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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CONSTITUTION ASSOCIATION INC.,  
by its founders, GEORGE F.X.  
ROMBACH and DOUGLAS V. GIBBS  
as well as its vice president DENNIS R.  
JACKSON, and B. GREEN, R. HANDY,  
A. HURLEY, R. HVIDSTON, R.  
KOWELL, H. LEWIS, C. MONGIELLO,  
R. REISS, L. REYES, J. SCARAFONE,  
R. SHORT, S. ST. JOHN, L. STUCKY, J.  
YATES and T. EVANS,

Plaintiffs,

v.

KAMALA DEVI HARRIS,

Defendant.

Case No.: 20-CV-2379 TWR (BLM)

**ORDER (1) ALLOWING  
PLAINTIFFS TO RESPOND TO  
DEFENDANT’S *EX PARTE*  
APPLICATION TO SET ASIDE  
DEFAULT AND (2) REQUIRING  
PLAINTIFFS TO SHOW CAUSE  
WHY THIS COURT SHOULD NOT  
DISMISS FOR LACK OF SUBJECT  
MATTER JURISDICTION**

(ECF No. 6)

The matters before the Court are (1) the *Ex Parte* Application to Set Aside Entry of Default (“*Ex Parte* Application,” ECF No. 6) filed by Defendant, and (2) the Court’s *sua sponte* consideration of its own subject matter jurisdiction.

**I. Background**

On December 7, 2020, Plaintiffs, proceeding *pro se*,<sup>1</sup> initiated this action by filing a

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<sup>1</sup> Plaintiff Constitution Association Inc. is alleged to be a corporation (ECF No. 1 at 8) and the docket reflects that it is not represented by an attorney. If the Court finds that it has subject matter jurisdiction,

1 Complaint in this Court seeking a declaration that Defendant Kamala Devi Harris is  
2 ineligible to serve as Vice President of the United States allegedly because she is not a  
3 “natural born citizen” within the meaning of the United States Constitution. (ECF No. 1  
4 at 42-43). The Complaint alleges that “a ‘natural born citizen’ required by ... the  
5 Constitution ‘is a person born in the United States of parents who are both citizens of the  
6 United States at the time of birth,” and Defendant “could not be a citizen of the United  
7 States by birth despite being born in Oakland, California, since neither of her parents was  
8 at least a permanent resident at the time of her birth.” (*Id.* at 40, 42.) The Complaint  
9 alleges that “Plaintiffs who are individuals and have served in the military forces of the  
10 United States, public office, or public servants are bound by an Oath to support the  
11 Constitution and this action is brought pursuant thereto.” (*Id.* at 8.)

12 On April 15, 2021, Plaintiffs filed an Affidavit of Service by Certified Mail stating  
13 that Plaintiffs served Defendant by mailing a copy of the Summons and Complaint via  
14 certified mail to “The White House, Office of the Vice President, 1600 Pennsylvania  
15 Avenue, NW, Washington D.C. 20500.” (ECF No. 3 at 1.) On April 26, 2021, Plaintiffs  
16 filed a Request for Entry of Default, alleging that Plaintiffs served Defendant on February  
17 26, 2021 as described in the Affidavit of Service by Certified Mail. (ECF No. 4-1 at 1-2.)  
18 On April 26, 2021, the Clerk of Court issued a Default. (ECF No. 5.) On May 12, 2021,  
19 Defendant filed the *Ex Parte* Application, moving to set aside the Default because Plaintiffs  
20 failed to properly effect service. (ECF No. 6 at 1.)

## 21 II. *Ex Parte* Application

22 In the *Ex Parte* Application, Defendant contends that Plaintiffs failed to follow the  
23 requirements for serving an employee or officer of the United States set forth in Federal  
24 Rule of Civil Procedure 4(i). That Rule states that “[t]o serve a United States officer or  
25 employee sued in an individual capacity for an act or omission occurring in connection  
26

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27 this Plaintiff must be represented by an attorney in order to proceed. *See Rowland v. California Men’s*  
28 *Colony*, 506 U.S. 194, 202 (1993) (“A corporation may appear in federal court only through licensed  
counsel.”).

