. UU.) California's failure to comply with the NVRA's requirement to cancel registrations of ineligible voters is a major contributor to these issues. (*Id.* ¶ 12.) Finally, EIPCa sent Defendant Padilla statutory notice pursuant to the NVRA that

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1   highlighted over 458,000 likely ineligible registrants who would be mailed ballots for

2   the November election and an additional 24,000 duplicated registrants who would each

3   be mailed two ballots unless corrected. (*Id*. Ex. TT.) The notice included supporting

4   evidence that the state has over 1 million more registered voters than eligible citizens,

5   per official government data. (*Id.*) EIPCa's estimates of ineligible voters are

6   conservative and significantly underestimate the full extent of the problem. (*Id.* ¶ 21.)

7   California, however, refused to remedy the problem, ultimately impacting the

8   November 2020 election.

9   **IV. Predictably, the Conduct of the 2020 Election Eviscerates Citizen**

10 **Oversight, Causes Mass Irregularities and Opportunities for Fraud, and**

11 **Violates the Rights of Lawful Voters, Citizen Observers and Candidates.**

12 **A.   Citizen Observers Were Obstructed from Meaningfully Observing**

13 **Vote Collection and Tabulation**

14 California citizens have the right to observe the entire election process,

15 including vote collection, signature verification, the remaking of "damaged" and

16 military ballots, adjudication of ballots to determine 'intent of the voter' and tabulation

17 of the votes. (EC §§ 2300 (a) (9)(A)(B), (a)(10) and 15100 – 15105.)

18   In relation to the November 2020 election, EIPCa received hundreds of Incident

19 Reports signed under penalty of perjury establishing that EIPCa observers were not

20 allowed sufficiently close access to see the signatures on VBM ballots with sufficient

21 clarity to determine if established procedures were being followed. (Weiss Decl. Exs.

22 A-RR.) Observation distances were too great. (*Id*. Exs. B, C, D and H.) Observers

23 were limited, at times, to a few minutes of observing. (*Id*. Ex. A) In some cases,

24 observation was provided through remote video access which precluded the ability of

25 observers to challenge whether established procedures were being followed. (*Id*. Exs.

26 G, I, J, L, Q and R.) In some counties, observers were not allowed to observe the

27 remaking of military, damaged or defective ballots. (*Id*. Exs. F and M.) In others, they

28 were denied effective viewing of voting machines. (*Id*. Exs. B, C, D.) In many cases,

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COVID-19 was used as cover for these unreasonable and unlawful restrictions, yet county employees and contractors, as well as employees of the companies that supplied and operated the voting machines, were generally not subjected to these same restrictions.

For example:

Alameda County:

    A.   An EIPCa citizen observer was informed by multiple county employees that no observers were allowed to observe vote processing and counting <u>at all</u> due to COVID-19. (Weiss Decl. Ex. A.)

Fresno County:

    B.   Throughout Fresno County, citizen observers were kept in confined areas too far from vote processing and counting activities to effectively observe them. (*Id*. Exs. B, C and D.) Defendant Orth told citizen observers at the Orange Cove Library that they "needed to stay in [their] area and Observe!" It was her interpretation that observers did not need to be close enough to hear what was going on, as she informed the observer. (*Id*. Ex. C and D.)

    C.   At multiple precincts, citizen observers were forced to remain in observer areas which was approximately 35 to 50 feet away from ballot processing, making it difficult to see and hear. (*Id*. Ex. C, D and H.)

Los Angeles County:

    D.   A citizen observer was told by a head poll worker at Vasquez High School that "it was illegal for [her] to be [there]" as a poll observer after the polls closed. Because of this the citizen observer was forced to leave five minutes before the doors to the voting center closed. (*Id*. Ex. E.)

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Monterey County:

E.   Citizen observers were separated from election officials processing ballots by thick glass, making it impossible to hear the process, and more than ten feet away from the election officials' desks, making it virtually impossible to see what they were doing. (*Id*. Ex. F.)

