IN THE FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

1ST DCA Case No.: 1D12-3489
L.T. No.: 2012-CA-00467

MICHAEL VOELTZ,

Plaintiff/Appellant

v.

BARACK HUSSEIN OBAMA, Florida Democratic Party nominee for President to the 2012 Democratic National Convention; KEN DETZNER, Secretary of State of Florida; FLORIDA ELECTIONS CANVASSING COMMISSION

Defendants/Appellees.

On Appeal from the Circuit Court of the
Second Judicial Circuit, in and for
Leon County, Florida
Case No. 2012 CA 467
The Honorable Terry P. Lewis, presiding

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE AND OF THE FACTS

Plaintiff Michael Voeltz, registered member of the Democratic Party of Florida, having sworn an oath to "protect and defend" the U.S. Constitution as an elector of the state of Florida, brought forth a lawsuit to challenge the election and nomination of Barack Obama as the Democratic Party candidate for the 2012 presidential election. (R.110-116)

The Democratic Party of Florida has submitted the name of Appellee Barack H. Obama as the only candidate for the presidency of the United States. Under Florida law, by submitting Appellee Obama's name as the only name for the Florida Presidential Primary the Democratic Party of Florida *nominated* Appellee Obama for the office of the presidency of the United States.[1] (R.112-114) As with the presidential election of 2008, Appellee Obama has never established his eligibility for the presidency of the United States. Indeed, neither Appellee Obama, nor the Democratic Party of Florida has even stated that Appellee Obama is a "natural born citizen" as required to run for president as set forth in the Article II, section 1, clause 4, of the U.S. Constitution. (R.112-114) The only so called evidence of Appellee Obama's birth within the United States has come in the form of an electronic version posted on the internet. (R.112) There is uncontroverted

[1] This issue is now moot in any event, as Appellee Obama was recently *again* nominated on September 6, 2012 at the Democratic National Convention in Charlotte, North Carolina. Accordingly, this case must now proceed under even the lower court's flawed interpretation of the law.

evidence, however, on the record, to show that this "birth certificate" has either been altered or is entirely fraudulent. (R.260-278) No physical, paper copy has ever been presented to firmly establish that Appellee Obama was indeed born within the United States. (R.112)

Yet even if his purported "birth certificate" is to be believed, Appellee Obama was born to a mother who was a citizen of the United States, and a father who was a Kenyan citizen. (R.112) The U.S. Constitution requires that all who serve as President of the United States must be "natural born citizen[s]." The U.S. Supreme Court has defined this term to mean a child born to two citizen parents. (R.245-260) Since Appellee Obama was not born to both parents who were citizens of the United States, he is not a "natural born citizen" as required by the Constitution. (R.114)

Under either scenario, it is clear that Appellee Obama has not established eligibility for the Office of the President of the United States, and it is evident that he may not, under any circumstance, establish his eligibility. (R. 114) Indeed, neither Appellee Obama, nor the Democratic Party of Florida has ever made the claim that Appellee Obama is a "natural born citizen." (R. 114) Appellant has properly challenged the nomination of Appellee Obama as the Democratic Party nominee for the Florida general election of 2012 because he is not eligible for the

office in question. Appellant set forth the grounds for the challenge and now seeks relief from this Court. (R. 116)

The eligibility of Appellee Obama must be dealt with now. Appellant Voeltz, who is a registered Democrat, and the rest of the electors in the state of Florida, must be assured that if they cast their votes for Appellee Obama in the general election that their votes will not be in vain. The Democratic Party, and much more the general Florida electorate, will have been led down the primrose path, and will be effectively defrauded, if the issue is not settled now but rather after the election.

SUMMARY OF THE ARGUMENT

Appellant correctly filed this action within Florida's Contest of Election Statute, section 102.168(1)(3)(b), clearly stating, in support of his Florida elector oath to protect and defend the U.S. Constitution, that Barack H. Obama was ineligible to be on the Florida general election ballot for President because he is not a natural born citizen as required by Art. II, s. 1, c.4 of the U.S. Constitution due to foreign citizenship at birth. Appellant has also provided sworn affidavits of an official investigation attesting that the birth documents displayed by Appellee Obama on the White House website are entirely fraudulent. Judge Lewis ignored all evidence of ineligibility, and has instead agreed with the Appellees that Barack H. Obama was not "nominated or elected" within the meaning of Fla. ss. 102.168,

and thus conveniently ruled that Appellant, Michael C. Voeltz, has not stated a proper cause of action (R 505-511). Appellant asserts that decision was reached in error.[2]

Under Florida law, eligibility is a judicial determination. Florida's Contest of Election statute provides a cause of action which enables Appellant Michael Voeltz to bring forth a law suit in order to determine the eligibility of those wishing to hold office. Florida's statutes are consistent with both state and federal case law.

I. Candidate Obama Was "Nominated Or Elected" According To Both State Of Florida And Federal Election Statutes And In Any Event The Issue Is Now Moot.

In his order to try to justify dismissal, Judge Lewis found that presidential candidates are nominated at their national conventions, and that "Presidential candidates are treated differently under Florida law." (R. 506-507). This interpretation clearly violates the standards of statutory construction, which stipulate that, first and foremost, the plain wording of a statute yield its intent and meaning (*see Caminetti v. US,* 242 US 470, 485 (1917)), where the language is plain and admits of no more than one meaning, the duty of interpretation does not

[2] The issue of eligibility has become a political hot potato, in effect a sticky matter for judges and courts around the nation. But the rule of law must eventually govern, without regard to politics, and cannot and should not be sidestepped through legally convenient and politically correct court rulings which ignore the plain language of Florida statutes and the U.S. Constitution.

arise”). Judge Lewis’ construction, that “Presidential candidates are treated differently” is foreclosed by the plain wording of Fl. ss. 101.252(1), under the heading, “**Candidates entitled to have names printed on certain ballots exception,**”

> “(1) Any candidate for nomination who has qualified as prescribed by law is entitled to have his or her name printed on the official primary election ballot. However, when there is only one candidate of any political party qualified for an office, the name of the candidate shall not be printed on the primary election ballot, and such candidate shall be declared nominated for the office.”

