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IN THE NINTH CIRCUIT COURT OF APPEALS

Case # 13-15627

GRINOLS ET AL

V

ELECTORAL COLLEGE ET AL

RESPONSE TO MAY 15,2013 ORDER BY THE COURT

NOTICE OF FINAL JUDGMENT

NOTICE OF MEMORANDUM ORDER FILED BY THE COURT WITH THE FINAL JUDGMENT

NOTICE OF A TRANSCRIPT OF THE FINAL HEARING BEING FILED

REQUEST TO REVIEW PREVIOUSLY SUBMITTED MOTION TO MODIFY THE APPEAL AND HEAR THE APPEAL AT HAND IN CONJUNCTION WITH A RELATED CASE

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RESPONSE TO MAY 15 ORDER BY THE COURT

On May 15 2013 the clerk of the court issued an order in regards to the interlocutory appeal filed in this case. The court stated that it has no jurisdiction as it does not have final judgment.

Yesterday, on 05.23.2013, lower court, USDC Eastern District of California issued a final judgment.

As such 9th circuit has jurisdiction to hear the appeal.

Plaintiffs submit herein:

1. **Exhibit 1 Final Judgment by the lower court.**
2. **Exhibit 2 Memorandum to final judgment.**
3. **Exhibit 3 Transcript of the final hearing on 04.22.2013**
4. **Exhibit 4 Motion to Modify and appeal and join this case with a related case**
5. **Certificate of Service**

Respectfully submitted

/s/ Orly Taitz

Counsel for Appellants

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

JAMES GRINOLS, ET AL.,

CASE NO: **2:12−CV−02997−MCE−DAD**

V.

ELECTORAL COLLEGE, ET AL.,

XX −− **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 5/23/2013

Marianne Matherly
Clerk of Court

ENTERED: **May 23, 2013**

by: /s/ J. Donati
Deputy Clerk

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES GRINOLS, et. al.,

Plaintiffs,

v.

ELECTORAL COLLEGE, et. al.,

Defendants.

No. 2:12-cv-02997-MCE-DAD

MEMORANDUM AND ORDER

The operative First Amended Complaint ("FAC") names the following plaintiffs: (1) James Grinols ("Grinols"), a 2012 California Republican party elector; (2) Edward Noonan ("Noonan"), allegedly the American Independent Party's 2012 presidential candidate; (3) Thomas MacLeran ("MacLeran"), a presidential candidate; (4) Robert Odden ("Odden"), a 2012 California Libertarian party elector; (5) Keith Judd ("Judd"), a 2012 Democratic primary candidate in West Virginia; and (6) Orly Taitz ("Taitz"), Plaintiffs' counsel and a California voter (collectively referred to as "Plaintiffs"). (ECF No. 69). The FAC lists the following Defendants: (1) California Governor Edmund G., Jr. ("Governor Brown"); (2) California Secretary of State Debra Bowen ("Secretary Bowen"); (3) the Electoral College; (4) President of the Senate, Vice President Joseph Biden, Jr. ("Vice President Biden");

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(5) the United States Congress ("Congress"); and (6) President Barack H. Obama ("President Obama").[1] (ECF No. 69.)

In their FAC, Plaintiffs allege that President Obama is not eligible to be the President of the United States because he is not a "natural born" U.S. Citizen, as required by the United States Constitution. (Id.) Further, according to Plaintiffs, President Obama uses a stolen Connecticut social security number, a forged short-form birth certificate, a forged long-form birth certificate, and a forged selective service certificate as proof that he is a natural born American citizen. (Id.) Finally, Plaintiffs' FAC contains a claim alleging violations of California Elections Code § 2150 by California Defendants. Plaintiffs allege that over one-and-one-half million of California voter registration records contain falsified or missing data with respect to those voters' place of birth, which allegedly makes those voter registrations invalid under California law. (Id.) Accordingly, Plaintiffs ask the Court for "declarative and injunctive relief to clean up California voter roles [sic] and [have] a special election." (Id.)

On April 22, 2013, the Court heard oral arguments regarding California Defendants' and Federal Defendants' Motions to Dismiss Plaintiffs' Amended Complaint. After careful consideration of the parties' filings and exhibits prior to the hearing, as well as oral arguments made during the hearing, the Court orally dismissed Plaintiffs' Complaint without leave to amend. This Order provides further analysis regarding the Court's ruling from the bench. To the extent that there is any inconsistency between this Order and the Court's ruling from the bench, the terms of this Order control.

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[1] For the purposes of this Order, Governor Brown and Secretary Bowen are collectively referred to as "California Defendants." The Electoral College, Vice President Biden, Congress, and President Obama are collectively referred to as "Federal Defendants."

LITIGATION HISTORY

On December 13, 2012, Plaintiffs filed their original Complaint and "Petition for Extraordinary Emergency Writ of Mandamus/Stay of Certification of Votes for Presidential Candidate Obama due to elections fraud and his use of invalid/forged/fraudulently obtained IDs" ("Plaintiffs' Petition"). (ECF No. 2.) On December 14, 2012, the Court interpreted Plaintiffs' Petition to be an Application for a Temporary Restraining Order ("TRO"). (ECF No. 8.) The Court denied Plaintiffs' Petition for failure to comply with the requirements of Local Rule 231(c), which governs the procedure for filing a TRO application. (Id.) In its ruling, the Court instructed Plaintiffs to file a corrected TRO application within a week. (ECF No. 12.)

On December 20, 2012, Plaintiffs moved for a TRO to prevent the following events from occurring: (1) Secretary Bowen and Governor Brown certifying the Certificate of Ascertainment; (2) the Electoral College tallying the 2012 presidential election votes; (3) Governor Brown forwarding the Certificate of Electoral Vote to the United States Congress; (4) Vice President Biden presenting the Certificate of Electoral Vote to Congress; (5) the United States Congress confirming the Presidential election results; and (6) President Obama taking the oath of office on January 20, 2013. (Id.) On January 3, 2013, the Court denied Plaintiffs' Motion for Temporary Restraining Order. (ECF Nos. 48 and 52.)

On February 11, 2013, Plaintiffs filed the operative FAC. (ECF No. 69.) Presently before the Court are a Motion to Dismiss Plaintiff's FAC filed by Federal Defendants on February 15, 2013 (ECF No. 71), and a Motion to Dismiss the FAC filed by California Defendants on February 28, 2013 (ECF No. 73).

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THE 2012 PRESIDENTIAL ELECTION HISTORY

A brief overview of American presidential elections generally and the 2012 Presidential election in particular is necessary for better understanding Plaintiffs' allegations in this case.[2] The 2012 presidential election was held on November 6, 2012. Nationally, President Obama won the popular vote, earning 62,611,250 popular votes to Governor Mitt Romney's ("Governor Romney") 59,134,475 popular votes. (http://www.washingtonpost.com/wp-srv/special/politics/election-map-2012/president/, *Washington Post*, 2012 Election Results.) In California, President Obama defeated Governor Romney by about 3 million votes and a margin of 60.2% to 37.1%. (Cal. Defs' Request for Judicial Notice ("RJN"),[3] ECF No. 75, Ex. D.)

The popular national vote does not determine the winner of American presidential races. Instead, the U.S. Constitution created the Electoral College to elect the President and Vice President of the United States. Under Article II, section 1, clause 2 of the U.S. Constitution, the voters of each state choose electors on Election Day to serve in the Electoral College. The number of electors in each state is equal to the number of members in Congress to which the state is entitled. U.S. Const. art. II, § 1, cl. 2. There are a total of 538 electors because there are 435 representatives and 100 senators, plus 3 electors allocated to Washington, D.C., under the Twenty-Third Amendment. U.S. Const. art. II, § 1, cl. 2. In most states, including California, the State appoints its electors on a "winner-takes-all" basis, based on the statewide popular vote on Election Day.

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[2] Unless stated otherwise, this overview is derived, at times verbatim, from Federal Defendants' Motion to Dismiss and California Defendants' Motion to Dismiss. (ECF Nos. 71 and 73.)

[3] On February 28, 2013, California Defendants requested that the Court take judicial notice of the following documents: (1) Executive Department, State of California, *Certificate of Ascertainment for Electors of President and Vice President of the United States of America 2012*; (2) Executive Department, State of California, *Certificate of Vote for President and Vice President of the United States of America 2012*; (3) 159 Congressional Record H49-H50; (4) Secretary Bowen's *Statement of Vote, November 6, 2012, General Election*; (5) and United States Election Assistance Commission; *National Mail Voter Registration Form*. (ECF No. 75.) The Court granted California Defendants' RJN at the April 22, 2013 hearing because the content of the documents attached to the RJN "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." See Fed. R. Civ. P. 201.

That is all electors pledged to the presidential candidate who wins the most votes become electors for that State. Two hundred and seventy electoral votes are necessary to win the American presidency.

As soon as the election results are final, the Governor of each State is required to prepare and send to the Archivist of the United States a Certificate of Ascertainment ("COA"), which is a formal list of the names of electors chosen in that State and the number of votes cast for each. See 3 U.S.C. § 6. Of particular relevance to this case, Governor Brown executed California's COA on December 15, 2012. (RJN Ex. A.)

The electors chosen on Election Day meet in their respective state capitals on the Monday after the second Wednesday in December to cast their votes for President and Vice President of the Unites States. See U.S. Const. amend. XII; 3 U.S.C. §§ 7, 8. In the instant case, the Electoral College executed California's Certificates of Vote ("COV"), and Secretary Bowen witnessed them, on December 17, 2012. (RJN Ex. B.) On December 18, 2012, California forwarded both its COA and COV to Vice President Biden. (Decl. John Kim in Support of Cal. Defs' Mot. to Dismiss, ECF No. 59 ¶ 1.)

On January 4, 2013, the Senate and House of Representatives met in the House Chamber and counted the electoral votes. See 3 U.S.C § 15 (2012); H.J. Res. 122, 112th Cong. (2012). Vice President Biden, in his role as President of the Senate, was the presiding officer. Vice President Biden opened and presented the certificates of the electoral votes of the states and the District of Columbia in alphabetical order. See 3 U.S.C § 15 (2012).

Under 3 U.S.C. § 15, when the certificate from each state is read, "the President of the Senate shall call for objections, if any." An objection must be made in writing and must be signed by at least one Senator and one Representative. Id. The objection "shall state clearly and concisely, and without argument, the ground thereof." Id. If and when an objection is made, each house is to meet and debate it separately. Id. Both Houses must vote separately to agree to the objection to an electoral vote; otherwise, the electoral vote is counted. Id.

No Senators or Congressmen objected at the January 4, 2013, electoral vote count, and the tally confirmed that President Obama was the winner of the 2012 Presidential election with 332 electoral votes to Governor Romney's 206 votes. (RJN Ex. C.) Chief Justice Roberts inaugurated President Obama at noon on January 20, 2013. See U.S. Const. amend. XX, § 1.

STANDARDS

A. Federal Rule of Civil Procedure 12(b)(1) Standard

Federal courts are courts of limited jurisdiction, and are presumptively without jurisdiction over civil actions. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). The burden of establishing the contrary rests upon the party asserting jurisdiction. Id. Because subject matter jurisdiction involves a court's power to hear a case, it can never be forfeited or waived. United States v. Cotton, 535 U.S. 625, 630 (2002). Accordingly, lack of subject matter jurisdiction may be raised by either party at any point during the litigation, through a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006); see also Int'l Union of Operating Eng'rs v. Cnty. of Plumas, 559 F.3d 1041, 1043-44 (9th Cir. 2009). Lack of subject matter jurisdiction may also be raised by the district court sua sponte. Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583 (1999). Indeed, "courts have an independent obligation to determine whether subject matter jurisdiction exists, even in the absence of a challenge from any party." Id.; see also Fed. R. Civ. P. 12(h)(3) (requiring the court to dismiss the action if subject matter jurisdiction is lacking).

There are two types of motions to dismiss for lack of subject matter jurisdiction: a facial attack and a factual attack. Thornhill Publ'g Co. v. Gen. Tel. & Elec. Corp., 594 F.2d 730, 733 (9th Cir. 1979).

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Thus, a party may either make an attack on the allegations of jurisdiction contained in the nonmoving party's complaint, or may challenge the existence of subject matter jurisdiction in fact, despite the formal sufficiency of the pleadings. Id.

In the case of a factual attack, "no presumptive truthfulness attaches to plaintiff's allegations." Thornill, 594 F.2d at 733 (internal citation omitted). The party opposing the motion has the burden of proving that subject matter jurisdiction does exist, and must present any necessary evidence to satisfy this burden. St. Clair v. City of Chico, 880 F.2d 199, 201 (9th Cir. 1989). If the plaintiff's allegations of jurisdictional facts are challenged by the adversary in the appropriate manner, the plaintiff cannot rest on the mere assertion that factual issues may exist. Trentacosta v. Frontier Pac. Aircraft Ind., Inc., 813 F.2d 1553, 1558 (9th Cir. 1987) (quoting Exch. Nat'l Bank of Chi. v. Touche Ross & Co., 544 F.2d 1126, 1131 (2d Cir. 1976)). Furthermore, the district court may review any evidence necessary, including affidavits and testimony, in order to determine whether subject matter jurisdiction exists. McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988); Thornhill, 594 F.2d at 733. If the nonmoving party fails to meet its burden and the court determines that it lacks subject matter jurisdiction, the court must dismiss the action. Fed. R. Civ. P. 12(h)(3).

