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INTRODUCTION

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2 Plaintiff has pending an Amended Complaint alleged three causes of action, for declaratory
3 relief, and for civil rights violations under 42 U.S.C. § 1983. All of this is based on the core fact that
4 Plaintiff, as a presidential elector for the 2016 presidential election, was coerced, under threat of
5 felony prosecution, to vote for a particular candidate for President and Vice-President, contrary to
6 his rights and obligations under the U.S. Constitution, and contrary to federal statute prohibiting
7 intimidation, threats, and coercion of voters for President and Vice-President. Plaintiff seeks
8 declaratory relief and a permanent injunction holding that California Elections Code §§ 6906 and
9 18002 violate the U.S. Constitution and federal law.
10

11 As detailed below, Plaintiff's Amended Complaint is more than sufficient to withstand the
12 Rule 12(b)(1) and Rule 12(b)(6) challenges raised in by two Defendants and one Intervenor in this
13 case. Plaintiff had, and continues to have standing, to pursue this case. As with many other election
14 cases, the issues raised here fall within the "capable of repetition, yet evading review" exception to
15 the general mootness rules. Furthermore, the issues raised by Plaintiff are not non-justiciable
16 political questions. Plaintiff also has properly and sufficient plead the three causes of action
17 contained within the Amended Complaint and, to the extent the Court may find any deficiencies,
18 Plaintiff stands ready to amend as necessary.
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FACTUAL SUMMARY

Amended Complaint Allegations

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23 Plaintiff Vinzenz J. Koller is a resident of Monterey County, California, and a duly chosen
24 Presidential Elector for the 2016 presidential election. Doc. #83 (Amended Complaint), ¶ 1.

25 Defendant Kamala Harris was the Attorney General of California and, in such capacity,
26 enforced the laws of the State of California, including Elections Code §§ 6906 and 18002 in
27 December 2016. She has been replaced in her official capacity in the Amended Complaint by
28 Xavier Becerra for prospective injunctive relief, but Harris remains a Defendant in her individual

1 capacity for past actions. See Doc. #83 ¶ 2. Defendant Xavier Becerra is the Attorney General of
2 California and, in such capacity, enforces the laws of the State of California, including *Election*
3 *Code* §§ 6906 and 18002. Doc. #83 ¶ 3.

4 Defendant Alex Padilla is the Secretary of State of California and, as such, gives notice of
5 the time and place for the Presidential Electors to vote, and certifies the results of the Presidential
6 Electors' balloting and votes. He is being sued in his official capacity for prospective injunctive
7 relief, but in his individual capacity for past actions. Doc. #83 ¶ 4.

8 Defendants Xavier Becerra and Alex Padilla have filed a motion to dismiss (Doc. #88) and
9 are referred to herein as "Official Capacity Defendants." Defendants Kamala Harris and Alex
10 Padilla in their individual capacity have not yet filed their responsive pleadings.

11 This Court has jurisdiction over the subject matter of this dispute as it relates to a federal
12 question, to wit, a challenge to the constitutionality of a state statute, under 28 U.S.C. § 1331 as
13 well as 28 U.S.C. §§ 2201 and 2202. Doc. #83 ¶ 6. Venue is proper in this Court under 28 U.S.C. §
14 1391(b). Doc. #83 ¶ 11.

15 The federal question presented by this case is the constitutionality of *California Election*
16 *Code* §§ 6906 and 18002, which requires electors to vote "for that person for President and that
17 person for Vice President of the United States, who are, respectively, the candidates of the political
18 party which they represent . . ." and calls for punishment for "willfully neglect[ing] or refus[ing] to
19 perform it" or "knowingly and fraudulently act[ing] in contravention" to be punished by felony fine
20 or imprisonment. Doc. #83 ¶ 7.

21 These statutes, Elections Code §§ 6906 and 18002, violate Article II of the U.S.
22 Constitution as amended by the Twelfth Amendment. Doc. #83 ¶ 8. These statutes, Elections Code
23 §§ 6906 and 18002, also violate California Election Code § 18540(a) and 18 U.S.C. § 594 which
24 prohibit threats, intimidation, and coercion against presidential electors. Doc. #83 ¶ 9.

25 Although the 2016 Presidential election is over, litigation involving the rights and duties of
26 presidential electors is capable of repetition, yet evading review, every four years. With the length
27 of a presidential elector's actual service lasting for a single day, and the designation of someone as
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1 being a presidential election never being made more than six weeks prior to that one day, it is
2 impossible for any court case to be completed in time. Doc. #83 ¶ 10.

3 The United States Constitution was signed on September 17, 1787. That document set forth
4 the means by which the President of the United States would be elected every four years. Doc. #83
5 ¶ 12. The Constitution does not, nor has it ever, called for election to the office of President by
6 popular vote of the citizens of this country. Doc. #83 ¶ 13. The Constitution has, and always has,
7 called for election to the office of President by Presidential Electors selected by the respective
8 states. Doc. #83 ¶ 14.

9 The Constitution sets forth qualifications and disqualifications for Presidential Electors,
10 namely, that neither Senators, Representatives, nor person holding an office of trust or profit under
11 the United States, shall be appointed. Doc. #83 ¶ 15. The Constitution sets forth the duties of
12 Presidential Electors, namely, that they shall meet in their respective states, and vote by ballot for
13 two persons, of whom one at least shall not be an inhabitant of the same state with themselves,
14 make a list of all the persons voted for, and of the number of votes for each. Said list is to be
15 signed, certified, and transmitted sealed to the seat of the government of the United States, directed
16 to the President of the Senate. Doc. #83 ¶ 16. The Constitution also sets forth the duties of the
17 President of the Senate when those lists are received. Doc. #83 ¶ 17.

18 Never has the Constitution reduced the weighty responsibility of choosing the President of
19 the United States to a media circus on the second Tuesday of November every four years. Doc.
20 #83 ¶ 18. Never has the Constitution allowed for foreign influences, threats, or intimidation to
21 restrain or dictate the votes placed by Presidential Electors. Doc. #83 ¶ 19.

