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December 20, 2020

Honorable _____:

On January 6, 2021, you will be asked to approve the Electoral College votes cast for former Vice President Joe Biden and Senator Kamala Harris and declare the winners of the presidential and vice-presidential election. We urge that on that day you count all the constitutionally cast Electoral College votes and object in writing to any which have been cast in violation of the Constitution and federal and state law. The Constitution commands how you are to count all the Electoral College votes. You have solid ground on which to stand in making your objection. The first ground is tied to an illegal popular vote occurring in an offending state. The second ground is Senator Kamala Harris not being eligible for the Office of Vice President for not being an Article II "natural born Citizen."

Our great nation is a republic guided by a written Constitution. The Constitution does not provide for election of President and Vice President through a majority of the national popular vote. Rather, Article II and the Twelfth Amendment provide that it is a majority of the "electors" (the Electoral College) who elect them. Article II of the Constitution provides, "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress." Notwithstanding what the Electoral Count Act (3 U.S.C. § 1 et. seq.) may provide, nothing in the Constitution requires that you must accept the votes of a state's electors appointed as a result of a state's irregular popular vote occurring in that state. Generally, state legislatures allow the popular vote in their state to determine which political party's slate of electors it will appoint for purposes of its Electoral College vote. Necessarily, a state's appointment of such electors is conditioned upon that state's popular vote being legally cast. In other words, a state's

appointment of its electors must be predicated upon that state's validly cast popular vote. If that state's popular vote is not valid, then that state's appointment of the slate of electors tied to that popular vote must fail. Additionally, with an invalid popular vote in any state, we cannot conclude that the votes of the Electoral College for that state were "regularly given." 3 U.S.C. § 15. If a state has the constitutional power to remove "faithless electors," then you surely have the constitutional power to reject the vote of an elector who was not legally appointed by a state. Moreover, under such circumstances, a Governor's certification of those electors would not be binding upon you. *See* 3 U.S.C. § 15 (provides "if the two Houses shall disagree in respect of the counting of such votes, then, and in that case, the votes of the electors whose appointment shall have been certified by the executive of the State, under the seal thereof, shall be counted."). A state's Governor should not be certifying the Electoral College votes of any political party if that vote was not legally cast. In the end, if a state's underlying popular vote is not valid, the state, which is responsible for running a valid election, shall have failed to appoint electors for its state. You then have the constitutional power to nullify those electoral votes tied to that illegal popular vote and that state's failure to prevent it.

Thereafter you have two options. One is that you accept the electoral votes of the Republican party in that state. Another is that you do not give that offending state any electoral votes which may then require under the Twelfth Amendment the House of Representatives to vote for the President and the Senate to vote for the Vice President when no person receives a majority of the electoral votes. The Twelfth Amendment commands that the person with the highest number of votes for President shall be President and for Vice President shall be Vice President, if that person gets a majority of the votes (a majority of 538 is 270). The Amendment further instructs what needs to be done should such a majority not be reached. It provides that the decision as to who shall be President falls on the House of Representatives, with one vote given to each state so represented rather than each Representative having one vote. The Senate would vote with each Senator having one vote. A quorum of two-thirds of the states and two-thirds of the Senate along with majority votes by each quorum will have to be achieved in both chambers.

As to the grounds for rejecting electoral votes due to voting irregularities which disqualifies an offending state's appointment

of the Democratic Party's electors, there is enough doubt regarding the integrity of the votes for you to challenge those votes and demand a full debate on the floor. Those grounds are documented, among other places, in the numerous state lawsuits and in the federal lawsuit filed by Texas which the U.S. Supreme Court refused to hear because of standing. A large percentage of Americans do not think we had a legitimate election. While the immediate seizure of evidence and appointment of a Special Counsel, and a Congressional investigation following the election is necessary, you have enough evidence to now reject the electoral college votes of the offending battleground states, Arizona, Georgia, Michigan, Nevada, Pennsylvania, Wisconsin. See Peter Navarro, "The Immaculate Deception: Six Key Dimensions of Election Irregularities," accessed here (explains the six dimensions of election irregularities in the six battleground states). As Peter Navarro concludes in his report, if "this is not done before Inauguration Day, we risk putting into power an illegitimate and illegal president lacking the support of a large segment of the American people."