“Any candidate who has qualified by law” covers any candidate however they qualify in the state of Florida. No exception is made for presidential candidates. Barack H. Obama was the only candidate qualified for the Democratic Presidential Preference Primary Ballot, thus his name was not printed on the ballot (Fl. ss. 103.101(4), Fl. ss. 101.252(1)), and he was “declared nominated” for the office (Fl. ss. 101.252(1)) by the Florida Democratic Party delegation, just as if Appellee Obama had won an election with five candidates. That Appellee Obama had not been nominated at the national convention is a straw man, since the Florida statutes refer to elective actions within the state of Florida, not nationally. Upon that nomination, “electors” have the right to challenge that nomination on the basis of eligibility within 10 days of the final certification of the election (Fl. ss 102.168(1)(3)(b). All of the Florida election statutes fit and work together as one complete whole in accordance with the law of statutory construction, so that each

statute has effect. Judge Lewis' construction attempts to explicitly separate the Florida Presidential Preference Primary, and the Preference Primary Selection Committee from the statutes. The Florida election code should be "interpreted by reference to traditional codes of statutory construction" (Dept. of Elections Advisory Opinion 10-94), and the Supreme Court of Florida has held that "Therefore, it is our duty to read the provisions of a statute as consistent with one another . . . and to give effect and meaning to the entirety of the legislative enactment at issue." *Am. Home Assur. Co. v. Plaza Materials Corp*., 908 So. 2d 360, 366 (Fla. 2005). Judge Lewis cites no authority that the statutes should be read to separate the Presidential Preference Primary, or the Presidential Preference Selection Committee from the rest of the Florida Election code. **His construction illegally voids the effect of Fl ss. 102.168(1)(3)(b), and must be overturned as a matter of law.**

Judge Lewis ruled that "[T]he plaintiff nor any other elector will determine by vote the nomination." (R. 508), but this is true in any primary where a candidate is the sole qualifier for a primary, since they would be considered "nominated", and no voting primary would be held. By Judge Lewis' reasoning, a political party could always avoid an eligibility challenge for any office by simply qualifying only one candidate. Judge Lewis also ruled that "there has not been, nor will there ever be a nomination or qualification as contemplated under Florida law." (R. 508)

Again he cites no authority, and ignores statutory construction. The sole qualifier in a primary is considered “nominated” clearly by the laws of statutory construction. This effectuates the ability of an elector to make a challenge based on eligibility of “any person nominated or elected to office.” “Words or phrases in a statute are construed to be relative to and qualify the words or phrases immediately preceding." 82 C.J.S. Statutes, Section 334, as quoted at page 105, of the Florida Senate Bill Drafting Manual. Thus the use of the word “nominated” in Fl ss. 101.252(1) is relative to, and qualifies its use in 102.168(1).

Moreover, under Title 11 of the Code of Federal Regulations, federal election regulations affirm this exact understanding, declaring unopposed nominees elected on the date on which the primary election was held by the state:

> "With respect to any major party candidate who is unopposed for nomination within his or her own party, and who is certified to appear as that party's nominee in the general election for the office sought, the primary election is considered to have occurred on the date on which the primary election was held by the candidate's party in that State."

11 C.F. R. 100.2(C)(5). According to the federal standard Appellee Obama would have also been declared elected on the date of the Florida Presidential Primary even though he ran unopposed in the election.

For all these reasons, Appellee Obama is considered both “nominated” and “elected" and Appellant Michael Voeltz has a viable cause of action under the Florida Contest of Election statutes, section 102.168(1)(3)(b).

II. Eligibility Is A Judicial Determination, Upon Any Challenge Properly Made.

Judge Lewis stated that, “this court lacks jurisdiction to consider an issuance of mandamus against it.” (R. 509). This is not an accurate description of the relief sought by Appellant. Plaintiff has asked for declaratory relief, not a “mandamus against the court” as to Barack Obama’s eligibility for president. (*See* Amended Complaint, prayer for relief, R.116)

The Florida Supreme Court has held that eligibility for office is a judicial determination upon any challenge properly made. *Shevin v. Stone,* 279 So. 2d. 17, 22 (Fla. 1972). This action is properly made, as to eligible plaintiff, time, venue, cause and parties, and is ripe for a judicial holding with precedent, as to the eligibility of Barack H. Obama to be on the Florida General Election ballot. Appellant has cited Supreme Court precedent which would appear to say that Mr. Obama is not an eligible natural born citizen and thus not eligible to be on the Florida general election ballot for President of the United States. Appellant has brought further evidence that Mr. Obama’s birth records are fraudulent.

Appellant has clearly set forth grounds of contest, and the court is now obliged to make a legal determination on the record as to the eligibility of Barack Obama. The requirement that the President be a natural born citizen is self executing, a "provision that lays down a sufficient rule by which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment." *Gray v. Bryant*, 125 So.2d 846, 851 (1960).

This judicial determination of eligibility is vital to the protection of U.S. citizen sovereignty, and to the integrity of the coming election. The Florida judiciary has been held by the Supreme Court of Florida to protect the integrity of Florida elections as a firewall against "fraudulent candidates" as described by the U.S. Supreme Court. "[A] State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Storer v. Brown,* 415 US 724, 733 (1974) citing *Jenness* v. *Fortson*, 403 U.S., 432, 442 (1974); *Williams* v. *Rhodes*, 393 U.S. 23, 32 (1968).

III. Florida's Election Laws Are Consistent with the U.S. Constitution and Federal Law.

Appellees disingenuously alleged that for Florida to determine eligibility would be contrary to the U.S. Constitution, specifically the Twentieth Amendment and 3 USC §15. This argument is non-meritorious. The Twentieth Amendment simply states the procedure "*if* the President elect shall have failed to qualify."

There is no mention about the method of qualification, only that the electors shall meet and vote by ballot. Appellee Obama claims federal statute 3 U.S.C § 15, "describe[s], in detail, the process for raising and resolving challenges to the qualifications." Yet this statute simply states the procedure for counting the electoral votes, and objections if improper votes are cast. *See Fitzgerald v. Green*, 134 US 377, 378 (1890) ("The sole function of the presidential electors is to cast, certify, and transmit the vote of the state for president and vice-president of the nation"). *Nothing* is stated about challenging the *qualification* of a candidate.

Nor is Florida law interfering with presidential electors. The Florida law allows challenges to those who are nominated or elected. These actions occur *before* the electors cast their votes, and are simply in place to ensure that the presidential elector votes for an eligible candidate. It would surely be possible for a disqualified candidate to be declared ineligible, leaving the electors with the duty to vote for the remaining candidates. This is precisely the outcome Appellant, a registered member of the Democratic Party, and Florida law seek to avoid. Appellant wishes to ensure that if Appellee Obama is the Democratic Party nominee then his vote, and the vote of the presidential electors, will not end up going to the other candidates and/or for naught.