22 Both federal and state statutes enacted over the years since the Constitution was ratified
23 have reaffirmed the importance of the independence of voters at every level of elected office, from
24 dog catcher on up to the president. These statutes include California Elections Code § 18540(a) and
25 18 U.S.C. § 594. Doc. #83 ¶ 20. *California Election Code* § 18540(a) penalizes persons who use or
26 threaten to use “force, violence, or tactic of coercion or intimidation” to induce or compel votes “at
27 any election” as a felony punishable by imprisonment. Doc. #83 ¶ 21. *California Election Code* §
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1 18540(b) also penalizes persons who arrange for another person to use or threaten to use “force,
2 violence, or tactic of coercion or intimidation” to induce or compel votes “at any election” as a
3 felony punishable by imprisonment. Doc. #83 ¶ 22.

4 18 U.S.C. § 594 likewise, and more specifically, penalizes anyone who “intimidates,
5 threatens, coerces” or attempts the same “for the purpose of interfering with the right of such other
6 person to vote or to vote as he may choose, or of causing such other person to vote for, or not vote
7 for, any candidate for the office of President, Vice President, Presidential elector . . . at any election
8 held solely or in part for the purpose of electing such candidate . . .” Doc. #83 ¶ 23.

9 Notwithstanding the Constitutional structure for functioning of Presidential Electors (the
10 “Electoral College”) and longstanding state and federal criminalization of any actions to intimidate,
11 threaten, or coerce votes, some individual states have passed laws that do just that – intimidate,
12 threaten, and coerce the votes placed by Presidential Electors for President and Vice President.
13 Two such statutes are those challenged in this case - Elections Code §§ 6906 and 18002. Doc. #83
14 ¶ 24.

15 As of the date of filing this case, Plaintiff was a duly authorized Presidential Elector of the
16 Democratic Party and met all qualifications to be an elector. Doc. #83 ¶ 25. Plaintiff had previously
17 served as a Presidential Elector (before 2016) and continues to meet all qualifications to be selected
18 against as a Presidential Elector in subsequent elections, thus being reasonably likely to face the
19 situation addressed herein in a subsequent presidential election. Doc. #83 ¶ 26.

20 California Elections Code §§ 6906 and 18002 requires electors to vote “for that person for
21 President and that person for Vice President of the United States, who are, respectively, the
22 candidates of the political party which they represent . . .” and calls for punishment for “willfully
23 neglect[ing] or refus[ing] to perform it” or “knowingly and fraudulently act[ing] in contravention”
24 to be punished by fine or imprisonment. Doc. #83 ¶ 27.

25 The Democratic Presidential and Vice-Presidential candidates for the 2016 presidential
26 election were Hillary Rodham Clinton and Timothy Kaine, respectively. Doc. #83 ¶ 28. The
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1 Republican Presidential and Vice-Presidential candidates for the 2016 presidential election were
2 Donald J. Trump and Michael Pence, respectively. Doc. #83 ¶ 29.

3 Though the Democratic nominees for President and Vice-President won the nationwide
4 popular vote by over 3 million votes, and won the California popular vote by a large margin, the
5 various state-by-state popular votes indicated that Donald Trump and Michael Pence (the
6 Republican presidential and vice presidential nominees) would win the majority of electoral
7 college votes on December 19, 2016 if the electors in each state vote consistent with the popular
8 vote in their respective states. Doc. #83 ¶ 31.

9 During the time period between election day (November 8, 2016) and the date for the
10 electoral college voting to occur (December 19, 2016), U.S. intelligence agencies confirmed that
11 they possessed evidence showing foreign interference in the presidential election with the purpose
12 of favoring Donald J. Trump and undermining Hillary R. Clinton in that election. Doc. #83 ¶ 32.

13 Plaintiff and many other Presidential Electors considered this information of foreign
14 influence in the election to be a matter of grave importance and took affirmative steps to obtain
15 more information from the current President Obama, intelligence agencies, or Congress. Doc. #83
16 ¶ 33. This is of continued importance because Donald J. Trump has already commenced his
17 campaign for President for the 2020 election, having filed the necessary papers on January 20,
18 2017, and thus considers himself to be seeking electoral college votes again in less than four years.
19 See Doc. #83 ¶ 30.

20 Presidential Electors in the states of Arizona, Arkansas, Georgia, Idaho, Illinois, Indiana,
21 Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, New Hampshire, New Jersey, New
22 York, North Dakota, Pennsylvania, Rhode Island, South Dakota, Texas, and West Virginia
23 (“Unbound Presidential Electors”) were not required to simply place a ceremonial vote consistent
24 with their state’s popular vote, and were free to consider the possibility of foreign influence on
25 behalf of one of the presidential candidates or any other circumstance as part of their decision
26 making process before placing their electoral votes. Doc. #83 ¶ 34.

1 Presidential Electors in the remaining states, including California, Colorado, and
2 Washington (“Bound Presidential Electors”), were coerced into being rubberstamps, not being free
3 to consider the possibility of foreign influence on behalf of one of the presidential candidates or
4 any other circumstance as part of their decision making process before placing their electoral votes.
5 California and 28 other states have laws in place requiring their Presidential Electors to vote
6 consistent with the persons and/or party corresponding to the popular vote in the state and setting
7 forth some type of adverse action to be taken if they do not. Doc. #83 ¶ 35.

8 On December 19, 2017, Presidential Electors placed their votes in a sufficient number to
9 confirm Donald J. Trump as President. Doc. #83 ¶ 36. By early January 2017, at least three U.S.
10 intelligence agencies reported a high confidence that Russian President Vladimir Putin ordered
11 actions aimed at undermining public faith in the United States’ democratic process and denigrating
12 one candidate (Clinton) and giving preference to the other (Trump). Doc. #83 ¶ 37.

13 On January 20, 2017, Mr. Trump was inaugurated as President and simultaneously began
14 his 2020 presidential campaign. Doc. #83 ¶ 38. By mid-February 2017, additional reports surfaced
15 indicating that Mr. Trump’s campaign may have had numerous contacts with Russian intelligence
16 officers during the campaign, raising further questions about the connection between Mr. Trump
17 and the Russian government. Doc. #83 ¶ 39.

