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Plaintiff, Appellant In Propria Persona
Co-Founder of Constitution Association , Inc.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CONSTITUTION ASSOCIATION, INC., a founder GEORGE F.X. ROMBACH and; et. al., Plaintiffs-Appellants, and B. GREEN; et. al. Plaintiffs, vs. KAMALA DEVI HARRIS, Defendant-Appellee.	**No. 21-56287** **D.C. No. 20cv2379 TWR BLM** **Southern District of California** **San Diego** **REPLY BRIEF** Complaint Filed: December 7, 2020 Appeal Filed: November 26, 2021

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Ninth Cir. Rule 28-2.6. STATEMENT OF RELATED CASES

Appellants certify, pursuant to Ninth Circuit Rule 28-2.6, that the only related case pending in this Court is Court of Appeal No. **21-56061**, **ELECTION INTEGRITY PROJECT CALIFORNIA, INC.**, et al., *Plaintiffs-Appellants*, **vs. SHIRLEY WEBER**, et al., *Defendants-Appellees*, An Appeal from the Order of the United States District Court for the Central District of California, Case No. 2:21-cv-00032-AB-MAA, Before the Honorable André Birotte Jr., District Judge.

Date: April 15, 2022

Respectfully submitted,

/s/ GEORGE F. X. ROMBACH
GEORGE F. X. ROMBACH, PhD, JD, CPA
Plaintiff, Appellant In Propria Persona
Co-Founder of Constitution Association, Inc.

Introduction:

In her Answering Brief, Appellee Harris asserted that the district court *sua sponte* dismissed the Complaint in this action for lack of Article. III. Standing and under the Political question doctrine, which are the only issues in this appeal. She FALSELY asserted the Complaint has NOT been served.

Appellants assert that if Supreme Court precedents were properly applied, Article. III. Standing requirements would be fulfilled, and the Political Question Doctrine was not properly applied in the case of *Grinols v. Electoral College*, No. 2:12-cv-02997-MCE, 2013 WL 2294885 (E.D. Cal. May 23, 2013), *aff'd*, 622 F. App'x 624(9th Cir. 2015).

In the Verified Complaint, the sole issue is whether, due to the circumstances of her birth, Appellee is not constitutionally eligible to run for or hold the Office Vice President. Appellants have asserted that the United States government is not a party to this action and has no standing in it. Further, they are non-partisan and have no issue with the political affiliation of any candidate, they are simply seeking that the provisions of the Constitution be complied with by ALL persons as it was expressly written.

Standard of Review:

A dismissal pursuant to Fed. R. Civ. P. 12(b)(1) is reviewed de novo. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) and *Puri v. Khalsa*, 844

F.3d 1152, 1157 (9th Cir. 2017). A Fed. R Civ. P. 12(b)(1) motion challenges a court's subject matter jurisdiction either facially, claiming that the facts accepted as true do not establish jurisdiction, or factual, claiming that the facts establishing jurisdiction are not true. *Thornhill Pub. Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). In determining a factual attack, a court must accept the allegations in the complaint as true. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). Likewise, in determining a factual attack, "when the issue of subject matter jurisdiction is intertwined with an element of the merits of the plaintiff's claim" (id. at 1122 n.3), the court "must 'assume [ ] the truth of the allegations in a complaint ... unless controverted by undisputed facts in the record.' " *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003) (quoting *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987)).

Political Question Doctrine Improperly Applied TO This Case

In this case the district court cited *Grinols v. Electoral College*, *supra* as the core reason for its dismissal of this case. The operative phrase quoted by the district court in this case is "Because federal courts are barred from intruding on a **TASK <u>CONSTITUTIONALLY</u> ASSIGNED TO CONGRESS**." *(emphasis added)*. [ER 8] However, **<u>nowhere</u>** in the U.S. Constitution is it **enumerated** in any way that the legislative branch

(Congress) has any authority regarding the eligibility of any person seeking to serve as the President (or Vice-President) of the United States – Not one single word expressed or implied. As such the district court in the *Grinols* case totally ignored the **enumeration doctrine** and the related required U.S. Supreme Court precedents, as did the Ninth Court of Appeals when it affirmed it.

As a more explicit limitation, the Constitution vests Congress only with those legislative powers that are "herein granted". Unlike state legislatures that enjoy plenary authority, Congress has authority only over the subject matter specified in the Constitution, particularly in Article. I, Section 8. Early Presidents and Congresses took seriously the limited jurisdiction of the federal government. They assumed no federal power to fund internal improvements, for example. They also debated what powers might be implied by the grant of the enumerated powers.

Enumeration Doctrine

Roger Sherman and Oliver Ellsworth of Connecticut reported that the Constitution vested some additional powers in Congress, but that "[t]hose powers extend only to matters respecting the common interests of the union, and are specially defined, so that the particular states retain their sovereignty in all other matters." See, 3 FARRAND'S RECORDS 99, (Sept. 26, 1787).

