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8 **UNITED STATES COURT OF APPEALS**
9 **FOR THE NINTH CIRCUIT**

11
12 **CONSTITUTION ASSOCIATION, INC.,**
13 **a founder GEORGE F.X. ROMBACH**
14 **and; et. al.,**

15 **Plaintiffs-Appellants,**

16 **and**

17 **B. GREEN; et. al.**

18 **Plaintiffs,**

19
20 **vs.**

21 **KAMALA DEVI HARRIS,**

22 **Defendant-Appellee.**

No. 21-56287

D.C. No. 20cv2379 TWR BLM

**Southern District of California
San Diego**

AMENDED OPENING BRIEF

Complaint Filed:
December 7, 2020

Appeal Filed:
November 26, 2021

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27	<u>The Law of Nations</u> , Emerich de Vattel's (1758)	12.
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1 **Rule 26.1 Corporate Disclosure Statement**

2 The CONSTITUTION ASSOCIATION, INC. is an exempt charitable
3
4 corporation that has no parent corporation or other shareholder that owns ten
5 percent (10%) or more of its stock.
6

7
8 **Rule 28(a)(4) Jurisdiction Statement**

9 (A) The basis for the district court's subject-matter jurisdiction
10 “[b]ecause federal courts are barred from intruding on a task constitutionally
11 assigned to congress” as set forth in *Grinols v. Electoral College*, No. 2:12-
12 cv-02997-MCE, 2013 WL 2294885 (E.D. Cal. May 23, 2013), *aff’d*, 622 F.
13 App’x 624(9th Cir. 2015).
14

15 (B) The basis for the court of appeals’ jurisdiction is that the *Grinols*
16 case was incorrectly decided in that there is no express provision of the U.S.
17 Constitution vesting the power over the qualifications or eligibility of the
18 President (and Vice-President) of the United States with congress and that
19 instead the "natural born Citizen" clause of the U.S Constitution, which is
20 the issue that is the subject of this case, "is couched in absolute terms of
21 qualification and does NOT designate which branch should evaluate whether
22 the qualifications are fulfilled.” *Barnett v. Obama*, No. SACV 09-0082
23 DOC (ANx), 2009 WL 3861788, at *12 (C.D. Cal. Oct. 29, 2009) should be
24 applied.
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1 (C) The order appealed from was filed on November 10, 2021 and the
2 appeal was filed November 26, 2021 which establishes the timeliness of the
3
4 appeal.

5 (D) The appeal is from a final order that *sua sponte* dismissed the
6 complaint for lack of Subject Matter jurisdiction that disposes of all parties'
7
8 claims.

9
10 **Rule 28(a)(6) Statement of the Case**

11 The Introduction to this Petition sets forth a concise statement of the
12 case setting out the facts relevant to the issues submitted for review. There
13 are no parts of the record contained set forth in an appendix filed with the
14
15 appellant's brief.
16

17
18 **Ninth Cir. Rule 30-1.2(a). Statement on Excerpts of Record**

19 The Excerpts of Record filed under separate cover includes district
20 court 'Order *Sua Sponte* Dismissing Complaint for Lack of Subject Matter
21 Jurisdiction' document 18 filed 9/28/21 page ID 154 through 160 as ER 3 –
22 9; as well as district court 'Order of Dismissal Without Prejudice' document
23 19 filed 11/04/21 page ID 160 through 161 as ER 10 – 11.
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1 **Introduction**

2 The sole issue in this action is whether the Defendant / Appellee, a
3 member of the Democratic Party, is not constitutionally eligible to run for or
4 hold the Office of President or Vice President. In the Verified Complaint in
5 this action, Plaintiffs / Appellants had also alleged that three Republican
6 candidates were likewise not eligible to hold the Office of President, but
7 they withdrew from the race before the commencement of this action.
8

9 Plaintiffs / Appellants are non-partisan as to this action and have no issue
10 with the political affiliation of any candidate, they are simply seeking that
11 the provisions of the Constitution be complied with by ALL persons as it
12 was expressly written.
13

