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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 VINZENZ J. KOLLER, an individual and Presidential) Case No. _____
11 Elector,)

12 Plaintiffs,)

13 v.)

14 JERRY BROWN, in his official capacity as)
15 Governor for the State of California; KAMALA)
16 HARRIS, in her official capacity as Attorney)
17 General for the State of California; ALEX)
18 PADILLA, in his official capacity as Secretary of)
19 State for the State of California; and DOES 1-10;)

20 Defendants.)
21

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

22 **PRELIMINARY STATEMENT**

23 Plaintiff Vinzenz J. Koller, a Presidential Elector for the State of California, hereby
24 challenges the constitutionality of *California Election Code* §§ 6906 and 18002, statutes
25 which restrict, under penalty of fine and/or imprisonment, the obligations of presidential
26 electors under Article II of the U.S. Constitution, as amended by the Twelfth Amendment,
27 and the First Amendment rights of freedom of speech.

28 Plaintiff seeks the protection to act as a Presidential Elector not merely by placing a
ceremonial vote, but as part of a deliberative body, placing a vote that is most likely to

1 ensure that only a person with the adequate qualifications for office be voted in as President
2 of the United States.

3 Currently 29 states, including California, have state laws that bind presidential
4 electors to do no more than place a ceremonial vote in accord with their party affiliation or
5 pre-election pledge. Plaintiff here, is joining the path of other electors in the States of
6 Colorado and Washington seeking relief from state statutes that interfere with their right to
7 act as a deliberative body and, if appropriate under the circumstances, place their votes in
8 the best interest of the country, even if they might not be their party's candidate.

9 The relief sought here is narrow – declaratory relief that *Election Code* §§ 6906 and
10 18002 are unconstitutional restraints on presidential electors, and furthermore, that those
11 sections have the same effect as threats against electors made criminal by *Election Code* §
12 18540(a).

13 Plaintiff, through undersigned counsel, for his complaint against the above-named
14 Defendants avers as follows.

15 **PARTIES**

16 1. Vinzenz J. Koller is a resident of Monterey County, California, and a duly
17 chosen Presidential Elector for the 2016 presidential election.

18 2. Defendant Jerry Brown is the Governor of California and, as its chief
19 executive, has the power to enforce the laws of the State of California, including *Election*
20 *Code* §§ 6906 and 18002.

21 3. Defendant Kamala Harris the Attorney General of California and, in such
22 capacity, enforces the laws of the State of California, including *Election Code* §§ 6906 and
23 18002.

24 4. Defendant Alex Padilla is the Secretary of State of California and, as such,
25 gives notice of the time and place for the Presidential Electors to vote, and certifies the
26 results of the Presidential Electors' balloting and votes.

27 5. Defendants DOES 1-10 are other individuals or entities, presently
28 unidentified, that upon information and belief are also engaged, directly or indirectly, in the

1 conduct giving rise to this Complaint. On information and belief, Defendants act as agents
2 of one or more of each other relative to the subject matter of this Complaint.

3
4 **JURISDICTION AND VENUE**

5 6. This Court has jurisdiction over the subject matter of this dispute as it relates
6 to a federal question, to wit, a challenge to the constitutionality of a state statute, under 28
7 U.S.C. § 1331 as well as 28 U.S.C. §§ 2201 and 2202.

8 7. The federal question presented by this case is the constitutionality of
9 *California Election Code* §§ 6906 and 18002, which requires electors to vote “for that
10 person for President and that person for Vice President of the United States, who are,
11 respectively, the candidates of the political party which they represent . . .” and calls for
12 punishment for “willfully neglect[ing] or refus[ing] to perform it” or “knowingly and
13 fraudulently act[ing] in contravention” to be punished by fine or imprisonment.

14 8. These statutes, *Election Code* §§ 6906 and 18002, violate Article II of the
15 U.S. Constitution as amended by the Twelfth Amendment, and freedom of speech under the
16 First Amendment.

17 9. Venue is proper in this Court under 28 U.S.C. § 1391(b).

18
19 **FACTUAL ALLEGATIONS**

20 10. Plaintiff is a duly authorized Presidential Elector of the Democratic Party and
21 has met all qualifications to be an elector.

22 11. *California Election Code* §§ 6906 and 18002 require electors to vote “for that
23 person for President and that person for Vice President of the United States, who are,
24 respectively, the candidates of the political party which they represent . . .” and calls for
25 punishment for “willfully neglect[ing] or refus[ing] to perform it” or “knowingly and
26 fraudulently act[ing] in contravention” to be punished by fine or imprisonment.

27 12. The Democratic Presidential candidate is Hillary Rodham Clinton and the
28 Democratic Vice-Presidential Candidate is Timothy Kaine.

1 13. Though the Democratic nominees for President and Vice-President won the
2 nationwide popular vote by at least 2.7 million votes, and won the California popular vote
3 by a large margin, the various state-by-state popular votes portend that Donald Trump and
4 Michael Pence (the Republican presidential and vice presidential nominees) will win the
5 majority of electoral college votes on December 19, 2016 if the electors in each state vote
6 consistent with the popular vote in their respective states.