James Madison; The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. The operations of the federal government will be most extensive and important in times of war and danger; those of the State governments, in times of peace and security. *Federalist Paper 45, James Madison.*

The tenet that Congress has only the power to provide for enumerated powers, and not for the general welfare," Jefferson wrote in 1811, "is almost the only landmark which now divides the federalists from the republicans." 12 Jefferson Papers 71, Letter to Albert Gallatin (June 16, 1817).

In 1824, Chief Justice MARSHALL speaking for a unanimous opinion of the Court, "The appellant contends that this decree is erroneous because the laws which purport to give the exclusive privilege it sustains are repugnant to the Constitution and laws of the United States. They are said to be repugnant." *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 186 (1824).

The Constitution " . . . contains an enumeration of powers expressly granted by the people to their government. It has been said that these powers ought to be construed strictly." See *Gibbons, supra*, at 187.

"What do gentlemen *(of the bar)* mean by a 'strict construction?' If they contend only against that enlarged construction, which would extend words beyond their natural and obvious import, we might question the application of the term, but should not controvert the principle." See *Gibbons, supra*, at 188.

"The enumeration presupposes something not enumerated." See *Gibbons, supra*, at 195. In other words: the powers of Congress are specifically enumerated in the Constitution. If Congress had general legislative power, the Constitution would have said that, rather than providing a list of particularly enumeration powers.

In *United States v. Lopez*, 514 U.S. 549 (1995) the Supreme Court invalidated a federal law making it a crime to possess a firearm close to a public school. Not only did Congress fail to connect the statute to an enumerated power, but the power asserted (regulation of commerce) was not considered the kind of economic regulation the Court had previously sanctioned. *Lopez* reaffirmed outer boundary of federal regulatory power.

In defending the Gun-Free School Zones Act and the Violence Against Women Act, respectively, the government relied on the "substantial effects test," which, at the time, permitted Congress to regulate any activity it rationally believed, in the aggregate, to have a substantial effect on

interstate commerce. As a matter of existing doctrine, this argument was strong. But in *United States v. Morrison*, 529 U.S. 598 (2000) Chief Justice Rehnquist explained for the *Lopez* majority, "[i]f we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate." Unwilling to step onto this slippery slope, the Court effectively prohibited Congress from regulating noneconomic activities.

Gonzales v. Raich, (previously Ashcroft v. Raich), 545 U.S. 1 (2005), was a decision by the Supreme Court ruling that under the Commerce Clause of the US Constitution, Congress may criminalize the production and use of homegrown marijuana even if state law allows its use for medicinal purposes. The enumeration principle was the driving force behind Justice O'Connor's and, especially, Justice Thomas's dissents which would have held Congress powerless to regulate homegrown medical marijuana—at least in states that sanctioned and regulated its use. The government relied on the substantial effects test to defend the Controlled Substances Act. This time the Court agreed, holding that the cultivation and consumption of marijuana—even on a small, noncommercial scale— were economic activities, which Congress rationally could have believed to have a substantial effect on interstate commerce. The dissenters were not

convinced. Justice O'Connor protested that the majority's broad definition of economic activity drew "no line at all." Justice Thomas echoed *Lopez*: "If Congress can regulate this under the Commerce Clause, then it can regulate virtually anything—and the Federal Government is no longer one of limited and enumerated powers." Unwilling to accept this result, both Justices would have required Congress to demonstrate that regulation of personal cultivation and consumption was genuinely—not merely rationally—necessary to the regulation of the interstate marijuana market.

In the *Grinols,* case the district court failed to state, or connect to, any enumerated power that **CONGRESS was Constitutionally Assigned the Task of determining the eligibility of the President (and Vice-President)** of the United States. Nor did they properly connect that alleged authority to any enumerated power. It is unmistakably clear that the Framers of the Constitution expressly enumerated that in order to be eligible to serve as President (or Vice-President) of the United State one had to be '**natural born Citizen**' and each candidate shall on their honor abide by that eligibility requirement. As the Constitution and Amendments were enumerated and ratified the supervision of the '**natural born Citizen**' eligibility requirement was, by the Tenth Amendment, expressly enumerated upon the States or **the people**.

When Powers are NOT Delegated to the United States

When the Constitution does NOT specifically ENUMERATE powers to the United States government, nor are they prohibited by it to the States, as it did not in the case of the supervision of the '**natural born Citizen**' eligibility requirement, the Amendment. X. to the Constitution very specifically enumerates **ALL** of those powers not expressly granted in as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the **States** respectively, or **to the people**." *(emphasis added)*. That position is totally and completely consistent with powers of the States set forth in Article. II.

The United States Supreme Court has constantly upheld that. In the *United States v. Darby Lumber Co.*, 312 U.S. 100 (1941), a case in which the Court upheld the Fair Labor Standards Act of 1938, it also held at 124:

> "Our conclusion is unaffected by the Tenth Amendment. which provides:
>
> > "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or **to the people**." *(emphasis added)*.
>
> "The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment, or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers."