14
15 When the Verified Complaint was filed, Defendant / Appellee was
16 **NOT** in any way a “United States officer or employee” and the Verified
17 Complaint does **NOT** in anyway involve “an act or omission occurring in
18 connection with duties performed on the United States’ behalf”. As such the
19 Federal Rule of Civil Procedure 4(i)(3) does not apply. Defendant /
20 Appellee avoided numerous attempts to serve her until she was inaugurated.
21

22 The **SOLE** issue in this action is whether the Defendant / Appellee
23 was, as a matter fact, a ‘**natural born Citizen**’ at the time of her birth or she
24 was not. Plaintiffs / Appellants attached substantial evidence that she is
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1 **NOT** a ‘**natural born Citizen**’ and sought to have that issue **decided on the**
2 **merits**. However, Defendant / Appellee and the government of the United
3 States of America have avoided having this matter heard on its **merits**.
4

5 Article III, Section. 2, of the United States Constitution provides that
6 "The judicial Power shall extend to **ALL CASES**, in Law and Equity,
7 **arising under this Constitution**, the Laws of the United States, and
8 Treaties made, or which shall be made, under their Authority
9

10 *.”(emphasis added)*. It is absolutely clear that this action is one which
11 "arises under" the Constitution and has jurisdiction over this matter. The
12 Verified Complaint alleges, and submits substantial evidence, that
13 Defendant / Appellee does **NOT** comply with law set forth in the fifth
14 paragraph of Article. II. Section. 1. of the Constitution.
15
16

17 **Political Question Doctrine Improperly Applied To This Case**

18 One of the core issues of this Appeal, and to avoid have this case
19 heard on its merits, the government of the United States of America, a non-
20 party, has raised the political question doctrine, which arises from the
21 Constitution’s separation of powers doctrine. As the Supreme Court put it in
22 *Baker v. Carr*, [369 U.S. 186](#), 210 (1962) “The nonjusticiability of a political
23 question is primarily a function of the separation of powers.” The Court
24 went on “[d]eciding whether a matter has in any measure been committed by
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1 the Constitution to another branch of government,” Id. at 211. The
2 Constitution expressly separately sets forth the powers of the branches of
3 government by way of Article. I. Section. 1. which states that “All
4 legislative Powers herein granted SHALL BE **VESTED** in a Congress of
5 the United States,” (*emphasis added*); and Article. II., Section. 1. which
6 states that “The executive Power SHALL BE **VESTED** in a President of
7 the United States of America.” (*emphasis added*); and in Article. III.,
8 Section. 1. which states that “The judicial Power of the United States,
9 SHALL BE **VESTED** in one supreme Court, and in such inferior Courts as
10 the Congress may from time to time ordain and establish.” (*emphasis added*);
11 The powers **VESTED** in each of the branches under the Constitution are
12 divided into a separate Article for each branch and are exclusive to those that
13 are expressly set forth. A power that expressly crosses over the branch
14 divides is the ability of Congress to establish inferior Courts as set forth in
15 Article III.

21 In the *Baker v. Carr*, supra at 217 the Supreme Court set forth six
22 factors indicating the existence of “a political question, although each has
23 one or more elements which identify it as essentially a function of the
24 separation of powers. [1] Prominent on the surface of any case held to
25 involve a political question is found a textually demonstrable **constitutional**
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1 **commitment** of the issue to a coordinate political department; or [2] a lack
2 of judicially discoverable and manageable standards for resolving it; or [3]
3 the impossibility of deciding without an initial policy determination of a
4 kind clearly for nonjudicial discretion; or [4] the impossibility of a court's
5 undertaking independent resolution without expressing lack of the respect
6 due coordinate branches of government; or [5] an unusual need for
7 unquestioning adherence to a political decision already made; or [6] the
8 potentiality of embarrassment from multifarious pronouncements by various
9 departments on one question.

13 **Unless one** of these formulations is inextricable from the case at bar,
14 **there should be no dismissal for nonjusticiability on the ground of a**
15 **political question's** presence. ." (*emphasis & factor numbering added*). The
16 first of those factors of whether there is "a textually demonstrable
17 constitutional commitment of the issue to a coordinate political department"
18 is the one that is the most relevant to the present case.