7 14. Presidential Electors in the states of Arizona, Arkansas, Georgia, Idaho,
8 Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, New
9 Hampshire, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, South
10 Dakota, Texas, and West Virginia are not, however, bound to simply place a ceremonial
11 vote consistent with their state’s popular vote, though they usually do so.

12 15. The remaining states, including California, have laws in place requiring their
13 Presidential Electors to vote consistent with the persons and/or party corresponding to the
14 popular vote in the state.

15 16. *California Election Code* § 6906 requires electors to vote “for that person for
16 President and that person for Vice President of the United States, who are, respectively, the
17 candidates of the political party which they represent . . .”

18 17. *California Election Code* § 18002 sets for a punishment for “willfully
19 neglect[ing] or refus[ing] to perform” duties under state elections laws or “knowingly and
20 fraudulently act[ing] in contravention” to be punished by fine or imprisonment.

21 18. This state requirement pre-determining the vote to be cast by Presidential
22 Electors violates the plain language of Article II, Section 1, of the U.S. Constitution, as
23 amended by the Twelfth Amendment, which indicates that there is no way to know in
24 advance what the vote will be –

25 The executive power shall be vested in a President of the United States of
26 America. He shall hold his office during the term of four years, and, together
27 with the Vice President, chosen for the same term, be elected, as follows:
28

1 Each state shall appoint, in such manner as the Legislature thereof may direct,
2 a number of electors, equal to the whole number of Senators and
3 Representatives to which the State may be entitled in the Congress: but no
4 Senator or Representative, or person holding an office of trust or profit under
5 the United States, shall be appointed an elector.

6 The electors shall meet in their respective states, and vote by ballot for two
7 persons, of whom one at least shall not be an inhabitant of the same state with
8 themselves. And they shall make a list of all the persons voted for, and of the
9 number of votes for each; which list they shall sign and certify, and transmit
10 sealed to the seat of the government of the United States, directed to the
11 President of the Senate. The President of the Senate shall, in the presence of
12 the Senate and House of Representatives, open all the certificates, and the
13 votes shall then be counted. The person having the greatest number of votes
14 shall be the President, if such number be a majority of the whole number of
15 electors appointed; and if there be more than one who have such majority,
16 and have an equal number of votes, then the House of Representatives shall
17 immediately choose by ballot one of them for President; and if no person
18 have a majority, then from the five highest on the list the said House shall in
19 like manner choose the President. But in choosing the President, the votes
20 shall be taken by States, the representation from each state having one vote; A
21 quorum for this purpose shall consist of a member or members from two
22 thirds of the states, and a majority of all the states shall be necessary to a
23 choice. In every case, after the choice of the President, the person having the
24 greatest number of votes of the electors shall be the Vice President. But if
25 there should remain two or more who have equal votes, the Senate shall
26 choose from them by ballot the Vice President.

27 The Congress may determine the time of choosing the electors, and the day
28 on which they shall give their votes; which day shall be the same throughout
the United States. ...

19. Furthermore, this state requirement pre-determining the vote to be cast by
Presidential Electors violates the Founders' intent that the Presidential Electors be a
deliberative and independent body free to cast votes for whomever they deem to be the
most fit and qualified candidates.

See The Federalist, No. 68 (Earle ed., 1937), pp. 441-442:
"It was desirable that the sense of the people should operate in the choice of
the person to whom so important a trust was to be confided. This end will be
answered by committing the right of making it, not to any preestablished
body, but to men chosen by the people for the special purpose, and at the
particular conjuncture.

1 "It was equally desirable, that the immediate [presidential election] should be
2 made by men most capable of analyzing the qualities adapted to the station,
3 and acting under circumstances favorable to deliberation, and to a judicious
4 combination of all the reasons and inducements which were proper to govern
5 their choice. A small number of persons, selected by their fellow-citizens
6 from the general mass, will be most likely to possess the information and
7 discernment requisite to such complicated investigations."

8 Quoted in *Ray v. Blair*, 343 U.S. 214.

9 20. Ironically, the Constitution and the Founders' intent should be protected
10 under *California Election Code* § 18540(a) which makes it a felony offense for "every
11 person who makes use of or threatens to make use of any ... tactic of coercion or
12 intimidation, to induce or compel any other person to vote ... or to vote or refrain from
13 voting for any particular person ... at any election, or because any person voted or refrained
14 from voting at any election or refrained from voting for any particular person ..."

15 21. Coercion via statute is not different in result than independent coercion as it
16 interferes with the freedom of speech (to voice questions and concerns about the fitness and
17 qualification for office of any potential candidate for President and Vice President) and the
18 obligation and right to act as part of the Presidential Electors to "analyz[e] the qualities
19 adapted to the station," "act[] under circumstances favorable to deliberation, and to a
20 judicious combination of all the reasons and inducements which were proper to govern
21 their choice" and to "possess the information and discernment requisite to such complicated
22 investigations."