> "From the beginning and for many years, the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end. *Martin v. Hunter's Lessee,* 1 Wheat. 304, 14 U. S. 324, 14 U. S. 325; *McCulloch v. Maryland, supra,* 17 U. S. 405, 17 U. S. 406; *Gordon v. United States,* 117 U.S.Appx 697, 705; *Lottery Case, supra; Northern Securities Co. v. United States, supra,* 193 U. S. 344-345; *Everard's Breweries v. Day, supra,* 265 U. S. 558; *United States v. Sprague,* 282 U. S. 716, 282 U. S. 733; *see United States v. The Brigantine William,* 28 Fed.Cas. No. 16,700, p. 622. Whatever doubts may have arisen of the soundness of that conclusion, they have been put at rest by the decisions under the Sherman Act and the National Labor Relations Act which we have cited. *See also Ashwander v. Tennessee Valley Authority,* 297 U. S. 288, 297 U. S. 330-331; *Wright v. Union Central Ins. Co.,* 304 U. S. 502, 304 U. S. 516."

In *United States v. Sprague, supra,* 282 U. S. 716, the United States Supreme Court at 733-734 held that

> "The Tenth Amendment provides:
>
> > "'The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or **to the people**." *(emphasis added)*.
>
> "Appellees assert this language demonstrates that the people reserved to themselves powers over their own personal liberty, and that the legislatures are not competent to enlarge the powers of the federal government in that behalf. They deduce from this that the people never delegated to the Congress the unrestricted power of choosing the mode of ratification of a proposed amendment. But the argument is a complete *non sequitur.* The Fifth Article does not purport to delegate any governmental power to the United States, nor to withhold any from it. On the contrary, as pointed out in *Hawke v. Smith (No. 1), supra,* that Article is a grant of authority by the people to Congress, and not to the United States. It was submitted as part of the original draft of the Constitution to the people in conventions assembled. They deliberately made the grant of power to Congress in

> respect to the choice of the mode of ratification of amendments. Unless and until that Article be changed by amendment, Congress must function as the delegated agent of the people in the choice of the method of ratification."
>
> "**The Tenth Amendment was intended to confirm the understanding of the people, at the time the Constitution was adopted, that powers not granted to the United States were reserved to the states or to the people.** It added nothing to the instrument as originally ratified, and has no limited and special operation, as is contended, upon the people's delegation by Article V of certain functions to the Congress." *(emphasis added)*.

Murphy v. National Collegiate Athletic Association *NCAA*, No. 16-476, 584 U.S. ___ (2018), was a United States Supreme Court case involving the Tenth Amendment to the Constitution. The issue was whether the federal government has the right to control state lawmaking with a federal law prohibiting states from "authorizing" sports gambling unconstitutionally "commandeered" the authority of state legislatures. In an opinion authored by Justice Alito (and joined by six other justices in its central holding), the Court explained that because the Professional and Amateur Sports Protection Act of 1992 (PASPA) "unequivocally dictates what a state legislature may and may not do" with respect to sports gambling, it impermissibly placed state legislatures "under the direct control of Congress." In reaching this conclusion, the Court rejected the argument that PASPA represented a valid exercise of Congress's power to preempt state law, reasoning that Congress can preempt state law only in the course

of directly regulating private actors and not by directly issuing commands to state governments.

In a direct quote from the docket of *Gamble v. United States,* No. 17-646, 587 U.S. ___ (2019), when the Supreme Court considered whether the Double Jeopardy Clause of the Fifth Amendment, which prohibits any person from being prosecuted for the same offense more than once, bars a federal prosecution for a criminal offense when the defendant has already been prosecuted for the same offense in state court, they said:

> "In recognition of the States' authority in this realm, the first Congress enacted a fairly limited set of federal offenses in the Crimes Act of 1790. This included treason, piracy, and other offenses committed on federal enclaves—crimes which were all understood to be within federal purview. This Court's early precedents also recognized the States' central role over the administration of criminal justice—that 'Congress cannot punish felonies generally,' Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 428 (1821), and 'the police power . . . unquestionably remains, and ought to remain, with the States.' Brown v. Maryland, 25 U.S. (12 Wheat.) 419, 443 (1827). The Court's more recent Tenth Amendment jurisprudence has further solidified the understanding that criminal law enforcement is 'an area to which States lay claim by right of history and expertise.' United States v. Lopez, 514 U.S. 549, 582 (1995) (Kennedy, J., concurring); id. at 584-85 (Thomas, J., concurring) ('The Federal Government has nothing 10 approaching a police power.'); United States v. Morrison, 529 U.S. 598, 618 n.8 (2000) (the principle is "deeply ingrained in our constitutional history" that "the Constitution created a Federal Government of limited powers, while reserving a generalized police power to the States."). In sum, the Tenth Amendment historical record confirms the Framers' intention to draw clear boundaries between federal and state authority in the administration of criminal justice, with the vast majority of this power being reserved to the States."