18 California Elections Code § 6906 requires electors to vote “for that person for President and
19 that person for Vice President of the United States, who are, respectively, the candidates of the
20 political party which they represent . . .” Doc. #83 ¶ 40. California Elections Code § 18002 sets for
21 a punishment for “willfully neglect[ing] or refus[ing] to perform” duties under state elections laws
22 or “knowingly and fraudulently act[ing] in contravention” to be punished by fine or imprisonment.
23 Doc. #83 ¶ 41. These statutes contain no exceptions whatsoever, not if the candidate for the
24 political party which they represent died, became physically or mentally unable to assume office,
25 or abducted by aliens. In fact, even if the candidate of their political party was discovered to be a
26 foreign agent, compromised and subject to blackmail by a foreign government, or any manner of
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1 other disqualifying situations, these statutes would still require Presidential Electors to vote for
2 their political party candidate. Doc. #83 ¶ 42.

3 Likewise, these statutes contain no exceptions that would allow Presidential Electors to
4 vote on a compromise candidate from another party that would ensure that someone unqualified
5 would not be President or Vice-President. Doc. #83 ¶ 43.

6 These statutes prioritize political party loyalty over the best interests of the United States.
7 Doc. #83 ¶ 44.

8 *California Election Code* §§ 6906 and 18002 state requirement pre-determining the vote to
9 be cast by Presidential Electors violates the plain language of Article II, Section 1, of the U.S.
10 Constitution, as amended by the Twelfth Amendment, which indicates that there should not be a
11 way to know in advance what the vote will be –

12
13 The executive power shall be vested in a President of the United States of America.
14 He shall hold his office during the term of four years, and, together with the Vice
President, chosen for the same term, be elected, as follows:

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

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

1 electors shall be the Vice President. But if there should remain two or more who
2 have equal votes, the Senate shall choose from them by ballot the Vice President.

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

5 Doc. #83 ¶ 45.

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

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

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

18 Quoted in *Ray v. Blair*, 343 U.S. 214. Doc. #83 ¶ 46.

19 Ironically, the Constitution and the Founders' intent should be protected under California
20 Election Code § 18540(a) which makes it a felony offense for "every person who makes use of or
21 threatens to make use of any ... tactic of coercion or intimidation, to induce or compel any other
22 person to vote ... or to vote or refrain from voting for any particular person ... at any election, or
23 because any person voted or refrained from voting at any election or refrained from voting for any
particular person ..." Doc. #83 ¶ 47.

24 The Constitution and the Founders' intent should also be protected under 18 U.S.C. § 594
25 which makes it a criminal offense to intimidate, threaten, or coerce votes, including specifically
26 votes for President and Vice President. Doc. #83 ¶ 48. Indeed, under the Supremacy Clause, 18
27 U.S.C. § 594 preempts California state law on this issue.
28

1 Coercion via statute is no different in result than independent coercion as it interferes with
2 the freedom of speech (to voice questions and concerns about the fitness and qualification for
3 office of any potential candidate for President and Vice President) and the obligation and right to
4 act as part of the Presidential Electors to “analyz[e] the qualities adapted to the station,” “act[]
5 under circumstances favorable to deliberation, and to a judicious combination of all the reasons and
6 inducements which were proper to govern their choice” and to “possess the information and
7 discernment requisite to such complicated investigations.” Doc. #83 ¶ 49.

8 Though Hillary Clinton and Timothy Kaine won the majority vote in California and are
9 qualified for office, Plaintiff and fellow Bound Presidential Electors should not have been
10 constitutionally compelled to vote for them if the best interests of the country warranted a different
11 course of action. Plaintiff should have been allowed to exercise his judgment and free will to vote
12 for whomever he believes to be the most qualified and fit for the offices of President and Vice
13 President within the circumstances and with the knowledge known on December 19, 2016, whether
14 those candidates are Democrats, Republicans, or from a third party. Doc. #83 ¶ 50.

15 Plaintiff was forced, coerced, and intimidated by Defendants into his decision of how to
16 vote for the offices of President and Vice-President. Doc. #83 ¶ 51.

17 Defendants Kamala Harris and Alex Padilla, under color of state law, failed and refused to
18 disclaim the possibility that Plaintiff would be criminally prosecuted under *California Election*
19 *Code* §§ 6906 and 18002 if he failed to vote along party lines. Doc. #83 ¶ 52.

20 Similarly, Defendants Kamala Harris and Alex Padilla, under color of state law, violated
21 *California Election Code* § 18540 and 18 U.S.C. § 594 by intimidating, threatening, and coercing
22 Plaintiff into his decision of how to vote for the offices of President and Vice-President. Doc. #83 ¶
23 53.

24 Furthermore, Defendant Xavier Becerra, as California’s new Attorney General and with
25 knowledge of the unconstitutionality of California Elections Code §§ 6906 and 18002, has failed to
26 disclaim any intent to criminally prosecute Presidential Electors in the future, thus prospectively
27 chilling their Constitutional rights and duties. Doc. #83 ¶ 54.
28

1 *Election Code* §§ 6906 and 18002 call for criminal penalties against Plaintiff if Plaintiff
2 does not place his presidential electoral vote for Hillary Clinton and Tim Kaine. Doc. #83 ¶ 56.
3 Plaintiff's stated intention to not necessarily place his vote for Hillary Clinton and Tim Kaine, but
4 instead to act with the deliberative intent and care for choosing of qualified persons for the office
5 of President and Vice President called for in the U.S. Constitution, created a risk of criminal
6 prosecution by the State of California and thus creates an actual controversy within the meaning 28
7 U.S.C. § 2201(a). Doc. #83 ¶ 57.

8 Because Plaintiff has previously served as a Presidential Elector and continues to be
9 eligible to serve as a Presidential Elector in 2020 and future presidential elections, and because the
10 presidential contender who raised particular concerns in the 2016 election already plans to run
11 again in 2020, an actual controversy continues to exist. Doc. #83 ¶ 58.