21 In *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) this
22 court correctly decided that political issues, as opposed to legal issues, are
23 required to be resolved by the political branches rather than by the judiciary.
24 [ER 7] Further, in *Koohi v. U.S.* 976 F.2d 1328, 1331 (9th Cir. 1992) this
25 court had previously correctly decided that the federal courts were prevented
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1 from unduly intruding on certain policy choices and value judgments that are
2 **constitutionally** committed to Congress or the Executive branch. [ER 7]

3
4 The Appellants fully and completely support those decisions and base this
5 appeal thereon. However, NONE of the issues in this case are a political
6 question, choice or issue, or value judgment that is constitutionally
7 committed to any other branch. Instead, they involve the express minimum
8 requirements that the Framers of the Constitution wrote into the Constitution
9 for an individual to be eligible to serve in an office. As such they are a
10 matter of **LAW**.

13 The Constitution expressly provides in the second paragraph of
14 Article. VI. that “**This Constitution**, and the Laws of the United States
15 which shall be made in Pursuance thereof; and all Treaties made, or which
16 shall be made, under the Authority of the United States, shall be the supreme
17 **Law of the Land;**” (*emphasis added*). The Constitution further expressly
18 provides in the fifth paragraph of Article. II., Section. 1. that “No Person
19 except a **natural born Citizen**, or a Citizen of the United States, at the time
20 of the Adoption of this Constitution, shall be eligible to the Office of
21 President; neither shall any person be eligible to that Office who shall not
22 have attained to the Age of thirty-five Years, and been fourteen Years a
23 Resident within the United States.” (*emphasis added*) Accordingly, thereby

1 the issue of the eligibility of any particular person to serve in the office of
2 President of the United States, or as a Vice- President of the United States
3 under the last sentence of Amendment XII, based on nature's circumstances
4 of their birth, or age, or years of residency in the United States is totally,
5 completely and specifically prescribed by **LAW**. That is the sole issue of
6 this action and it in no way is a policy choice or issue, or any kind of a value
7 judgment.
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10 The "natural born Citizen" clause of the U.S Constitution, which is the
11 issue that is the subject of this case, "is couched in absolute terms of
12 qualification and **does NOT designate which branch should evaluate**
13 **whether the qualifications are fulfilled.**" (*emphasis added*); *Barnett v.*
14 *Obama*, No. SACV 09-0082 DOC (ANx), 2009 WL 3861788, at *12 (C.D.
15 Cal. Oct. 29, 2009). To designate the legislative branch would have violated
16 the separation of powers doctrine, which would have required the
17 Constitution to expressly state provisions of the cross over of powers. To
18 have designated the executive branch would have had the individual
19 evaluate their own qualifications. It is the position of Appellants that the
20 Framers' of the Constitution did that by deliberately making NO designation
21 of a branch of the government to evaluate the eligibility qualifications of a
22 person seeking the office of President but instead they were relying on the
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1 virtue of that person to be in compliance with that law and if any action was
2 needed Amendment X provided that the States or the people had the
3 responsibility. It is further, the position of Appellants that the Framers’
4 patterned the office of President they had George Washington in mind. That
5 belief is supported by the statements of our Founding Fathers including John
6 Adams “Our Constitution was made only for a moral and religious people.
7 It is wholly inadequate to the government of any other.”; Benjamin Franklin
8 “Only a virtuous people are capable of freedom. As nations become corrupt
9 and vicious, they have more need of masters.”; and Thomas Jefferson “We
10 in America do not have government by the majority – we have government
11 by the majority *who participate* . . . All tyranny needs to gain a foothold is
12 for people of good conscience to remain silent.”

