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8 *Plaintiff, Appellant In Propria Persona*

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

12 CONSTITUTION ASSOCIATION, INC., one
13 of its founders, GEORGE F. X. ROMBACH
14 and; et. al.,

14 Plaintiffs-Appellants,

15 and

16 B. GREEN; et. al.

17 Plaintiffs,

20 vs.

21 KAMALA DEVI HARRIS,

22 Defendant-Appellee.

No. 21-56287

D.C. No. 20CV2379 TWR BLM
Southern District of California
San Diego

PETITION IN APPEAL

Complaint Filed: December 7, 2020

Appeal Filed: November 26, 2021

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1 **Introduction**

2 The sole issue in this action is whether the Defendant / Appellee, a member of the
3 Democratic Party, is not constitutionally eligible to run for or hold the Office of President or Vice
4 President. In the Verified Complaint in this action, Plaintiffs / Appellants had also alleged that
5 three Republican candidates were likewise not eligible to hold the Office of President, but they
6 withdrew from the race before the commencement of this action. Plaintiffs / Appellants are non-
7 partisan as to this action and have no issue with the political affiliation of any candidate, they are
8 simply seeking that the provisions of the Constitution be complied with by ALL persons as it was
9 expressly written.
10

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

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

23 Article III, Section. 2, of the United States Constitution provides that "The judicial Power
24 shall extend to **ALL CASES**, in Law and Equity, **arising under this Constitution**, the Laws of
25 the United States, and Treaties made, or which shall be made, under their Authority
26 .”(emphasis added). It is absolutely clear that this action is one which "arises under" the
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1 Constitution and has jurisdiction over this matter. The Verified Complaint alleges, and submits
2 substantial evidence, that Defendant / Appellee does **NOT** comply with law set forth in the fifth
3 paragraph of Article. II. Section. 1. of the Constitution.

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

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

22 In the *Baker v. Carr*, *supra* at 217 the Supreme Court set forth six factors indicating the
23 existence of “a political question, although each has one or more elements which identify it as
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1 essentially a function of the separation of powers. [1] Prominent on the surface of any case held to
2 involve a political question is found a textually demonstrable **constitutional commitment** of the
3 issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable
4 standards for resolving it; or [3] the impossibility of deciding without an initial policy
5 determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's
6 undertaking independent resolution without expressing lack of the respect due coordinate branches
7 of government; or [5] an unusual need for unquestioning adherence to a political decision already
8 made; or [6] the potentiality of embarrassment from multifarious pronouncements by various
9 departments on one question.
10

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

17 In *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) this court correctly
18 decided that political issues, as opposed to legal issues, are required to be resolved by the political
19 branches rather than by the judiciary. Further, in *Koohi v. U.S.* 976 F.2d 1328, 1331 (9th Cir.
20 1992) this court had previously correctly decided that the federal courts were prevented from
21 unduly intruding on certain policy choices and value judgments that are constitutionally
22 committed to Congress or the Executive branch. The Appellants fully and completely support
23 those decisions and base this appeal thereon. However, NONE of the issues in this case are a
24 political question, choice or issue, or value judgment that is constitutionally committed to any
25 other branch. Instead, they involve the express minimum requirements that the Framers of the
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1 Constitution wrote into the Constitution for an individual to be eligible to serve in an office. As
2 such they are a matter of **LAW**.

3 The Constitution expressly provides in the second paragraph of Article. VI. that “**This**
4 **Constitution**, and the Laws of the United States which shall be made in Pursuance thereof; and all
5 Treaties made, or which shall be made, under the Authority of the United States, shall be the
6 supreme **Law of the Land;**” (*emphasis added*). The Constitution further expressly provides in the
7 fifth paragraph of Article. II., Section. 1. that “No Person except a **natural born Citizen**, or a
8 Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to
9 the Office of President; neither shall any person be eligible to that Office who shall not have
10 attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United
11 States.” (*emphasis added*) Accordingly, thereby the issue of the eligibility of any particular
12 person to serve in the office of President of the United States, or as a Vice- President of the United
13 States under the last sentence of Amendment XII, based on nature’s circumstances of their birth,
14 or age, or years of residency in the United States is totally, completely and specifically prescribed
15 by **LAW**. That is the sole issue of this action and it in no way is a policy choice or issue, or any
16 kind of a value judgment.