When a party makes a facial attack on a complaint, the attack is unaccompanied by supporting evidence, and it challenges jurisdiction based solely on the pleadings. Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). If the motion to dismiss constitutes a facial attack, the court must consider the factual allegations of the complaint to be true, and determine whether they establish subject matter jurisdiction. Savage v. Glendale High Union Sch. Dist. No. 205, 343 F.3d 1036, 1039 n.1 (9th Cir. 2003). In the case of a facial attack, the motion to dismiss is granted only if the nonmoving party fails to allege an element necessary for subject matter jurisdiction. Id. However, in the case of a facial attack, district courts "may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." Safe Air for Everyone, 373 F.3d at 1039.

B. Federal Rule of Civil Procedure 12(b)(6) Standard

On a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief" in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require detailed factual allegations. However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. (internal citations and quotations omitted). A court is not required to accept as true a "legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009) (quoting Twombly, 550 U.S. at 555). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must contain something more than "a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.")).

Furthermore, "Rule 8(a)(2). . . requires a showing, rather than a blanket assertion, of entitlement to relief." Twombly, 550 U.S. at 556 n.3 (internal citations and quotations omitted). Thus, "[w]ithout some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirements of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." Id. (citing 5 Charles Alan Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain "only enough facts to state a claim to relief that is plausible on its face." Id. at 570.

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If the "plaintiffs . . . have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." Id. However, "[a] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

ANALYSIS

Federal Defendants argue the Court should dismiss Plaintiffs' FAC under Federal Rule of Civil Procedure 12(b)(1) for the following reasons: (1) the case is moot; (2) Plaintiffs lack standing to bring their claims; (3) Plaintiffs' claims are barred by the political question doctrine; and (4) sovereign immunity protects Congress from this suit. (ECF No. 71.) California Defendants also argue that Plaintiffs' FAC should be dismissed under Rule 12(b)(1) because the case is moot as to California and it presents a non-justiciable political question. (ECF No. 73.) Finally, both Federal Defendants and California Defendants argue that the Court should dismiss Plaintiffs' action under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

A. Political Question Doctrine[4]

All Defendants argue that the Court should dismiss this action for lack of subject matter jurisdiction because Plaintiffs' claims are barred by the political question doctrine. (ECF Nos. 71, 73)

The political question doctrine arises out of the Constitution's division of powers, and provides that certain questions are political as opposed to legal, and therefore off limits to the court.

[4] This section's analysis is substantially similar to the discussion set forth in the Court's January 16, 2013, Order denying Plaintiff's TRO application. (ECF No. 52.)

See Corrie v. Caterpillar, Inc., 503 F.3d 974, 980 (9th Cir. 2007) ("The Supreme Court has indicated that disputes involving political questions lie outside of the Article III jurisdiction of federal courts."). The doctrine exists because the Constitution prohibits "a court from interfering in a political matter that is principally within the dominion of another branch of government." Banner v. U.S., 303 F. Supp. 2d 1, 9 (D.D.C. 2004) (citing Spence v. Clinton, 942 F. Supp. 32, 39 (D.D.C. 1996)). The doctrine of separation of powers requires that political issues be resolved by the political branches rather than by the judiciary. See Corrie, 503 F.3d at 980. In other words, "[t]he political question doctrine serves to prevent the federal courts from intruding unduly on certain policy choices and value judgments that are constitutionally committed to Congress or the executive branch." Koohi v. U.S., 976 F.2d 1328, 1331 (9th Cir. 1992).

To determine whether an issue is a "political question" that the court is barred from hearing, the court considers whether the matter has "in any measure been committed by the Constitution to another branch of government." Baker v. Carr, 369 U.S. 186, 210 (1962). The Supreme Court has set forth six factors indicating the existence of a political question.[5] Id. at 217. The first factor—whether there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department"—is the one most relevant to the present case. Id.

The "natural born citizen" clause of the U.S Constitution, on which Plaintiffs primarily rely, "is couched in absolute terms of qualification and does not designate which branch should evaluate whether the qualifications are fulfilled." Barnett v. Obama, No. SACV 09-0082 DOC (ANx), 2009 WL 3861788, at *12 (C.D. Cal. Oct. 29, 2009).

[5] "In Baker v. Carr, the Supreme Court announced a series of facts, at least one of which must be present in order to make a non-justiciable political question. Each factor relates to the separation of powers and are: (1) "a textually demonstrable constitutional commitment of the issue to a coordinate political department" (i.e., to Congress or the President); (2) "a lack of judicially discoverable and manageable standards for resolving the issue"; (3) "the impossibility of deciding the issue without an initial policy determination of a kind clearly for nonjudicial discretion"; (4) "the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government"; (5) "an unusual need for unquestioning adherence to a political decision already made"; or (6) "the potential for embarrassment from multifarious pronouncements by various departments on one question." Do-Nguyen v. Clinton, 100 F. Supp. 2d 1241 (S.D. Cal. 2000) (quoting Baker, 369 U.S. 186 at 217).

Accordingly, the Court must look to the text of the Constitution to determine whether the Constitution "speaks to which branch of government has the power to evaluate the qualifications of a president." Id. As the Court explained in its January 16, 2013, Order, numerous articles and amendments of the U.S. Constitution, when viewed together, make clear that the issue of the President's qualifications and his removal from office are textually committed to the legislative branch and not the judicial branch.

First, Article II, Section 1 of the Constitution establishes the Electoral College as the means of electing the President, but the Constitution also empowers "Congress [to] determine the time of choosing the electors, and the day on which they shall give their votes . . . ." U.S. Const. art. II, § 1. The Twelfth Amendment empowers the President of the Senate to preside over a meeting between the House of Representatives and the Senate, in which the President of the Senate counts the electoral votes.[6] U.S. Const. amend. XII. If no candidate receives a majority of presidential votes, the Twelfth Amendment authorizes the House of Representatives to choose a President between the top three candidates. Id. The Twentieth Amendment empowers Congress to create a procedure in the event that neither the President-elect nor Vice President-elect qualifies to serve as President of the Unites States. U.S. Const. amend. XX, § 4.

Additionally, the Twenty-Fifth Amendment provides for removal of the President should he be unfit to serve. U.S. Const. amend. XXV. Finally, and perhaps most importantly, the Constitution gives Congress, and Congress alone, the power to remove the President from office. U.S. Const. art. I, § 2, cl. 5; U.S. Const. art. I, § 3, cl. 6; U.S. Const. art. I, § 3, cl. 7. Nowhere does the Constitution empower the Judiciary to remove the President from office or enjoin the President-elect from taking office.

These various articles and amendments of the Constitution make clear that the Constitution assigns to Congress, and not to federal courts, the responsibility of determining whether a person is qualified to serve as President of the United States.

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[6] The President of the Senate is the Vice President of the United States.

As such, the question presented by Plaintiffs in this case—whether President Obama may legitimately run for office and serve as President—is a political question that the Court may not answer. Accordingly, this Court, like numerous other district courts that have dealt with this issue to date, declines to reach the merits of Plaintiffs' allegations because doing so would ignore the Constitutional limits imposed on the federal courts. See Do-Nguyen v. Clinton, 100 F. Supp. 2d 1241, 1247 (S.D. Cal. 2000) (dismissing plaintiff's action seeking President Clinton's resignation as a non-justiciable political question because removal of the President from office is an issue that has a "textually demonstrable constitutional commitment to Congress").

In sum, were the Court to grant the declaratory relief requested by Plaintiffs, it would necessarily "[interfere] in a political matter that is principally within the dominion of another branch of government." See Banner, 303 F. Supp. 2d at 9. Because federal courts are barred from intruding on a task constitutionally assigned to Congress, this action presents a non-justiciable political question that this Court cannot consider, and, thus, the court lacks jurisdiction over this case. Accordingly, this action must be dismissed with prejudice.[7]

B. Additional Grounds for Dismissal

Although the political question doctrine bars Plaintiffs' declaratory relief action to the extent it challenges President Obama's eligibility to serve as President of the United States, the Court cannot avoid noting several other glaring jurisdictional problems associated with Plaintiffs' claim.

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[7] At the hearing, Plaintiffs relied heavily on a recently decided Eastern District of California case, Peace and Freedom Party v. Bowen to support their argument. No. 12-00853, 2012 WL 6161031 *1 (E.D. Cal. Dec. 11, 2012). Although Plaintiffs discussed the case at the MTD hearing, Plaintiffs failed to include it in any of their filings. Neither California Defendants nor Federal Defendants could discuss the case as they learned about it on-the-spot at the hearing. Moreover, even though Peace and Freedom Party has no precedential weight on this Court, the Court finds it distinguishable from the present action.

1. Standing

Article III of the United States Constitution limits the judicial power of federal courts to "adjudicating actual 'cases' and 'controversies.'" Allen v. Wright, 468 U.S. 737, 750 (1984). "As an incident to the elaboration of this bedrock requirement, [the Supreme Court] has always required that a litigant have 'standing' to challenge the action sought to be adjudicated in the lawsuit." Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982). Importantly for the present case, the Supreme Court has explained that the "standing inquiry" should be "especially rigorous" if reaching the merits of the lawsuit "would force [the court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." Raines v. Byrd, 521 U.S. 811, 819-20 (1997).

A plaintiff bears the burden of demonstrating that he or she has standing. Summers v. Earth Island Inst., 555 U.S. 488, 493 (2009). To establish standing, a plaintiff must show that:

> (1) [he] has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., 528 U.S. 167, 180–81 (2000). The requirement that the injury be "particularized" means that it "must affect the plaintiff in a personal and individual way." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 n.1 (1992). Accordingly, to demonstrate standing, a plaintiff must allege "such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court jurisdiction and to exercise the court's remedial powers on his behalf." Warth v. Seldin, 422 U.S. 490, 498–99 (1975) (emphasis added).

The Supreme Court has emphasized that "[s]tanding to sue may not be predicated upon an interest of the kind . . . which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share."

Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 220 (1974); see also Warth, 422 U.S. at 499 ("[W]hen the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction."); Lujan, 504 U.S. at 573-74 ("[A] plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and intangibly benefits him than it does the public at large—does not state an Article III case or controversy."). For this reason, the Supreme Court has consistently refused to recognize generalized claims of constitutional ineligibility for public office as sufficient to confer standing. See, e.g., Ex Parte Levitt, 302 U.S. 633, 633 (1937) (per curiam) (holding that "a citizen and a member of the Bar of this Court" did not have standing to challenge appointment of Hugo Black to the Supreme Court under the Constitution's Ineligibility Clause, art. I, § 6, cl. 2, because he "ha[d] merely a general interest common to all members of the public"); Schlesinger, 418 U.S. at 220-23 (holding that an anti-war group did not have standing to invoke the Incompatibility Clause, art. I, § 6, cl. 2, to have members of Congress stricken from the Armed Forces Reserve List).

Several Circuits, including the Ninth Circuit, have recognized a "competitive standing" theory. See, e.g., Owen v. Mulligan, 640 F. 2d 1130, 1132-33 (9th Cir. 1981); Tex. Dem. Party v. Benkiser, 459 F.3d 582, 586-87 (5th Cir. 2006); Schulz v. Williams, 44 F.3d 48, 53 (2d Cir.1994); Fulani v. Hogsett, 917 F.2d 1028, 1030 (7th Cir.1990). The Ninth Circuit has explained that "a candidate or his political party has standing to challenge the inclusion of an allegedly ineligible rival on the ballot, on the theory that doing so hurts the candidate's or party's own chances of prevailing in the election." Drake v. Obama, 664 F.3d 774, 782 (9th Cir. 2011) (quoting Hollander, 566 F. Supp. 2d 63, 68 (D.N.H. 2008)). For the competitive standing theory to apply, however, a competitor must have a "chance of prevailing in the election." Drake, 664 F.3d at 782. A chance is "the possibility of a particular outcome in an uncertain situation."

(Merriam-Webster's Dictionary, m-w.com.) Other courts have emphasized that a political candidate must be a "competitor" or "rival" to demonstrate the particularized injury element of competitive standing. Recently, the Western District of Tennessee concluded that competitive standing to challenge the results of the 2012 Presidential elections did not extend to "candidates" who would not appear on the state's general presidential election ballot:

> At most, the pleadings state that Plaintiffs were registered candidates for President of the United States. Neither Plaintiff has alleged that he is a Tennessee political party's nominee for the office, that his name will appear on the ballot for Tennessee's general election in November, that he is campaigning in the state of Tennessee, that any registered voter in Tennessee intends to cast a vote for him, or that President Obama's presence on the ballot will in any way injure either candidate's campaign. In short, Plaintiffs have not alleged that he is truly in competition with President Obama for votes in Tennessee's general election."