Article. III. § 2. expressly enumerates that "The judicial Power shall extend to all Cases, in Law and Equity, **arising under this Constitution**, . . .". *(emphasis added)*. Article. II. § 1. starts out "No Person except a **natural born Citizen** . . . shall be eligible to the Office of President . . ." (or Vice President). *(emphasis added)*. Whether or not a person seeking the office of President or Vice President is a 'natural born Citizen' is without any possibility of being other than as a case '**arising under this Constitution**' and fully authorized and enumerated by Article. III. That is the sole issue of this action, which mandates the case be remanded to the district court for trial on the merits.

Further, the Supreme Court has previously applied the rule of law in relation to the definition of '**natural born Citizen**' (a child born to both parents who were citizens of the United States at the time the child was born in the United States) in at least five published cases. See *The Venus***,** 12 U.S. (8 Cranch) 253, 289 (1814); *Shanks v. Dupont***,** 28 U.S. 3 Pet. 242 245 (1830); *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857); *Minor v. Happersett*, 88 U.S. 162, 167-168 (1875); and *United States v. Wong Kim Ark***,** 169 U.S. 649, 702 (1898). As such the Supreme Court has set the **precedent** that there was **NO** issue in those cases that the

'**natural born Citizen**' issue was any way barred by the political question doctrine or in any way a violation the separation of powers doctrine and that this action is a proper case under Article. III. of the Constitution. If the court had properly applied these precedents in the *Grinols case*, as they should have, they would not have errored in holding that Congress was Constitutionally Assigned the Task of determining the eligibility of the President (and Vice-President) and this case would NOT have been dismissed. As such this should be remanded to the district court for trial on the merits.

Implied Powers

A significant early debate concerned whether Congress had the power to create a Bank of the United States. In *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819) Chief Justice John Marshall admitted that the Constitution does not enumerate a power to create a central Bank but said that is not dispositive as to Congress's power to establish such an institution. *McCulloch* was a landmark U.S. Supreme Court decision that defined that the "Necessary and Proper" Clause of the U.S. Constitution gives the U.S. federal government certain implied powers that are not explicitly enumerated in the Constitution. In that regard held that "[i]n considering this question, then, we must never forget, that it is a *constitution* we are

expounding." *McCulloch* at 408.

James Madison and Thomas Jefferson argued against such a power, but President Washington ultimately supported Alexander Hamilton's plan for the Bank, even though the Framers had rejected bank incorporation as an enumerated power. The Supreme Court upheld the constitutionality of the Bank and recognized that the enumerated powers included some implied powers by invoking the Necessary and Proper Clause, which permits Congress to seek an objective while it exercised its enumerated powers as long as that objective is not forbidden by the Constitution. Marshall also noted that the Necessary and Proper Clause is listed within the powers of Congress, not its limitations. The Court held that the word "necessary" does not refer therefore to the only way of doing something but applies to various procedures for implementing all constitutionally-established powers: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are Constitutional." *McCulloch* at 421. The opinion stated that Congress has implied powers, which **must be related to the text of the Constitution** but do not need to be enumerated within the text.

In the *Grinols* case the court held that it must look to the Constitution

to determine whether the Constitution "speaks to which branch of government has the power to evaluate the eligibility of a president" (or vice president). But there is **NOTHING** there. Rather than accepting that the Framers intentionally did not enumerate anything on that matter, as stated herein before, they '**implied**' a new power in order to create a political question by setting up a perceived conflict between two branches of the government where **NONE** was enumerated in the Constitution as written. Appellants are concerned that this implied power was created in order to avoid making a decision on the merits relating of the '**natural born Citizen**' issue, which is actually what happened. In the process of creating this new **Implied Power** they considered the following enumerated articles and amendments of the Constitution:

1. Congress, and Congress alone, is given the power of impeachment except when the President of the United States is tried, the Chief Justice of the supreme Court shall preside. Article I., Section 2, paragraph 5; Section 3. Paragraphs 6 and 7.

2. Congress determines the time of choosing electors of the Electoral College as well as the date giving their votes. Article I. Section 1.

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

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

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

Whether read singly, all together or in any combination, **NOTHING** in those articles and amendments relate to the eligibility requirement of Article. II. § 1. that the President (and Vice-President) be a '**natural born Citizen**', or in any way is the new implied power created '**related to the text of the Constitution**' in Article. II. § 1. as required. Further, the new implied power created violates the separation of powers doctrine which gave rise to the political question doctrine. Never before has the deviation of the separation of powers doctrine been done with an implied unwritten power.

In the *McCulloch case* the Supreme Court upheld the constitutionality of an implied power by invoking the Necessary and Proper Clause, which permits Congress **to seek an objective while it exercised its enumerated powers**, which clearly sets out that the implied power must relate to the objective or implementation of an enumerated power. In determining the implied power of the *Grinols* case none of the enumerated articles and amendments that the court relied on relate to the implied power.