12 The threat of criminal prosecution against Plaintiff if he acts in any manner in his capacity
13 as Presidential Elector other than as a rubber stamp or ceremonial vote consistent with the popular
14 vote in California, constitutes a violation of his obligations under the U.S. Constitution, Art. II,
15 Sec. 1, as amended by the Twelfth Amendment, and his rights to freedom of speech under the First
16 Amendment of the U.S. Constitution. Doc. #83 ¶ 59.

17 The threat of criminal prosecution chilled Plaintiff's exercise of his Constitutional rights
18 and duties, constituting harm. Doc. #83 ¶ 60. Plaintiff therefore requests a declaratory judgment by
19 this Court that California Elections Code § 6906 and the corresponding penalty for violation
20 thereof in California Elections Code § 18002 are unconstitutional and therefore unenforceable
21 against Plaintiff or any other presidential electors. Doc. #83 ¶ 61.

22 The purpose of the Electoral College, which is made up of electors such as Plaintiff, is to
23 elect the President and Vice President of the United States. There is nothing in the Constitution that
24 permits or requires electors to be bound to vote the same as the popular vote in their states. For the
25 first 100 years of our history, the majority of states did not hold popular votes for the election of
26 president and vice president and, instead, the states themselves appointed the electors who voted
27 for president and vice president. Doc. #83 ¶ 62.

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1 Alexander Hamilton explicitly stated “that that the immediate election should be made by
2 men most capable of analyzing the qualities adapted to the station.” Federalist No. 68. The electors
3 (the “men”) would be “most likely to possess the information and discernment requisite to such
4 complicated investigations.” *Id.* The electors were created so that they, as a deliberative body,
5 would be “detached” and less prone to be influenced by the “heats and ferments” of a raucous
6 election. *Id.* The electors would help ensure “the office of President [would] never fall to the lot of
7 any man who is not in an eminent degree endowed with the requisite qualifications.” *Id.* The
8 electors create an “obstacle” to “cabal, intrigue, and corruption” and prevent “foreign powers
9 [from] gain[ing] an improper ascendant in our councils.” *Id.* Doc. #83 ¶ 63.

10 The United States Supreme Court has already partially addressed the question of a state
11 statute that required an elector for a primary election to sign a pledge as to whom they would vote
12 and found the pledge itself constitutional (*Ray v. Blair*, 343 U.S. 214 (1952)), the Supreme Court
13 left open the question of whether enforcement of such pledges, or penalties for violating the
14 pledges, or state statutes dictating what votes would be placed, was constitutional. This question is
15 now ripe for review. Doc. #83 ¶ 64.

16 Similarly, while Article II, Section 1 provides that states shall “appoint” electors, but the
17 Constitution does not provide that the states shall have the ability to determine for whom those
18 electors will vote. Doc. #83 ¶ 65.

19 The Electoral College would be rendered superfluous and antithetical to the purpose of the
20 Electoral College as articulated by Alexander Hamilton, for if the electors are merely to vote for
21 the candidate who won the popular vote in their state, then there is no need for the Electoral
22 College at all. While many scholars have advocated for the elimination of the Electoral College,
23 this case does not seek to invalidate the Electoral College; that would be a matter to be changed by
24 constitutional amendment ratified by a sufficient number of states. Doc. #83 ¶ 66.

25 Declaratory and injunctive relief is necessary to prevent the Defendants from violating
26 Plaintiff’s constitutional rights or chilling his exercise of those rights due to the risk of punitive
27 consequence for voting in the broader interest of the country, even if that might not end up aligning
28

1 with his loyal party affiliation. Without such relief, Plaintiff's rights and obligations as a
2 Presidential Elector, and his rights to be free from intimidation, threats, and coercion in his voting
3 as protected under state and federal law, will be irreparably harmed. Doc. #83 ¶ 67.

4 This Court can provide declaratory relief because an actual and substantial controversy now
5 exists between Plaintiffs and the Defendants with respect to Plaintiff's rights and Defendants'
6 rights and duties under *Elections Code* §§ 6906 and 18002, and such controversy is capable of
7 repetition, yet evading review. Doc. #83 ¶ 68.

8 Plaintiff's constitutional rights have been directly, substantially, and irreparably violated,
9 affected, and injured unless and until this Court declares the state law requiring electors to vote
10 consistent with the popular vote in their state, and penalizing an elector for not doing so, is
11 unconstitutional. Doc. #83 ¶ 69.

12 At all times relevant to this Amended Complaint, Harris and Padilla were acting under
13 color of state law and through their acts engaged in unlawful intimidation, threatens, and coercion
14 relating to Plaintiff's voting decision for President and Vice President. Doc. #83 ¶ 71. Defendants
15 Harris and Padilla deprived Plaintiff of his rights under Article II, Section 1, of the U.S.
16 Constitution, as amended by the Twelfth Amendment, by failing and refusing to disclaim any
17 intent to criminally prosecute Plaintiff under California Elections Code §§ 6906 and 18002 if he
18 voted for anyone for President and Vice-President other than Clinton and Kaine. Doc. #83 ¶ 72.

19 Defendants Harris and Padilla deprived Plaintiff of his rights under Article II, Section 1, of
20 the U.S. Constitution, as amended by the Twelfth Amendment, by failing and refusing to disclaim
21 any intent to criminally prosecute Plaintiff under California Elections Code §§ 6906 and 18002 if
22 he voted for anyone for President and Vice-President other than Clinton and Kaine. Doc. #83 ¶ 73.
23 Defendants Harris and Padilla deprived Plaintiff of his rights under 18 U.S.C. § 594, by failing and
24 refusing to disclaim any intent to criminally prosecute Plaintiff under *California Election Code* §§
25 6906 and 18002 if he voted for anyone for President and Vice-President other than Clinton and
26 Kaine. Doc. #83 ¶ 74.

27 Defendants Harris and Padilla deprived Plaintiff of his rights under California Elections
28

1 Code § 18540, by failing and refusing to disclaim any intent to criminally prosecute Plaintiff under
2 California Elections Code §§ 6906 and 18002 if he voted for anyone for President and Vice-
3 President other than Clinton and Kaine. Doc. #83 ¶ 75.