A presidential election is not, ipso facto, an exclusively federal process. In fact, electors, those chosen to ultimately select the President, were to be designated

exclusively by the *state* legislatures. Article II, s. 1, c. 2. *See Mcpherson v. Blacker*, 146 US 1, 35 (1892) ("The appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States"). Presidential elections are thus a cooperative and complementary effort of both the state and federal government. The state of Florida, through its legislative branch, is simply ensuring that eligible candidates, for *all* elected offices, are chosen.

IV. The Question Of Barack H. Obama's Natural Born Citizenship Eligibility Was Determined Based On The Wrong Legal Standard.

Judge Lewis used the wrong standard in opining on the eligibility of Barack H. Obama., stating that the U.S. Supreme Court "has concluded that every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States." (R. 510), and citing state court dicta relating to the same subject. However, the standard set forth in Art. II, s.1, c.4 is "natural born citizen" not "citizen" or "citizen at birth".

No U.S. Supreme Court case has ever held that "citizen at birth" defines natural born citizen, including the relied upon *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). That case held that Wong Kim Ark, born of resident alien parents, was "as much a citizen as the natural born child of a citizen" and clearly holding that *Wong Kim Ark* was not a natural born citizen. *Id.* at 693. Moreover that ruling,

declaring that the child of "resident domiciled aliens" is a U.S. citizen, within the meaning of the 14th Amendment's "subject to the jurisdiction" clause does not relate to Mr. Obama, since his father, Barack H. Obama Sr., was never a domiciled legal resident, and was in the U.S. on a student visa, which was subsequently revoked, and then he was deported.

"Natural born citizen" is a distinct and separate term of art that cannot be defined by breaking it down into constituent words. *See Sullivan v. Stroop*, 496 U.S. 478, 483 (1990). Thus "born a U.S. citizen" cannot be construed to mean natural born citizen, nor has any U.S. Supreme Court holding ever said as much. The adoption of a "term of art" implies the adoption of the entire body of law from which it came. *See Morissette v. United States*, 342 U.S. 246, 263 (1952). The separate term of art was intended specifically to prevent the danger of foreign influence.

The founders of the U.S. Constitution were very concerned about the danger of foreign influence undermining American society, so much so, that John Jay wrote five Federalist Papers on the dangers of foreign influence (#2-6), and George Washington warned direly about it in his "Farewell Speech" in 1796:

> "Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government".

In order to protect and safeguard against this foreign influence, the founding fathers placed within the U.S. Constitution the unique requirement that the President of the United States, the highest office in the land, be a "natural born citizen." The term "natural born citizen" was well established at the time the Constitution was drafted and enacted, coming from the law of nations as compiled and set forth in the historic treatise the "Law of Nations," a treatise crafted by the renowned Emmerich de Vattel, and which the framers consulted and replied upon in crafting and enacting the Constitution.

In a section titled "Of the Citizens and Natives" the "Law of Nations" confrimed of the difference between citizens and natural born citizens as follows.

> "The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives, or **natural-born citizens, are those born in the country, of parents who are citizens.**"

"Law of Nations," Book 1, Chapter 19, § 212 (emphasis added)(R. 257-259). Vattel went on to clarify and confirm, the **"country of the father is the country of the son."** *Id.*

Not coincidentally, the U.S. Supreme Court in *The Venus*, 12 U.S. 253 (1814), Justice John Marshall, in a case entirely decided by the legal concepts of the law of nations, directly quotes the above definition by Vattel almost verbatim. Justice Marshall wrote:

> “Vattel, who, though not very full to this point, is more explicit and more satisfactory on it than any other whose work has fallen into my hands, says 'The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives or indigenes are those born in the country of parents who are citizens. Society not being able to subsist and to perpetuate itself but by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights.'”

The Venus, 12 US 253, 289 (1814). Justice Marshall went on to explain:

> “The writers upon the law of nations distinguish between a temporary residence in a foreign country for a special purpose and a residence accompanied with an intention to make it a permanent place of abode. The latter is styled by Vattel "domicile," which he defines to be, "a habitation fixed in any place, with an intention of always staying there." Such a person, says this author, becomes a member of the new society, at least as a permanent inhabitant, and is a kind of citizen of an inferior order from the native citizens, but is nevertheless united and subject to the society without participating in all its advantages”.

Id. at 278. Thus, *The Venus* stands for the proposition that allegiance to one's country cannot be established by domicile because it is easily disintegrated when a person moves back to his native country. The framers wanted a solid bond to one's country. Citizenship through this temporary allegiance cannot be what the framers were intending when requiring the future president to be a "natural born citizen," for the purpose of the prevention of foreign influence. The framers desired and mandated that a deep abiding allegiance to the United States for the future president must be had, as this person would be the Commander In Chief of the

U.S. Armed Forces. They were looking for allegiance derived from at least naturalized U.S. citizen parents, on the standing of a "Native," who had legally thrown off native allegiances and pledged sole allegiance to their new nation, not the temporary allegiance of inhabitants, simply changed by moving domicile.

The definition that a natural born citizen was one born in the country with two citizen parents, was the prevalent view of the time. In his landmark treatise "A Treatise on Citizenship," following the law of nations codified in Vattel's "Law Of Nations," Alexander Peter Morse definitively set forth and reiterated the accepted law on "natural born citizen," **"A citizen, in the largest sense, is any native or naturalized person who is entitled to full protection in the exercise and enjoyment of the so-called private rights. The natural born, or native is one who is born in the country, of citizen parents."** Morse, Alexander Peter, *A Treatise on Citizenship* pp. xi (1881). **"Under the view of the law of nations, natives, or natural born citizens, are those born in the country, of parents who are citizens."** *Id.* at §7 (Emphasis added).

Even more, there is clear evidence the founding fathers studied, utilized, and incorporated the law of nations codified in Vattel's "Law of Nations" in the crafting and enacting of the U.S. Constitution, and frequently consulted Vattel's "Law of Nations" thereoften for guidance.