As to Senator Harris's ineligibility to be Vice President, Article II, Section 1, Clause 5 provides in relevant part: "No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President. . ." The Twelfth Amendment provides in pertinent part: "But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States." Hence, ineligibility to be President disqualifies one from being Vice President. The Twentieth Amendment requires that the Vice President "shall have qualified" by the time fixed for the beginning of that term. "The electors shall vote for President and Vice President, respectively, in the manner directed by the Constitution. 3 USCS § 8. Hence, electors are prohibited not only by the Constitution but also by federal statute from voting for a person for Vice President who is not an Article II natural born citizen.

United States District Court Judge William Alsup in Robinson v. Bowen succinctly explained the process for challenging in the Congress a presidential candidate's eligibility thus:

> Article II prescribes that each state shall appoint, in the manner directed by the state's legislature, the number of presidential electors to which it is constitutionally entitled.

The Twelfth Amendment prescribes the manner in which the electors appointed by the states shall in turn elect the president:

> "[t]he electors shall meet in their respective states and vote by ballot for President and Vice-President . . . and they shall . . . transmit [their votes] sealed to the seat of the government of the United States, directed to the President of the Senate; -- The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted."

Federal legislation further details the process for counting electoral votes in Congress. 3 U.S.C. 15. Section 15 directs that Congress shall be in session on the appropriate day to count the electoral votes, with the President of the Senate presiding. It directs that designated individuals shall open, count and record the electoral votes, and then present the results to the President of the Senate, who shall then "announce the state of the vote." Ibid. The statute provides a mechanism for objections then to be registered and resolved:

> "[e]very objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof, and shall be signed by at least one Senator and one Member of the House of Representatives before the same shall be received. When all objections so made . . . shall have been received and read, the Senate shall thereupon withdraw, and such objections shall be submitted to the Senate for its decision; and the Speaker of the House of Representatives shall, in like manner, submit such objections to the House of Representatives for its decision."

Ibid. The Twentieth Amendment further provides,

> "if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as

> President, or the manner in which one who is to act shall be elected, and such person shall act accordingly until a President or Vice President shall have qualified."
>
> It is clear that mechanisms exist under the Twelfth Amendment and 3 U.S.C. 15 for any challenge to any candidate to be ventilated when electoral votes are counted, and that the Twentieth Amendment provides guidance regarding how to proceed if a president elect shall have failed to qualify. Issues regarding qualifications for president are quintessentially suited to the foregoing process. Arguments concerning qualifications or lack thereof can be laid before the voting public before the election and, once the election is over, can be raised as objections as the electoral votes are counted in Congress. The members of the Senate and the House of Representatives are well qualified to adjudicate any objections to ballots for allegedly unqualified candidates. Therefore, this order holds that the challenge presented by plaintiff is committed under the Constitution to the electors and the legislative branch, at least in the first instance. Judicial review -- if any -- should occur only after the electoral and Congressional processes have run their course. Texas v. United States, 523 U.S. 296, 300-02, 118 S. Ct. 1257, 140 L. Ed. 2d 406 (1998). This circumstance also obviates any occasion to consider plaintiff's standing-cure suggestion that the American Independent Party (affiliated with Alan Keyes) be allowed to intervene.

Robinson v. Bowen, 567 F. Supp. 2d 1144, 1146-1147 (N.D. Cal. 2008). So, there you have it from a federal district court which issued a precedential decision how the Congressional challenge process can work regarding Senator Harris's constitutional ineligibility to be Vice President for not being a natural born citizen. Thus, a candidate receiving a vote from an Electoral College elector is not the end of the process. That candidate must still prove to Congress that he or she is eligible, i.e., must "have qualified" for that office under the Constitution.

The issue of whether Senator Harris is a natural born citizen has not been debated by your chamber and it should. Remember that the Senate investigated in 2008 whether Senator John McCain, born in Panama to two U.S. citizen parents serving the U.S.

military, was a natural born citizen and stated in the non-binding S. Res. 511 that he was. Moreover, the Twelfth Amendment specifically mentions that "no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States." What is critical to understand is that the Amendment raises the issue of the Vice President's eligibility in the context of Congress in joint session counting the votes of the Electoral College. What this means is that Congress is not hampered to decide the constitutional eligibility of a presidential or vice-presidential candidate by a general election or Electoral College election having taken place and in which the constitutional eligibility issue was not raised for whatever reason. The Constitution foresees the Congress in joint session after those two elections have occurred making sure that any such candidate is constitutionally eligible for the office he or she seeks. This means that under the Constitution, Congress is not a mere rubber stamp for the electoral votes, but rather a deliberative body that must assure that those votes are cast for a candidate who is constitutionally eligible for the office sought. Hence, in this regard, Congress is the ultimate guardian of the Constitution.

