



California Court Declared Newsom COVID Order Unconstitutional

On November 2, Sutter County, California, Superior Court Judge Sarah Heckman made a tentative decision in favor of Republican state assemblymen James Gallagher and Kevin Kiley in their abuse of power lawsuit against Governor Gavin Newsom. Heckman decided that Newsom's executive order regulating voting is an "unconstitutional exercise of legislative power."

"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.

Since declaring a state of emergency in March, Newsom has issued more than 50 executive orders in response to the COVID-19 pandemic, including a March 19 order for all people living within the state to "stay at home."

In her tentative ruling, Judge Heckman addressed Newsom's Executive Order N-67-20, which, unlike some of his other orders, issued COVID-related requirements for voting procedures, rather than restrictions on social gatherings or the wearing of masks:

"On the issue of whether Executive Order N-67-20 was authorized by the California Emergency Services Act (CESA), 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."

Heckman explained her decision:

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.

"We have been arguing that the California Emergency Services Act does not provide for one-man rule. Today, the Court agreed with us," Gallagher and Kiley said in a joint statement. "This is a victory for separation of powers. The governor has continued to create and change state law without public input and without the deliberative process provided by the Legislature."



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Written by [Warren Mass](#) on November 4, 2020

A report in the *Los Angeles Times* observed that Heckman’s ruling — which primarily addressed Newsom’s Executive Order N-67-20 — “is not expected to have an impact on the state’s mandates for Californians to wear masks when out in public, or other pandemic-related statewide restrictions on activities and businesses.”

So while Heckman’s objection to Newsom’s usurpation of authority regarding voting regulations was an encouraging precedent, it will require further court challenges to his other executive orders to rein in his exploitation of the pandemic to assume unconstitutional powers.

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