Liberty Legal Found. v. Nat'l Dem. Party of the USA, Inc., 875 F. Supp. 2d 791, 800-01 (W.D. Tenn. 2012) (emphasis added).

Similarly, the United States Court of Appeals for the District of Columbia recently held that "self-declaration as a write-in candidate is insufficient" to establish standing because "if it were sufficient any citizen could obtain standing (in violation of Article III of the U.S. Constitution) by merely self-declaring." Sibley v. Obama, No. 12-5198, 2012 WL 6603088 at *1 (D.C. Cir. Dec. 6, 2012), cert. denied, 133 S. Ct. 1263 (2013). Further, the doctrine of competitive standing does not stretch so far as to include individuals hoping to become electors pledged to vote for a presidential candidate. Robinson v. Bowen, 567 F. Supp. 2d 1144, 1146 (N.D. Cal. 2008). A would-be elector's injury is "not only speculative, but merely derivative of the prospects of his favored candidate." Id.; Gottlieb v. Fed. Election Comm'n, 143 F. 3dd 618, 622 (D.C. Cir. 1998).

Federal Defendants correctly point out that the doctrine of competitive standing does not apply to Plaintiffs Noonan and MacLearan because neither Noonan's nor MacLearan's chances of prevailing in the 2012 Presidential election were affected by President Obama's participation. (ECF No. 71-1.)

As alleged, Noonan and MacLearan were presidential candidates in 2012, and Noonan won the American Independent Primary. (ECF No. 69.) However, as demonstrated by judicially noticed documents, an individual by the name of Thomas Hofeling was actually nominated as the American Independent party's candidate for President, not Noonan. (RJN, Ex. A). As to MacLearan, the FAC is devoid of any details about his alleged candidacy for President.

To gain competitive standing, Noonan and MacLearan needed to prove that their "own chances of prevailing in an election" were affected by President Obama's presence on the ballot. See Drake, 664 F.3d 774 at 784. However, they have failed to demonstrate that they were President Obama's competitors in the 2012 Presidential election or were otherwise personally injured by President Obama's participation in the election. There is no evidence that Noonan or MacLearan appeared on any state's 2012 general presidential election ballot, that they campaigned for the presidency anywhere in the country, or that a single registered voter intended to vote for them. Concluding that either Noonan or MacLearan has standing to bring this lawsuit would amount to declaring that any citizen who wished to be the President of the United States could self-declare himself or herself a presidential candidate and gain standing in federal court to challenge the results of the presidential election. Such a conclusion would clearly run afoul of Article III's "case or controversy" requirement. See Sibley, 2012 WL 6603088 at *1.

Further, Plaintiffs argue that Plaintiffs Grinols and Odden have competitive standing as would-be presidential electors. As alleged, Plaintiff Grinols was slated to be a Republican Party elector if a Republican candidate won California's popular vote, and Plaintiff Odden was expected to be a Libertarian party elector if the Libertarian Party's candidate won the election. (ECF No.69.) However, the alleged harm Grinols and Odden faced as disappointed potential presidential electors is too far attenuated and vague to meet the particularized injury requirement imposed by the Supreme Court. Grinols and Odden's alleged harm is, at best, "speculative" and "derivative of their favored candidates."

See Robinson, 567 F. Supp. 2d at 1146. Plaintiff Taitz's status as a "voter" also does not provide her with standing to challenge the results of the 2012 Presidential election. Courts across the country have continually rejected arguments that "voters" have standing, explaining that "a voter . . . has no greater stake in the lawsuit than any other United States citizen," and that "the harm [the voter] alleges is therefore too generalized to confer standing." Drake, 664 F. 3d at 784.

Because Noonan, MacLearan, Grinols, Odden, and Taitz are unable to demonstrate a "concrete and particularized . . . injury . . . traceable to the [defendants]," they are unable to show that they have standing to challenge the results of the 2012 Presidential election. See Friends of the Earth, Inc., 528 U.S. at 180–81. Accordingly, the Court must dismiss those Plaintiffs from this action as lacking standing.

Finally, Plaintiffs contend that Keith Judd, a federal inmate currently serving his prison sentence, who received over 40,000 votes in West Virginia's 2012 Democratic Party Primary, has competitive standing to proceed with this action because he was President Obama's "competitor" in last year's Presidential election.

Cognizant of the fact that the history presents several examples of inmates running for the presidency from their jail cells, the Court declines to issue a categorical ruling that Plaintiff Judd has no standing to proceed with this action, even though the Court is quite skeptical of Judd's ability to demonstrate that President Obama's participation in the 2012 election hurt Judd's "chances of prevailing in the election."[8] See Drake, 664 F.3d at 782.

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[8] Lyndon H. LaRouche, Jr. ran for the U.S. Presidency in 1992 while serving a federal sentence he received in 1988 for several counts of mail fraud. See LaRouche v. Fed. Election Comm'n, 996 F.2d 1263, 1264 (D.C. Cir. 1993) cert. denied 114 S. Ct. 550 (1993). Similarly, Eugene Debs ran as the Socialist Party's candidate for the presidency in 1900, 1904, 1908, 1912 and 1920. In 1920, Debs ran for president while serving time in federal prison for sedition. (http://www.britannica.com/EBchecked/topic/154766/Eugene-V-Debs)

As analyzed above, even if the doctrine of competitive standing allows Plaintiff Judd to bring the instant lawsuit, his challenge to President Obama's eligibility must be dismissed because it is barred by the political question doctrine.[9]

2. Mootness

Mootness is "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." U.S. Parole Comm'n v. Geraghty, 445 U.S. 388, 397 (1980) (citation omitted). "The mootness doctrine 'requires that an actual, ongoing controversy exist at all stages of federal court proceedings.'" Leigh v. Salazar, 677 F.3d 892, 896 (9th Cir. 2012). A case becomes moot when it has "lost its character as a present, live controversy . . ." Oregon v. FERC, 636 F.3d 1203, 1206 (9th Cir. 2011).

As relevant for the purpose of instant litigation, the test for mootness of a claim for declaratory relief is "whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Biodiversity Legal Found. v. Badgley, 309 F.3d 1166, 1174–75 (9th Cir. 2002) (quoting Super Tire Eng'g Co. v. McCorkle, 416 U.S. 115, 122 (1974)). Accordingly, the court must inquire "whether a judgment will clarify and settle the legal relations at issue and whether it will afford relief from the uncertainty and controversy giving rise to the proceedings." Natural Res. Defense Council, Inc. v. U.S. EPA, 966 F.2d 1292, 1299 (9th Cir. 1992). In order to obtain declaratory relief, a plaintiff must show "a very significant possibility of future harm; it is insufficient . . . to demonstrate only past injury." San Diego Cnty. Gun Rights Comm. v. Reno, 98 F.3d 1121, 1126 (9th Cir. 1996).

[9] The Bureau of Prison's ("BOP") does not have a specific regulation which prevents inmates from running for political office; however, Prohibited Act 334 "Conducting a business; conducting or directing an investment transaction without staff authorization" in the Inmate Admission and Orientation Handbook likely prohibits a federal inmate from running for a compensated elected office.

Thus, in order to satisfy the Article III "case or controversy" requirement, the dispute must be not only "definite and concrete" and "real and substantial," but also resolvable by "specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 (2007) (citation omitted) (emphasis added).

In this case, as fully explained above, Plaintiffs initially sought a preliminary injunction to prevent President Obama's inauguration and to enjoin a series of other events leading to President Obama's inauguration.

However, since Plaintiffs filed their original complaint in December of 2012, all of the events that Plaintiffs sought to enjoin have already taken place. In particular, as Defendants correctly point out: (1) Governor Brown already prepared and delivered the COA; (2) the Electoral College already convened and cast their votes for President; (3) the Electoral College already delivered their sealed votes to the President of the Senate; (4) Congress already counted the electoral votes at a joint session of Congress on January 4, 2013; (5) Congress already declared President Obama the winner earning 332 electoral votes to Governor Romney's 206 electoral votes; and (6) President Obama was inaugurated and began his second term as President of the United States on January 20, 2013. (ECF Nos. 71,73.)

Realizing that every action they had sought to enjoin already occurred, Plaintiffs filed the operative amended complaint, in which they no longer seek a preliminary injunction, but merely request this Court's judicial declaration that President Obama is ineligible to be the President of the United States. However, Article III prohibits this Court to grant declaratory relief where "changes in the circumstances that prevailed at the beginning of litigation have forestalled any occasion for meaningful relief." West v. Sec'y of the Dep't of Transp., 206 F.3d 920, 925 n. 4 (9th Cir. 2000) (emphasis added). During the hearing, Plaintiffs agreed that the Court cannot issue a ruling removing President Obama from office−the very remedy that Plaintiffs sought by filing the instant action and seeking an injunction preventing President Obama's inauguration.

Thus, even were the Court to issue the declaratory judgment requested by Plaintiffs, that ruling would have no effect on the parties' legal relationship and would amount to nothing more than an advisory opinion, which the Court is constitutionally prohibited from issuing. F.C.C. v. Pacifica Foundation, 438 U.S. 726, 735 (1978).

Accordingly, granting such declaratory judgment "without the possibility of prospective effect would be superfluous," would serve no useful purpose, and would not provide any legally cognizable benefit to Plaintiffs. See McQuillion v. Schwarzenegger, 369 F.3d 1091, 1095 (9th Cir. 2004). Because this Court "has no jurisdiction to hear a case that cannot affect the litigants' rights," see Allard v. DeLorean, 884 F.2d 464, 466 (9th Cir.1989), Plaintiffs' challenge to President Obama's eligibility for office no longer presents a live "case or controversy" and is therefore dismissed as moot.

Plaintiffs, however, argue that the case is not moot because it is subject to the "capable of repetition yet evading review" exception to the mootness doctrine. (ECF No. 69 at 18-20.) This exception applies only in "exceptional situations," City of Los Angeles v. Lyons, 461 U.S. 95, 109 (1983), "where the following two circumstances [are] simultaneously present: (1) the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again," Lewis v. Cont. Bank Corp., 494 U.S. 472, 481 (1990) (internal citation and quotation marks omitted).

The "capable of repetition, yet evading review" exception is inapplicable in this case because the actions challenged by Plaintiffs cannot be repeated. The Twenty-Second Amendment prohibits a person from being elected to the office of President more than twice. U.S. Const. amend. XXII, § 1. Since President Obama is currently serving his second term as President of the United States, he is constitutionally precluded from serving as President again. Accordingly, even were the Court to declare that President Obama is ineligible to serve as the American President, such a declaration will have no practical effect on the parties' future relationship.

See Newdow v. Roberts, 603 F.3d 1002, 1009 (D.C. Cir. 2010) (explaining that the exception applies only where "an otherwise moot case [has] a reasonable chance of affecting the parties' future relations"). Therefore, the "capable of repetition, yet evading review" exception does not apply.

In sum, by granting Plaintiffs' requested declaratory relief would serve no useful purpose. All parties agree that the Court cannot enjoin the events that have already happened and that the Court is constitutionally barred from removing President Obama from office. Under these circumstances, Plaintiffs' request for declaratory relief is dismissed as moot and is dismissed for lack of subject matter jurisdiction.

3. The Speech or Debate Clause

Federal Defendants argue that the Court should dismiss Plaintiffs' action because Plaintiffs' claim against Congress is barred by the Speech or Debate Clause of the United States Constitution. (ECF No. 71.) At the hearing, Plaintiffs argued that the Speech or Debate Clause had "nothing to do with this case . . . it only applies to cases where the government can prosecute or arrest members of Congress and prosecute them because of something they said."

Contrary to Plaintiffs' statement during oral argument, the Speech or Debate Clause provides:

> The Senators and Representatives shall . . . in all Cases except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

U.S. Const. Art. I, § 6, cl. 1 (emphasis added). The Speech or Debate Clause "affords Member[s] of Congress [a] vital privilege - they may not be questioned in any other place for any speech or debate in either House." Gravel v. U.S., 408 U.S. 606, 615 (1972).

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The Speech or Debate Clause reinforces the Constitution's commitment to the separation of powers by assuring that Congress, a co-equal branch of government, "has the freedom of speech and deliberation" to perform its legislative function without intimidation, intervention, or oversight from the executive or judicial branches. Gravel, 408 U.S. at 616- 18. "Without exception, [Supreme Court] cases have read the Speech or Debate Clause broadly to effectuate its purposes." Eastland v. U.S. Servicemen's Fund, 421 U.S. 491, 501 (1975) (holding that the activities of the Senate Subcommittee, the individual Senators, and the Chief Counsel are protected by the absolute prohibition of the Speech or Debate Clause of the Constitution being "questioned in any other Place" and are immune from judicial interference) ; Kilbourn v. Thompson, 103 U.S. 168, 204 (1881) (holding that an individual held in custody until he agreed to testify before committee could not sue Members of Congress for false imprisonment as they were exercising their official duties and protected by the Speech or Debate Clause). To determine whether the Speech or Debate Clause applies, a Court must ask "whether the claims presented fall within the sphere of legitimate legislative activity." Gravel, 408 U.S. 606 at 625. "Matters which the Constitution places within the jurisdiction of either House" fall within the sphere of legitimate legislative activity and those activities shall not be questioned in any other place because the prohibitions of the Speech or Debate Clause are absolute. Id.; Eastland, 421 U.S. at 501.