17 The Appellants have another issue with *Grinols v. Electoral College*,
18 No. 2:12-cv-02997-MCE, 2013 WL 2294885 (E.D. Cal. May 23, 2013),
19 *aff’d*, 622 F. App’x 624(9th Cir. 2015). The district court in this case cited
20 the *Grinols* case as the core reason for its dismissal of this case. The
21 operative phrase quoted by the district court in this case is “Because federal
22 courts are barred from intruding on a **TASK CONSTITUTIONALLY**
23 **ASSIGNED TO CONGRESS.**” (*emphasis added*). [ER 8] However,
24 when the *Grinols* case is examined, one finds that the district court in that
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1 case did **NOT** find any express provision of the Constitution vesting the
2 power over the qualifications or eligibility of the President (and Vice-
3 President) of the United States any way with the legislative branch. There
4 are absolutely **no words** set forth in the Constitution to that effect. To get
5 around that problem that court held that there are “numerous articles and
6 amendments of the U.S. Constitution, **when viewed together**, make clear
7 that the issue of the President's qualifications and his removal from office
8 are **textually committed** to the legislative branch and not the judicial
9 branch.”(*emphasis added*). Artificially connecting the removal and
10 impeachment provisions, which are expressly provided for, with the
11 qualifications and eligibility of the office create an illusion of an authority
12 that is not there.

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17 The articles and amendments of the U.S. Constitution which the
18 district court considered in that regard were as follows:

- 19
20
21 1. Congress, and Congress alone, is given the power of
22 impeachment except when the President of the United States is
23 tried, the Chief Justice of the supreme Court shall preside.
24 Article I., Section 2, paragraph 5; Section 3. Paragraphs 6 and
25 7.
- 26 2. Congress determines the time of choosing electors of the
27 Electoral College as well as the date giving their votes. Article
28 I. Section 1.

1 3. President of the Senate presides over the Senate and House of
2 Representatives for the opening of the electoral votes.
3 Amendment. XII.

4 4. In case of the death of President-elect or Vice President-elect,
5 Congress may choose the President or Vice President.
6 Amendment. XX.

7 5. Whenever the President transmits a declaration that he is unable
8 to discharge the powers and duties of the office the Vice-
9 President shall serve as the Acting President until he transmits a
10 contrary declaration. Amendment. XXV.

11 Nothing in those articles and amendments relate to the eligibility of
12 President and Vice-President whether read singly, all together or in any
13 combination.

14 Further, the district court in the *Grinols* case determined that
15 “[n]owhere does the Constitution empower the Judiciary to remove the
16 President from office or enjoin the President-elect from taking office”. That
17 also does not in any way relate to the eligibility of President and Vice-
18 President.

19 In holding that these non-existent invisible words read into and made
20 a part of the Constitution, this judgment was effectively an attempt to amend
21 the U.S. Constitution without using Article. V. and not including the powers
22 vested in the judiciary. In effect, the judge in the *Grinols* case was acting
23 more like a politician than a judge erred in rendering that decision as did
24 this court when it affirmed it and thereby violated the separation of powers
25 more like a politician than a judge erred in rendering that decision as did
26 this court when it affirmed it and thereby violated the separation of powers
27 more like a politician than a judge erred in rendering that decision as did
28 this court when it affirmed it and thereby violated the separation of powers

1 doctrine in that the judicial branch was not vested with any powers to amend
2 the Constitution.

3
4 The Supreme Court, under the early years of the John Marshall's
5 tenure as Chief Justice of the United States, offered in its 1803 decision in
6 *Marbury v. Madison* 5 U.S. (1 Cranch) 137 (February 24, 1803) that "All
7 laws which are repugnant to the Constitution are null and void." Laws are
8 not constitutional simply because Congress passed them or a court attempted
9 to judicially write them which in itself violate the separation of powers
10 doctrine. If shown to be inconsistent with the Constitution, those laws
11 should not be followed. Such an unjust law is no law at all.,

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14 In *Gamble v. United States*, No. 17-646, 587 U.S. (June 17, 2019)
15 Supreme Court Justice Clarence Thomas wrote a concurring opinion, joining
16 six of his fellow justices in the decision not to overrule precedent, Thomas in
17 his opinion provided a view that "When faced with a demonstrably
18 erroneous precedent, my rule is simple: We should not follow it" In his
19 argument, Justice Thomas simply wanted to let the Constitution, the real
20 Constitution, be the supreme law of the land.

