

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE MORRISON C. ENGLAND, CHIEF JUDGE

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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

1 APPEARANCES

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1 SACRAMENTO, CALIFORNIA

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

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

7 THE COURT: Thank you.

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

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

12 THE COURT: Thank you.

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

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

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

25 Let me go and make sure that everyone understands the

1 procedures today.

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

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

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

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

18 MR. OLSEN: No, Your Honor.

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

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

1 restraining order was denied.

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

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

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

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

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

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

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

9 For the defense?

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

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

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

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

25 And because of this textually demonstrable

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

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

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

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

25 Secondly, plaintiffs lack Article III standing to

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

6 In *Drake v. Obama*, which is a Ninth Circuit decision,
7 664 F.3d. 774 at 782, it is stated that a generalized interest
8 of all citizens in constitutional governance is insufficient
9 to establish standing. That same holding is articulated by
10 the Supreme Court in *Schlesinger v. Reservists Committee to*
11 *Stop the War*.

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

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

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

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

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

17 Sorry, counsel. Go ahead.

18 MR. OLSEN: So, as I was saying, the Ninth Circuit
19 said in regards to a similar case brought in 2008, once the
20 2008 election was over, the President was sworn in, the
21 plaintiffs were no longer candidates for the 2008 election.
22 They cannot claim competitive standing because they were no
23 longer candidates when they filed their complaint.

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

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

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

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

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

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

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

8 The Ninth Circuit has held that if the activity sought
9 to be enjoined has already occurred, the action is moot and
10 must be dismissed. That's *Foster v. Carson*. That's a -- the
11 cite is 347 F.3d 742. It's a case from the Ninth Circuit in
12 2003.

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

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

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

4 THE COURT: Thank you.

5 Counsel?

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

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

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

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

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

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

1 California by more than three million votes. It takes about
2 30 days for elections officials to add up all of the numbers.

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

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

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

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

1 to try and stop California from counting its electoral college
2 votes. They filed their action on December 13th. So out of
3 41 days, they waited 37, an odd decision considering they were
4 hoping to stop the course of this election.

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

11 This court on December 14th issued an order pointing
12 out that they had not met any of the Court's requirements in
13 the local rules for a temporary restraining order. So it was
14 this court that actually informed them that they had failed to
15 comply with the local rules, and this court entered an order
16 on December 14th which gave them one week, until December
17 21st, to correct their errors.

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

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

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

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

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

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

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

25 I want to talk very briefly about the political

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

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

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

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

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

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

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

6 I want to point out that there was no objection raised
7 on January 4th when Congress met in joint session. But if
8 there was going to be an objection to President Obama's
9 election, or previously John McCain -- this came up with John
10 McCain's election in 2008 -- it was when the joint -- when the
11 houses were meeting in joint session. That is the moment that
12 the Constitution and the statute gives Congress the ability to
13 moot these issues. There was no objection raised on January
14 4th, Your Honor.

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

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

1 registrations are invalid.

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

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

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

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

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

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

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

18 And finally there's this claim for -- this kind of
19 comes I think out of thin air, which is this equal protection
20 claim. And I think, although it's not mentioned in the -- in
21 the pleadings from the other side, I think it's a reference to
22 Bush versus Gore, a 2001 opinion, involving the -- well, the
23 2000 presidential election.

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

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

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

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

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

24 THE COURT: Thank you.

25 Ms. Taitz.

1 MS. TAITZ: Yes, Your Honor.

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

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

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

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

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

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

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

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

16 And so I am going to go first to mootness.

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

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

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

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

18 Well, where is equal protection under the law --

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

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

25 THE COURT: What section are you referring to?

1 MS. TAITZ: Article II, Section 1.

2 THE COURT: Which says?

3 MS. TAITZ: That says that in order to be U.S.

4 President, one has to be: A, a natural born U.S. citizen; B,
5 he has to be 35 years old.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Further on, Mr. Olsen misrepresented the case of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Did this candidate, when he ran for office, commit
13 fraud? Did Barack Obama indeed use the Social Security number
14 of Harrison J. Bounel, a Connecticut Social Security number,
15 042-68-4425, which was never assigned to him?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Further, when we talk about -- I'm asking you, Your
13 Honor, for declaratory relief. And declaratory relief under
14 28 U.S.C. 2201 states the existence of another adequate remedy
15 does not preclude declaratory judgment that is otherwise
16 appropriate. The court may order a speedy hearing hearing
17 declaratory judgment actions.

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

25 Now another issue, the defendants are stating that

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

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

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

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

25 And this issue has to be decided once and for all

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

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

13 THE COURT: Your time is up. Thank you.

14 Is there a response?

15 MR. OLSEN: Briefly, Your Honor.

16 There was some discussion of default --

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

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

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

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

1 the Court wants to entertain any more arguments regarding
2 that.

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

4 THE COURT: Go ahead.

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

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

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

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

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

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

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

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

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

1 had died.

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

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

17 So I think I'll rest with that.

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

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

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

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

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

16 With that, I submit, Your Honor.

17 THE COURT: Thank you.

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

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

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

1 ECF, as was the motion to stay.

2 There was a motion for reconsideration filed on March
3 12th, 2013. This court denied that motion for reconsideration
4 at document No. 103 on March 26th, 2013.

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

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

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

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

1 state a claim which is plausible on its face.

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

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

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

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

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

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

1 that particular case I believe is distinguishable as well.

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

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

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

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

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

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

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

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

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

3 Clearly, the election which was held in November of
4 2012 belies the fact of what you're saying here in this
5 courtroom. The majority of the people who voted in the
6 presidential election voted for the candidate Obama, who was
7 then also the President of the United States. You cannot go
8 against that or try to make up some evidence to the contrary.

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

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

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

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

1 President, not Mr. Noonan.

2 UNIDENTIFIED SPEAKER: Objection.

3 THE COURT: Excuse me. You do not speak.

4 UNIDENTIFIED SPEAKER: I was elected --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 MS. TAITZ: You don't have --

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

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

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

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

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

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

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

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

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

9 (Off the record.)

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

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

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