Accordingly, to determine whether the Speech and Debate Clause applies to Plaintiffs' lawsuit against Congress, the Court must assess "whether the claims presented fall within the sphere of legislative activity." Gravel, 408 U.S.606 at 625. Various articles and amendments of the U.S. Constitution place determining a person's qualifications to serve as President of the United States and counting electoral votes within Congress's jurisdiction. See supra. Because the Constitution assigns those tasks to Congress, the Speech or Debate Clause applies in this case, and the Court must not question Congress' performance of its duties. Thus, Plaintiffs' action against Congress is barred by the Speech or Debate Clause, and is therefore dismissed.

C. Plaintiffs' Claims under California Law

Plaintiffs' FAC contains a claim for violations of California Penal Code § 2150 against California Defendants. (ECF No. 69 at 15-18.) Although framed as a constitutional claim for violation of Plaintiffs' "equal protection" rights, this cause of action is based entirely on state law and, to the extent the Court can discern from Plaintiffs' convoluted allegations, does not "arise under" federal law as required by 28 U.S.C. § 1331 for the Court to have original jurisdiction.[10] In their opposition to Defendants' motions to dismiss, Plaintiffs concede that their "equal protection" claim is a camouflaged state-law claim as they assert that the Court can exercise "supplemental and ancillary jurisdiction" over their second claim for relief. (ECF No. 115 at 5.)

Having dismissed Plaintiffs' only federal claim for declaratory relief, the Court determines that the FAC presents no basis for federal question or diversity jurisdiction. The Court declines to exercise supplemental jurisdiction over Plaintiffs' state-law claim for violations of California Penal Code pursuant to 28 U.S.C. § 1367(c)[11] and dismisses this claim without prejudice.[12]

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[10] A case 'arises under' federal law either where federal law creates the cause of action or 'where the vindication of a right under state law necessarily turn[s] on some construction of federal law.'" Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088–89 (9th Cir. 2002) (citation omitted). The presence or absence of federal-question jurisdiction is governed by the "well-pleaded complaint rule," pursuant to which "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987).

[11] If Plaintiffs are concerned about California voting procedures, they should bring their grievances to a state court. Cal. Elec. Code §§ 16100(d), (b). Section 16100(d) provides that "any elector of a county, city, or of any political subdivision of either may contest any election held therein, for any of the following causes…including… [t]hat the person who has been declared elected to an office was not, at the time of the election, eligible to that office." Section 16100(b) enables any elector to contest an election because illegal votes were cast. Neither Plaintiffs nor any other California elector lodged a Complaint in state court alleging that President Obama was ineligible for office or that illegal votes were cast in 2012. (ECF No. 75.)

[12] To the extent Plaintiffs attempted to state a federal "equal protection" claim, the Court determines that Plaintiffs' FAC does not meet the federal pleading requirements under Rule 8(a)(2) because it does not contain "a short and plain statement" of the claim showing that the pleader is entitled to relief. Since Plaintiffs' pleading does not provide Defendants with the requisite "fair notice of what the . . . claim is and the grounds upon which it rests," see Twombly, 550 U.S. at 555, it is subject to dismissal for failure to state a claim under Rule 12(b)(6). Because the Court concludes that any amendment would be futile, the dismissal is without leave to amend.

CONCLUSION

Courts across the country have uniformly rejected claims that President Obama is ineligible to serve as President because his Hawaiian birth certificate is a fake or is forged. See, e.g., Kerchner v. Obama, 612 F.3d 204 (3d Cir.), cert. denied, 131 S. Ct. 663 (2010); Hollister v. Soetoro, 601 F. Supp. 2d 179, 180 (D.D.C. 2009), aff'd, 368 F. App'x 154 (D.C. Cir. 2010); Berg v. Obama, 574 F. Supp. 2d 509 (E.D. Pa. 2008), aff'd, 586 F.3d 234 (3d Cir. 2009); Wrotnowski v. Bysiewicz, 958 A.2d 709 (Conn.), stay denied, 129 S. Ct. 775 (2008); Ankeny v. Governor of State of Indiana, 916 N.E.2d 678 (Ind. Ct. App. 2009). Plaintiff Taitz has single-handedly filed at least seven similar challenges to President Obama's eligibility for office, each and every one of these suits has failed. See Taitz v. Astrue, 806 F. Supp. 2d 214 (D.D.C. 2011) (denying plaintiffs' motion for reconsideration), aff'd, 2012 WL 1930959 (D.C. Cir. May 25, 2012); Taitz v. Ruemmler, No. 11-1421 (RCL), 2011 WL 4916936 (D.D.C. Oct.17, 2011) (granting defendant's motion to dismiss and dismissing plaintiff's suit with prejudice), aff'd, No. 11-5306, 2012 WL 1922284 (D.C. Cir. May 25, 2012); Taitz v. Obama, 707 F. Supp. 2d 1 (D.D.C. 2010) (granting government's motion to dismiss, denying plaintiff's motion for preliminary injunction as moot, and dismissing case), recons. denied, 754 F. Supp. 2d 57 (D.D.C. 2010); Cook v. Good, No. 4:09-cv-82 (CDL), 2009 WL 2163535 (M.D. Ga. July 16, 2009) (dismissing case for lack of subject matter jurisdiction); Rhodes v. MacDonald, No. 4:09-CV-106 (CDL), 2009 WL 2997605 (M.D. Ga. Sept. 16, 2009) (denying plaintiff's motion for temporary restraining order and dismissing plaintiff's complaint in its entirety), cert. denied, 131 S. Ct. 918 (2011); Barnett, 2009 WL 3861788 (granting defendants' motion to dismiss), aff'd sub nom. Drake v. Obama, 664 F.3d 774 (9th Cir. 2011), and order clarified, No. SA CV 09-0082 DOC (ANx), 2009 WL 8557250 (C.D. Cal. Dec. 16, 2009); Keyes v. Bowen, 189 Cal. App. 4th 647, 661 (Cal. Ct. App. 2010), cert. denied, 132 S. Ct. 99 (2011) (upholding on appeal a state Superior Court's ruling sustaining demurrers without leave to amend).

Despite failing in courts across the country, Plaintiffs have continued to file lawsuits alleging that President Obama is ineligible to serve as the American President because he is not a natural born U.S. citizen. However, as set forth above, federal courts cannot grant Plaintiffs the relief sought because the issues which Plaintiffs raise in their pleadings are constitutionally committed to the jurisdiction of another branch of the federal government. If Plaintiffs believe that President Obama has violated the law, their remedy is to alert Congress to the alleged wrongdoing. Congress could then initiate impeachment proceedings with the aid of an independent and special prosecutor. See U.S. Const. art. I, § 2, cl. 5; U.S. Const. art. I, § 3, cl. 6; U.S. Const. art. I, § 3, cl. 7. Plaintiffs could also lobby Congress or the states to pass a Constitutional amendment defining the phrase "natural born citizen" as used in Article II of the Constitution or pass laws requiring presidential candidates to prove their citizenship before taking office. U.S. Const. art. V.

In sum, as fully analyzed above, Plaintiffs' declaratory relief action is barred by the political question doctrine, is moot, and Plaintiffs lack standing to bring this action. Additionally, the Speech or Debate Clause of the U.S. Constitution bars Plaintiffs' lawsuit against Congress. Accordingly, the Court grants the motions to dismiss filed by Federal Defendants and California Defendants and dismisses Plaintiffs' first cause of action without leave to amend.[13]

For the reasons set forth above:

1. Defendants' Motions to Dismiss (ECF Nos. 71, 73) are GRANTED without leave to amend.

2. The Court DISMISSES without leave to amend Plaintiffs' claim for declaratory relief arising out of President Obama's alleged ineligibility for office.

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[13] As demonstrated by the analysis above and by the rulings of numerous other courts throughout the nation, Plaintiffs' challenge to President Obama's eligibility for office is frivolous, and has been a tremendous drain on the Court's time and resources. Although the Court does not impose any sanctions on Plaintiffs or their counsel at this time, the Court will not hesitate to impose such sanctions if Plaintiffs or their counsel continue filing unsupported and groundless lawsuits. See Fed. R. Civ. Proc. 11(c).

3. Having dismissed the only federal claim asserted by Plaintiffs in their FAC, the Court declines to exercise supplemental jurisdiction over the remaining state-law claim and DISMISSES that claim without prejudice.

4. All other pending motions, including Plaintiffs' Motion to Recuse Counsel for Defendants (ECF No. 102), are DENIED as MOOT.

5. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

DATED: May 23, 2013

MORRISON C. ENGLAND, JR, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE MORRISON C. ENGLAND, CHIEF JUDGE

---o0o---

JAMES GRINOLS, et al.,

Plaintiffs,

vs. No. Civ. S-12-02997

ELECTORAL COLLEGE, et al.,

Defendants.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

MONDAY, APRIL 22, 2013

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Reported by: KATHY L. SWINHART, CSR #10150

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SACRAMENTO, CALIFORNIA

MONDAY, APRIL 22, 2013, 10:05 A.M.

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THE CLERK: Calling civil case 12-2997, James Grinols, et al., v. Electoral College, et al., on for defendants' motion to dismiss, Your Honor.

THE COURT: Thank you.

May I have your appearances for the record, please, counsel.

MS. TAITZ: Your Honor, Orly Taitz, counsel for the plaintiffs.

THE COURT: Thank you.

MR. OLSEN: Good morning, Your Honor. Edward Olsen from the U.S. Attorney's office on behalf of the government.

MR. WATERS: Good morning, Your Honor. George Waters from the California Attorney General's office for defendants Governor Jerry Brown and Secretary of State Debra Bowen.

THE COURT: All right. First of all, let me make sure that everyone understands that I'm issuing a direct order that there will be no cell phones utilized in any way and no laptop computers utilized in any way. If they are opened or utilized in any way, they are subject to confiscation by the United States marshals until this hearing is over when they'll be returned to you at that time.

Let me go and make sure that everyone understands the

procedures today.

First of all, each side -- and when I say each side, I'm referring to the defendants, that would be both the state and federal defendants -- have 30 minutes to present their argument. This motion to dismiss has been brought by the defendants in this case, so they will argue or present their argument first. And you'll please do so at the podium.

I don't know if you're going to -- all right. There's been a request for the table, but if you'll please pull the microphones as close as possible so I can make sure that I hear you and the Court Reporter can hear you.

Once the 30 minutes has been allotted for the defense, and there could be time reserved for rebuttal if they wish to, the plaintiff will have an opportunity to present an opposition which will last no more than 30 minutes.

Are there any questions regarding the procedures at this time? Apparently there are none.

MR. OLSEN: No, Your Honor.

THE COURT: All right. To get this matter started, I will just have a very brief summary.

The plaintiffs in this case had previously sought a temporary restraining order to enjoin Congress from counting the 2012 electoral college votes and barring President Obama from taking oath of office on January 20th, 2013. For the reason stated in the Court's order, the request for temporary

restraining order was denied.

The plaintiffs have subsequently filed a first amended complaint, that being filed on February 11th, 2013. In that first amended complaint, the plaintiffs allege that President Obama is not a natural born U.S. citizen and not eligible to serve as President. They are making further allegations of a forged birth certificate, forged Selective Service certificates and stolen Social Security cards.

Plaintiffs' first amended complaint also alleges that the California voters and California political candidates were denied their rights to vote and participate in a lawful election.

The federal defendants and the California defendants, who may be referred to during the course of this hearing as defendants collectively, have filed motions to dismiss on various grounds.

The State defendants have filed a motion to dismiss based on, among other things, that this first amended complaint is now moot; that the first amended complaint raises a nonjusticiable political question; and that there is no violation of equal protection under the Fourteenth Amendment based upon the allegation of invalid voter registration.

The federal defendants have argued that the plaintiffs' lawsuit should be dismissed because also the case is moot; the plaintiffs lack standing to bring their claims;

the plaintiffs' claims are barred by the political question doctrine; sovereign immunity protects Congress from this suit; and the plaintiffs have failed to state a cause of action or claim.

The scope of today's argument will be limited to mootness, standing, political question, speech and debate clause, and the Fourteenth Amendment issue raised in the first amended complaint.

For the defense?

MR. OLSEN: Thank you, Your Honor. I don't anticipate using anywhere near the 30 minutes allotted, but to be safe if I could reserve five minutes.

THE COURT: I'll let you know. Thank you.

MR. OLSEN: Plaintiffs' claims are legally untenable and should be dismissed for a number of reasons, Your Honor.

First of all, as the Court ruled in its order denying the motion for a temporary restraining order, plaintiffs' claims are barred by the political question doctrine. As the Court stated, the Constitution commits the issue of contesting a president's qualifications and removal from office to the legislative branch, not the judiciary. And I'm specifically referring to the Twelfth Amendment and the Twentieth Amendment and Sections 2 and 3 of Article I of the Constitution, which deals with impeachment of a president.