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

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

5 The articles and amendments of the U.S. Constitution which the district court considered
6 were as follows:

- 7 1. Congress, and Congress alone, is given the power of impeachment except when the
8 President of the United States is tried, the Chief Justice of the supreme Court shall
9 preside. Article I., Section 2, paragraph 5; Section 3. Paragraphs 6 and 7.
- 10 2. Congress determines the time of choosing electors of the Electoral College as well
11 as the date giving their votes. Article I. Section 1.
- 12 3. The President of the Senate presides over the Senate and House of Representatives
13 for the opening of the electoral votes. Amendment. XII.
- 14 4. In case of the death of the President-elect or Vice President-elect, Congress may
15 choose the President or Vice President. Amendment. XX.
- 16 5. Whenever the President transmits a declaration that he is unable to discharge the
17 powers and duties of the office the Vice-President shall serve as the Acting
18 President until he transmits a contrary declaration. Amendment. XXV.

19 Nothing in those articles and amendments relates in any way to the eligibility of President and
20 Vice-President whether read singly, all together or in any combination.

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

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

1 judicial branch was not vested with any powers to amend the Constitution.

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

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

15 The American people and the Constitution they ratified provides the standard for the
16 conduct of the United States Government regarding all of its laws, actions, and if an authority is
17 granted regarding laws and actions in the first place. Follow the proper rules and law regarding
18 eligibility specifically set forth by the Framers of the Constitution, is not a political question,
19 policy choice or issue, or any kind of a value judgment, it is the **LAW**, and any holding that the
20 issue of the eligibility of any particular person to serve in the President or Vice- President of the
21 United States is barred by the political question doctrine is unconstitutional.

22
23 **The States or The People Have Authority Over the Eligibility of The President And**
24 **Vice President**

25 The first sentence of Section. 5. of Article. I of the Constitution expressly provides that
26 “Each House shall be the Judge of the Elections, Returns and Qualifications of **its own Members**”
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1 (*emphasis added*). The Constitution expressly **DOES NOT** provide any authority whatsoever
2 regarding the eligibility to the Office of President or Vice President. Further nowhere in the
3 Constitution or the Amendments thereto does it provide for any such authority in anyway.
4 However, the Constitution is very specific as to any powers not expressly granted in Amendment
5 X. thereto which provides as follows: “The powers not delegated to the United States by the
6 Constitution, nor prohibited by it to the States, are reserved to the States respectively, or **to the**
7 **people.”** (*emphasis added*). As such, the Constitution has expressly provided that the individual
8 Plaintiffs / Appellants of this action are among those to have the authority over eligibility to the
9 Office of President or Vice President. The government and its branches have no power or authority
10 to ban the rights which are constitutionally-protected and are at issue in this action.
11

12 **Governance of Precedent**

13 As set forth in the Verified Complaint on file in this action, the Supreme Court has
14 previously applied the rule of law as to the definition of ‘**natural born Citizen**’ in the cases of
15 *The Venus*, 12 U.S. (8 Cranch) 253, 289 (1814); *Shanks v. Dupont*, 28 U.S. 3 Pet. 242 245
16 (1830); *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857); *Minor v. Happersett*, 88 U.S.
17 162, 167-168 (1875); and *United States v. Wong Kim Ark*, 169 U.S. 649, 702 (1898). The
18 precedent is that those cases were **NOT** barred by the political question doctrine or in any way a
19 violation the separation of powers doctrine. The Supreme Court heard those cases setting the
20 precedent that they were not barred by those doctrines. This case also deals with the definition of
21 ‘**natural born Citizen**’ exact same issue and should proceed.
22

23 Further, there are precedents that the meaning of the term ‘**natural born Citizen**’ are
24 ‘**children born in the country of parents who are citizens of that country at that time**’. The
25 *Venus* and the *Dred Scott* cases 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 forth a concrete case
3 and controversy which arises under the Constitution and the federal judicial power is required to
4 exercise jurisdiction over. As previously stated, Amendment. X. of the Constitution expressly sets
5 forth “The powers not delegated to the United States by the Constitution, nor prohibited by it to
6 the States, are reserved to the States respectively, or **to the people.**” (*emphasis added*). As such,
7 the Constitution has expressly provided that the individual Plaintiffs / Appellants of this action
8 have standing to bring this action.