In support of their political question doctrine, Appellee makes a conclusory assertion that ". . . certain questions are **political** as opposed to **legal** and, therefore, beyond the courts' jurisdiction." *(last line of page 8 and*

the first line of page 9 - emphasis added). Appellee cites **NO** authority whatsoever for her conclusory assertion that the circumstances of her birth is a **political** question rather than a factorial issue of **law**. In support of that, Appellee correctly cites *Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) that [d]isputes involving political questions lie outside of the Article. III. jurisdiction of federal courts." But neither the court in the *Grinols case* or Appellee cite any authority or precedent whatsoever that the FACT of whether the President (or Vice-President) is born as a '**natural born Citizen**' is a 'policy choice', 'value judgment' or a **political question**. However, in his *Frist Edition of An American Dictionary of the English Language* (1828) Noah Webster set forth the second definition of "Qualification" as "Legal power or requisite; as the qualifications of electors" Appellee asserts that the circumstances of the birth of a future candidate, a minimum of thirty five years prior, is a political question.

The Appellee, and in the *Grinols* case the court, both cited Baker v. Carr, 369 U.S. 186, (1962). But again, neither of them cite any authority or precedent whatsoever that the FACT of whether the President (or Vice-President) is born as a '**natural born Citizen**' is a **political question**. They assert that, of the six factors of the existence of a political question, ". . the first two are likely the most important" [*Republic of Marshal Islands v.*

United States, 865 F.3d 1187, 1200 (9th Cir. 2007)][1] and simply proceed as if the unsupported statement is true.

So let us examine those first two factors. In the *Marshal Islands, case* at 1200 and 1201 the court held that:

> "Under the first factor, the Marshall Islands' claims involve '**a textually demonstrable constitutional commitment of the issue to a coordinate political department**,' *Baker,* 369 U.S. at 217 — 82 S.Ct. 691 — namely, the decision of when, where, whether, and how the United States will negotiate with foreign nations to end the nuclear arms race and accomplish nuclear disarmament. *See* U.S. Const. art. II, §§ 2, 3.[11] "**The conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative —`the political' — departments of the government**, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision." *Oetjen v. Cent. Leather Co.,* 246 U.S. 297, 302, 38 S.Ct. 309, 62 S.Ct. 726 (1918)." *(emphasis added)*.

In the context of treaty enforcement, "[t]he nonjusticiability of a political question is primarily a function of the separation of powers."*Baker, supra,* is clear that claims present inextricable political questions that are nonjusticiable. However, neither the court in the *Grinols case* or Appellee cite any authority or precedent that the FACT of the birth of the President (or Vice-President) as a '**natural born Citizen**', or not, is a **political question**. Appellee puts forth a conclusory statement that "[h]ere there is plainly a 'textually demonstrable constitutional commitment of the issue to a

[1] Citing *Alperin v. Vatican Bank*, 410 F.3d 532, 544-45 (9th Cir. 2005).

coordinate political department,' depriving the district court of jurisdiction"

Further in the *Marshal Islands, case* at 1201 the court held that:

> "The second *Baker* factor offers an additional impediment: the "**lack of judicially discoverable and manageable standards for resolving**" key issues inextricably intertwined with the relief the Marshall Islands seeks. *See Baker,* 369 U.S. at 217, 82 S.Ct. 691. As we have said, Article VI contains an array of vague terms and a dearth of applicable standards. Our self-execution analysis applies with equal force under this *Baker* factor. *See generally* Carlos Manuel Vázquez, *Treaties as Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties,* 122 Harv. L. Rev. 599, 631 (2008) (explaining that treaties that are non-self-executing because they are "too vague for judicial enforcement" are "no different from constitutional and statutory provisions that are regarded as nonjusticiable" under the political question doctrine)." *(emphasis added)*.

Again, it is clear that claims in the *Marshal Islands, case,* present political questions that are nonjusticiable, however there has been no authority or precedent that the judiciary would be unable to discover public birth and other records as this case would require and for having standards to manage and resolve those issues. The cases cited above demonstrate that they were ". . . judicially discoverable and manageable standards for resolving".

The court in the *Marshal Islands, case,* quoting *Corrie, supra,* at 981, "characterized the first three factors as 'constitutional limitations of a court's jurisdiction' and the other three factors as 'prudential considerations'." The

first two factors clearly do not support the assertion of a political question. The third factor is "the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion". On it's face that factor does not make the '**natural born Citizen**' status of a candidate for President (or Vice-President) a **political question**. The other three being 'prudential considerations' are not addressed.