Orange County:

F.   In Orange County, citizen observers were provided with computer "observation screens" on which to view ballot processing activities. However, observers were kept far away from these screens, making observation of details like signatures impossible to verify. (*Id*. Exs. G and H.)

G.   Observation screens were also turned off with varying or no explanation while the count continued. Citizens were unable to view or object to signature matches and the processing of conditional ballots because these screens were off. (*Id*. Exs. G, I and J.)

H.   The Registrar of Voters informed citizen observers that it had halted "first pass" ballot counting at 5:00 p.m. However, counting took place again later in the evening without the knowledge or observation of citizen observers. (*Id*. Ex. L.)

Riverside County:

I.   Citizen observers were prevented from seeing ballots being remade in Riverside County. (*Id*. Exs. M and N.) When an observer raised this with an election official, he told the observer there would be no changes to the process to enable observers to see ballots being remade. (*Id*. Ex. N.) A temporary Elections Assistant in Riverside who took part in the remaking of ballots reported that she observed no method of accountability for the remaking of ballots that would ensure the voter's original choice was accurately marked on the new ballot. (*Id*. Ex. M.)

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Sacramento County:

J.   A citizen observer in Sacramento County was positioned more than 6 feet from the counting desks which were also surrounded by plexiglass, making it nearly impossible to see ballot marks. (*Id*. Ex. P.)

Santa Clara County:

K.   A citizen observer in Santa Clara reported "Observers were not allowed into the tabulation room to observe counting. Observers watched from conference room over zoom link, but camera was filming from the doorway/outside the room." As such, observers had limited view on the operation and could not readily object. (*Id*. Ex. Q.)

Ventura County:

L.   Ventura County allowed only a limited number of citizen observers to observe ballot processing and vote tabulation in person, and they were directed to stand outside the vote tabulation center in the hall and observe through the window, approximately 20 feet away from the process. Ventura County also set up a limited number of streaming cameras to allow citizen observers to observe remotely, but they provided limited view of the facility and did not show the activity on computer screens. (*Id*. Ex. R.)

B.   EIPCa Observes Widespread Irregularities and Evidence of Fraud in Hundreds of Sworn Declarations, Despite Obstruction of Election Observers

Even with all of the measures put in place by Defendant County Registrars to disrupt citizen observers, citizens still observed a vast number of irregularities, which are documented in hundreds of sworn affidavits collected by EIPCa.

These affidavits demonstrate that signature verifications for VBM ballots for the November 2020 election were not meaningfully conducted statewide. As massive numbers of VBM ballots flooded vote counting centers, their signatures were visually

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1   checked at the rate of one signature pair every one to four seconds. (Weiss Decl. Exs.

2   S, T, U and CC.) In some cases, four signature comparisons were conducted

3   simultaneously using images projected on computer monitors, at the rate of one to four

4   seconds per screen. (*Id*. Exs. S, T, U and CC.) This cursory review is patently

5   inadequate to ensure that the VBM ballots were properly vetted as legal votes as

6   required by EC § 3019. Observers noted widespread additional irregularities and

7   potential for fraud across many counties:

Contra Costa County:

9   M.   In Contra Costa County, poll data tapes from Dominion machines

10   show inconsistencies between votes as recorded by the machines, and

11   later tabulation of those votes in the vote for President. In multiple

12   cases, <u>votes were added to the tally for</u> Biden but <u>not for Trump</u>. The

13   data tape from one poll center tabulator shows 95 votes for Biden and

14   147 for Trump, but the Dominion report released by the County shows

15   96 (an additional vote) for Biden and the same 147 for Trump. The

16   same thing happened in at least three other cases. In each instance,

17   Trump's votes remained constant while votes were added for Biden.

18   Only an audit can show whether the same irregularities hold true for

19   other counties and other candidates. (Weiss Decl. Ex. V.)

20   N.   A voter had his ballot envelope signed by another person with <u>a</u>

21   <u>different name</u>, and the County accepted the signature because no

22   signature matching was taking place. (*Id*. Ex. W.)