And because of this textually demonstrable

constitutional commitment to the legislative branch, not the judicial branch, the Court is barred by the doctrine of political -- the political question doctrine from considering the issue. The Constitution does not give the judiciary the authority to reverse the election of President Obama by the American people, remove the President from office and order a new election.

The Supreme Court, in a number of cases, has made it clear that the judiciary does not have the power to enjoin the President and has never subjected the President to declaratory relief.

Judge, also the decision Robinson v. Bowen, which is set forth in the federal defendant's brief, says it's clear that mechanisms exist under the Twelfth Amendment and 3 U.S.C. Section 15 for any challenge to any candidate to be ventilated when the electoral votes are counted, and that the Twentieth Amendment provides guidance regarding how to proceed if a president elect fails to qualify. Issues regarding qualifications for president are quintessentially suited to the foregoing process.

That same holding was weighed by the California Court of Appeal in Keyes v. Bowen and by the District of New Jersey in Kerchner v. Obama. And I can provide the Court with this cite, but it's cited in the brief.

Secondly, plaintiffs lack Article III standing to

bring this action. And both the Supreme Court and the Ninth Circuit have made it very clear that a citizen's general interest in ensuring that government is administered in accordance with law and the Constitution is insufficient to confer standing.

In Drake v. Obama, which is a Ninth Circuit decision, 664 F.3d. 774 at 782, it is stated that a generalized interest of all citizens in constitutional governance is insufficient to establish standing. That same holding is articulated by the Supreme Court in Schlesinger v. Reservists Committee to Stop the War.

Moreover, although the Ninth Circuit has recognized the notion of competitive standing, that principle doesn't provide any aid to the plaintiffs in this case. Because no matter how far that concept is stretched, none of the plaintiffs are -- are competitors for President Obama. None of them allege in either the original complaint or the first amended complaint, or in any pleadings that followed those complaints, that the plaintiffs were on the ballot in a single state in the country for President.

Mr. Noonan was not nominated to be the presidential candidate for the American Independent Party. Keith Judd is a federal inmate. And there are absolutely no allegations to support Thomas MacLaren's allegations that he was a legitimate presidential candidate.

But more importantly, even if originally the Court finds that these plaintiffs can be considered competitors to President Obama, that interest, that competitive interest that they had was extinguished by the time they filed their first amended complaint. They filed their first amended complaint in February of 2013 after the President was inaugurated. So after the President was inaugurated, the plaintiffs can't be considered competitive candidates for President.

And that point was made by the Ninth Circuit. In Drake v. Obama, the court said once the 2008 election was over and the President was sworn in -- he used Drake and Lightfoot, those were the plaintiffs in that case, were no longer --

THE COURT: Stop. Whoever has a phone on, it will be confiscated. I issued an order earlier that said they were not to be on or used in the courtroom. So if you have a phone, turn it off. Not silent, turn it off.

Sorry, counsel. Go ahead.

MR. OLSEN: So, as I was saying, the Ninth Circuit said in regards to a similar case brought in 2008, once the 2008 election was over, the President was sworn in, the plaintiffs were no longer candidates for the 2008 election. They cannot claim competitive standing because they were no longer candidates when they filed their complaint.

Plaintiffs, in their opposition to the government's motion to dismiss, cite a case regarding competitive standing

from the Seventh Circuit, Fulani v. Hogsett. But their reliance on that case is misplaced because the candidates -- the plaintiffs in that case were candidates who were on the ballot in all 50 states, in contrast to this case where none of the plaintiffs were on a ballot in any state.

And as the Seventh Circuit recognized, that if the candidates for the Democratic party and the Republican party were not on the ballot, as plaintiffs hoped they would not be, that they could have conceivably won the Indiana election. So obviously the court found that they had competitor standing.

In Owen v. Mulligan, which is a case from the Ninth Circuit in 1981, the Ninth Circuit recognized this notion of competitor standing and said that the potential loss of an election is an injury in fact under Article III sufficient to give the plaintiff standing. Obviously that's not the case here.

There obviously has to be some allegation of a concrete injury in fact to separate plaintiffs' claims as general citizens from their claims as competitor candidates, and they haven't done that despite given multiple opportunities to do so.

The third basis for dismissing the plaintiffs' claims is that, similar to the reasons articulated regarding lack of standing, the case is moot. At the time they filed their first amended complaint, all of the injunctive relief that

they sought, all of the injunctive actions, all of the actions that they're asking the Court to enjoin had already occurred. So the electoral votes had already been counted, the president of the Senate had already presided over the meeting of the House and Senate to count the electoral votes, the opening of electoral votes, and the President was inaugurated. So this court obviously cannot undo the past.

The Ninth Circuit has held that if the activity sought to be enjoined has already occurred, the action is moot and must be dismissed. That's Foster v. Carson. That's a -- the cite is 347 F.3d 742. It's a case from the Ninth Circuit in 2003.

And finally, the speech or debate clause provides that for any speech or debate in either house shall not be questioned in any other place. And the policy underlying that speech and debate clause is that the legislative function should be performed independently.

And under the Constitution in 3 U.S.C. Section 15, Congress is assigned the task of counting electoral votes and making objections to the electoral votes, not regularly given. This task is unquestionably part of the deliberative process to protect from interference from the judiciary. So any claims against Congress, which is the named defendant in this case, any claims against Congress are barred by the speech and debate clause.

So I'm happy to address any questions by the Court and respond to any arguments made by opposing counsel. Otherwise, I'll rest.

THE COURT: Thank you.

Counsel?

MR. WATERS: Should I go to the podium, Your Honor?

THE COURT: You can stay there if you like as long as you use the microphone.

MR. WATERS: Your Honor, I'm going to address three issues here. They are mootness, the political question doctrine, and the equal protection claim, the so-called equal protection claim for invalid voter registrations.

Before I do, just for a housecleaning matter, I want to point out that I have a request for judicial notice that was filed, and there has been no objection, and I would ask that the request be granted, Your Honor.

Turning to mootness, I want to briefly go over the genesis of this lawsuit. And the puzzling thing is here why were the California defendants, that is the Governor and the California Secretary of State, why are they involved in this lawsuit? Well, the reason evidently is the plaintiffs wanted to stop California's 55 electoral college votes from being forwarded to Congress.

The system for a presidential election is that the election is held. That was November 6th. Barack Obama won

California by more than three million votes. It takes about 30 days for elections officials to add up all of the numbers.

And then there is an important date here, that's December 17. That's the date -- it's the first Monday after the second Wednesday in December, and this is the date set out in a federal statute where the electoral -- those who are -- the electoral college delegates from each state, they meet on December 17th -- and they don't meet in Washington, they meet in each state capital -- and they vote.

And then the next day, which is December 18th, the state elections officials are obligated by federal statute to send the results of each state's electoral college vote to the president of the United States Senate. So December 17 is the date in which California and the 49 other states and the District of Columbia held their -- counted their electoral college votes and sent them off to Washington.

And then on January 4th, both houses of Congress meet in joint session, and they count the votes. Now there's really not a whole lot of drama there because by that time everyone knows what the vote was anyway, but the official counting of the votes is January 4th.

So, anyway, I'm mentioning these dates because the election was November 6th. The date on which California counted its electoral college votes was December 17th. So by my way of counting, that was 41 days on which plaintiffs had

to try and stop California from counting its electoral college votes. They filed their action on December 13th. So out of 41 days, they waited 37, an odd decision considering they were hoping to stop the course of this election.

Even when they filed it, they filed none of the documents required by the Court's local rules for asking for a temporary restraining order. Obviously they wanted an immediate order stopping California from counting the electoral college votes. Well, they didn't file that on December 13th.

This court on December 14th issued an order pointing out that they had not met any of the Court's requirements in the local rules for a temporary restraining order. So it was this court that actually informed them that they had failed to comply with the local rules, and this court entered an order on December 14th which gave them one week, until December 21st, to correct their errors.

The plaintiffs actually filed their motion for a temporary restraining order on December 20th. Well, the point of this is by the time that they had filed their motion for a temporary restraining order, which is an order that would have stopped California from counting the electoral college votes, California had already counted the electoral college votes and sent them off to Washington.

So, to repeat what I've said at the TRO hearing in

this case, which was January 3rd, this case was moot for California by the time that the -- that the plaintiffs actually successfully filed their motion for a temporary restraining order. And I would add, no one to blame for that except for the plaintiffs themselves.

On January 4th, Congress met in joint session. No surprise, Barack Obama won the election.

And let me just point out that California has 55 electoral college votes. Even if under any theory the Court were to conclude that there was something improper about California's 55 electoral college votes, Barack Obama won by more than 55. So, I mean, in terms of mootness, this -- this case is indeed moot.

The law in mootness is that, unlike other issues of standing, to avoid being moot, a case has to remain live throughout the course of the litigation. And it's not a question of whether it was live when the plaintiffs filed their action, the question is whether it is live at the moment when someone raises the issue of mootness.

And to summarize the State's position on mootness, it's moot here because not only has California's electoral college votes been counted and sent to the president of the United States Senate, they were counted on January 4th, and Barack Obama was shortly thereafter inaugurated.

I want to talk very briefly about the political

question doctrine, Your Honor. The federal defendants have addressed that, and we endorse everything they've said. But I do want to point out that Mr. Olsen mentioned a California case, Keyes versus Bowen is the name. It's mentioned both in our opening brief, and it's on page 2 of our reply brief.

But the issue in Keyes versus Bowen was whether the Secretary of State had an obligation to investigate the bona fides of presidential candidates. There is a very recent 2011 decision there. The answer is no, the Secretary of State has no obligation to do so. This case was -- went up to the Supreme Court. The Supreme Court denied certiorari.

And I think the court -- it's a state court, but I do think the court made two comments in its opinion, which is quoted in our brief, which is enlightening to the Court's task here today.

The California Court of Appeals said it would be an absurd system that required or allowed 50 different California -- 50 different state secretaries of state to independently investigate presidential qualifications. It just -- I mean, it would not make sense, to quote that court, to have 50 separate investigations going on.

And also they added this is best left to each party, which the parties, the political parties have an immense incentive to investigate their own candidates. Because, if they don't, their nominee could be derailed later by Congress.

And there's a specific statute on that, 3 U.S.C. Section 15.

Congress meets in joint session, and at that point this federal statute allows any member of Congress -- that's both houses sitting in joint session -- to raise an objection and to discuss it at that point.

I want to point out that there was no objection raised on January 4th when Congress met in joint session. But if there was going to be an objection to President Obama's election, or previously John McCain -- this came up with John McCain's election in 2008 -- it was when the joint -- when the houses were meeting in joint session. That is the moment that the Constitution and the statute gives Congress the ability to moot these issues. There was no objection raised on January 4th, Your Honor.

And I want to address the -- a claim that has come up in the amended complaint, which is -- it's been described alternatively by plaintiffs as an effort to clean up California voter rolls, or a more formal name for it is an equal protection claim, that there is -- there are invalid voter registrations in California.

The plaintiffs allege that they had someone go over a disk that they allegedly got from the California Secretary of State, which had all of the California vote registrations on it. And 1.5 million of those did not have the place of birth of the -- of the registrant and that, therefore, those

registrations are invalid.

Let me just say a couple things right off the bat. That even if one were to assume that there were 1.5 million invalid voter registrations in this state, and there aren't for reasons I'll explain in a moment, and even if one were to subtract all 1.5 million from Barack Obama's total in the California election in 2012, Mr. Obama would have won the election by 1.5 million votes anyway.

But moving just beyond the factual issues here to address legally the claim of invalid voter registrations. First, they base their claim entirely on state law. And under a case named Pennhurst, Your Honor, the California defendants enjoy Eleventh Amendment immunity for a claim in federal court that they have violated state law. There is just -- right off the bat, plaintiffs cannot state a state law claim in this federal or in any federal court that the defendants have not adequately implemented state law involving elections.

Then there's the matter of the -- and this is in my brief, so I'll go over it briefly. But then there's the issue of the National Voter Registration Act.

As we point out in the brief, California law does indeed require a registrant to state their place of birth. Since 1993, Congress adopted a law, the National Voter Registration Act, known commonly as the Motor Voter law. Congress was concerned that states in federal elections were,

some states were making it too difficult for people to register and, therefore, reducing the number of people who actually voted. So a law was passed, and it requires all states for federal elections to allow voters to use a write-in -- a written application for voter registration.

And the key thing here is that the federal form does not require place of birth. That is a decision made by Congress, which they had authority to do for the -- for the reasons set out in our brief, and it's been 20 years now.

So I have no idea whether there are 1.5 million California registrations that do not state place of birth. But assuming that that's true, which I must on a motion to dismiss, all I can say is that the federal law has been in effect for 20 years, and that there is nothing unusual, there is no -- there is nothing to be concerned about that 1.5 million voter registrations would not have the place of birth accompanying them because that's what federal law requires.