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

In holding that these non-existent invisible words, which Appellee asserts should be read into and made a part of the Constitution, this decision was effectively an attempt to amend the U.S. Constitution without using Article. V. as required. In addition, these invisible words of the *Grinols* decision violated the separation of powers doctrine of the Constitution. Neither of these are included with the powers that are vested in the judiciary. In effect, during the Obama campaign, the judge in the *Grinols* case was acting more like a politician than a judge errored in rendering that decision as did this court when it affirmed it, which created the elution of a political question that forever makes a case of the '**natural born Citizen**' eligibility

requirement unfit for judicial determination. That would further amend the Constitution to remove that issue from the Article. III. § 2. judicial power over ". . . **all Cases**, in Law and Equity, arising under this Constitution, . . ." *(emphasis added)* without using Article. V. provisions. As said before, the judicial branch was not vested with any powers to amend the Constitution. Based on these matters, the *Grinols* case is **unconstitutional** and should be overturned and this action remanded to the district court for trial on the merits.

Appellants Expressly Have Standing:

As in this case, when the Constitution does NOT delegate certain duties, responsibilities and powers to a particular party, Amendment. X. to the Constitution expressly provides as follows: "The powers **not** delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or **to the people**." *(emphasis added)*. As enumerated by the Framers and ratified by the states, the Constitution was clearly structured to have the states and / or the people to be the check and balance as to the eligibility of the President or Vice President and that is position that the Appellants have in this action. Amendment. X. of the Constitution has expressly enumerated that the individual Plaintiffs / Appellants of this action are among those to have the authority over

eligibility to the Office of President or Vice President. Further, in *Williams v. Rhodes*, 393 U.S. 23, 43 (1968) the court stated that "[t]he [Electoral] College was created to permit the most knowledgeable members of the community to choose the executive of a nation . . .". The 'members of the community' are clearly 'We the people' and not Congress.

Further, the Constitution should be followed for the benefit of every one of the States that formed the nation thereunder, as well as everyone of 'We the People' subject to its jurisdiction. When the Constitution is not followed every citizen is damaged. The right to vote is among the rights most protected by the Constitution.

Organizational Standing:

The Supreme Court and Ninth Circuit Court of Appeals have both held that an organization, such as the Constitution Association, Inc. which is a nonpartisan, non-profit public benefit corporation committed to defending the United States Constitution, alleges an "injury in fact" where it "expended additional resources that they would not otherwise have expended" to accomplish its mission. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1040 (9th Cir. 2015); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). ("Such concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—

constitutes far more than simply a setback to the organization's abstract social interests."). The Supreme Court has unambiguously rejected the argument that such expenditure is merely an "abstract" injury. Id. Thus, Constitution Association, Inc. has established that it has and will suffer "injury in fact" other persons who are NOT Natural Born Citizens by being forced to divert and reallocate resources. See *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, (9th Cir. 2015), at 1040-41.

The test of whether an organizational plaintiff has standing is identical to the three-part test outlined above normally applied in the context of an individual plaintiff. *La. Asociacion De Trabajadores De Lake v. City of Lake Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010). An organization establishes the requisite injury upon a showing of "both a diversion of its resources and a frustration of its mission." Id. That is so even if the "added cost has not been estimated and may be slight," because standing "requires only a minimal showing of injury." *Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), aff'd, 553 U.S. 181 (2008) (citing *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 180-84 (2000)).

Appellant Constitution Association, Inc. alleges organizational standing, which educates the public on the United States Constitution and voting rights and investigates defects and illegalities in elections. It has

expended resources to train voters and prepare election observers and will continue to expend such resources for future elections. On that basis this Court should dismiss the lower court's decision on standing grounds. See Townley v. Miller, 722 F.3d 1128, 1133 (9th Cir. 2013) (holding the Court "need not address standing of each plaintiff if it concludes that one plaintiff has standing.")

The Courts Have Upheld the Standing of Voters:

For there to be a case or controversy, the plaintiff must have standing to sue. *Spokeo, Inc. v. Robins*, 578 U.S. 330, (2016). In addition to the express standing of Appellants to sustain this action as set forth by the Framers of the Constitution in the Amendment. X. in the Bill of Rights, the Supreme Court has for a very long time generally recognized that the right for a citizen to vote is "individual and personal in nature." *Reynolds v. Sims*, 377 U.S. 533, 561 (1964). Thus, "voters who allege facts showing disadvantage to themselves as individuals have standing to sue" to remedy that disadvantage. *Baker v. Carr, supra, at* 204 (1962).

Following *Baker*, the Supreme Court has consistently upheld the standing of voters to challenge the constitutionality of election processes which cause dilution or debasement of their votes without first proving that their particular votes have been miscounted, diluted, or debased. *Gray v.*

Sanders, 372 U.S. 368, 375 (1963)

The Supreme Court has instructed that "the **injury required for standing need not be actualized**. *(emphasis added)*. A party facing prospective injury has standing to sue where the threatened injury is real, immediate, and direct." *Davis v. FEC*, 554 U.S. 724, 734 (2008). Stated another way, a party may challenge the prospective operation of a statute that presents a realistic and impending threat of a direct injury. *Babbitt v. UFW Nat'l Union*, 442 U.S. 289, 298 (1979).