23   O.   A citizen who was voting observed a poll worker who instructed

24   another voter how to vote on certain ballot items that voter had left

25   blank because the voter knew nothing about them, per her own

26   admission. The poll worker provided her this guidance without

27   solicitation. (*Id*. Ex. X.)

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Fresno County:

    P.   At Fresno County's Clovis Center, a supervisor informed a citizen observer that the ballots for the first day of early voting (10/31/2020) had been left inside a vote tallying machine "unattended in a locked room overnight," and that it was his understanding this practice would continue every night until the final closing of the voting center. (*Id*. Ex. Y.)

Los Angeles County:

    Q.   A citizen at Los Angeles County's Pasadena Victory Park center witnessed a machine <u>change a voter's vote</u>. (*Id*. Ex. Z.)

    R.   Multiple observers at voting centers saw "many workers with open bags, big purses and other stuff around desks" in violation of security procedures, noting that "[b]allots could easily have been taken." (*Id*. Exs. AA and DD.)

    S.   An observer at Los Angeles County's Claremont center witnessed two different women drop off <u>multiple ballots without voter signatures</u>. Nevertheless, <u>the ballots were counted by election officials</u>. (*Id*. Ex. BB.)

    T.   Even where signature matching was done, it was not done effectively. One observer watched a worker matching signatures four at a time (as in other counties) and spending five seconds or less per each set of four. (*Id*. Ex. CC.) The observer saw over 40 signatures that did not match, and three with no reference signature to match whatsoever, but only one was flagged. Another observed 95 signatures that should have been challenged but were not. Including "<u>[m]any [that] had no signature or a total mismatch</u>." (*Id*. Ex. DD.) (Emphasis added.)

Monterey County:

    U.   Voters in Salinas who voted in person were advised that a provisional

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1   ballot must be used. (*Id*. Ex. EE.) A mail carrier in the Salinas Post

2   Office informed a voter that his superiors had instructed him to "cram

3   all the ballots into a mailbox" even if he knew many of the voters at

4   the address did not live there. (*Id*. Ex. FF.)

5   **Orange County**:

6   V.   Election officials did not perform meaningful signature matching of

7   signatures on VBM ballot envelopes with those on record. Signatures

8   were displayed four at a time on computer screens and remained on the

9   screen for only a few seconds, leaving no actual time for signature

10   matching to occur or for observers to object. Ballots with signatures

11   that did not appear to match were allowed to be counted. (*Id*. Exs. G,

12   H, I, GG and HH.) Incredibly, an election official informed a citizen

13   observer that "they do not verify signatures for provisional ballots" at

14   all. (*Id*. Ex. HH.)

15   W.   The status of VBM envelope signatures that were challenged by

16   citizen observers was changed from "challenged" to "good" without

17   meaningful review by election officials. During ballot processing, an

18   election official announced over the public address system that citizen

19   observers were challenging too many signatures and that the election

20   officials would not have time to get to all of them. (*Id*. Ex. G, I and J.)

21   X.   At the meeting of the League of Women Voters of Central Orange

22   County on November 16, Defendant Kelley expressed surprise about

23   the changes regarding signature verification because the new

24   instruction essentially amounted to a directive that "basically all

25   ballots were to be considered valid unless there was substantial proof

26   otherwise." (*Id*. Ex. II.)

27   **Riverside County:**

28   Y.   An observer witnessed ballots put into <u>boxes that were never sealed,</u>

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and were <u>put into an election official's car</u> in which another unidentified individual was riding. (*Id*. Ex. JJ.)

Z.   A temporary assistant at the Registrar of Voters was assigned to accept drive-in VBM ballots curbside. She "observed temp. employees taking ballots without checking for signatures or if the person was dropping off for others. NO effort was made to check for their signature and their relationship to the person." (*Id*. Ex. KK.)

Sacramento County:

AA. A citizen observer reported that he saw on multiple occasions a ballot marked for both Biden and Trump, but with the Trump indicator having an "x" through it. The observer mentioned this to the adjudicators, who refused to elevate the issue to supervisors, concluding, without evidence, the voter had just changed his or her mind. (*Id*. Ex. LL.)