1 with duties performed on the United States’ behalf ..., a party must serve the United States  
2 and also serve the officer or employee....” Fed. R. Civ. P. 4(i)(3); *see also* Compl. ¶ 15,  
3 ECF No. 1 (alleging that Defendant is being sued “in her personal capacity and not in any  
4 official capacity”). To serve the United States, a party must deliver or send via certified or  
5 registered mail a copy of the summons and complaint to (1) the civil process clerk at the  
6 United States Attorney’s Office for the district where the action is brought and (2) the  
7 Attorney General of the United States. *See* Fed. R. Civ. P. 4(i)(1). The time for the  
8 employee of the United States does not commence until each of the Rule 4(i) requirements  
9 are met. *See* Fed. R. Civ. P. 12(a)(3) (stating that “[a] United States officer or employee  
10 ... must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after  
11 service on the officer or employee or service on the United States attorney, *whichever is*  
12 *later.*”) (emphasis added).

13 Defendant contends that Plaintiffs have served neither the United States Attorney’s  
14 Office nor the Attorney General. Defendant further contends that there is good cause to  
15 set aside the Default pursuant to Federal Rule of Civil Procedure 55(c) based on a  
16 consideration of the relevant factors. *See* Fed. R. Civ. P. 55(c) (stating that a court “may  
17 set aside an entry of default for good cause”); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir.  
18 1984) (“[J]udgment by default is a drastic step appropriate only in extreme circumstances;  
19 a case should, whenever possible, be decided on the merits.... [T]hree factors should be  
20 evaluated in considering a motion to reopen a default judgment...: (1) whether the plaintiff  
21 will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether  
22 culpable conduct of the defendant led to the default.”); *see also Franchise Holding II, LLC*  
23 *v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004) (reiterating that this is  
24 the proper “‘good cause’ standard that governs vacating an entry of default under Rule  
25 55(c)”).

26 The Court **ORDERS** Plaintiffs to file any response to the *Ex Parte* Application no  
27 later than June 3, 2021.

### 28 **III. Subject Matter Jurisdiction**

1 Federal courts are courts of limited jurisdiction and are presumptively without  
2 jurisdiction over civil actions. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.  
3 375, 377 (1994). The burden of establishing the contrary rests upon the party asserting  
4 jurisdiction. *See id.* Because subject matter jurisdiction involves a court’s power to hear  
5 a case, it can never be forfeited or waived. *See United States v. Cotton*, 535 U.S. 625, 630  
6 (2002). “[C]ourts have an independent obligation to determine whether subject matter  
7 jurisdiction exists, even in the absence of a challenge from any party.” *Ruhrgas AG v.*  
8 *Marathon Oil Co.*, 526 U.S. 574, 583 (1999); *see also* Fed. R. Civ. P. 12(h)(3) (requiring  
9 the court to dismiss the action if subject matter jurisdiction is lacking).

### 10 **A. Standing**

11 “Constitutional standing concerns whether the plaintiff’s personal stake in the  
12 lawsuit is sufficient to make out a concrete ‘case’ or ‘controversy’ to which the federal  
13 judicial power may extend under Article III, § 2.” *Pershing Park Villas Homeowners Ass’n*  
14 *v. United Pac. Ins. Co.*, 219 F.3d 895, 899 (9th Cir. 2000); *see also Lujan v. Defenders of*  
15 *Wildlife*, 504 U.S. 555, 559-60 (1992). Constitutional standing limitations are  
16 jurisdictional, cannot be waived, and a court must resolve doubts as to constitutional  
17 standing even if *sua sponte*. *See Oliver v. Ralphs Grocery Co.*, 654 F.3d 903, 907 (9th Cir.  
18 2011) (“Although neither [party] raised the issue of standing before the district court or on  
19 appeal, we must resolve any doubts about this constitutional issue *sua sponte*.”) (quotation  
20 omitted).

21 In *Drake v. Obama*, 664 F.3d 774 (9th Cir. 2011), the court considered a claim that  
22 “President Obama is ineligible for the presidency under Article II, Section 1 of the United  
23 States Constitution, which states that ‘No Person except a natural born Citizen, or a Citizen  
24 of the United States, at the time of the Adoption of this Constitution, shall be eligible to  
25 the Office of President.’” *Id.* at 778 (quoting U.S. Const. art. II, § 1, cl. 4.2). The plaintiffs  
26 consisted of “(1) active military personnel; (2) former military personnel; (3) state  
27 representatives; (4) federal taxpayers; (5) relatives of President Obama; and (6) political  
28 candidates in the 2008 election.” *Id.* The court held that the district court properly

1 dismissed “plaintiffs’ constitutional claims for lack of Article III standing.” *Id.* at 786.