4 California Elections Code §§ 6906 and 18002 do not serve any significant governmental
5 interest. To the contrary, they actually significantly jeopardize the governmental interests of both
6 the State of California and the United States of America. Doc. #83 ¶ 76; see also ¶ 86. California
7 Election Code §§ 6906 and 18002 is neither narrowly tailored or the least restrictive means to
8 accomplish any governmental purpose sought to be served by the legislation. Doc. #83 ¶ 77; see
9 also ¶ 87.

10 Plaintiff's rights to be free from intimidation, treats, and coercion in the process of voting is
11 a clearly established right. Doc. #83 ¶ 78. Plaintiff was harmed as a result of this conduct,
12 including through the deprivation of constitutional rights, and otherwise as according to proof at
13 trial. Doc. #83 ¶ 79.

14 Defendants' conduct was a substantial factor in causing harm to Plaintiff. Doc. #83 ¶ 80.
15 Plaintiff additionally seeks compensation for reasonable attorney's fees and costs under 42 U.S.C.
16 § 1988. Doc. #83 ¶ 81.

17 California Elections Code §§ 6906 and 18002 are unconstitutional on their face and as
18 threatened to be applied, infringing Plaintiff's duties and rights as a presidential elector under
19 Article II, Section 1, of the U.S. Constitution, as amended by the Twelfth Amendment. Doc. #83 ¶
20 83.

21 California Elections Code §§ 6906 and 18002 are unlawful and in violation of 18 U.S.C. §
22 594 on their face and as threatened to be applied. Doc. #83 ¶ 84. California Elections Code §§ 6906
23 and 18002 are unlawful and in violation of California Election Code § 18540 on their face and as
24 threatened to be applied. Doc. #83 ¶ 85.

25 Plaintiff seeks injunctive relief to prohibit Defendants from intimidating, threatening,
26 and/or coercing Plaintiff or other presidential electors in how they vote for President and Vice
27 President. Doc. #83 ¶ 88.

28

1 Plaintiff seeks entry of judgment in favor of Plaintiff and against Defendants on all causes
2 of action; entry of an order declaring California Elections Code §§ 6906 and 18002 to be
3 unconstitutional under the U.S. Constitution, Article II, Section 1, as amended by the Twelfth
4 Amendment, in violation of 18 U.S.C. § 594, and/or in violation California Elections Code §
5 18540; and for an order permanently enjoining the Defendants from prosecuting any presidential
6 elector on the basis of their vote placed for a presidential or vice presidential candidate; as well as
7 compensatory damages and attorney fees. See Doc. #83, Prayer for Relief.
8

9
10 *Procedural Facts*

11 The Court has already reviewed, and denied, Plaintiff's request for temporary restraining
12 order and preliminary injunction requested in December 2016. The Court found that Plaintiff raised
13 a question serious enough to require litigation. See Doc. #37.

14 Plaintiff has since filed an Amended Complaint adding two new causes of action and
15 adapting to account for new facts occurring in the interim timeframe.

16 The Official Capacity Defendants (Attorney General Xavier Becerra and Secretary of State
17 Alex Padilla) have filed a Motion to Dismiss under Fed.R.Civ.P. 12(b)(1). Intervenor California
18 Republican Party has also filed a Motion to Dismiss under Fed.R.Civ.P. 12(b)(1) and 12(b)(6).

19 For ease of review by the Court, Plaintiff's opposition to both moving parties' Rule
20 12(b)(1) overlapping arguments are contained within the Opposition to the Official Capacity
21 Defendants' Motion and both the Factual Summary and that those arguments simply incorporated
22 by reference into the Opposition to the Intervenor's Motion.

23 **ARGUMENT**

24 **I. DEFENDANTS AND INTERVENOR'S RULE 12(B)(1) MOTIONS TO DISMISS**
25 **SHOULD BE DENIED.**

26 **A. Standard for review**

27 "[A] party may assert the following defenses by motion: ... (1) lack of subject-matter
28 jurisdiction; . . ." Fed. R. Civ. P. Rule 12(b)(1).

1 “A party invoking the federal court’s jurisdiction has the burden of proving the actual
2 existence of subject matter jurisdiction.” *Trentacosta v. Frontier Pac. Aircraft Indus. Inc.* 813 F.2d
3 1553, 1559 (9th Cir. 1987); cited in *Thompson v. McCombe*, 99 F.3d 352 (9th Cir. 1996).

4 Rule 12(b)(1) motions to dismiss can be facial or factual. “In a facial attack, the challenger
5 asserts that the allegations contained in the complaint are insufficient on their face to invoke federal
6 jurisdiction. By contrast, in a factual attack, the challenger disputes the truth of the allegations that,
7 by themselves, would otherwise invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373
8 F.3d 1035, 1039 (9th Cir. 2004). Where a facial attack is made, where the question of whether
9 subject matter jurisdiction exists does not depend on resolution of a factual dispute, but rather on the
10 allegations of the complaint, those allegations are assumed to be true and all reasonable inferences
11 drawn in favor of the plaintiff. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004); *Savage v.*
12 *Glendale Union High Sch.* 343 F.3d 1036, 1039 (9th Cir. 2003); *Saridakis v. United Airlines*, 166
13 F.3d 1272, 1274 n. 1 (9th Cir. 1999).

14
15
16 In the event that the Court finds any deficiencies in the operative complaint, a court should
17 “freely give leave to amend when justice so requires.” See Fed. R. Civ. P. 15(b); *Foman v. Davis*,
18 371 U.S. 178, 182 (1962).

19 Defendants and Intervenor are raising a facial attack to Plaintiff’s Amended Complaint (see
20 Doc. #88, pg. 5:22-24 and Doc. #89, pg. 4:12-13). Although both briefs make different, circuitous
21 arguments with different sets of caselaw to support their Rule 12(b)(1) challenges, the arguments can
22 be synthesized down to the following: (1) standing; (2) mootness; and (3) political question doctrine.

23
24 **B. Plaintiff had, and continues to have, standing in this case.**

25 To establish Article III standing, the plaintiff bears the burden of demonstrating the
26 following three elements: (1) an injury in fact; (2) a causal connection between the
27 injury and the challenged action; and (3) a likelihood that a favorable decision will
28 redress the injury.