And finally there's this claim for -- this kind of comes I think out of thin air, which is this equal protection claim. And I think, although it's not mentioned in the -- in the pleadings from the other side, I think it's a reference to Bush versus Gore, a 2001 opinion, involving the -- well, the 2000 presidential election.

My only comment there is that the equal protection claim requires an allegation that state procedures are -- do

not guarantee equal protection. And if you think back to Bush versus Gore, the situation there was you had -- I don't know how many counties there are in Florida, but the troubling aspect of that, which resulted in a decision that Florida's procedures in that election violated equal protection, was that there was no statewide common approach to decide whether a chad was hanging or pregnant. What you had was each separate county going over ballots in an extremely close election with no guidance.

And what the Supreme Court held in Bush versus Gore was that without some guarantee that a common standard would be applied to all of these ballots, that -- that the recount there couldn't proceed.

Well, there's no allegation here the California -- there is no allegation from plaintiffs that there is anything equivalent. The fact of the matter is that California law has ample protections for counting ballots and determining who is -- who is registered; and that, therefore, plaintiffs have not stated a cause of action for invalid voter registrations because they have not identified any California procedure which is inadequate.

So with that, Your Honor, outside of any questions you might have, I will rest.

THE COURT: Thank you.

Ms. Taitz.

MS. TAITZ: Yes, Your Honor.

The plaintiffs are going to show that in this case there are -- there are opinions that are absolutely binding on this court, mandatory binding opinions of the Ninth Circuit Court of Appeals showing that this case is not moot and that there is jurisdiction. All of the plaintiffs do have standing.

The political question doctrine has absolutely no connection to this case because this case was brought in specifically an amended complaint. We're asking for declaratory relief in regards to actions of a candidate, fraud and user forged IDs by a candidate.

And what the defense is stating is that you have no right to impeach a president. The case is not about a president, it's about a candidate for office. You are not asked to impeach anybody. As a matter of fact, the amended complaint is asking only for declaratory relief that you, as an Article III court, have a right and jurisdiction to provide.

And, moreover, the Congress of the United States has absolutely no right to render any decision on the issue of actions of a candidate because impeachment deals only with actions of a president in his official duties as a president.

Further on, speech and debate doctrine is a completely bogus issue because speech and debate clause deals only with

arrest and prosecution of members of Congress in regards to something that they stated during speech and debate. The plaintiffs have never asked you, Your Honor, to arrest or prosecute members of Congress; never asked you to do anything in regards to actions of members of Congress in regards to their speech and debate.

Further on, the plaintiffs are stating that the fed -- the Department of Justice brought this motion to dismiss even though it does not represent one single party in this case. And the plaintiffs have provided evidence that the Department of Justice has filed this motion, going behind the back of the U.S. Congress of the electoral college.

As you know, there is a motion for default judgment against Mr. Obama, who was sued as a candidate, and he has never responded as he was supposed to respond within 21 days.

And so I am going to go first to mootness.

And it's interesting that just recently in this very building a case was heard, which was brought by the Peace and Freedom Party on behalf of a candidate, Peta Lindsay. The same Secretary of State who is being represented by the Department of Justice of California ruled -- argued, and the Court, your counterpart Judge Burrell, has ruled that this is -- that eligibility of a candidate to become a U.S. President has nothing to do with -- with actions of Congress. It's -- the state officials have a right to decide whether the

candidate is eligible or not, and it's up to the court to uphold this decision or not.

So in this case, the plaintiff, Peta Lindsay, who was a candidate for presidency, was thrown off the ballot just last year by the same Debra Bowen who has the goal of saying that the Secretary of State has no place of acting and no -- has no right to ascertain whether a candidate is eligible for office.

Well, that in itself shows bias and lack of equal protection under the law. She throws off the ballot one candidate claiming that this candidate is not eligible because her presence on the ballot will violate Article II, Section 1 of the U.S. Constitution, because the candidate is not 35 years old. And at the same time, the same Secretary of State and the same Attorney General are claiming that they refuse to do anything in regards to candidate Barack Obama because they have no right to ascertain.

Well, where is equal protection under the law --

THE COURT: Wait. I'm sorry. I hate to interrupt you, but you just quoted the United States Constitution. Secretary of State Bowen utilized the United States Constitution in making that decision.

MS. TAITZ: And she refused to utilize it in regards to Obama.

THE COURT: What section are you referring to?

MS. TAITZ: Article II, Section 1.

THE COURT: Which says?

MS. TAITZ: That says that in order to be U.S. President, one has to be: A, a natural born U.S. citizen; B, he has to be 35 years old.

So she chose to uphold the Constitution in regards to one candidate --

THE COURT: So -- hold on. So what is it that you're saying it is then, the age?

MS. TAITZ: What I am saying, that according to Article II, there are several requirements. She chose to uphold one requirement in regards to a candidate whom she wanted to throw off the ballot, but she refused to uphold the U.S. Constitution in regards to another candidate who came from the same party, and she wanted to keep him on the ballot in spite of overwhelming evidence of fraud.

Let's see. What -- we don't even know how the Secretary of State found out that Peta Lindsay was not 35 years old. We don't know this. No information was provided.

When Judge Burrell heard this case, after Peta Lindsay was thrown off the ballot last year by the same Secretary of State Bowen, her attorney has written to the Secretary of State and admitted, yes, she is not 35, but the Congress should decide this. So Judge Burrell said, no, it's not up to the U.S. Congress to decide. It's up to the state and the

court, you, to decide whether the candidate is eligible or not.

She is not 35 years old, she cannot be on the ballot. He found there was standing, he found there was jurisdiction, and he -- and he looked at the merits.

Here, Your Honor, I have provided you 150 pages of sworn affidavits showing that Barack Obama not only is not a natural born U.S. citizen, he is not a citizen period. The man does not have one single valid piece of paper.

You are -- in prior opinion in January, you stated that you refused to allow witnesses to testify; however, you're relying on authentication and verification that you received from Hawaii. It's an error. That's absolutely not true. You never received anything from the state of Hawaii, no authentication, no verification.

As a matter of fact, if you look at the transcript of the January 3rd hearing, the defendants are telling you that you have no authentication. And on page 37 of the transcript, Mr. Olsen is saying, well, the certified copy was never provided to the public.

Moreover, according to Rule 1003 of Federal Rules of Evidence, when there is a genuine question of authenticity, a certified copy wouldn't be sufficient, an original is needed. Not one single person in this country has ever seen any original document for Obama, not birth certificate, not Social

Security Administration, not a Selective Service certificate. And all of the documents that he provided were deemed to be flagrant forgeries by top law enforcement officials and by experts.

And this is an issue of fact that has to be decided during discovery. This is not something that can be ruled upon now on a motion to dismiss.

Further, in the case of Peta Lindsay, your counterpart Judge Burrell stated that the plaintiff -- the plaintiffs are saying that Secretary of State Bowen reserves the exclusive constitutional role of Congress in determining the age qualification of presidency, and he states that's wrong. It has nothing to do with the U.S. Congress. The candidates can and have to be vetted by the officials of the state and by the court. He stated:

Defendant Debra Bowen is the Secretary of State of California and, as such, the chief election officer of the state. And, therefore, she is responsible for administering the provisions of California elections.

Further on, he is saying that the plaintiff is not eligible under Article II of the Constitution. And he is saying plaintiffs' claims are capable of repetition because, in the future, defendant would deny Lindsay or any other candidate their rights to be included on a presidential ballot.

Further, he is basing his decision on a decision of Joyner v. Mofford. This is a Ninth Circuit Court of -- decision that is mandatory for you, Your Honor, to follow. Which states -- in Joyner v. Mofford, it states that cases were rendered -- that if cases were rendered moot by the occurrence of an election, many constitutional suspect election laws, including the one under consideration here, could never reach appellate review. Therefore, plaintiffs' motion is not moot.

Further, the -- the defense has quoted a case, again Ninth Circuit Court of Appeals. And in Ninth Circuit Court of Appeals, I represented Ambassador Alan Keyes in a case, Keyes v. Obama. And the Ninth Circuit Court of Appeals ruled that indeed the candidates, the electors, the presidential electors have standing as long as the case was filed prior to candidates taking office.

Plaintiffs had filed this case on December 12th, two and a half months prior to Obama taking office. Therefore, based on the decision of the Ninth Circuit Court of Appeals, that is mandatory on you, Your Honor, to follow, this case is not moot as it was brought timely. And we're asking you to ascertain whether indeed a candidate, not a president, a candidate who ran for office committed fraud and used forged IDs.

Further on, Mr. Olsen misrepresented the case of

Fulani v. Hogsett. As a matter of fact, he said opposite of what was said in the court. The court ruled that even minor candidates have a right. They did not state that a candidate has to be on the ballot in 50 states. And as a matter of fact, the Ninth Circuit Court of Appeals said the same thing. A candidate does not have to be on the ballot in all 50 states. Even minor candidates have a right to bring such actions.

One of the candidates -- when we're talking about standing, one of the candidates is Mr. Judd, who ran. Again, I mean, what the defense is saying is just intellectually dishonest. For example, they completely took away the two presidential electors.

The lead plaintiff here is Mr. Greenhouse, James Greenhouse, who was a presidential elector for Mitt Romney who lost only by one percent. He has a right, based on what the Ninth Circuit ruled, which is competitive standing, come to you and state that in this election there was fraud committed.

I was prevented to be part of the electoral vote, electoral college on December the 17th because, instead of me, other electoral candidates, electoral presidential electors were seated, and they were seated based on fraud and forgery that were committed -- fraud and user forged IDs by Barack Obama.

Further, in terms of a political question, again, this

is just again intellectual dishonesty. You are not asked to rule -- you are not asked to impeach, and you are not asked to rule on actions of a president. You are only asked to rule whether a candidate committed fraud.

And when we are talking about a political question, I, Your Honor, brought here the actual -- the actual articles of impeachment that were drafted three times. Only three times in U.S. history we had articles of impeachment drafted. Articles of impeachment are drafted by the U.S. Congress only in relation to actions of a president who is acting in his capacity as a U.S. President, never as a candidate, never anything that was done prior to person being sworn in.

And you have here the trial of Andrew Johnson. When you read the articles of impeachment, it states that said Andrew Johnson, President of the United States, on the 21st of February in the year of our Lord, 1868, at Washington in the District of Columbia, unmindful of the high duties of his office, of the oath of office and of the requirements of the Constitution, that he should take care of the laws, be faithful and execute it, did unlawfully and in violation of the Constitution -- and, as you know, what he did was fired the minister of war.

So in this case, Your Honor, you took an oath of office to uphold the U.S. Constitution, the Constitution of the state of California.

THE COURT: No, I did not. No, no. This is a federal court, not a state court. My oath is to the United States Constitution.

MS. TAITZ: I apologize, Your Honor. You're right.

And as such, as such, you have a duty to act.

Let's take Watergate. I have in front of me the articles of impeachment of Richard Nixon. In his conduct of office as President of the United States, Richard Nixon, in violation of his constitutional oath faithfully to execute the oath of President of the United States and, to the best of his ability, preserve, protect and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed and impeded administration of justice.

Next, we took the third one, which was the articles of impeachment against Bill Clinton. And, again, very similar. In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of the President of the United States and, to the best of his ability, to preserve and protect the Constitution and so forth.

Therefore, Your Honor, even if U.S. Congress wanted to assume jurisdiction and do something in regards to actions of Barack Obama prior to taking office, they are absolutely prevented from doing so because based -- because articles of

impeachment can be drawn only based on something that the President of the United States, while as President, acting in his official capacity as President.

Further on, I wanted to draw your attention, Your Honor, that there was an error in your order which was issued in regards to -- in regards to motion brought in January.

What happened -- and I know that typically one of your law clerks has probably drafted and made an error and gave it to you. I'm not saying that you made an error. But what you stated there, it says: Finally, and perhaps most importantly, the Constitution gives Congress, and Congress alone, the power to remove the President. So what you -- what you quoted there was Article I, Section 2, clause 5. All it says is that the House of Representatives can impeach the President. That's not what we asked you for.

Next, you quoted Article I, Section 3, clause 6, which says that the Senate should confirm it. And then you quoted U.S. Constitution, Article I, Section 7. And I actually brought it here to show you. That was a complete error. This -- this part of the Constitution has absolutely nothing to do with impeachment. Article I, Section 7 deals only with bills, the way bills have to pass. And I brought a copy for you, Your Honor.

And what was actually omitted is the most important part, which is Article I, Section 3, clause 7. What does it

state? Judgments in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

Therefore, even if U.S. Congress were to have any jurisdiction to impeach Barack Obama, which they do not, because this has to do with his actions prior to becoming the U.S. President, that does not take away from you jurisdiction to act and issue declaratory relief.

Did this candidate, when he ran for office, commit fraud? Did Barack Obama indeed use the Social Security number of Harrison J. Bounel, a Connecticut Social Security number, 042-68-4425, which was never assigned to him?

You have in front of you the official report from -- verified saying he used a number that was not assigned to him. Did he indeed use forged IDs?

We never asked you, Your Honor -- and maybe it's a misunderstanding -- we never asked you or we never asked the defendants to investigate. And as a matter of fact, Secretary of State investigated with Peta Lindsay.