Further, the Supreme Court does not require that a plaintiff demonstrate "that it is literally certain that the harms they identify will come about." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 415 n.5 (2013). The Supreme Court has continued to find "standing based on a 'substantial risk' that the harm will occur…." Id.; *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010); see also the following cases *Pennell v. San Jose*, 485 U.S. 1, 8 (1988); *Blum v. Yaretsky*, 457 U.S. 991, 1000-01 (1982); and *Babbitt*, *supra*, at 298.

In the voting context, courts have found standing based on an increased risk that votes would be improperly discounted. See *Bush* v. Gore, 531 U.S. 98, 104-05 (2000); *Sandusky Cnty Democratic Party v. Blackwell*, 387 F.3d 565, 574 (6th Cir. 2004); *Black v. McGuffage*, 209 F. Supp. 2d

889 (N.D. Ill. 2002). As the Eleventh Circuit explained: "[i]immediacy requires only that the anticipated injury occur with some fixed period of time in the future, not that it happen in the colloquial sense of soon or precisely within a certain number of days, weeks, or months." *Fla. State Conf. of the NAACP v. Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008). Appellants' allegations of a substantial risk of harm are sufficient to establish a cognizable injury at the pleading stage of litigation.

To establish Article. III. standing, a plaintiff must demonstrate that he or she has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, U.S. 330, 338 (2016).

To establish an "injury in fact", a plaintiff must show that he or she suffered "an invasion of a legally protected interest" that is "concrete and particularized", "affect[s] the plaintiff in a personal and individual way" and is "actual or imminent…." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

The court held the appellants had standing because they were asserting " 'a plain, direct, and adequate interest in maintaining the effectiveness of their vote'…." Id. at 208 (citing *Coleman v. Miller*, 307 U.S. 433, 438 (1939)), not merely a claim of 'the right possessed by every

citizen to require that the government be administered according to the law.' " Id. (citing *Fairchild v. Hughes*, 258 U.S. 126, 129 (1922)).

"[K]ey considerations . . . [are] whether there was invidious discrimination with 'regard to race, sex, economic status, or place of residence' " . . . "Voters who prefer to vote by mail are nothing like the groups with a shared immutable characteristic traditionally protected by law.") In reaching its decision, the court relies on *Baker* and *Reynolds v. Sims*, 377 U.S. at 561. However, these cases support Appellants' position. In *Baker*, appellants challenged a state apportionment statute "on their own behalf and on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee." *Baker,* 369 U.S. at 703.

Discrimination based on "race, sex, economic status or place of residence" is not required to succeed on a vote dilution theory. To suggest otherwise is to invent a standard where none exists. *Reynolds* affirmed *Baker*, holding that vote dilution was defined as where a certain group of voters' votes are weighted differently. *Reynolds,* 377 U.S. at 555-56.

The decision also conflates a widespread injury with a "generally available grievance about government." However, an injury is not a "generalized grievance" simply because the harm is widespread, as the

Supreme Court has found. See *Fec v. Akins*, 524 U.S. 11, 24-25 (1998).

The Federal Election Commission argued the voters did not have standing because the asserted harm was one which was shared equally by all or a large class of citizens just as Appellee has done. the Supreme Court disagreed. See *Akins*, *supra,* at 23.

As the Supreme Court astutely observed, a harm can be widespread **but personal**. See *Akins*, , *supra,*at 25-26.

The decision is also premised on the erroneous conclusion that Appellants' allegations amount to a "generalized injury" and that allowing the case to go forward would be to "engage in policymaking properly left to elected representatives." However, an injury is not a "generalized grievance" simply because the harm is widespread. See *Akins*, *supra,* at 24-25. Further, court decisions protecting the integrity of the election process cannot be said to "engage in policymaking properly left to elected representatives," as it is the very process of electing those representatives that requires protection.

A voter in Georgia may sue to enjoin that state's allegedly unconstitutional county unit system as a basis for counting votes, holding that "appellee, like any person whose right to vote is impaired, has standing to sue". *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966)

Virginia residents have standing to seek a declaration that poll tax violated the equal protection clause. *Burdick v. Takushi*, 504 U.S. 428, 430 (1992)

Hawaii voter has standing to challenge as unconstitutional the state's ban on write-in candidates. *Dunn v. Blumstein*, 405 U.S. 330, 333 n.2 (1972)

Voter has standing to challenge Tennessee's durational residence requirement. *United States v. Hays*, 515 U.S. 737, 744-45 (1995)

Voters residing in racially gerrymandered districts have standing to sue. Bush v. Gore, 531 U.S. 98, at 104-05

Independent presidential candidate had standing to challenge League of Women Voter's decision to deny her the right to participate in the Democratic and Republican primary debates. *Common Cause v. Bolger*, 512 F. Supp. 26, 30-31 (D.D.C. 1980)

Thus, courts recognize that candidates have Article. III. standing to challenge election processes that affect their chances of winning an election. *Constitution Party. v. Aichele*, 757 F.3d 247, 360-68 (2014)