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24 The American people and the Constitution they ratified provides the
25 standard for the conduct of the United States Government regarding all of its
26 laws, actions, and if an authority is granted regarding laws and actions in the
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1 first place. Follow the proper rules and law regarding eligibility specifically
2 set forth by the Framers of the Constitution, is not a political question,
3 policy choice or issue, or any kind of a value judgment, it is the **LAW**, and
4 any holding that the issue of the eligibility of any particular person to serve
5 in the President or Vice- President of the United States is barred by the
6 political question doctrine is unconstitutional.
7
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9 **The States or The People Have Authority Over the Eligibility of**
10 **The President and Vice President**
11

12 The first sentence of Section. 5. of Article. I of the Constitution
13 expressly provides that “Each House shall be the Judge of the Elections,
14 Returns and Qualifications of **its own Members**” (*emphasis added*). The
15 Constitution expressly **DOES NOT** provide any authority whatsoever
16 regarding the eligibility to the Office of President or Vice President. Further
17 nowhere in the Constitution or the Amendments thereto does it provide for
18 any such authority in anyway. However, the Constitution is very specific as
19 to any powers not expressly granted in Amendment X. thereto which
20 provides as follows: “The powers not delegated to the United States by the
21 Constitution, nor prohibited by it to the States, are reserved to the States
22 respectively, or **to the people.**” (*emphasis added*). As such, the Constitution
23 has expressly provided that the individual
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1 Plaintiffs / Appellants of this action are among those to have the
2 authority over eligibility to the Office of President or Vice President. The
3 government and its branches have no power or authority to ban the rights
4 which are constitutionally-protected and are at issue in this action.
5

6 **Governance of Precedent**

7

8 As set forth in the Verified Complaint on file in this action, the
9 Supreme Court has previously applied the rule of law as to the definition of
10 ‘**natural born Citizen**’ in the cases of *The Venus*, 12 U.S. (8 Cranch) 253,
11 289 (1814); *Shanks v. Dupont*, 28 U.S. 3 Pet. 242 245 (1830); *Dred Scott*
12 *v. Sandford*, 60 U.S. (19 How.) 393 (1857); *Minor v. Happersett*, 88 U.S.
13 162, 167-168 (1875); and *United States v. Wong Kim Ark*, 169 U.S. 649,
14 702 (1898). The precedent is that those cases were **NOT** barred by the
15 political question doctrine or in any way a violation the separation of powers
16 doctrine. The Supreme Court heard those cases setting the precedent that
17 they were not barred by those doctrines. This case also deals with the
18 definition of ‘**natural born Citizen**’ exact same issue and should proceed.
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22 Further, there are precedents that the meaning of the term ‘**natural**
23 **born Citizen**’ are ‘**children born in the country of parents who are**
24 **citizens of that country at that time**’. *The Venus* and the *Dred Scott* cases
25 reference Emerich de Vattel's 1758 treatise ‘The Law of Nations’.
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1 **Standing**

2 Plaintiffs / Appellants have a personal stake in this lawsuit that sets
3
4 forth a concrete case and controversy which arises under the Constitution
5 and the federal judicial power is required to exercise jurisdiction over. As
6 previously stated, Amendment. X. of the Constitution expressly sets forth
7
8 “The powers not delegated to the United States by the Constitution, nor
9 prohibited by it to the States, are reserved to the States respectively, or to
10 **the people.**” (*emphasis added*). As such, the Constitution has expressly
11 provided that the individual Plaintiffs / Appellants of this action have
12 standing to bring this action.
13

14 Further, 42 U.S. Code Section 1983 - Civil action for deprivation of
15 rights provides that:
16

17 “Every person who, under color of any statute, ordinance,
18 regulation, custom, or usage, of any State or Territory or the
19 District of Columbia, subjects, or causes to be subjected, any
20 citizen of the United States or other person within the
21 jurisdiction thereof to the deprivation of any rights, privileges,
22 or immunities secured by the Constitution and laws, shall be
23 liable to the party injured in an action at law, suit in equity, or
24 other proper proceeding for redress, except that in any action
25 brought against a judicial officer for an act or omission taken in
26 such officer’s judicial capacity, injunctive relief shall not be
27 granted unless a declaratory decree was violated or declaratory
28 relief was unavailable. For the purposes of this section, any Act
of Congress applicable exclusively to the District of Columbia
shall be considered to be a statute of the District of Columbia.”