1 *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. Inc.* 528 U.S. 167, 180–81 (2000); see also *Lujan*
2 *v. Defenders of Wildlife*, 504 U.S. 555 (1992).

3 When evaluating standing, the court accepts the material allegations of the complaint as
4 true and construes the complaint in the plaintiffs' favor. *Davis v. Guam*, 785 F.3d 1311, 1314 (9th
5 Cir. 2015).

6 In his Amended Complaint, Plaintiff pleads three causes of action. In his First Cause of
7 Action for declaratory relief, Plaintiff is requesting a declaratory judgment that California Elections
8 Code § 6906 and the corresponding penalty for violation thereof in California Elections Code §
9 18002 are unconstitutional and therefore unenforceable against Plaintiff or any other presidential
10 electors. In his Second Cause of Action for a deprivation of civil rights under 42 U.S.C. § 1983,
11 Plaintiff alleges that the Individual Defendants, acting under color of state law, engaged in
12 unlawful intimidation, threats, and coercion relating to Plaintiff's voting decision for President and
13 Vice President, and that he is entitled to damages for that violation. In his Third Cause of Action
14 for a deprivation of civil rights under 42 U.S.C. § 1983, Plaintiff alleges that California Elections
15 Code §§ 6906 and 18002 are unconstitutional on their face and as threatened to be applied, in
16 violation of Plaintiff's rights under 18 U.S.C. § 594, and California Elections Code § 18540, and
17 requests prospective injunctive relief. U.S. Const. art. II, § 1; U.S. Const. amend. XII.
18
19
20

21 Neither Official Capacity Defendants nor Intervenor has specified the particular causes of
22 action they are attacking with their motions to dismiss, and neither acknowledge the existence of,
23 nor reference, the inclusion of two entirely new causes of action contained in the Amended
24 Complaint.
25
26
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28

1 In *Thomas v. Mundell*, 572 F.3d 756 (9th Cir. 2009), a county attorney lacked standing to
2 challenge the existence of separate, Spanish-speaking, DUI courts because any disadvantage to him
3 was institutional, not personal; individual DUI victims lacked standing because their injuries were
4 too generalized. In *City of South Lake Tahoe v. Cal. Tahoe Reg'l Planning Agency*, 625 F.2d 231,
5 233 (9th Cir.1980), a mayor and city councilmen did not have standing to challenge federal agency
6 regulations they were required to enforce in their official capacities; political subdivisions may not
7 challenge validity of state statutes and city officials' "abstract outrage" was insufficient to confer
8 standing. "No consequences, save those of conscience self-imposed by the council members'
9 personal beliefs" would accrue to plaintiffs. *Id.* In *Smith v. Indiana*, 191 U.S. 138 (1903), the
10 distinction between "official" and "personal" interests came down to whether the plaintiff was
11 testing the constitutionality of a law purely in the interest of third persons. In *Drake v. Obama*, 664
12 F.3d 774 (9th Cir. 2011), active and former military personnel, state representatives, federal
13 taxpayers, a claimed relative of President Obama, and political candidates in the 2008 election
14 lacked standing to perpetuate birther claims after Obama's inauguration because of only
15 generalized (or mooted, in the instance of the political candidates), claims of injury.
16
17

18 In *Walker v. United States*, 93 F.2d 383 (8th Cir. 1937), the court did not address standing,
19 but rather distinguished an elector's role between state versus federal for purposes of coverage
20 under a federal statute. *Chenault v. Carter*, 332 S.W.2d 623 (Ky. 1960) does not involve standing,
21 and the reference to electors being state officials relates to determination of when their election
22 would be held. Similarly, *Ray v. Blair*, 343 U.S. 214 (1952) does not address standing, its
23 distinction between state and federal officers is dicta.
24

25 The argument that Plaintiff's interest in this case is merely "official" and not "personal"
26 belies the actual language of the statutes in question. Plaintiff's interest is personal because a
27
28

1 violation of California Elections Code § 6906 would, under California Elections Code § 18002,
2 subject him to *personally* being fined, *personally* being thrown in jail, *personally* having a felony
3 conviction, *personally* losing all civil rights denied to persons convicted of felonies, including the
4 rights to vote, own a firearm, work for the government, etc. It doesn't get much more personal than
5 that. If California law treated Plaintiff's actions as being "official," he should have immunity for
6 his actions, not punishment.
7

8 By way of comparison, the Official Capacity Defendants could not have been plaintiffs in
9 this case because, even if they believed that these California statutes were unconstitutional, it is not
10 they who would be subjected to criminal penalties if electoral votes were cast outside of party
11 affiliations. Indeed, even if they acknowledge in the privacy of their own offices that California
12 Elections Code §§ 6906 and 18002 are unconstitutional, they would not have standing to file this
13 case. Plaintiff, however, does have standing.
14

15 Plaintiff had concrete plans to violate California Elections Code § 6906, but was
16 intimidated, threatened, and coerced to do otherwise. See Doc. #83, ¶¶ 51, 60, 71-75. Plaintiff is
17 happy to amend to be even more specific in his allegations on this point, if necessary. To suggest
18 that Plaintiff should simply cave to an unconstitutional law, or "resign with honor" is absurd. There
19 is no honor in simply complying with unconstitutional laws, particularly in this case where
20 presidential electors were faced with a very real danger to the country, a danger that the very
21 Founders of the institution of the electoral college foresaw at the birth of our country, and against
22 which they intended presidential electors to guard against.
23

24 **C. This lawsuit is not moot because the issues are "capable of repetition, yet**
25 **escaping review."**

26 The occurrence of the presidential election on December 19, 2016 does not moot this case
27 because (1) the constitutional issues raised meet the "capable of repetition, yet escaping review"
28

1 standard; and (2) Plaintiff's Amended Complaint raises new 42 U.S.C. § 1983² claims for completed
2 constitutional violations which are not even argued to be moot post-election.

3 1. Issues “capable of repetition, yet escaping review” are an established
4 exception to mootness rules.

