

BREAKING: Court Declares Gov. Newsom's Abuse of Power Unconstitutional

Judge issues injunction restraining the Gov. from any more unconstitutional orders.



Assemblymen Kiley and Gallagher. (Photo: Katy Grimes for California Globe)

California Assemblymen Kevin Kiley and James Gallagher sued to stop California Governor Gavin Newsom's "one-man rule," as California Globe has reported over several months. They were in Sutter County Superior Court October 21st, arguing that Gov. Gavin Newsom has exceeded his emergency powers in issuing Executive Orders having nothing to do with the coronavirus pandemic crisis.

Monday, State Superior Court Judge Sarah Heckman tentatively ruled in favor of Gallagher (R-Yuba City) and Kiley (R-Rocklin) in their abuse of power lawsuit against Governor Newsom.

In the tentative ruling, Judge Heckman declared the Governor's recent Executive Order N-67-20 unconstitutional. More importantly, Judge Heckman's tentative ruling places a permanent injunction against the Governor which prevents him from unilaterally making or changing state law moving forward.

Assemblyman Kiley wrote:

The Judge ruled Newsom violated the Constitution. She also issued an injunction restraining the Governor from issuing any more unconstitutional orders. You can read the ruling [here](#).

This marks an end to Gavin Newsom's one-man rule. It makes clear that the laws of the State of California do not countenance an autocracy under any circumstances - not for a single day, and certainly not for eight months with no end in sight.

The ruling is “tentative,” meaning Newsom has a few days to try to persuade the Judge to change her mind, but it’s rare for a tentative ruling to change. While Newsom can appeal, we are confident the decision is on solid legal ground and will stand.

Kiley and Gallagher argue that California’s Constitution has an explicit separation-of-powers provision, which Gov. Newsom has violated. “A California Governor is constitutionally forbidden from doing the very thing Gov. Newsom has done here: exercise legislative powers,” they said.

Gov. Newsom’s Executive Order to create an all-vote-by-mail-election suspends and substantively changes California’s Elections Code. Gov. Newsom contends that the order “fits comfortably within the Governor’s broad grant of authority under the Emergency Services Act.”

Gov. Newsom’s attorneys argued that the governor does have the “plenary” authority, along with “broad police powers” during a declared State of Emergency, and under the California Emergency Services Act (CESA).

In her ruling, Judge Heckman explains:

The Governor takes the position the California Emergency Services Act’s grant of authority to exercise “all police power vested in the state,” allowing him to “promulgate, issue, and enforce such orders and regulations as he deems necessary” authorizes him to legislate by unilaterally amending existing statutory law. Not only is this an active and ongoing controversy between the parties, but it is a critically important one for the Judicial Branch to resolve.

The Governor has issued three executive orders during the current state of emergency specifically regarding the November 3, 2020, general election (Def. Exs. 4 and 5; Pl. Ex. D) and has issued more than 50 different executive orders changing numerous California statutes since the state of emergency was declared. (Pl. Ex. F) Further, despite representations by the Governor’s legal counsel that Executive Order N-67- 20 dated June 3, 2020, is “withdrawn,” there is no evidence it has been formally rescinded, and the Executive Order includes provisions controlling the election process for the November 3, 2020, General Election which were not superseded by the subsequently enacted legislation.

Specifically, despite the subsequent legislation, the Executive Order remained in

effect requiring all county election officials to use the Secretary of State's barcode tracking system for all mail ballots and altered the statutorily required outreach in Voter's Choice Act counties to provide noticed, public meetings allowing for public comment on voting access for California voters with disabilities or limited English proficiency.

Judge Heckman also found "The plain meaning of the CESA does not delegate to the Governor the power to legislate, and therefore does not violate the separation of powers under California Constitution."

Importantly, Judge Heckman did rule "On the issue of whether Executive Order N.67-20 was authorized by the California Emergency Services Act, the court finds the executive order was NOT authorized by the CESA because it improperly amended existing statutory law, exceeding the governor's authority and violating the separation of powers."

The judge explains:

The CESA allows the Governor, during a state of emergency, to issue orders and regulations and to suspend certain statutes, but the plain and unambiguous language of CESA does not permit the Governor to amend statutes or make new statutes. The Governor does not have the power or authority to assume the Legislature's role of creating legislative policy and enactments. Because Executive Order N-67-20 amended sections of the Elections Code it exceeds the Governor's authority under CESA and renders Executive Order N-67-20 invalid.

Kiley and Gallagher argued the Governor may not exercise legislative powers unless permitted by the Constitution, while the governor's attorneys argued, "Making orders' is what it says," and that the legislation took care of overriding the governor's orders.

Gallagher and Kiley argued in court that there is a very clear distinction in the California Governor's emergency powers as it pertains to legislation: he cannot create legislation or new laws, but the emergency powers allow the governor to remove legislation that is a roadblock to making decisions during the emergency. He can suspend any regulatory statute if it is getting in the way of facilitating emergency procedures.

It appears Judge Heckman agreed with them:

The Court finds good cause to issue a permanent injunction consistent with the request set forth in paragraph 21 of plaintiffs' complaint (Def. Ex. 1), as follows: 8 Gavin Newsom, in his official capacity as Governor of the State of California is enjoined and prohibited from exercising any power under the California Emergency Services Act (Government Code § 8550 et seq.) which amends, alters, or changes existing statutory law or makes new statutory law or legislative policy.

"Nobody disputes that there are actions that should be taken to keep people safe during an emergency. But that doesn't mean that we put our Constitution and free society on hold by centralizing all power in the hands of one man," Gallagher and Kiley said in a press statement.

The Court's decision does not impact any of the election protocols for the 2020 election.

California Globe was the only Capitol media present at the trial.



Katy Grimes

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