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

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

21 Section 1983 was part of the CIVIL RIGHTS ACT of 1871 formerly enacted as part of the Ku
22 Klux Klan Act of 1871 and was originally designed to combat post-Civil War racial violence in
23 the Southern states. It was Reenacted as part of the Civil Rights Act. The Supreme Court
24 decisions in *Monroe v. Pape*, 365 U.S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961), and
25 *Monell v. Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978),
26 recognized the full scope of Congress's original intent and began accepting an expansive definition
27 of rights, privileges, or immunities which include those that Plaintiffs / Appellants have brought.
28 Federal courts are authorized to hear cases brought under section 1983 pursuant to two statutory

1 provisions: 28 U.S.C.A. Section 1343(3) (1948) and 28 U.S.C.A. Section 1331 (1948).

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

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

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

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

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

13 Separate from the individual Plaintiffs, Constitution Association , Inc. has separate and
14 distinct damages from the individual citizens which are for resources wasted because of Defendant
15 Harris unconstitutional conduct.

16 **The Government of the United States of America Is Not a Party in this Action**

17 As set forth in Plaintiffs’ / Appellants’ reply to the government’s *Ex Parte* Application
18 interfering in this action, the government of the United States of America is **NOT** a party of this
19 action and has **NO** standing as to whether Defendant / Appellee was born as a "natural born
20 Citizen" as is expressly required by the fifth paragraph Article. II. Section. 1. therein. . The
21 government sought to interfere with this action, more than sixty (60) days after the Verified
22 Complaint was served on Defendant / Appellee, seeking to set aside the Entry of Default that was
23 properly entered more than two (2) weeks prior. In the *Ex Parte* Application the United States
24 Attorney’s Office clearly indicates that they are representing the United States of America and
25 NOT as to the Defendant / Appellee Kamala Devi Harris as an individual. They have never stated
26 or entered an appearance for her. At the time Verified Complaint was filed, Defendant / Appellee
27 was not an officer or employee of the United States Government, and she is not being sued for any
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1 act or omission occurring in connection with duties performed on behalf of the government.

2 **United States Not Required To Be Served**

3 Plaintiffs / Appellants were NOT required to serve the United States government because
4 the sole issue is whether Defendant / Appellee is a ‘**natural born Citizen**’ at the time of her birth,
5 and when the Verified Complaint was filed she was not a ‘United States officer or employee’ nor
6 were the actions alleged in the Verified Complaint on file herein were committed in any way in
7 connection with United States government. That issue was not ruled on by the District Court but
8 it is considered the previous argument are re-asserted as if fully set forth herein.
9

10 **Defendant / Appellee Did Not Respond**

11 Defendant / Appellee has not yet answered any of the merits of this action, pled, defended
12 or otherwise responded in any way to the Verified Complaint on file in this action for her
13 personally committing an unconstitutional action of running for the office of Vice President of
14 the United States of America for which Plaintiffs allege she is not eligible to hold. She is in total
15 Default!

16 **Conclusion**

17 This case is over whether KAMALA DEVI HARRIS, Defendant / Appellee, is a ‘**natural**
18 **born Citizen**’, a question of **LAW** arising under this Constitution over which judicial Power
19 extends. The U.S Constitution does NOT designate any branch of government to evaluate the
20 qualification of ‘**natural born Citizen**’ as that is not a political question. The United States of
21 America is not a party in this action and has no standing in it.
22

23 Executed on January 21, 2022, at Temecula, California

24 /s/ GEORGE F. X. ROMBACH
25 GEORGE F. X. ROMBACH, PhD, JD, CPA,
26 *Plaintiff - Appellant, In Propria Persona and*
27 /s/ DENNIS A. RASMUSSEN
28 DENNIS A. RASMUSSEN, Esquire
Attorney for Plaintiff - Appellant
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 County of Riverside,
4 State of California, being duly sworn, depose and say:

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

8 On January 21, 2022, I served the following pleading described as **PETITION IN**
9 **APPEAL** by placing true copies thereof enclosed in a sealed envelope addressed to the person(s)
as follows:

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

13 Randy S. Grossman,
14 Acting United States Attorney
Brett Norris
15 Assistant U.S. Attorney
Office of the U.S. Attorney
880 Front Street, Room 6293
16 San Diego, CA 92101

17 And by depositing same on that same day in a facility for the collection mail that is regularly
18 maintained by United States Postal Service with postage thereon fully prepaid at Temecula,
19 California. I am aware that on motion of a party served, service is presumed invalid if postal
20 cancellation date or postage meter date is more than one day after the date of deposit for mailing
21 affidavit.

22 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.

23 Executed on January 21, 2022, at Temecula, California

24
25 /s/ Beau Harley Watson
26 Beau Harley Watson,

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