5 The usual rule in federal cases is that an actual controversy must exist at stages of appellate
6 or certiorari review, and not simply at the date the action is initiated. *United States v.*

7 *Munsingwear, Inc.* 340 U.S. 36 (1950); *Golden v. Zwickler*, 394 U.S. 103 (1969); *SEC v. Medical*
8 *Committee for Human Rights*, 404 U.S. 403 (1972); *Roe v. Wade*, 410 U.S. 113, 125 (1973).

9 However, there are defined exceptions to that rule, including issues that are “capable of repetition, yet
10 escaping review.”

11
12 The United States Supreme Court has long ago confirmed that challenges to California
13 election statutes are not mooted after an election is over.

14 The 1972 election is long over, and no effective relief can be provided to the
15 candidates or voters, but this case is not moot, since *the issues properly presented,*
16 *and their effects on independent candidacies, will persist* as the California statutes
17 are applied *in future elections*. This is, therefore, a case where the controversy is
18 ‘capable of repetition, yet evading review.’ *Rosario v. Rockefeller*, 410 U.S. 752,
19 756 n. 5 (1973); *Dunn v. Blumstein*, 405 U.S. 330, 333 n.2 (1972); *Moore v. Ogilvie*,
20 394 U.S. 814, 816 (1969); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515
(1911). The “capable of repetition, yet evading review” doctrine, in the context of
election cases, is appropriate when there are “as applied” challenges as well as in
the more typical cases involving only facial attacks.

21 *Storer v. Brown*, 415 U.S. 724, 737 n. 8 (1974) (emphasis added). See also *Mandel v. Bradley*, 432
22 U.S. 173, 175 n. 1 (1977) (no inquiry as to future plans of candidate to run for office again, yet
23 case not moot because of election); *Anderson v. Celebrezze*, 460 U.S. 780, 784 n. 3 (1983) (same);
24 *Brown v. Chote*, 411 U.S. 452, 457 n. 4 (1973) (same).

25 The relief sought by a plaintiff is a key factor of distinction in this analysis, a distinction
26 completely ignored in both the Official Capacity Defendants’ and Intervenor’s analysis. In *Ariz.*

27
28 ² It has just been noticed that the Amended Complaint has several typos, citing “28 U.S.C. §
1983” rather than the intended “42 U.S.C. § 1983.”

1 *Green Party v. Reagan*, 838 F.3d 983 (9th Cir. 2016), the court held that claims related to the
2 specific election cycle were moot (getting Green Party on the ballot), but claims generally
3 challenging the statute were not moot, and were “capable of repetition, yet evading review.” In
4 *Canez v. Guerrero*, 707 F.2d 443 (9th Cir. 1983), the subject injunctions were limited by their
5 terms to the conduct of one specific election and appellants suffered no other injury in the election
6 because they won. *Murphy v. Hunt*, 455 U.S. 478 (1982) dealt with a criminal defendant
7 challenging his entitlement to pretrial bail, a moot point once he was convicted. *Weinstein v.*
8 *Bradford*, 423 U.S. 147 (1975) also dealt with an inmate challenging procedures for consideration
9 of parole, a moot point when he was both paroled and then completely released from supervision.
10 In *Abdurraahman v. Dayton*, 2016 WL 7428193, at *1, plaintiff filed suit after casting his elector
11 vote and sought an injunction precluding state officials from transmitting his ballot to the Senate,
12 an action that had already occurred the date after the vote and before the court held a hearing.
13
14

15 In this case, Plaintiff’s initial request for a temporary restraining order and injunction as to
16 the December 19, 2016 electoral ballot casting is now moot, but his request for declaratory relief,
17 and the added 42 U.S.C. § 1983 claims in his Amended Complaint claims, requesting declaratory
18 relief, prospective injunctive relief, and damages, are not.
19

20 2. Plaintiff need not prove with certainty his future status as an elector for the
21 “capable of repetition, yet escaping review” exception to apply.

22 The established “capable of repetition, yet escaping review” exception to the mootness rule,
23 applies where “(1) the challenged action is in its duration too short to be fully litigated prior to
24 cessation or expiration, and (2) there is a reasonable expectation that the same complaining party
25 will be subject to the same action again.” *Spencer v. Kemma*, 523 U.S. 1, 17; *FEC v. Wisc. Right to*
26 *Life, Inc.* 551 U.S. 449 (2007).

27 In the context of election cases, the second-prong requirement is relaxed. The United States
28 Supreme Court has repeatedly held that ballot-access requirement challenges were not rendered

1 moot by the occurrence of the election, without any inquiry into the future plans of the plaintiffs to
2 run for office. *Mandel v. Bradley*, 432 U.S. 173, 175 n. 1, 97 S.Ct. 2238, 53 L.Ed.2d 199 (1977).
3 See also *Anderson v. Celebrezze*, 460 U.S. 780, 784 n. 3, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)
4 (same); *Brown v. Chote*, 411 U.S. 452, 457 n. 4, 93 S.Ct. 1732, 36 L.Ed.2d 420 (1973) (same);
5 *North Carolina Right to Life Comm. Fund v. Leake*, 524 F.3d 427, 435 (4th Cir.2008). (“[W]e
6 reject, as other circuits have, the argument that an ex-candidate's claims may be ‘capable of
7 repetition, yet evading review’ only if the ex-candidate specifically alleges an intent to run again in
8 a future election.”).

9
10 The *FEC v. Wisc. Right to Life* case involved a constitutional challenge to the Bipartisan
11 Campaign Reform Act; a nonprofit advocacy group (WRTL) sued the FEC so it could broadcast
12 advertisements shortly before primary and general elections. Obviously by the time the case got the
13 U.S. Supreme Court, the elections had come and gone. The FEC argued that the case was moot
14 because the election was over and WRTL had not asserted a continuing interest in running the
15 subject advertisements. The FEC argued that “in order to prove likely occurrence of the same
16 controversy, WRTL must establish that it will run ads in the future sharing all ‘the characteristics
17 that the district court deemed legally relevant,” but the Court disagreed.
18

19 We have recognized that the “ ‘capable of repetition, yet evading review’ doctrine,
20 in the context of election cases, is appropriate when there are ‘as applied’ challenges
21 as well as in the more typical case involving only facial attacks.” *Storer v.*
22 *Brown*, 415 U.S. 724, 737, n. 8[] (1974). Requiring repetition of every “legally
23 relevant” characteristic of an as-applied challenge—down to the last detail—would
24 effectively overrule this statement by making this exception unavailable for virtually
25 all as-applied challenges. History repeats itself, but not at the level of specificity
26 demanded by the FEC.