We are telling you that we provided you with evidence that Mr. Obama, as a candidate, when he submitted his declaration of the candidate, he did so under false pretenses.

He committed fraud because he assumed an identity based on all forged IDs and based on a stolen Social Security number. This is the most egregious crime ever committed against the United States of America. And only you, Your Honor, not U.S. Congress, only you have the power as an Article III federal court to rule did this candidate commit fraud or not.

Further on -- and I have for you, Your Honor, this article.

Further on, just recently in the state of Indiana, federal court Judge William Lawrence has issued an opinion. And this opinion -- and I have a copy for you as well, Your Honor -- again confirms that all of the plaintiffs here do have standing. It actually confirms what the Ninth Circuit is telling you, the same thing, that there is jurisdiction, it's not moot, the plaintiffs have standing. This case is Judicial Watch v. Bradley King, and I quoted it in my amended complaint pleadings.

And, again, I wanted to point again -- it's very important -- amended complaint does not ask you for any injunctive relief. Amended complaint is asking you only for declaratory relief.

In this case, Judge Lawrence is stating he found that -- he denied motion to dismiss by the government stating -- in this case in the state of Indiana, there was election fraud. He is stating that undermining -- that fraud

undermines their confidence in the legitimacy of the elections held in the state of Indiana and thereby burdens their right to vote.

While the defendants argue that this allegation, and thus their injury, is purely speculative, and thus insufficient to meet the standard required for standing, defendants' brief at 12, the court disagrees. There can be no question that a plaintiff who alleges that his right to vote has been burdened by state action has standing to bring suit to redress that injury.

There is also no question that the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.

And they are quoting U.S. Supreme Court, Your Honor. Those are decisions of the U.S. Supreme Court in Purcell v. Gonzalez, 549 U.S., and Reynolds v. Sims. The Supreme Court has recognized confidence in the integrity of our electoral process is essential to the functioning of our participant democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government.

And that's what we have, we have complete distrust. We have millions of people who distrust the government because top federal and state officials were complacent in most egregious fraud and forgery in the history of this nation.

Absolutely we have distrust. And, therefore, based on Purcell v. Gonzalez, based on Reynolds v. Sims, the plaintiffs do have standing. Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.

Further on, the U.S. Supreme Court decided in Crawford v. Marion County that fraud, voter fraud because -- can be heard because it encourages citizen participation. That interest -- an interest that the court noted had independent significance beyond the interest in preventing voter fraud because it encourages citizen participation in the democratic process.

Therefore, we do have here an issue of violation of Fourteenth Amendment equal rights. We have a Secretary of State who decides to enforce Article II, Section 1 of the Constitution in one case and, at the same time, refuse to enforce it in another case where there is a hundred times more evidence.

Moreover, Your Honor, I have provided you with e-mails that came from offices of registrars which show falsification of records and flagrant fraud that is being committed in offices of registrars.

One of the e-mails is stating that the Los Angeles County registrar has told his employees to put in the voter registration cards that they were born in U.S. or U.S.A. when those areas were blank. That's falsification of records. You

cannot allow, Your Honor, to -- such flagrant fraud. This is an issue -- based on Roe v. Wade, this is an issue that is capable of repetition and evading review.

Moreover, the registrar of Orange County has instructed his employees to enter a birth date when it was blank, didn't exist. It's fraud. It's falsification of official records.

And, Your Honor, not only you have jurisdiction to hear it, you have an obligation based on your oath of office to do it. Not hearing those issues of election fraud would -- would constitute a breach of your oath of office.

Further, when we talk about -- I'm asking you, Your Honor, for declaratory relief. And declaratory relief under 28 U.S.C. 2201 states the existence of another adequate remedy does not preclude declaratory judgment that is otherwise appropriate. The court may order a speedy hearing hearing declaratory judgment actions.

Therefore, even if there would have been a power to impeach -- and we never asked you for. Impeachment is simply removing from office. Even if the Congress were to have the power to impeach, and we're not asking for that, still you have power and duty under your oath of office to issue a declaratory relief whether fraud and forgery were committed during this election because it will repeat itself.

Now another issue, the defendants are stating that

this is an issue -- yeah, this is an issue that cannot come back because Barack Obama is on his second term. That's not true, Your Honor. The issue is that there is fraud. And what they are assuming, that since he is President a second time, he cannot run again. However, he can run for -- to become a U.S. Congressman or U.S. Senator. And in U.S. history, we have such examples.

For example, President Andrew Johnson ran for U.S. Senate from Tennessee, and he acted as a senator. President John Quincy Adams, after being U.S. President, ran for U.S. Congress, and he served for 17 years as a U.S. Congressman. As a matter of fact, he is better known as a U.S. Congressman, if you recall, because of his argument in the Amistad rebellion, and he actually died of a heart attack standing on the floor of the Congress.

Therefore, this issue of Barack Obama running for office using false identity, using forged IDs can happen again because he can run in 2016 for U.S. Senate or U.S. Congress. We have those precedence.

Moreover, when you look at Roe v. Wade, it's not only the question -- in Roe v. Wade and the decision around that applied not only to the same woman, whether she will be pregnant again, it related to other women, whether they can get pregnant and whether their rights will be denied.

And this issue has to be decided once and for all

because otherwise anybody with any forged IDs and a stolen Social Security number is going to run for either President or Vice President or Congress.

Next, speech and debate clause, as I stated, has nothing to do with this case. If you look at speech and debate, it only applies to cases where the government can prosecute, can arrest members of Congress and prosecute them because of something that they stated. There were the cases of Gravel, Congressman Gravel, Congressman William Jefferson, Congressman Murtha. All of those cases, all of the known precedence show that speech and debate has nothing to do with this case.

THE COURT: Your time is up. Thank you.

Is there a response?

MR. OLSEN: Briefly, Your Honor.

There was some discussion of default --

THE COURT REPORTER: I need you to use the microphone.

MR. OLSEN: Sorry. Let me start over. Can you hear me now?

So, as the Court has already ruled on two occasions, the plaintiffs haven't properly sued the President in his individual capacity. So any suggestion that the President has defaulted, the Court has already addressed that.

And I don't -- I don't think -- and I can address it again if the Court wants to hear that again. I don't think

the Court wants to entertain any more arguments regarding that.

(Off-the-record discussion with Courtroom Deputy.)

THE COURT: Go ahead.

MR. OLSEN: Secondly, Ms. Taitz says that in her first amended complaint she is only seeking declaratory relief. That's irrelevant because at the time she filed the first amended complaint, the plaintiffs were no longer candidates for the 2012 presidency. And that point is made by the Ninth Circuit in Drake v. Obama. So whether she is seeking declaratory relief or injunctive relief, plaintiffs lack standing.

Regarding the mootness issue, as the government's argued, there's no exception to the mootness doctrine for declaratory relief. You know, at the time she filed her amended complaint, the majority of the actions that she was seeking the Court to enjoin had already occurred. And certainly by the time she filed her first amended complaint, all of the actions that she was asking the Court to enjoin had already occurred.

She filed that amended complaint in February. The President was inaugurated on January 20th. So at that point in time, plaintiffs lacked standing, and the case was moot.

I think -- with all due respect, I think Ms. Taitz is misreading all of the cases that the government cited on

speech or debate clause. There's no suggestion in any of those cases -- and I can cite the Court to the Gravel v. United States case. That's 408 U.S.C. Section 606, and that's in regards to Pentagon papers.

There's no suggestion that that clause only pertains to prosecutions of Congress. It pertains to the debate that Congress engages in not being subject to review by the judiciary because, under the separation of powers doctrine, we want the legislature to act independently.

Fulani, Fulani was a case discussing competitor standing. The court was careful to note that the plaintiffs in that case had standing because they were on the ballot in all 50 states. And the quote is they could have conceivably won, is the quote, the Indiana election but for the actions of the Indiana elections officials in placing the Democratic and Republican candidates on the ballot. So I don't think Fulani provides any aid to plaintiffs in this case.

The Judicial Watch case which plaintiffs mentioned, that citation -- it's not a published decision. It appears that the Westlaw cite is 2012 Westlaw 6114897. It's a Southern District of Indiana case.

In that case, the plaintiffs were -- were asserting claims against Indiana for not promulgating a program designed to remove the names of ineligible voters from -- from voter registration lists. Ineligible meaning, you know, folks that

had died.

And the court in that case found that the plaintiffs had standing. But the court was careful to note in footnote 4 of that case that the National Voter Registration Act specifically provides that anybody who is aggrieved by a violation of this provision can bring a case. Which obviously plaintiffs can't point to any provision similar that would give them standing in this case.

And secondly, regardless of what the Southern District of Indiana said in a very dissimilar case, the Ninth Circuit has spoken directly to this issue in a case almost identical to this case. And that's the Ninth Circuit case in Drake v. Obama talking about what is required for plaintiffs to have standing in a case that's challenging the eligibility of a president. So we have a Ninth Circuit case almost on all fours with this case talking about standing.

So I think I'll rest with that.

MR. WATERS: Your Honor, for the State defendants, Ms. Taitz has made heavy reference to a case which she calls Lindsay. I'm at a disadvantage here because I've never heard of it, it wasn't cited in any of the briefing, and I -- I don't have a clue. So, I mean, all I can say is this case has never been cited, I'm unaware of it and, therefore, cannot respond to it.

Let me move very briefly, then, to -- because there's

an audience here, let me clear up a statement I think I made earlier about the National Voter Registration Act.

The National Voter Registration Act does not require a voter registrant to state their state or country of birth, but it does state that they must be a United States citizen, and they sign a statement under penalty of perjury that that's true. That form is attached as Exhibit E to our request for judicial notice.

So, beyond that, getting very briefly back to mootness. I mean, the mootness wouldn't have come up in the last round of presidential elections because President Obama could have been re-elected. As I said in the brief, California will never be asked to certify a list of delegates, electoral college delegates for Barack Obama, and the case is therefore moot.

With that, I submit, Your Honor.

THE COURT: Thank you.

That will conclude the arguments that will be taken by the Court today.

First of all, there was a request from the defendants that the Court take judicial notice of the documents attached, and that's granted if it has not done so before.

There was also reference made to a motion for default. That motion for default was denied pursuant to an order of this court on March 11th, 2013, it's document No. 92 in the

ECF, as was the motion to stay.

There was a motion for reconsideration filed on March 12th, 2013. This court denied that motion for reconsideration at document No. 103 on March 26th, 2013.

So there is no pending default, and the Court found at the time that there was not, first of all, a way to have jurisdiction over the defendant, and there was not effective service. And for all of the reasons that were stated in the Court's order, the motion or request for default was denied.

This is a motion to dismiss based upon Federal Rule of Civil Procedure 12. And in such a rule, the plaintiff bears the burden of proving that the Court has subject matter to hear jurisdiction over the claims in question.

The district court, as well as the circuit court, are not general jurisdiction courts in the United States federal system. They have certain limited, enumerated powers. And before a court can exercise, other than the Supreme Court of the United States, jurisdiction over a particular claim, there must be some form of standing and/or jurisdiction.

The purpose of a motion to dismiss under Rule 12 is to test the legal sufficiency of the complaint to determine whether the plaintiff has standing and whether the court can exercise jurisdiction over the claims. To survive a motion to dismiss, a complaint must contain sufficient factual matter, which is accepted as true for purposes of the motion, and

state a claim which is plausible on its face.

A claim is plausible when the plaintiff has alleged factual content that allows the court to draw reasonable inferences that the defendant is liable for the misconduct as alleged. Recitals of elements of causes of action supported by mere conclusory statements do not suffice.

Now, turning to the actual claims that have been made and to the motion. The first action is whether this action is moot.

The authorities are clear that where the actions sought to be enjoined have already occurred, the courts cannot undo what has already happened and that, therefore, the action is moot.

This court was asked after the California electors had voted to render a decision and to stop the counting of the electoral college votes by the House and Senate, as required under the United States Constitution. That was already done. There is no way that that can be undone at this point in time.

There have been a number of attempts to try to obfuscate this particular issue, but the fact of the matter is this is about when this case was filed originally.

And touching over on the case that you were referring to, Ms. Taitz, regarding Judge Burrell, first of all, that case is not precedential on this court. It's not. It's a colleague of mine, and that has no bearing or relation. And

that particular case I believe is distinguishable as well.

But the one thing that I can say is that if a person wishes to challenge the Secretary of State's procedures for who was on the ballot, there is a procedure that is done at the state court, and that is through the issuance of a writ where a court actually makes a determination as to whether the Secretary of State has properly or improperly removed or placed a person on the California state ballot.

Having been a superior court judge for six years, I handled those types of cases dealing with ballot issues for over three years. So that is where the action should be brought to deal with the issues that you're claiming. And that could have been brought for many, many months prior to the election in November of 2012, but that was not done.

So, therefore, absent any other evidence -- and when I say evidence, I mean admissible evidence, not purely hearsay, speculation and/or belief -- then there's nothing to show that the Secretary of State of the state of California did anything improperly or that the process that the Secretary of State utilizes in making a determination as to who should or should not be on the California state ballot is improper.