2 The Court has reviewed Plaintiffs’ Complaint, including the section entitled  
3 “Standing.” (ECF No. 1 at 11-13; *see id.* at 13 (alleging that “Plaintiffs, and each and every  
4 one of them, have had their voting rights disenfranchised or diluted when [Defendant]  
5 Harris sought the office [of] Vice-President of the United States, for which she is not  
6 eligible [because she is allegedly not a ‘natural born citizen’]”).) The Court finds that these  
7 allegations are insufficient to allege Article III standing. *See Drake*, 664 F.3d at 784 (“Even  
8 as a voter, [plaintiff] has no greater stake in this lawsuit than any other United States citizen.  
9 The harm he alleges is therefore too generalized to confer standing.”) (citing *Berg v.*  
10 *Obama*, 586 F.3d 234, 239 (3d Cir. 2009) (holding that the plaintiff’s status as a voter in  
11 the 2008 election did not give him standing to challenge President Obama’s candidacy on  
12 grounds similar to those alleged in *Drake*)).

13 Accordingly, the Court **ORDERS PLAINTIFFS TO SHOW CAUSE** why this  
14 action should not be dismissed for lack of jurisdictional standing no later than June 3, 2021.

### 15 **B. Political Question Doctrine**

16 The political question doctrine arises out of the Constitution’s division of powers,  
17 providing that certain questions are political as opposed to legal, and therefore off limits to  
18 a court. *See Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 980 (9th Cir. 2007) (“[D]isputes  
19 involving political questions lie outside of the Article III jurisdiction of federal courts.”).  
20 The doctrine of separation of powers requires that political issues be resolved by the  
21 political branches rather than by the judiciary. *See Corrie*, 503 F.3d at 980. “The political  
22 question doctrine serves to prevent the federal courts from intruding unduly on certain  
23 policy choices and value judgments that are constitutionally committed to Congress or the  
24 executive branch.” *Koohi v. U.S.*, 976 F.2d 1328, 1331 (9th Cir. 1992).

25 In *Grinols v. Electoral College*, No. 2:12-CV-02997-MCE, 2013 WL 2294885 (E.D.  
26 Cal. May 23, 2013), *aff’d*, 622 F. App’x 624 (9th Cir. 2015), the court considered a claim  
27 “that President Obama is not eligible to be the President of the United States because he is  
28 not a ‘natural born’ U.S. Citizen, as required by the United States Constitution.” *Id.* at \*1.

1 The court dismissed the action for lack of subject matter jurisdiction because Plaintiffs'  
2 claims were barred by the political question doctrine:

3 [W]ere the Court to grant the declaratory relief requested by Plaintiffs, it  
4 would necessarily interfere in a political matter that is principally within the  
5 dominion of another branch of government. Because federal courts are barred  
6 from intruding on a task constitutionally assigned to Congress, this action  
7 presents a non justiciable political question that this Court cannot consider,  
8 and, thus, the court lacks jurisdiction over this case.

9 *Id.* at \*7 (quotation omitted).

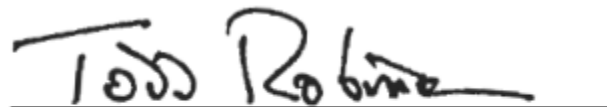
10 Based upon the allegations of the Complaint, it appears that the Court lacks subject  
11 matter jurisdiction over Plaintiffs' claims because they are barred by the political question  
12 doctrine. Accordingly, no later than June 3, 2021, Plaintiffs are **ORDERED TO SHOW**  
13 **CAUSE** why this action should not be dismissed for lack of subject matter jurisdiction  
14 because the claims are barred by the political question doctrine.

#### 14 **IV. Conclusion**

15 The Court **ORDERS** Plaintiffs to file any response to the *Ex Parte* Application no  
16 later than June 3, 2021. For the reasons discussed above, no later than June 3, 2021,  
17 Plaintiffs are **ORDERED TO SHOW CAUSE** why this action should not be dismissed  
18 without prejudice for lack of subject matter jurisdiction because (1) Plaintiffs lack standing  
19 and (2) the claims are barred by the political question doctrine. If Plaintiffs file a response  
20 to this Order, Defendant may file a reply no later than seven days after Plaintiffs' response  
21 is filed.

22 **IT IS SO ORDERED.**

23 Dated: May 14, 2021



24  
25 Honorable Todd W. Robinson  
26 United States District Court  
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