Senator Harris is not a natural born citizen and therefore not eligible for the office of Vice President. Attached is a copy of an *amicus curiae* brief which the U.S. Allegiance Institute recently filed in the case of *Robert C. Laity v. Kamala Devi Harris*, then pending in the D.C. Federal District Court under Case No. 20-cv-2511-EGS, which the court dismissed for lack of standing. This case is now on appeal in the D.C. Circuit Court of Appeals. The brief, authored by natural born citizen expert, attorney Mario Apuzzo, clearly demonstrates what an Article II natural born citizen and Fourteenth Amendment citizen of the United States are, and why Ms. Harris, at best, can be a "citizen" of the United States but not a "natural born citizen." Mr. Apuzzo demonstrates what the original American common law meaning of a natural born citizen is. He shows by relying upon constitutional text and structure and historical and legal sources that it is a child born in the country to parents who were both citizens of the U.S. at the time of the child's birth. He demonstrates that the framers through the natural born citizen clause wanted to assure that future Presidents and Commanders-in-Chief would be born with unity of natural allegiance to and citizenship in the U.S. from the moment of birth. He also shows how a natural born citizen is not to be conflated and confounded with a Fourteenth Amendment

"citizen" of the United States, who can be born with conflicting allegiances.

Mr. Apuzzo explains that a "citizen" presidential or vice-presidential candidate must not only be a "citizen," but also a "natural born citizen." He further explains that Senator Harris was born in California in 1964 to non-U.S. citizen parents (her father was Jamaican, and her mother was Indian) who were in the U.S. temporarily on student visas. Hence, while Senator Harris was born in the U.S., she was not born to U.S. citizen parents. Under these birth circumstances, Senator Harris is at best a "citizen" of the United States under the Fourteenth Amendment because she was born in the United States while presumably subject to its jurisdiction. But she is not nor can she also be an Article II "natural born citizen." Being neither a "natural born Citizen, [n]or a Citizen of the United States, at the time of the Adoption of this Constitution," she is not eligible to be President and therefore Vice President. Please share Mr. Apuzzo's brief with your Congressional colleagues so that they will be better prepared to debate the issue during the joint session of Congress.

The Framers inserted the natural born citizen clause into constitutional eligibility for the Office of President and the framers of the Twelfth Amendment extended it to the Vice President. Both framers thought it wise to do so for the sake of preserving the constitutional republic by protecting it from a person having from birth natural allegiance to a foreign power and who may strive to be President and Commander in Chief of the Military of the United States. That describes Senator Harris, who was born not only with allegiance to the United States (although very weak by being born on its soil to two parents who were both temporarily present there), but also inherited natural allegiance to India and Jamaica (much stronger by nature by being born to parents who were citizens of those nations at the time of her birth). Also, there are no surprises here. President Trump and others warned the public prior to the election that there was serious doubt that Ms. Harris was eligible for the office of Vice President.

As you can see, you have the constitutional and statutory power to challenge any state's (which includes the District of Columbia) Electoral College vote not only for voting irregularities, but also on the ground that Senator Harris is not a natural born citizen. Hence, do not be dissuaded in your effort by how any court may have so far ruled on the election (none of those courts allowed for

discovery or reached the merits of the challenges), by the mainstream media and their darling pundits, or by others who have blindly accepted a Biden-Harris victory for whatever reason.

The political pressure from all corners will be intense, but do not cave in. We hope you will follow the letter and the spirit of the Constitution on January 6, 2021. We hope that you will stand up for constitutional elections, which are fair, free, and legal and register your objection in writing. We hope that you will also heed the Framers' warning regarding having a person with divided loyalties serve as Vice President and potentially President. We hope that you will have the fortitude to stand for principle and most importantly for what gives our constitutional republic its lifeblood, the Constitution and the rule of law.

Thank you for your consideration of this critical national security matter.

s/ *Mario Apuzzo*

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