In the other cases that have been cited, there were actual instances where demonstrable evidence could be presented, not simply e-mails of what people have said or what people believe. There is a major difference here.

Now, going to -- and I should say also that what I'm doing now is putting this on the record orally, but my written opinion will control. So any discrepancies or differences between what I'm saying here on the record in open court is going to be controlled by the written document which will be filed shortly.

With respect to standing, in order to have Article III standing, the plaintiff must show there's an injury in fact of a legally protected interest, concrete and particularized, actual, imminent and not conjectural or hypothetical, a causal connection between the injury and the conduct complained of. The injury has to be traceable to the challenged action of the defendant and not the result of some independent action of a third party. And it must be actual as opposed to merely speculative.

It is well settled that a litigant's interest cannot be based upon the general interest of all citizens in constitutional governance.

There has been a claim that has been repeated here in oral argument that this is the most egregious crime in American history, and it's affecting -- no, pardon me -- the most egregious crime in the history of the United States, and it's affecting all Americans, millions of people. Well, that is no more than a generalized interest of all citizens in constitutional governance. Simply stating that there is

something that is wrong in your opinion or any group's opinion is not sufficient to show standing.

Clearly, the election which was held in November of 2012 belies the fact of what you're saying here in this courtroom. The majority of the people who voted in the presidential election voted for the candidate Obama, who was then also the President of the United States. You cannot go against that or try to make up some evidence to the contrary.

And that further goes to, as I have stated previously, the concept that only one percentage or one vote lost or whatever, the fact of the matter is California is a winner take all. So all 55 electoral votes go to the party who won the popular vote in the particular state and here California.

And going to the generalized interest of all citizens in constitutional governance, this is not something that is simply coming from this court or from a circuit court. This is from the United States Supreme Court. The United States Supreme Court has consistently refused to deal with generalized claims for constitutional ineligibility.

With respect to the competitive standing issue, which has been brought up and has been addressed by the Ninth Circuit in Drake, that doesn't apply in this particular case.

Edward Noonan claims that he was the winner of the American Independent party primary, but actually it was Thomas Hoefling or Hoefling, H-O-E-F-L-I-N-G, who was nominated to be

President, not Mr. Noonan.

UNIDENTIFIED SPEAKER: Objection.

THE COURT: Excuse me. You do not speak.

UNIDENTIFIED SPEAKER: I was elected --

THE COURT: You do not speak. You do not speak, sir. Time is up. You do not speak. And you're not also an attorney. Ms. Taitz is the one who speaks, not you.

Again, Edward Noonan was not the person who was nominated by the American Independent party.

Second, Mr. MacLeran, we have no allegations as to what Mr. MacLaren's position was or what he was doing.

And as far as Keith Judd, Keith Judd is at the end of serving a 210-month federal prison term, I believe it's in Alabama, for extortion. So interesting plaintiff.

None of the plaintiffs have alleged that they were on the ballot in enough states in the 2012 election to even get close to obtaining the requisite number of votes to be voted in as President of the United States.

With respect to the political question doctrine, it's abundantly clear that it is the Congress of the United States, and not the courts, who deal with this particular issue. It's been made abundantly clear.

The Constitution of the United States deals with the election of the President. And it has been well settled law for years, for decades that courts do not interfere with the

elections at that particular level when it comes to the political questions.

The counting of electoral college ballots is something that is purely vested with Congress. That is their responsibility and their job.

Just as the Constitution of the United States makes reference to other parts of dealing with elections, it does not include the courts. Even if the Congress -- and you brought up the issue of impeachment, which you now say is not what you're looking for or didn't want to, that's specifically for Congress to do. The House of Representatives files the articles, and the United States Senate has the trial. It is not done in a court. An Article III court does not handle impeachment, period.

And the same goes to a certain extent with the claims of forgery, et cetera, et cetera. If there is a claim of forgery or anything else, you don't come to this court and ask for any type of redress. If that's the case, you would bring it to a local official in the executive branch, such as the district attorney. Or if it's at a federal level, you bring it to the United States Attorney, who would then bring it before a United States grand jury -- and the U.S. Attorney would bring it before the grand jury and seek an indictment.

Courts do not deal with what are just simply allegations. There has not been one credible allegation of a

piece of evidence presented other than what is hearsay and people that quite frankly the plaintiffs believe are experts. Plaintiffs don't determine who experts are, the court does. And not one person that has been presented to come forward has been shown even closely reassembling an expert. They are simply citizens who have their own opinion, which they are free to express, and I respect that opinion. But that does not mean that their, quote/unquote, evidence is admissible.

The only admissible evidence is that which is under the rules of evidence. And at this point, the indication and the notification from secretary -- or from Hawaii, let's see, the director of the Hawaii State Department of Health has indicated and stated that the birth certificate of President Obama is accurate, is acceptable. That's --

MS. TAITZ: You don't have --

THE COURT: Stop. Do not speak. You're done.

The speech and debate clause also bars this suit. The speech and debate clause states that any speech or debate in either house shall not be questioned in any other place, and that has always been read liberally by the United States Supreme Court.

And to the contrary of how the plaintiffs present this, I am not certain where that particular argument came from, but the speech and debate claim is clearly one that is not to be challenged.

And going to the Fourteenth Amendment argument, I'm at somewhat of a loss to determine how that argument is brought forward. There's nothing that has been shown to this court or anywhere that the process that the Secretary of State uses within the state of California to certify elections or the process used to have people run for election is anything other than appropriate, anything.

While there may be arguments to the contrary or beliefs, that is one thing. But there has not been one shred of credible, admittable evidence that has been presented to this and at last count I believe 14 other courts across the country that have found that there's any credible evidence toward this.

Furthermore, I find it also interesting that in the five years that this has been the subject of debate in this country, no one has ever brought forward anything that goes anywhere more than simply at a court which dismisses it. Other than the fact that I'm now, I'm sure, Ms. Taitz, another corrupt judge that you've gone before, since that apparently is what you've always said is the case. And if following the law and the Constitution of the United States makes you corrupt, then you can have your opinion as well.

But in this particular case, there is nothing, nothing that has been put forward that allows you to have standing, that makes this issue ripe. It is moot. It involves a

political question. And for all of the reasons that I've stated, the motion is granted as to both the federal and state defendants. And because I do not believe that this case can be refiled again to state a cause of action against anyone, I am also denying any further leave to amend. This case is now finally terminated.

There being no other matters on calendar, court is adjourned.

(Off the record.)

(Proceedings were concluded at 11:23 a.m.)

---o0o---

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Kathy L. Swinhart
KATHY L. SWINHART, CSR #10150

ORLY TAITZ, ESQ

COUNSEL FOR APPEALANTS

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IN THE NINTH CIRCUIT COURT OF APPEALS

Case # 13-15627

GRINOLS ET AL

V

ELECTORAL COLLEGE ET AL

MOTION TO MODIFY THE APPEAL

Appellants herein have filed an appeal of the order of the lower court to deny the default judgment against one of the defendants in the above captioned case. The appeal is not due yet. Meanwhile the lower court has dismissed the whole case on a 12b motion. In the interest of judicial economy the appellants are requesting to modify the Appeal herein and file one appeal of both the denial of the default judgment and the dismissal of the case by the lower court. Additionally, appellants recently found out that an appeal was filed in a related case *Peace and Freedom Party and Peta Lindsey v Secretary of State Debra Bowen* Court of Appeals # 13-15085 and lower court # 2:12-cv-00853. See docket of the related case Exhibit 1. Both cases revolve around 2012 election and inclusion or exclusion of candidates on the ballot by the Secretary of State of California Debra Bowen. Appellants believe that in the interest of Judicial economy and in the interest of Justice it would be beneficial to hear both cases jointly.

Conclusion

Based on all of the above, 9th Circuit court of Appeals should allow the Appellants to file one appeal and should hear it in conjunction with the related case.

Respectfully submitted,

/s/ Orly Taitz,

Counsel for the Appellants

Exhibit 1

If you view the you will be charged for 1 Pages $0.10

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 13-15085 **Docketed:** 01/14/2013
Nature of Suit: 3441 Civil Rights Voting
Peta Lindsay, et al v. Debra Bowen
Appeal From: U.S. District Court for Eastern California, Sacramento
Fee Status: Paid

Case Type Information:
1) civil
2) private
3) null

Originating Court Information:
District: 0972-2 : 2:12-cv-00853-GEB-AC
Trial Judge: Garland E. Burrell, Junior, Senior District Judge
Date Filed: 04/03/2012

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
12/11/2012	12/11/2012	01/10/2013	01/11/2013

01/14/2013	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 01/22/2013. Appellants Richard Becker, Peta Lindsay and Peace and Freedom Party opening brief due 04/22/2013. Appellee Debra Bowen answering brief due 05/22/2013. Appellant's optional reply brief is due 14 days after service of the answering brief. [8472093] (GR)
01/14/2013	2	Filed certificate of record on appeal. RT filed in DC [8472095] (GR)
02/04/2013	3	Filed order MEDIATION (EPM)The Court of Appeals' records do not indicate that appellants have filed a Mediation Questionnaire in accordance with Circuit Rule 3-4. Within seven (7) days of the filing of this order,

		appellants shall: (a) file a Mediation Questionnaire (available on the court's website, www.ca9.uscourts.gov); (b) dismiss the appeal voluntarily pursuant to Fed. R. App. P. 42(b); or (c) show cause in writing why this appeal should not be dismissed pursuant to Ninth Cir. R. 42-1. Failure to comply with this order will result in dismissal pursuant to Ninth Cir. R. 42-1. [8499232] (KKW)
02/05/2013	4	Filed (ECF) Appellants Richard Becker, Peta Lindsay and Peace and Freedom Party Mediation Questionnaire. Date of service: 02/05/2013. [8501383] (REB)
02/14/2013	5	Filed order MEDIATION (VLS):This case is under consideration for inclusion in the Mediation Program. Within 14 days of the date of this order, counsel for all parties intending to file briefs in this matter are requested to inform Stephen Liacouras, Circuit Mediator, in writing, by email at stephen_liacouras@ca9.uscourts.gov, of their clients' views on whether the case is appropriate for settlement discussions or mediation [8514279] (KKW)
03/27/2013	6	Filed order MEDIATION (SL): Case not selected for mediation program. Counsel interested in obtaining settlement assistance or program information should contact the Mediation Office. [8566690] (KKW)
04/22/2013	7	Submitted (ECF) Opening Brief for review. Submitted by Appellants Richard Becker, Peta Lindsay and Peace and Freedom Party. Date of service: 04/22/2013. [8599635] (REB)

Exhibit 2

Affidavit of Attorney Orly Taitz

I, Orly Taitz, am a counsel for the Appellants in the above captioned case and I attest that following is true and correct to the best of my knowledge and informed consent.

1. Appeal at hand was filed in relation to the order denying default judgment in the above captioned case and on April 22, 2013 presiding judge dismissed the case against all parties on a 12 b motion, as such it would serve the interest of judicial economy to file one appeal on both issues.
2. Case *Peace and Freedom Party and Peta Lindsey v Secretary of State Debra Bowen* Appeals # 13-15085 is a related case currently before this court. It would serve judicial economy to hear both cases together.

Orly Taitz

I, Lila Dubert, am not a party to this case, I am over 18 years old, I attest that on 04.25.2013 I served all the parties in this case with the attached pleadings:

Lila Dubert

DISTRIBUTION LIST

Defendant

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Secretary of State of California

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Defendant

U.S. Congress, Electoral College, Barack Obama

Assistant Attorney US Attorney Edward Olsen
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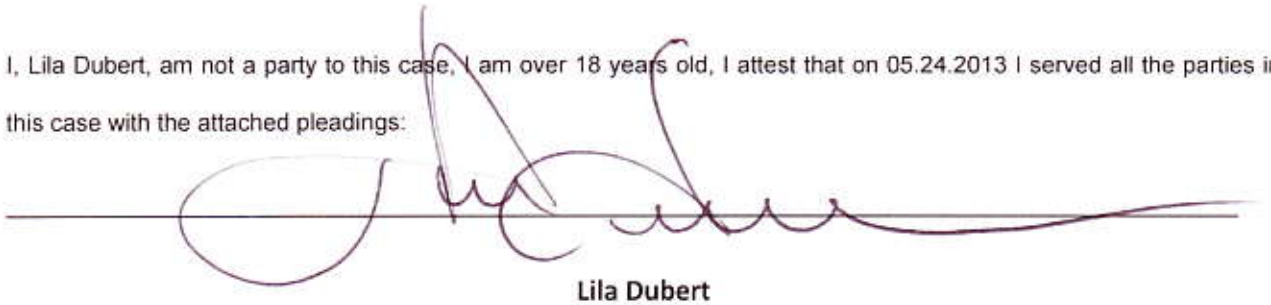
I, Lila Dubert, am not a party to this case, I am over 18 years old, I attest that on 05.24.2013 I served all the parties in this case with the attached pleadings:



Lila Dubert

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