San Bernardino County:

BB. An election official at the San Bernardino Registrar of Voters informed a citizen, "not all of the ballots will be counted, because California is such a Democrat state," in response to the citizen's inquiry as to why her in-person ballot had not already been counted. (*Id*. Ex. MM.)

CC. A citizen observer observed that there were 400+ more registered voters on the rolls than there had been the night before (after polls had closed). No explanation was found for this increase. (*Id*. Ex. NN.)

DD. A citizen observer witnessed voters being registered to vote provisionally without providing ID. (*Id*. Ex. NN.)

Santa Clara County:

EE. On November 2, a citizen observer arrived at the Santa Clara Registrar of Voters at 7:02 a.m. and found the double entrance doors and side

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1   doors leading to ballot processing area open and unattended. An

2   employee arrived at 7:08 a.m. and said that the area was not supposed

3   to be open. No supervisor or other employee was found in the area

4   and the unopened doors were not explained. (*Id*. Ex. OO.)

5   **Ventura**:

6   FF. In Ventura County, a Dominion employee was observed inserting a

7   flash drive into a Dominion machine while it was tallying votes, after

8   which the Dominion system was rebooted. The Dominion employee

9   then removed the drive from the Dominion machine, placed it into his

10   own laptop, and performed operations on the laptop. He then removed

11   the drive from the laptop and provided it to the Ventura County

12   election official who was operating the Dominion system. (*Id*. Ex.

13   PP.)

14   **C.   Voting Machines Used to Collect and Tabulate Votes Contain Known**
15   **Vulnerabilities Allowing Miscounting and Vote Manipulation**

16   Most California counties processed ballots and tabulated votes in the November

17   2020 election using computerized voting machines supplied by either Dominion or

18   Smartmatic. (Declaration of Mary Gallegos ("Gallegos Decl.") ¶ 6.) The software that

19   runs on Dominion and Smartmatic machines is substantially the same, with the

20   Dominion system deriving from the Smartmatic system. (*Id*. ¶ 6.)

21   Both Dominion and Smartmatic consider their software proprietary and refuse to

22   share the full source code with the public. (*Id*. ¶ 7.) This means that the system used

23   to process ballots and tabulate votes is secret. (*Id*. ¶ 7.)

24   Even with this secrecy, there are well-established vulnerabilities in Dominion

25   and Smartmatic systems.

26   Both systems classify ballots into two categories, 1) normal ballots and 2)

27   adjudicated ballots. (*Id*. ¶ 9.) Ballots sent to adjudication can be altered by election

28   officials, and adjudication files can be moved between different Results Tally and

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1 Reporting (RTR) terminals with no audit trail of which election official actually

2 adjudicates (i.e., votes) the ballot batch. (*Id*. ¶ 9.) This demonstrates a significant and

3 fatal error in security and election integrity because it provides no meaningful

4 observation of the adjudication process or auditable trail of which election official

5 actually adjudicates a ballot. (*Id*. ¶ 9.) Without an audit to show how many ballots are

6 "adjudicated," it is impossible to tell how many votes election officials are given

7 access to manipulate. In an audit of votes in Michigan Central Lake Township in

8 Antrim County, there were 1,222 ballots reversed out of 1,491 total ballots cast,

9 resulting in an 81.96% rejection rate, meaning the vast majority of all ballots cast were

10 sent to adjudication for a decision by election officials. (*Id*. Ex. EEE.) Even a much

11 smaller percentage of adjudicated ballots would allow election officials to modify

12 votes to change the outcome of nearly any race in the State of California. (*Id*. ¶ 9.)

13 Dominion and Smartmatic also allow election officials to generate reports as

14 vote counting is ongoing. (*Id*. ¶ 10.) Such reports could be used by a malicious party

15 to determine how many votes would need to be changed in order to manipulate the

16 outcome of an election. (*Id*. ¶ 10.) These reports, however, are deleted after they are

17 run and are not available to the public, concealing any such misuse of the software.