In a letter from Benjamin Franklin to Charles Dumas, editor of the 1775 edition of the Law of Nations, Franklin specifically thanks Dumas for providing him with copies of the “Law of Nations.” This founding father and framer wrote:

> "I am much obliged by the kind present you have made us of your edition of Vattel. It came to us in good season, when the circumstances of a rising state make it necessary frequently to consult the law of nations. Accordingly that copy, which I kept, (after depositing one in our own public library here, and sending the other to the College of Massachusetts Bay, as you directed,) **has been continually in the hands of the members of our Congress, now sitting, who are much pleased with your notes and preface, and have entertained a high and just esteem for their author.**"

Benjamin Franklin Letter, pp. 1. (R. 316-322) This letter of Benjamin Franklin is a certified copy from the Library of Congress and has been submitted on the record. Franklin, who was instrumental in the drafting and enacting of the Constitution, provides confirmation that those drafting the U.S. Constitution were "frequently consulting" the law of nations codified in “Law of Nations.” The framers then knew of and incorporated the definition of "natural born citizen" which was provided twice within the “Law of Nations.”

Not surprisingly, a direct reference to legal incorporation of the law of nations as codified in Vattel’s "Law of Nations" also appeared in the U.S. Constitution itself. In Article 1, Section 8, the U.S. Constitution granted enumerated powers for the legislative branch. One of these enumerated powers

was "To define and punish Piracies and Felonies committed on the high seas, and **Offenses against the Law of Nations**;" U.S. Constitution, Art. I, s. 8, c. 10 (emphasis added). The framers took care in incorporating and recognizing the law of nations, and providing Congress with a means of legislating crimes committed against it.

Even after the Constitution was written, Vattel's "Law of Nations" continued to be consulted and utilized by the leaders of the United States. On October 5, 1789, President George Washington borrowed from the New York Society Library a copy of Vattel's "Law of Nations," as evidenced by his entry in the ledger. An article with the picture of the ledger has been submitted on the record along with a confirmation by the head Librarian of the New York Society Library that the article is accurate. (R. 323-333)

Judge Lewis conveniently ignored all this evidence and U.S. Supreme Court precedent and instead relied on recent fatally flawed decisions from throughout the country. Certainly an Indiana state court case, *Ankeny v. Gov. of Indiana*, 916 NE 2d. 678, 688 (Indiana Ct. App, 2009), dicta cannot overrule U.S. Supreme Court holding, that it was "never doubted" that the natural born citizens were born in the U.S. of U.S. citizen parents. *Minor v. Happersett*, 88 US 162, 167 (1875). To construe a "citizen at birth" of the 14th Amendment, as the same as natural born

citizen of Article 2, would render moot Art.2 S.1 C.4 and is an "inadmissible argument." *See Marbury v. Madison* 5 US 137, 174 (1803).

V. Any Determination of Appellee Obama's Natural Born Citizenship Must Be Made Only After Discovery Is Taken.

Appellant submitted multiple sworn affidavits setting forth the fraudulent nature of Appellee Obama's birth certificate and other identifying documents. (R.260-278)(Appendix B). Appellee Obama conspicuously offered no evidence to the contrary and instead asked for a stay of discovery in order to avoid a proper determination of his citizenship. With only Appellant's affidavits in front of him as no contra-affidavits were put forth by Appellee Obama, Judge Lewis ignored this sworn evidence and incorrectly determined that Appellee Obama was a natural born citizen.

A question of fact such as this cannot be determined without the parties having been given the opportunity to take discovery. Appellant was not permitted to investigate through discovery or even observe the underlying documents that allegedly establish Appellee Obama's natural born citizenship. If Appellee Obama was born outside of the United States then he is not a natural born citizen, or even a citizen. In addition to being born within the United States, as noted above, a natural born citizen must be born to two U.S. citizen parents. If it is shown

through discovery that Barack H. Obama Sr., Appellee Obama's father, was not a U.S. citizen at the time of Appellee Obama's birth, then Appellee Obama is clearly not a natural born citizen as required by the U.S. Constitution.

VI. The Trial Court Erred in Refusing to Allow Appellant to Amend His Complaint.

Pursuant to Rule 1.190 of the Florida Rules of Civil Procedure, when a party files a motion requesting leave of court to file an amended complaint, **"[l]eave of court shall be given freely when justice so requires."** As courts of this state have consistently held "[t]he trial court should not deny leave to amend unless the privilege to amend has been abused or the complaint is clearly not amendable." *Epstein v. Denowitz*, 487 So. 2d 365 (Fla. 4th DCA 1986), *Highlands County School Board v. K. D. Hedin Construction, Inc.*, 382 So.2d 90 (Fla. 2nd DCA 1980). "[D]oubts should be resolved in favor of allowing amendment unless and until it appears that the privilege to amend will be abused. *Richards v. West*, 110 So. 2d 698 (Fla. 1st DCA 1959)

Amendment is also respectfully required as provided in Florida Statutes Section 102.168(5) *et. seq* which stands for the principle that a complaint cannot be dismissed "for any want of form if the grounds of contest provided in the statement are sufficient to clearly inform the defendant of the particular proceeding or cause for which the nomination or election is contested." Section 102.168(5),

Florida Statutes (2011). Thus, an extremely liberal and relaxed pleading standard exists pursuant to Florida elections law, when a voter, taxpayer, and elector such as Appellant Michael Voeltz files an election contest. This is because voter rights are the most sacrosanct of citizen rights and should not be eliminated on a technicality. Thus, amendment of a voter's complaint to clarify what is at issue should be freely granted.

During oral arguments on Appellee's motion to dismiss, counsel for Appellee indicated to the court that Appellant would be filing a motion to amend the complaint, in order to clarify that Appellant would be seeking declaratory relief pursuant to Florida Statutes Section 86.011. In hearing this, the court responded "Well, you don't need to file a motion. I made a note of it that you would like to be able to amend if granted... So, I would only not do that if I thought there was nothing you could do to amend." (R.450-455)

Judge Lewis dismissed the lawsuit, and at the same time granted Appellee's Motion to Strike the Second Amended Complaint. This decision ended Appellant Michael Voeltz's contest of election, without having the court briefed on the issue of a cause of action under Florida Statutes Section 86.011. The only reason that Judge Lewis gave for denying leave to amend was because "I don't see how Plaintiff, an individual voter, would have standing to seek declaratory relief." This

was merely speculative dicta. Again, this extra legal decision was made before the court was briefed on the matter.

