



December 29, 2020

The Honorable Mitch McConnell
Majority Leader, United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Schumer
Minority Leader, United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

RE: Qualifications of Alex Padilla for U.S. Senate

Dear Majority Leader McConnell and Minority Leader Schumer:

In a December 22 press release, California Governor Gavin Newsom announced his intention to appoint Secretary of State Alex Padilla to the United State Senate, "filling the term being vacated by Vice President-elect Kamala Harris."

However, the enclosed legal opinion by the State of California Office of the Legislative Counsel¹ has concluded that the Seventeenth Amendment to the U.S. Constitution "requires the Governor to issue a writ of election" to fill the vacancy created by Senator Harris' resignation and requires that "the person elected in the vacancy election takes office before the end of the existing term." This finding is inconsistent with the Governor's statement that Padilla will "fill[] the term being vacated" by Senator Harris.

Furthermore, while the Governor's statutory authority to make an appointment comes from California Elections Code 10720, the Legislative Counsel opinion finds that "existing case law casts doubt on the validity of the second sentence" of that section. Pursuant to that second sentence, Mr. Padilla would serve the remainder of Senator Harris' term in the absence of a Special Election. If a Court were to agree that the sentence is unconstitutional while also holding that it is not severable – that is, if a court finds that the

¹ This Office of Legislative Counsel has operated since 1913 to "assist the Legislature, the Governor, and other state officers by providing nonpartisan legal services relating to the legislative process." This includes rendering "legal opinions on issues of constitutionality, statutory interpretation, and other legal matters."

unconstitutionality of that provision also invalidates the statute's other two sentences – then the Governor of California would have no authority to appoint a United States Senator.

Article 1, Section 5 of the U.S. Constitution authorizes each house of Congress to “be the Judge of the Elections, Returns and Qualifications of its own Members.” If Governor Newsom proceeds with the appointment of Mr. Padilla as planned, the Senate may wish to consider whether the legal issues relating to the appointment raised by the Legislative Counsel Opinion require resolution before Mr. Padilla is seated.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Kiley', written in a cursive style.

KEVIN KILEY
California Assemblymember, 6th District

cc: United States Senator Dianne Feinstein
United States Senator Kamala Harris