27 Section 1983 was part of the CIVIL RIGHTS ACT of 1871 formerly
28

1 enacted as part of the Ku Klux Klan Act of 1871 and was originally
2 designed to combat post-Civil War racial violence in the Southern states. It
3 was Reenacted as part of the Civil Rights Act. The Supreme Court decisions
4 in *Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961),
5 and *Monell v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018,
6 56 L. Ed. 2d 611 (1978), recognized the full scope of Congress's original
7 intent and began accepting an expansive definition of rights, privileges, or
8 immunities which include those that Plaintiffs / Appellants have brought.
9 Federal courts are authorized to hear cases brought under section 1983
10 pursuant to two statutory provisions: 28 U.S.C.A. Section 1343(3) (1948)
11 and 28 U.S.C.A. Section 1331 (1948).

12
13 The Court expressly has jurisdiction over such civil rights and elective
14 franchise under 28 USC . Section 1343 which provides as follows:

15
16 “(a)The **district courts shall have original jurisdiction** of any civil
17 action authorized by law to be commenced by any person:

18
19 (1) To recover damages for injury to his person or property,
20 or because of the deprivation of any right or privilege of a
21 citizen of the United States, by any act done in furtherance of
22 any conspiracy mentioned in section 1985 of Title 42;

23 (2) To recover damages from any person who fails to prevent
24 or to aid in preventing any wrongs mentioned in section 1985 of
25 Title 42 which he had knowledge were about to occur and
26 power to prevent;” (emphasis added)

27 As such the individual Plaintiffs have standing in this action.

28 Separate from the individual Plaintiffs, Constitution Association , Inc.

1 has separate and distinct damages from the individual citizens which are for
2 resources wasted because of Defendant Harris unconstitutional conduct.

3
4 **Conclusion**

5 This case is over whether KAMALA DEVI HARRIS, Defendant /
6 Appellee, is a ‘**natural born Citizen**’, a question of **LAW** arising under this
7 Constitution over which judicial Power extends. The U.S Constitution does
8 NOT designate any branch of government to evaluate the qualification of
9 ‘**natural born Citizen**’ as that is not a political question. The United States
10 of America is not a party in this action and has no standing in it.
11
12

13 Executed on February 8, 2022, at Hemet, California

14
15 /s/ DENNIS A. RASMUSSEN
16 DENNIS A. RASMUSSEN, Esquire
17 *Attorney for Plaintiff - Appellant*
18 *Constitution Association, Inc.*
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1 STATE OF CALIFORNIA)
2 COUNTY OF RIVERSIDE)

3 I, Beau Harley Watson, a private individual who resides in the
4 County of Riverside, State of California, being duly sworn, depose and say:

5 I have been duly authorized to make service of the documents listed
6 herein in the above entitled case. I am over the age of eighteen years, and
7 not a party to the within action or otherwise interested in this matter.

8 On February 9, 2022, I served the following pleading described as
9 **AMENDED OPENING BRIEF** by placing true copies thereof enclosed
10 in a sealed envelope addressed to the person(s) as follows:

11 Kamala Devi Harris
12 The White House
13 Office of the Vice President
14 1600 Pennsylvania Avenue, NW
15 Washington, DC 20500

16 Randy S. Grossman,
17 Acting United States Attorney
18 Brett Norris
19 Assistant U.S. Attorney
20 Office of the U.S. Attorney
21 880 Front Street, Room 6293
22 San Diego, CA 92101

23 And by depositing same on that day in a facility for mail collection regularly
24 maintained by U. S. Postal Service with postage thereon fully prepaid at
25 Temecula, California. I am aware that on motion of a party served, service
26 is presumed invalid if postal cancellation date or postage meter date is more
27 than one day after the date of deposit for mailing affidavit.

28 I declare under penalty of perjury, under the laws of the United States
of America and the State of California that the foregoing is true and correct.

Executed on February 9, 2022, at Temecula, California

/s/ Beau Harley Watson

Beau Harley Watson