27 *FEC*, at 463.

28 Plaintiff has more than sufficiently alleged the facts necessary to show that the issue of
constitutionality of the subject election laws is “capable of repetition, yet evading review” and that
these issues could affect Plaintiff directly, or other presidential electors in the future.

1 Official Capacity Defendants have gone to great length to try to argue that Plaintiff must
2 show that he both will be an elector again and that he is realistically threatened by future repetition
3 of the dilemma faced in the 2016 election, but the law does not require that.

4 Plaintiff has alleged his service as a presidential elector in 2008 and 2016, and his
5 continued eligibility and willing to serve again if asked. Doc. #83, ¶¶ 25-26. He even alleged that
6 the same presidential candidate that caused him such great concern, Trump, had already begun his
7 campaign for 2020. Doc. #83, ¶ 30. These allegations must be assumed true and all reasonable
8 inferences drawn in favor of the Plaintiff as a matter of law for purposes of this motion. Official
9 Capacity Defendants' and Intervenor's claim that it is "especially unlikely" that Plaintiff would be
10 chosen now that he "identified himself" as an elector who may not vote for the Democratic Party's
11 nominee, is unfounded speculation. Plaintiff is able to amend to add the further facts that can set
12 that speculation to rest if need be.
13
14

15 3. The Court and all of the parties have acknowledged the importance of the
16 issues raised in this case.

17 As noted above, this Court has already found that Plaintiff has raised a question 'serious
18 enough to require litigation.'" Doc. #37 (Order on Motion for Temporary Restraining Order), pg.
19 10:1-2.

20 Official Capacity Defendants have stated that the "conflicting views [about the electoral
21 college] can be seen to raise substantial questions regarding the constitutionality of any potential
22 enforcement of the instructions in California Elections Code section 6906. Doc. #29, pg. 7:15-17.

23 Intervenor GOP asserted that the "issue of whether the requirement... that electors vote for
24 the ... 'candidates of the political party which they represent' is unconstitutional will bear on the
25 Party's rights to core political speech and association under the First Amendment." Doc. #14, pg.
26 1:18-21. "If California's Presidential Electors Statute is held unconstitutional, the [Republican]
27 Party will be forced—as a matter of practical and political reality—to revamp its process for
28

1 choosing Presidential Electors by elevating loyalty to individual candidates over other factors such
2 as time of service to the Party itself”). Doc. #14, pg. 3:18-21.

3 Intervenor Trump asserted that “Plaintiff’s lawsuit ... threatens to undermine the many laws
4 in other states that sensibly bind their electors’ votes to represent the will of the citizens....” Doc.
5 #22, pg. 4:3-5. “[T]he President-Elect and his Campaign have distinct interests, among them (1)
6 ensuring that other states’ laws are respected, (2) ensuring that the Electoral College process is
7 honored in the 50 states and the District of Columbia, ...”). Doc. #22, pg. 5:28-6:1-3.

9 Presidential elections are held every four years, yet no presidential elector will be able to
10 both acquire standing to file a suit challenging the subject statutes (by becoming an elector), and
11 reach even trial stage, much less appellate review, before he or she has cast a vote as an elector. If
12 the meeting of the electors and placing of their votes makes a challenge to statutes coercing their
13 votes moot, presidential elector litigation will never survive beyond the emergency motion stage.
14 Not only that, but as all of the parties have acknowledged, the impact of this case goes far wider
15 than merely the rights of presidential electors, but will affect political party actions and even
16 strategy for presidential election campaigns.

18 Plaintiff’s challenge of the constitutionality of California election laws relating to presidential
19 electors, like many other election law issues, is not mooted by the placing of Plaintiff’s electoral vote
20 in December 2016. The issues presented here “*capable of repetition, yet escaping review,*” and thus
21 should proceed to be litigated.

23 **II. LEAVE TO AMEND SHOULD BE FREELY GIVEN, IF NEEDED.**

24 A “court should freely give leave [to amend a complaint] when justice so requires.” Fed. R.
25 Civ. P. 15(b). Rule 15(b)’s “mandate is to be heeded.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).

27 If the underlying facts or circumstances relied upon by a plaintiff may be a proper
28 subject of relief, he ought to be afforded an opportunity to test his claim on the
merits.” [*Foman*, supra] Denying leave to amend is thus an abuse of discretion and

1 “inconsistent with the spirit of the Federal Rules,” *id.* unless the court provides a
2 sufficient reason for so doing, such as “futility of amendment, undue delay, bad
3 faith, dilatory motive, undue prejudice, or repeated failure to cure deficiencies by
4 previous amendments.” *Boyd v. District of Columbia*, 465 F.Supp.2d 1, 3
(D.D.C.2006) (other citation omitted) (citing *Foman*, 371 U.S. at 182, 83 S.Ct. 227).

5 *Gilliam v. Dept. of Justice*, 128 F. Supp. 3d 134 (D.C. 2015).

6 Although Plaintiff contends that the Amended Complaint is sufficient as it stands to avoid
7 dismissal under either Rule 12(b)(1) or 12(b)(6), Plaintiff does have additional facts at his disposal that
8 he can use to amend the operative complaint further.

9
10 **CONCLUSION**

11 For the reasons set forth above, Plaintiff respectfully requests that the Court deny the
12 Official Capacity Defendants’ and Intervenor’s Motions to Dismiss.
13

14
15 Dated this 5th day of May, 2017.

16
17 By: /s/ Melody A. Kramer
18 Melody A. Kramer, Esq.
19 KRAMER LAW OFFICE, INC.
20 Attorney for Plaintiff
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