18 (*Id*. ¶ 10.)

19 Ballot images, ballot totals and ballot envelopes processed by Dominion and

20 Smartmatic systems are not available to the public, so the accuracy of the systems'

21 vote processing cannot be validated without an audit. (*Id*. ¶ 11.)

22 Ballots and envelopes are separated during VBM ballot processing, leaving no

23 audit trail. If a signature on a VBM envelope is later determined to have been invalid,

24 the ballot or ballots from that envelope cannot be identified and removed from the vote

25 count. (*Id*. ¶ 12.)

26 Dominion and Smartmatic systems can be connected to the internet while

27 processing ballots and tabulating votes. This creates the opportunity for unlawful

28 remote manipulation of election results. (*Id*. ¶ 13.)

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1   Information can also be moved to and from systems locally using flash drives, as

2   was apparently done in Ventura County (*supra* at p. 29). (*Id*. ¶ 14.) This too creates

3   the opportunity for unlawful manipulation of election results.   (*Id*. ¶ 14.) There is

4   widespread concern across institutions at the State and Federal levels, as well as in

5   academia and the security industry, regarding the systemic problems and

6   vulnerabilities with Dominion and Smartmatic voting system.

7   An industry expert, Dr. Andrew Appel, Princeton Professor of Computer

8   Science and Election Security Expert has recently observed, with reference to

9   Dominion Voting machines, "I figured out how to make a slightly different computer

10   program that just before the polls were closed, it switches some votes around from one

11   candidate to another. I wrote that computer program into a memory chip and now to

12   hack a voting machine you just need 7 minutes alone with it and a screwdriver." (*Id*.

13   Ex. FFF.)

14   A Penn Wharton Study from 2016 concluded that "Voters and their

15   representatives in government, often prompted by news of high-profile voting

16   problems, also have raised concerns about the reliability and integrity of the voting

17   process, and have increasingly called for the use of modern technology such as laptops

18   and tablets to improve convenience." (*Id*. Ex. GGG.)

19   The Dominion system was denied certification in Texas by the Secretary of

20   State on January 24, 2020, specifically because the "examiner reports raise concerns

21   about whether Democracy Suite 5.5-A system … is safe from fraudulent or

22   unauthorized manipulation." (*Id*. Ex. HHH.)

23   Substantial evidence of this vulnerability was discussed in Judge Amy

24   Totenberg's October 11, 2020 Order in the USDC N.D. Ga. case of *Curling, et al. v.*

25   *Kemp, et. al*, Case No. 1:17-cv-02989 Doc. No. 964. See, p. 22-23 ("This array of

26   experts and subject matter specialists provided a huge volume of significant evidence

27   regarding the security risks and deficits in the system as implemented in both witness

28   declarations and live testimony at the preliminary injunction hearing."); p. 25 ("In

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1   particular, Dr. Halderman's testing indicated the practical feasibility through a cyber

2   attack of causing the swapping or deletion of specific votes cast and the compromise of

3   the system through different cyber attack strategies, including through access to and

4   alteration or manipulation of the QR barcode.")

5   A forensic audit of Antrim County, Michigan vote tabulation found that the

6   Dominion system had an astonishing error rate of 68%. *See* Ramsland Jr., Russell.

7   "Antrim Michigan Forensics Report." (Gallegos Decl. Ex. EEE.)

8   By way of comparison, the Federal Election Committee requires that election

9   systems must have an error rate no larger than 0.0008%. (*Id*. Ex. JJJ.)

10   ### D.   The Nature of the Audit Plaintiffs Seek

11   In order to determine the extent of the fraud and irregularities that occurred,

12   Plaintiffs seek a minimally invasive audit of the Dominion and Smartmatic voting

13   systems, and the paper VBM ballots and envelopes, used in California in the

14   November 2020 elections. Plaintiffs estimate their experts need only approximately

15   five business days per county to access any county's the Dominion or Smartmatic

16   systems in order to obtain the information necessary for the audit. (Gallegos Decl. ¶

17   17.) Defendants would be free to provide any oversight of Plaintiffs' access that they

18   wish provided they do not limit Plaintiffs' access to information and data. (*Id*. ¶ 15

19   and 16.)