CONCLUSION

Judge Lewis' ruling bars any elector contest of eligibility in a presidential primary, or in any unopposed primary, and is clearly contrary to the plain wording of the well crafted and crystal clear Florida statutes. Appellant rightfully has standing, and the judiciary is obliged to make a determination as to eligibility of "any candidate", including presidential candidates. *Shevin v. Stone,* 279 So. 2d. 17, 22 (Fla. 1972.

As a matter of law and equity, discovery of at least Appellee Obama's birth records is needed to ascertain the veracity of the claims made therein. By his own birth story, well told, he is not an eligible natural born citizen, due to foreign citizenship at birth. Appellant also asks for a determination of current citizenship that would require examination of all of Mr. Obama's passport and other relevant records. If it is found that Barack Obama Sr. is indeed the father of Barack H. Obama II, then Appellant also seeks an injunction, preventing the placement of the name Barack H. Obama on the Florida General Election Ballot by order of the

Florida judiciary, since he would not be an eligible natural born citizen as required by Art. II, s.1, c.4, U.S. Constitution.

For the foregoing reasons, the decisions of the trial court subject to this appeal must be reversed and this action remanded to the trial court with instructions to begin discovery.

Appellant submitted a Suggestion for Certification to the Florida Supreme Court. That having been denied, Appellant now requests an expedited ruling due to the looming general election and the duty of Florida judiciary to protect voters from fraud and other acts of misconduct that could nullify their votes.

Appellant also respectfully requests oral argument.

Respectfully submitted,

/s/ Larry Klayman

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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing Appellant's Initial Brief has been furnished, by mail, this 20th day of September, 2012 to the following:

Daniel Nordy
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Florida Department of State
R.A. Gray Building
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Respectfully submitted,

/s/ Larry Klayman

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CERTIFICATE OF FONT REQUIREMENT

I hereby certify that this brief complies with the font requirements (Times New Roman, 14 pt.) of Rule 9.100(1), Florida Rules of Appellate Procedure.

Respectfully submitted,

/s/ Larry Klayman

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APPENDIX

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APPENDIX A

20120044408 ELECTRONICALLY RECORDED IN THE PUBLIC RECORDS OF LEON COUNTY, FL
BK: 4388 PG: 61 07/02/2012 at 08:59 AM BOB INZER, CLERK OF COURTS

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

MICHAEL C. VOELTZ, CASE NO. 2012-CA-00467

Plaintiff,

BARACK HUSSEIN OBAMA, Florida Democratic Party Nominee to the 2012 Democratic Party Convention, KEN DETZNER, Secretary of State of Florida, and FLORIDA ELECTIONS CANVASSING COMMISSION,

Defendants.
______________________________/

FILED
2012 JUN 29 P 3: 42
C-04
BOB INZER
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

ORDER GRANTING BARACK OBAMA'S AND SECRETARY OF STATE KEN DETZNER'S MOTION TO DISMISS AMENDED COMPLAINT

This case is before me on motions to dismiss filed by Defendants Obama and Detzner. The amended complaint challenges the nomination of Defendant Obama as the Democratic Party's nominee for the office of President of the United States, pursuant to Section 102.168, Florida Statutes. The Plaintiff alleges that candidate Obama is not eligible for that office because he is not a "natural-born citizen" within the meaning of Article II, Section 1 of the Constitution of the United States. Because I find that the plaintiff has not and cannot state a cause of action for the relief requested under Section 102.168, Florida Statutes, I grant the motions to dismiss with prejudice.

There are several deficiencies in the complaint, but the biggest problem, and one which cannot be overcome by amending the complaint, is that Section 102.168, Florida Statutes, is not applicable to the nomination of a candidate for Office of President of the United States. This statute provides, in pertinent part, as follows:

IN COMPUTER

> (1) Except as provided in s. 102.171, the certification of election or nomination of any person to office, or of the result on any question submitted by referendum, may be contested in the circuit court by any unsuccessful candidate for such office or nomination thereto or by any elector qualified to vote in the election related to such candidacy, or by any taxpayer, respectively.

Plaintiff argues that President Obama has been nominated as the Democratic Party's candidate for the office by virtue of the fact that he had no opposition for the Presidential Preference Primary Election. Under Florida Statutes Section 97.021(28), "'Primary election' means an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office." Because Mr. Obama was the only candidate for that primary election, Plaintiff argues that Florida Statutes, Section 101.252(1) applies. That provision reads as follows:

> "Any candidate for nomination who has qualified as prescribed by law is entitled to have his or her name printed on the official primary election ballot. However, when there is only one candidate of any political party qualified for an office, the name of the candidate shall not be printed on the primary election ballot, **and such candidate shall be declared nominated for the office."** [Emphasis added].

Florida's Supreme Court has confirmed that "[w]hen only one candidate for a political party qualifies, that candidate is the party's nominee." *Republican State Exec. Comm. v. Graham*, 388 So. 2d 556, 557 (1980).

If the plaintiff was challenging the candidate's eligibility for any other office, his analysis would be correct and these provisions would apply. The Office of President of the United States, however, is treated differently under Florida law. In every other political office, any person can qualify to run as a Democrat or Republican in a primary election and if she receives the greatest number of votes, she is, by law, that party's nominee for the general election. Candidates for these other offices are required to file certain documents and pay a qualifying fee (or sufficient

petitions) during a specific time period. In 2012 that qualifying period ran from noon on Monday, June 4, 2012 until noon on Friday, June 8, 2012.

Presidential candidates do not qualify during that period or pursuant to that process. Rather, Section 103.021, Florida Statutes, provides that presidential electors are designated by the respective political parties before September 1 of each presidential election year and nominated by the Governor. [1] The respective major political parties determine their nominee at a national convention pursuant to rules that the parties draft and approve. The Presidential Preference Primary Election in Florida is an integral part of that process for the parties, but as it relates to Florida law, there is no qualifying and no certification of nomination of the candidate as a result. Thus, under Florida law, Mr. Obama is not presently the nominee of the Democratic Party for the office.