23 22. Though Hillary Clinton and Timothy Kaine won the majority vote in
24 California and are qualified for office, Plaintiff cannot be constitutionally compelled to vote
25 for them. Plaintiff must be allowed to exercise his judgment and free will to vote for
26 whomever he believes to be the most qualified and fit for the offices of President and Vice
27 President within the circumstances and with the knowledge known on December 19, 2016,
28 whether those candidates are Democrats, Republicans, or from a third party.

FIRST CAUSE OF ACTION

(Declaratory Relief)

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3 23. Plaintiffs re-allege and incorporate by reference paragraphs 1-24, above.

4 24. *Election Code* §§ 6906 and 18002 call for criminal penalties against Plaintiff
5 if Plaintiff does not place his presidential electoral vote for Hillary Clinton and Tim Kaine.

6 25. Plaintiff's stated intention to not necessarily place his vote for Hillary Clinton
7 and Tim Kaine, but instead to act with the deliberative intent and care for choosing of
8 qualified persons for the office of President and Vice President called for in the U.S.
9 Constitution, creates a risk of criminal prosecution by the State of California and thus
10 creates an actual controversy within the meaning 28 U.S.C. § 2201(a).

11 26. The threat of criminal prosecution against Plaintiff if he acts in any manner in
12 his capacity as Presidential Elector other than as a rubber stamp or ceremonial vote
13 consistent with the popular vote in California, constitutes a violation of his obligations
14 under the U.S. Constitution, Art. II, Sec. 1, as amended by the Twelfth Amendment, and his
15 rights to freedom of speech under the First Amendment of the U.S. Constitution.

16 27. Plaintiff therefore requests a declaratory judgment by this Court that
17 *California Elections Code* § 6906 and the corresponding penalty for violation thereof in
18 *California Elections Code* § 18002 are unconstitutional and therefore unenforceable against
19 Plaintiff and his fellow electors.

20 28. The purpose of the Electoral College, which is made up of electors such as
21 Plaintiff, is to elect the President and Vice President of the United States. There is nothing
22 in the Constitution that permits or requires electors to be bound to vote the same as the
23 popular vote in their states. For the first 100 years of our history, the majority of states did
24 not hold popular votes for the election of president and vice president and, instead, the
25 states themselves appointed the electors who voted for president and vice president.

26 29. Alexander Hamilton explicitly stated "that that the immediate election should
27 be made by men most capable of analyzing the qualities adapted to the station." Federalist
28 No. 68. The electors (the "men") would be "most likely to possess the information and

1 discernment requisite to such complicated investigations.” *Id.* The electors were created so
2 that they, as a deliberative body, would be “detached” and less prone to be influenced by
3 the “heats and ferments” of a raucous election. *Id.* The electors would help ensure “the
4 office of President [would] never fall to the lot of any man who is not in an eminent degree
5 endowed with the requisite qualifications.” *Id.* The electors create an “obstacle” to “cabal,
6 intrigue, and corruption” and prevent “foreign powers [from] gain[ing] an improper
7 ascendant in our councils.” *Id.*

8 30. The United States Supreme Court has already partially addressed the question
9 of a state statute that required an elector for a primary election to sign a pledge as to whom
10 they would vote and found the pledge itself constitutional (*Ray v. Blair*, 343 U.S. 214
11 (1952)), the Supreme Court left open the question of whether enforcement of such pledges,
12 or penalties for violating the pledges, or state statutes dictating what votes would be placed,
13 was constitutional. This question is now ripe for review.

14 31. Similarly, while Article II, Section 1 provides that states shall “appoint”
15 electors, but the Constitution does not provide that the states shall have the ability to
16 determine for whom those electors will vote.

17 32. The Electoral College would be rendered superfluous and antithetical to the
18 purpose of the Electoral College as articulated by Alexander Hamilton, for if the electors
19 are merely to vote for the candidate who won the popular vote in their state, then there is no
20 need for the Electoral College at all. While many scholars have advocated for the
21 elimination of the Electoral College, this case does not seek to invalidate the Electoral
22 College; that would be a matter to be changed by constitutional amendment.

23 33. Injunctive relief is necessary to prevent the Defendants from violating
24 Plaintiff’s constitutional rights or chilling his exercise of those rights due to the risk of
25 punitive consequence for voting in the broader interest of the country, even if that might not
26 end up aligning with his loyal party affiliation. Without such relief, Plaintiff’s right and
27 obligation a Presidential Elector and his right of freedom of speech will be irreparably
28 harmed.

VERIFICATION

I declare under penalty of perjury of the laws of the State of California and the United States that the foregoing is true and correct to the best of my knowledge with the exception of legal contentions asserted by my attorney.

Executed this 9th day of December, 2016, in Monterey County, California.



Vinzenz J. Koller

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