20   ## ARGUMENT

21   In determining whether to issue a TRO or a preliminary injunction, a District

22   Court considers if: (1) the plaintiffs are likely to succeed on the merits, (2) the

23   plaintiffs are likely to suffer irreparable harm, (3) the balance of the equities or harms

24   tips in the plaintiffs' favor, and (4) the injunction is in the public interest. *Stormans,*

25   *Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009); *Winter v. Natural Res. Def.*

26   *Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit uses a "sliding scale"

27   approach, under which the elements of the preliminary-injunction test are balanced, so

28   that a stronger showing of one element may offset a weaker showing of another. *See*

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1   *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–1135 (9th Cir. 2010).

2   Under this approach a preliminary injunction is appropriate when a plaintiff

3   demonstrates serious questions going to the merits are raised and that the balance of

4   hardships tips sharply in the plaintiff's favor, so long as the other factors are satisfied.

5   *Id.*; *see also Farris v. Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (characterizing

6   *Cottrell* formulation of sliding-scale approach as "an alternate formulation of the

7   Winter test."). As elaborated below, Plaintiffs satisfy each of these elements,

8   including a balance of hardships which tip sharply in their favor. Accordingly, a TRO

9   should issue.

10   **V.   Plaintiffs are Likely to Succeed on the Merits**

11   Already, the evidence gathered by Plaintiffs shows massive irregularities and

12   evidence of potential fraud and manipulation in multiple counties across California.

13   Plaintiffs make a compelling showing that their rights as California citizens, and the

14   rights of the citizen observers, to select their leaders under a free process established

15   by the California legislature were violated by the Defendants. These illegalities violate

16   the Equal Protection, Due Process, Elections and Guarantee Clauses of the U.S.

17   Constitution.

18   Plaintiffs' equal protection and due process claims are straightforward. The right

19   of qualified citizens to vote in a state election involving federal candidates is

20   recognized as a fundamental right under the Fourteenth Amendment of the United

21   States Constitution. *See Reynolds v. Sims*, 377 U.S. 533, 554 (1964) (The Fourteenth

22   Amendment protects "the right of all qualified citizens to vote, in state as well as in

23   federal elections.") The United States Supreme Court has held the Privileges or

24   Immunities Clause of the Fourteenth Amendment protects certain rights of federal

25   citizenship from state interference, including the right of citizens to directly elect

26   members of Congress. *See Slaughter-House Cases*, 83 U.S. 36 (1873); See also

27   *Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (citing *Ex parte Yarbrough*, 110 U.S.

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1   651, 663-64 (1884)); *see also Oregon v. Mitchell*, 400 U.S.112, 148-49 (1970)

2   (Douglas, J., concurring) (collecting cases).

3   The fundamental right of citizens to vote protected by the Fourteenth

4   Amendment is cherished in our nation because it "is preservative of other basic civil

5   and political rights." *Reynolds*, 377 U.S. at 562. Voters have a "right to cast a ballot in

6   an election free from the taint of intimidation and fraud," *Burson v. Freeman*, 504 U.S.

7   191, 211 (1992), and "[c]onfidence in the integrity of our electoral processes is

8   essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549

9   U.S. 1, 4 (2006) (per curiam).

10   "Every voter in a federal … election, whether he votes for a candidate with little

11   chance of winning or for one with little chance of losing, has a right under the

12   Constitution to have his vote fairly counted, without its being distorted by fraudulently

13   cast votes." *Anderson v. United States*, 417 U.S. 211, 227 (1974); see also *Baker v.*

14   *Carr*, 369 U.S. 186, 208 (1962). Invalid or fraudulent votes "debase[]" and "dilute" the

15   weight of each validly cast vote. *Id.* at 227. "The right to an honest [count] is a right

16   possessed by each voting elector, and to the extent that the importance of his vote is

17   nullified, wholly or in part, he has been injured in the free exercise of a right or

18   privilege secured to him by the laws and Constitution of the United States." *Id.* at 226

19   (quoting *Prichard v. United States*, 181 F.2d 326, 331 (6th Cir. 1950), aff'd due to

20   absence of quorum, 339 U.S. 974 (1950)).