---

[1] Section 103.021(1) and (2), Florida Statutes (2011), provides as follows:

> Nomination for presidential electors.—Candidates for presidential electors shall be nominated in the following manner:
>
> (1) The Governor shall nominate the presidential electors of each political party. The state executive committee of each political party shall by resolution recommend candidates for presidential electors and deliver a certified copy thereof to the Governor before September 1 of each presidential election year. The Governor shall nominate only the electors recommended by the state executive committee of the respective political party. Each such elector shall be a qualified elector of the party he or she represents who has taken an oath that he or she will vote for the candidates of the party that he or she is nominated to represent. The Governor shall certify to the Department of State on or before September 1, in each presidential election year, the names of a number of electors for each political party equal to the number of senators and representatives which this state has in Congress.
>
> (2) The names of the presidential electors shall not be printed on the general election ballot, but the names of the actual candidates for President and Vice President for whom the presidential electors will vote if elected shall be printed on the ballot in the order in which the party of which the candidate is a nominee polled the highest number of votes for Governor in the last general election.

The question remains whether or not this case should be stayed in anticipation that Mr. Obama will, in fact, be nominated at the national convention of the Democratic Party. Will the Plaintiff's election contest then be ripe for adjudication? I conclude not, as there has not been, and never will be, a nomination by primary election or qualification as contemplated under Florida law. Neither the Plaintiff nor any other elector will determine by vote the nomination. Thus, regardless of who is nominated by the party at the national convention, Plaintiff would not be able to amend his complaint to challenge the nomination under Section 102.168, Florida Statutes.

Even if Section 102.168, Florida Statutes, was applicable to a challenge to the "nomination" of a candidate for Office of the President of the United States, the amended complaint fails to state a cause of action for the relief requested. Specifically, the amended complaint alleges that the candidate has not demonstrated, and the Secretary of State has not confirmed, that the candidate is a "natural born citizen" as required by the United States Constitution. It is the plaintiff's burden, however, to allege and prove that a candidate is not eligible. The Secretary of State also has no affirmative duty, or even authority, "to inquire into or pass upon the eligibility of a candidate to hold office for the nomination for which he is running." *Taylor* v. *Crawford,* 116 So. 41, 42 (Fla. 1928); *see also Cherry,* 265 So. 2d at 57 (stating that nothing "places a duty upon or empowers the Secretary of State to conduct an independent inquiry with respect to circumstances or fact dehors the qualifying papers"); *Hall* v. *Hildebrand,* 168 So. 531, 364 (Fla. 1936) (finding that the filing officer "has neither the responsibility nor the authority to pass judgment upon the supposed ineligibility of candidates for office").

Plaintiff alleges that the Secretary's oath to "support the U.S. Constitution" "creates an absolute ministerial duty" on him to determine the eligibility of presidential nominees. I disagree. "The duties that fall within the scope of mandamus are legal duties of a specific, imperative, and ministerial character as distinguished from those that are discretionary." *Cherry* v. *Stone,* 265 So. 2d *56, 51* (Fla. 1972). An oath to "support the U.S. Constitution" is not a "specific, imperative" duty to do anything of a ministerial character, let alone a specific imperative to verify the eligibility of presidential nominees or candidates. *Cherry v. Stone, supra* at 57. Plaintiff's allegations are thus insufficient to justify a writ of mandamus directed to the Secretary.

Plaintiff's alternative request for mandamus against the Court is also insufficient for similar reasons. Plaintiff makes no allegation supporting any of the elements for a writ of mandamus against the Court. Additionally, this Court lacks jurisdiction to consider the issuance of mandamus directed to it. *See Davis* v. *State,* 982 So. 2d 1246 (Fla. 5th DCA 2008) (noting that "a court cannot logically issue a writ of mandamus to itself.")

In oral argument on the motion, the plaintiff's attorney advised the court that if given an opportunity to amend the complaint, the plaintiff could affirmatively allege that the candidate was not born within the territorial jurisdiction of the United States. Thus, that defect could theoretically be remedied. The second prong of the plaintiffs challenge, however, is also deficient and cannot be remedied. Specifically, the plaintiff alleges that even if the candidate was born within the territorial jurisdiction of the United States, he was not born of two parents who were American citizens and therefore cannot be a "natural born citizen" as required by the Constitution.

I have reviewed and considered the legal authority submitted by the Plaintiff and the Defendants on this issue and conclude as a matter of law that this allegation, if true, would not make the candidate ineligible for the office. Article II, Section 5 of the Constitution of the United States provides:

> 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; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States.

"The Constitution does not, in words, say who shall be natural-born citizens." *Minor v. Happersett,* 88 U. S. 162, 167 (1875). However, the United States Supreme Court has concluded that "[e]very person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States." Other courts that have considered the issue in the context of challenges to the qualifications of candidates for the office of President of the United States have come to the same conclusion. *See Hollander v. McCain*, 566 F. Supp. 2d 63, 66 (D.N.H. 2008) ("Those born 'in the United States, and subject to the jurisdiction thereof' have been considered American citizens under American law in effect since the time of the founding and thus eligible for the presidency.") (citations omitted); *Ankeny v. Governor of Indiana*, 916 N.E.2d 678, 688 (Ind. Ct. App. 2009) (citing *Wong Kim Ark*, and holding that both President Obama and Senator John McCain were "natural born citizens" because "persons born within the borders of the United States are 'natural born [c]itizens' for Article II, Section 1 purposes, regardless of the citizenship of their parents.").

Thus, for procedural and substantive reasons, the complaint is legally deficient and should be dismissed. The question remains, should it be dismissed with prejudice, i.e., without leave to amend. Dismissal with prejudice should only be granted if it conclusively appears there

is no possible way to amend the complaint to state a cause of action. As noted above, I can't see how the Plaintiff could amend the complaint and proceed under Section 102.168, Florida Statutes.

Plaintiff could perhaps contest the election if the candidate is successful. The Defendants argue that such a challenge is foreclosed as well, but as the complaint sought to challenge only the nomination, I do not reach the issue of whether Plaintiff might properly file an election contest action after the general election. Suffice it to say that Plaintiff could not, under any existing facts, amend the complaint to contest an election that has not occurred.

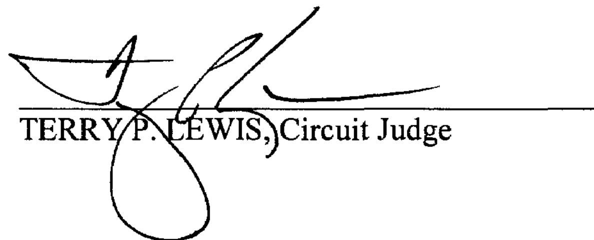
Plaintiff suggests the possibility of a declaratory judgment claim, but I don't see how Plaintiff, as an individual voter, would have standing to seek declaratory relief. In short, I am unable to conceive of any other legal theory upon which the Plaintiff could proceed at this time relative to the relief sought.

