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## **NCLA Asks CA Supreme Court to Clarify State’s Nondelegation Doctrine in Wake of Pandemic Abuse**

*Ghost Golf, Inc., Daryn Coleman, Sol Y Luna Mexican Cuisine, and Nieves Rubio v. Gov. Gavin Newsom, et al.*

**Washington, DC (August 12, 2024)** – Today, the New Civil Liberties Alliance sent an *amicus curiae* [letter](#) asking the Supreme Court of California to hear *Ghost Golf, Inc. v. Newsom* and restore clear standards for applying the California Constitution’s nondelegation doctrine. The Emergency Services Act (ESA) allows the Governor to unilaterally declare a state of emergency and “amend or make new law” that would apply to residents. California’s Fifth Appellate Court upheld the Governor’s exercise of pure legislative power because it concluded the state Legislature’s ability to end the emergency declaration “adequately” guards against ESA’s standardless delegation. NCLA urges the California Supreme Court to review that flawed ruling and restore the requirement that statutes contain “sufficiently clear standards” when delegating legislative power to executive officials.

The California Supreme Court’s 2017 *Gerawan Farming, Inc. v. Agricultural Labor Relations Board* ruling correctly decided that statutes delegating legislative power cannot leave “fundamental policy issues” for anyone but the Legislature to resolve. It further held rightly that laws must “provide adequate direction” to the Governor and agencies, so courts can tell if agencies have followed the Legislature’s directions. The Court also mandated that these statutes be joined by safeguards adequate to prevent their abuse. The Fifth Appellate Court abandoned that standard in *Ghost Golf*’s case against Gov. Newsom’s statewide business shutdown orders during the Covid-19 pandemic. It held that safeguards, by themselves, suffice to make a delegation constitutional. That reasoning would foolishly unwind the kind of clear delegation standards that *Gerawan Farming* required.

The ESA gives the Governor the authority to exercise “all police power vested in the state,” which is “generally the power to legislate.” The Fifth Appellate Court bluntly recognized that the “ESA permitted the Governor to amend or make new laws,” a step that cannot be reconciled with the California Constitution’s plain text forbidding executive officials from exercising legislative power.

The ESA purports to allow the Legislature to end a state of emergency through a mere concurrent resolution. But that safeguard against Executive Branch abuse of ESA authority is unconstitutional itself. Revoking delegated—or, really, divested—emergency powers is a legislative act that requires approval by both houses of the Legislature and presentment to the Governor under the California Constitution. A concurrent resolution does not accomplish that. The Covid-19 pandemic was not the last emergency California will face, so the California Supreme Court must restore doctrinal clarity and explain how the Legislature may draft laws delegating power to the Executive.

### **NCLA released the following statement:**

“Once the lower court recognized that the Emergency Services Act grants the Governor power to ‘amend or make new laws,’ that should have been the end of the matter. Article III, Section 3 of the California Constitution cannot

be clearer that the Governor may not exercise legislative powers. The lower court instead held that this constitutional violation was remedied by another unconstitutional provision in the same law that allows the Legislature to revoke a statutory delegation without bicameralism and presentment. But two wrongs do not make a right. The California Supreme Court should step in and correct this twisted logic.”

— **Sheng Li, Litigation Counsel, NCLA**

For more information visit the *amicus* page [here](#).

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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