21   Practices that promote the casting of illegal or fraudulent ballots, or that fail to

22   contain basic minimum guarantees against such, violate the Fourteenth Amendment by

23   leading to the dilution of validly cast ballots. *Reynolds*, 377 U.S. at 555 ("[T]he right

24   of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote

25   just as effectively as by wholly prohibiting the free exercise of the franchise.").

26   States may not, by arbitrary action or other unreasonable impairment, burden a

27   citizen's right to vote. *Baker,* 369 U.S. at 208 ("A citizen's right to a vote free of

28   arbitrary impairment by state action has been judicially recognized as a right secured

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by the Constitution"). "Having once granted the right to vote on equal terms, the state may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000). Among other things, "specific rules designed to ensure uniform treatment" in order to prevent "arbitrary and disparate treatment of voters" are required. *Id.*

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Here, Plaintiffs have submitted numerous vulnerabilities, irregularities and instances of apparent fraud in the 29-day leadup to Election Day, on Election Day, and the 30 days following election day.

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Defendants' implementation of emergency regulations that violate laws passed by the California Legislature also clearly violate the Elections Clause of the U.S. Constitution, which states that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, <u>shall be prescribed in each State by the Legislature thereof</u>." Art. I, § 4, cl. 1 (emphasis added).

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The Legislature is "'the representative body which ma[kes] the laws of the people.'" *Smiley v. Holm*, 285 U.S. 355, 365 (1932). Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." *Id*. at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n.*, 135 S. Ct. 2652, 2668 (2015).

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Finally, Defendants' have violated the Guarantee Clause of the U.S. Constitution "guarantee[ing] to every State in this Union a Republican Form of Government, and . . . protect[ion] . . . against Invasion. . . ." (Art. IV, § 4.) They have done so by implementing laws, regulations and orders, and conducting elections, so as to deny California and its citizens, including Plaintiffs, a republican form of government, and to allow foreign interference in California elections.

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Although Plaintiffs are clearly likely to succeed on the merits, an injunction should still issue even if there were significant questions as to Plaintiffs' likelihood of prevailing on the merits, because destruction of digital and paper records irrecoverably spoliates evidence, preventing Plaintiffs from asserting their constitutional right to a

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free election and creating an irreparable injury. *See, e.g., Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2010) (even if likelihood of success is not established, "serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest").

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VI. Plaintiffs Will Suffer Irreparable Harm

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The irreparable nature of the harm to Plaintiffs is apparent. If the California count was defective, including defective VBM ballots, illegal, dead and nonresident voters, improperly tabulated vote counts or other irregularities or fraud in an amount sufficient to change the outcome or place it in doubt, then California's election results are improper and suspect, and diminish eligible citizens' votes including those of Plaintiffs and citizen observers.

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California has provided no meaningful access to the VBM ballots and envelopes, the voting machines used to record, tabulate and report votes, or additional infrastructure that was implicated in election irregularities. The entire process of receiving, tabulating and reporting votes remains effectively hidden. Plaintiffs will be irrevocably harmed if this evidence is spoliated or otherwise lost or withheld.

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Emergency action is needed due to the imminent possibility of evidence tampering, further upcoming elections scheduled to take place as early as March 2021 that will be similarly affected (including because Defendant Padilla's emergency regulations will still be in effect then), and the likelihood that unconstitutional emergency orders and restrictions will be extended beyond their current sunset dates.

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Deprivation of the fundamental right to a free election creates an irreparable injury because this injury cannot be undone by monetary damages. *Nelson v. NASA*, 530 F.3d 865, 882 (9th Cir. 2008) ("Unlike monetary injuries, constitutional violations cannot be adequately remedied through damages and therefore generally constitute

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1 irreparable harm."); *See also Elrod v. Burns*, 427 U.S. 347, 373, (1976) (loss of

2 constitutional rights for even minimal time constitutes irreparable injury).