While these motions to dismiss were under advisement, Plaintiff filed a second amended complaint which was not authorized. The Secretary and the Commission have moved to strike it, which I grant.

Therefore, for the reasons expressed herein, it is ORDERED AND ADJUDGED, that:

The Motions to Dismiss the Amended Complaint are GRANTED and the Plaintiff's Amended Complaint is hereby dismissed with prejudice. The Second Amended Complaint is stricken.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida, this 29th day of June, 2012.



TERRY P. LEWIS, Circuit Judge

cc: Copies to Counsel of Record

APPENDIX B

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

MICHAEL C. VOELTZ, Plaintiff, vs. BARACK HUSSEIN OBAMA, et. al. Defendants.	))))))))))))	Case No.: 2012CA00467

NOTICE OF FILING OF AFFIDAVITS OF JEROME CORSI AND SHERRIFF JOSEPH ARPAIO IN CONTRAVENTION OF CLAIMS BY DEFENDANT BARACK OBAMA THAT HE WAS BORN IN THE UNITED STATES OR ITS TERRITORIES

Plaintiff Michael Voeltz hereby files the affidavit of Jerome Corsi (Exhibit 1) and corrected affidavit of Sheriff Joseph M. Arpaio[i] (Exhibit 2) in contravention of claims by Defendant Barack Obama that he was born in the United States.

Dated: June 12, 2012

Respectfully submitted,

/s/ Larry Klayman

Larry Klayman, Esq.
F.L. Bar No. 246220
Klayman Law Firm
2020 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006
Tel: (310) 595-0800
Email: leklayman@gmail.com

[i] Original filing contained a typographical error, since corrected.

Exhibit 1

/

AFFIDAVIT

1. I am currently employed as a Senior Staff Reporter at WND.com.

2. On August 17, 2011, I spoke at a meeting of the Surprise, Arizona, Tea Party, where approximately 250 residents of Maricopa County, signed a petition asking Sheriff Arpaio to undertake an investigation to address concerns regarding President Barack Obama's long-form birth certificate released by the White House on April 27, 2011.

3. The following day, August 18, 2011, I met with members of the Surprise, Arizona, Tea Party with Sheriff Arpaio and his staff in Sheriff Arpaio's Maricopa County Sheriff's Office in downtown Phoenix. The Tea Party group presented the Sheriff with the petition and asked that he undertake the investigation. Sheriff Arpaio suggested he would take the request under consideration, with the possibility he might assign the investigation to the Cold Case Posse.

4. I reported the speech and the meeting with Sheriff Arpaio in an article I published in WND.com, on April 22, 2011, at http://www.wnd.com/2011/08/336473/.

5. In September 2011, Sheriff Arpaio agreed to assign the Obama investigation to his Cold Case Posse, headed by lead investigator Mike Zullo. I reported this in WND.com, on September 16, 2011, at http://www.wnd.com/2011/09/345685/.

6. At Sheriff Arpaio's request, I agreed to turn over to the Cold Case Posse all the research I conducted to write my book "Where's the Birth Certificate: The Case that Barack Obama is Not Eligible To Be President," published May 17, 2011, as well as all relevant research I conducted subsequently.

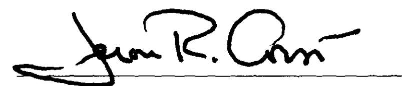
7. At Mike Zullo's request, I flew to Phoenix and met with the Cold Case Posse on Friday, October 14, 2011, and Saturday, October 15, 2011, for approximately 8 hours each day, to present the research requested.

8. My research, published and/or provided to date, reveals and shows a likelihood that key identity papers for President Obama have been forged,

including his long-form birth certificate released by the White House on April 27, 2011, and his Social Security Number.

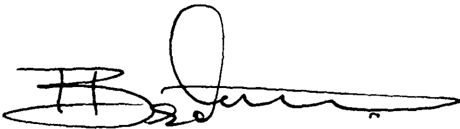
9. Based as well on extensive research and investigation, I have written and published a book on the subject of Barack Obama's eligibility to be president of the United States and found that, at a minimum, there are significant issues of fact that are in dispute as to where he was born, Hawaii as he claims, or outside of the United States and its territories. I am incorporating into this affidavit the contents of my book: "Where's the Birth Certificate?: The Case that Barack Obama is Not Eligible to be President" which sets forth my findings, as Exhibit 1. I attest to the accuracy of my book.

Sworn to and executed under oath this 12th day of June, 2012 in Morris Plains, NJ



Jerome Corsi, Ph.D.

Sworn to and subscribed before me this
12 day of June, 2012



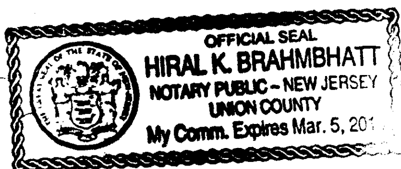


Exhibit 2

State of Arizona)
) ss.
County of Maricopa)

AFFIDAVIT

I, the undersigned, being first duly sworn, do hereby state under oath and under penalty of perjury that the facts are true:

1. I am over the age of 18 and am a resident of Arizona. The information contained in this affidavit is based upon my own personal knowledge and, if called as a witness, could testify competently thereto. I am the duly elected Sheriff of Maricopa County, Arizona, and I have been a law enforcement officer and official, in both state and federal government, for 51 years.

2. In August of last year, a group of citizens from the Surprise Arizona Tea Party organization met with me in my office and presented a petition signed by approximately 250 residents of Maricopa County, asking if I would investigate the controversy surrounding President Barrack Obama's birth certificate authenticity and his eligibility to serve as the President of the United States.

3. This group expressed its concern that, up until that point, no law enforcement agency in the country had ever gone on record indicating that they had either looked into this or that they were willing to do so, citing lack of resources and jurisdictional challenges.

4. The Maricopa County Sheriff's Office is in a rather unique position. Under the Arizona Constitution and Arizona Revised Statutes, as the elected Sheriff of Maricopa County, I have the authority to request the aid of the volunteer posse, located in the county, to assist me in the execution of my duties. Having organized a volunteer posse of approximately 3,000 members, I, as the Sheriff of the Maricopa County Sheriff's Office, can authorize an investigation go forward to answer these questions at virtually no expense to the tax payer.