Independent candidates had standing to challenge the constitutionality of the Election Code's cost assessment provisions for nomination challenges. *Krislov v. Rednour*, 226 F.3d 851, 857 (7th Cir. 2000)

Candidates had Article. III. standing to challenge state's signature

requirement even though they acquired enough signatures to be placed on ballot. *Fulani v. Hogsett*, 917 F.2d 1028, 1030 (7th Cir. 1990)

The additional expense of campaigning against candidates who should not be on the ballot provides candidate with Article. III. standing. *Fulani v. League of Women Voters Educ. Fund*, 882 F.2d 621, 626-27 (2d Cir. 1989)

For instance, in *Sinkfield v. Kelley*, 531 U.S. 28, 30 (2000), the appellees, who resided in majority-white districts, claimed they were entitled to a presumption of an injury-in-fact "because the bizarre shapes of their districts reveal that the districts were the product of an unconstitutional racial gerrymander." Id. at 30. The court held that the shapes of appellees' districts were largely influenced by the shapes of the majority-minority districts upon which they border, and although there was evidence of an unconstitutional use of race in drawing the majority-minority districts, that evidence did not prove anything with respect to the neighboring majority-white districts. Id. at 30-31.

In *Bower v. Ducey*, 506 F. Supp. 3d 699, 711 (D. Ariz. Dec. 9, 2020) the plaintiffs' equal protection claims were based on "Defendants' failure to comply with Arizona law by permitting illegal votes, allowing voting fraud and manipulation, and in preventing actual observation and access to the elector process, which allegedly resulted in the dilution of lawful votes…and

the counting of unlawful votes." (internal citations omitted). While the court held that plaintiffs had standing in the case, it did not hold for in their favor.

The *Grinols* case is NOT an AMENDMENT

The district court did in the *Grinols* case attempt to **AMEND** the Constitution without using Article. V. Holding that these non-existent invisible words are now read into, and made a part of, the Constitution taking away rights of the Appellants is nothing less. Doing so is **NOT** included within the powers vested in the judiciary. In effect, the judge in the *Grinols* case ignored long established legal precedents of the Supreme Court, this Court as well as other courts, and the decision violated the separation of powers doctrine.

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

Amendments XII and XX Do NOT Grant Congress EXCLUSIVE Rights To Select the President

Appellee makes the representation that those Amendments grant an exclusive right to make such a selection when the Electoral College has failed to do its job and that therefore Congress has the non-enumerated cross-over power to judge the eligibility of the Executives (President and Vice President). Article. I. § 5. of the Constitution **expressly enumerates** "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, . . .", but Appellee expects that it should be believed that there was **NO enumeration** whatsoever of Congress being the judge of Executive eligibility. That totally and completely defies all logic. The truth is it would support the opposite position.

As to Amendment. XII. the vote was a limited exclusive vote ". . . if no person have such majority, then from the persons having the highest numbers **not exceeding three** on the list of those voted for as President, . . ." *(emphasis added)*. The '**natural born Citizen**' eligibility of each of those three (3) candidates should have already been verified prior to the vote of the Electoral College, but it could be re-verified before choosing the President. This has not happened since 1801 in the election of our third President Thomas Jefferson.

Amendment. XX. § 3. provides that ". . . if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified." This may have happened twice Chester Arthur and Barak Obama but Congress took no action whatsoever either case. If the *Grinols* case, which arose during the Obama campaign, is allowed to stand, there would no way for States or 'We the People' to address the issue.

Conclusion

The first sentence of Article. I. § 5. of the Constitution expressly enumerates that "Each House shall be the Judge of the Elections, Returns and Qualifications of **its own Members**" *(emphasis added)*. The Constitution expressly **DOES NOT** provide any authority whatsoever regarding the eligibility of the President or Vice President – **NONE AT ALL**. The Constitution enumerates in Amendment. X. that ". . . the States respectively, or **to the people**." *(emphasis added)* are the 'Judges' of the eligibility of the President or Vice President. That provides no **political**

question at all.

Accordingly, it is respectfully requested that this case be turned to adjudicate whether KAMALA DEVI HARRIS, Defendant / Appellee, is or is not a '**natural born Citizen**', a question of **LAW** arising under this Constitution over which judicial Power extends. The United States of America is not a party in this action and has no standing in it.

Executed on April 15, 2022, at Hemet, California

/s/ GEORGE F. X. ROMBACH
GEORGE F. X. ROMBACH, PhD, JD, CPA
Plaintiff, Appellant In Propria Persona
Co-Founder of Constitution Association, Inc.

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

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

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

On April 15, 2022, I served the following pleading described as **AMENDED OPENING BRIEF** by placing true copies thereof enclosed in a sealed envelope addressed to the person(s) as follows:

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

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

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

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 April 15, 2022, at Temecula, California

/s/ Beau Harley Watson

Beau Harley Watson