3   Here, the harms Plaintiffs allege substantially and materially interfere with their

4 fundamental right to vote in a fair and honest election. If the vote counts were

5 incorrectly tabulated, manipulated, or coerced, the Plaintiffs suffer direct and

6 irreparable harm by this wrongful denial of their rights.

7 **VII. Balance of Equities Tips Sharply in Favor of the Plaintiffs and an**

8   **Injunction Serves the Public Interest**

9   The remaining two factors for the preliminary injunction test, "harm to the

10 opposing party and weighing the public interest, merge when the Government is the

11 opposing party." *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 1753 (2009).

12   There is no harm to Defendants in issuing a restraining order and injunction to

13 preserve the VBM and electronic evidence, which may otherwise be lost, destroyed or

14 withheld, and allowing Plaintiffs' experts to audit it. [1] At this stage, such an order only

15 preserves the status quo (i.e. that the evidence that is now in existence must remain so),

16 and provides for a minimally invasive audit requiring only an estimated five business

17 days of access to the Dominion and Smartmatic systems per county, with any oversight

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21 [1] For this reason, no security should be required for the issuance of the temporary restraining order and preliminary injunction. Rule 65(c) invests courts "with discretion

22 as to the amount of security required, if any." *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir.1999). The Court may dispense with the undertaking when it

23 concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct. *Gorbach v. Reno*, 219 F.3d 1087, 1092 (9th Cir. 2000); *Barahona-*

24 *Gomez*, 167 F.3d at 1237; *see also Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). Moreover, when the balance of the potential hardships each party will suffer as

25 a result of a preliminary injunction "weighs overwhelmingly in favor of the party seeking the injunction," a district court may dispense the bond requirement. *Elliott v.*

26 *Kiesewetter*, 98 F3d 47, 60 (3rd Cir. 1996). Finally, a strong likelihood of success on the merits also weighs against requiring a security. *Scherr v. Volpe*, 466 F2d 1027,

27 1035 (7th Cir. 1972).

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1   Plaintiffs wish to provide.[2] Lifting the injunction at a later date leaves the Defendants'

2   in entirely the same position they are now.

3   On the other hand, allowing destruction of evidence and moving forward

4   without a proper election audit irrevocably prevents Plaintiffs from raising their valid

5   rights to equal protection, due process and enforcement of the Elections and Guarantee

6   Clauses of the U.S. Constitution.

7   Further, the public interest in fair and honest elections would override any harm

8   to Defendants even if there were such harm, which there is not. *Yakus v. United States*,

9   321 U.S. 414 (1944) (courts may go much further in granting equitable relief in

10 furtherance of public interest than when only private interest is involved). It is without

11 doubt the proper outcome of the election is of paramount public interest. *Benson v.*

12 *Superior Court of Napa County*, Cal. App. LEXIS 2642 (1963) (Public interests

13 imperatively require that ultimate determination of election contest should, where

14 possible, reach right of case.); *See also Sweeny v. Adams,* 1904 Cal. LEXIS 1019

15 (1904) (The contest [of an election] does not merely concern the personal and

16 pecuniary interest of rival candidates for the office; but paramount to their claims is the

17 public interest involved as to who is entitled to hold an office for which the suffrages

18 of the electors have been cast.).

19   **CONCLUSION**

20   For the foregoing reasons, Plaintiffs respectfully request that the Court grant

21 Plaintiffs' Application for a Temporary Restraining Order and Preliminary Injunction.

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    [2] Even if the event the Court is not inclined to order an audit at the TRO stage, a TRO
    should issue preserving the evidence pending entry of a preliminary injunction
28 ordering an audit.

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APPLICATION FOR TRO AND PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND AUTHORITIES

DATED: January 5, 2021

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APPLICATION FOR TRO AND PRELIMINARY INJUNCTION;
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