5. The Cold Case posse agreed to undertake the investigation requested by the 250 citizens of Maricopa County. This posse consists of former police officers and attorneys who have worked investigating the controversy surrounding Barack Obama. The investigation mainly focused on the electronic document that was

presented as President Obama's long form birth certificate to the American people and to citizens of Maricopa County by the White House on April 27, 2011.

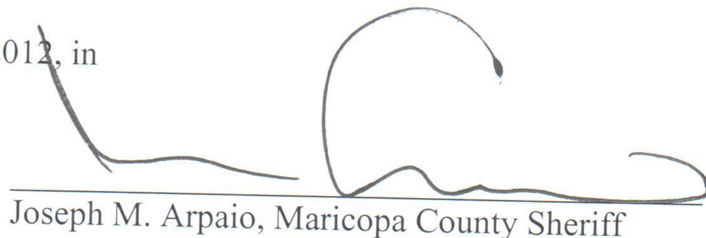
6. The investigation led to a closer examination of the procedures regarding the registration of births at the Hawaii Department of Health and various statements made by Hawaii government officials regarding the Obama birth controversy over the last five years.

7. Upon close examination of the evidence, it is my belief that forgery and fraud was likely committed in key identity documents including President Obama's long-form birth certificate, his Selective Service Registration card, and his Social Security number.

8. My investigators and I believe that President Obama's long-form birth certificate is a computer-generated document, was manufactured electronically, and that it did not originate in a paper format, as claimed by the White House. Most importantly, the "registrar's stamp" in the computer generated document released by the White House and posted on the White House website, may have been imported from another unknown source document. The effect of the stamp not being placed on the document pursuant to state and federal laws means that there is probable cause that the document is a forgery, and therefore, it cannot be used as a verification, legal or otherwise, of the date, place or circumstances of Barack Obama's birth.

9. The Cold Case Posse law enforcement investigation into Barack Obama's birth certificate and his eligibility to be president is on-going. The on-going nature of the investigation is due to additional information that has come to light since we held the press conference in March, 2012. As soon as that information has been properly verified by the Cold Case Posse, I will release that information to the public.

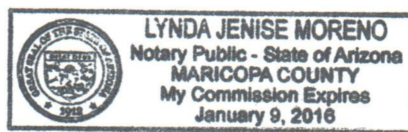
Executed this 12 day of June, 2012, in Maricopa County, Arizona.



Joseph M. Arpaio, Maricopa County Sheriff

Sworn to and subscribed before me this 12th day of June, 2012.

Lynda Jenise Moreno



Affidavit
Exhibit 1

(To be filed by hand with the clerk of courts.)

CERTIFICATION

I HEREBY CERTIFY that a true copy of the foregoing Notice of Filing Affidavits has been served by hand on June 13, 2012:

Hon. Terry P. Lewis
Circuit Judge
Leon County Courthouse
Room 301-C
301 S. Monroe Street
Tallahassee, FL 32301

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Ashley E. Davis
Florida Department of State
R.A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399

Mark Herron
Joseph Brennan Donnelly
Robert J. Telfer, III
Messer, Caparello & Self, P.A.
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Stephen F. Rosenthal
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Richard B. Rosenthal
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Miami FL 33131

James A. Peters
Office of the Attorney General
FL-01, The Capital
Tallahassee, FL 32399-1050

Counsel for Defendants

Respectfully submitted,

/s/ Larry Klayman
Larry Klayman, Esq.
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Email: leklayman@gmail.com

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

MICHAEL C. VOELTZ, Plaintiff, vs. BARACK HUSSEIN OBAMA, et. al. Defendants.	Case No.: 2012CA00467

NOTICE OF FILING OF AFFIDAVITS OF SHERIFF JOSEPH A. ARPAIO AND PRIVATE INVESTIGATOR MIKE ZULLO IN CONTRAVENTION OF CLAIMS BY DEFENDANT BARACK OBAMA THAT HE WAS BORN IN THE UNITED STATES OR ITS TERRITORIES

Plaintiff Michael Voeltz hereby files the affidavits of private investigator Michael Zullo (Exhibit 1) and Sheriff Joseph M. Arpaio (Exhibit 2) in contravention of claims by Defendant Barack Obama that he was born in the United States.

Dated: June 11, 2012

Respectfully submitted,

/s/ Larry Klayman

Larry Klayman, Esq.
F.L. Bar No. 246220
Klayman Law Firm
2020 Pennsylvania Ave. NW, Suite 800
Washington, DC 20006
Tel: (310) 595-0800
Email: leklayman@gmail.com

Exhibit 1

State of Arizona)
) ss.
County of Maricopa)

AFFIDAVIT

I, the undersigned, being first duly sworn, do hereby state under oath and under penalty of perjury that the facts are true:

1. I am over the age of 18 and am a resident of Arizona. The information contained in this affidavit is based upon my own personal knowledge and, if called as a witness, could testify competently thereto. I am an investigator with Maricopa County Sheriff's Cold Case Posse.

2. In August 2011, approximately 250 members of the Surprise, Arizona, Tea Party, who are residents of Maricopa County, presented a signed petition asking Sheriff Joe Arpaio to undertake an investigation to address concerns regarding President Barack Obama's long-form birth certificate released by the White House on April 27, 2011.

3. Residents of Maricopa County were concerned that document released was suspected to be a computer-generated forgery, not a scan of an original 1961 paper document, as represented by the White House when the long-form birth certificate was made public.

4. The Tea Party members petitioned under the premise that if a forged birth certificate was utilized to obtain a position for Barack Obama on the 2012 Arizona presidential ballot, their rights as Maricopa County voters could be compromised.

5. In October 2011, Sheriff Arpaio commissioned the Maricopa County Sheriff's Office Cold Case Posse, which is comprised of former law enforcement investigators and practicing attorneys, to investigate President Barack Obama's long-form birth certificate released by the White House on April 27, 2011. The purpose of this investigation was to determine if the document was, in fact, authentic.

6. As lead investigator for the Cold Case Posse, I agreed to Sheriff Arpaio's request to undertake the investigation into President Obama's birth certificate and his eligibility to be president.

7. In February, 2012, Cold Case Posse investigators advised Sheriff Joe Arpaio that the forgers most likely committed two crimes: first, in fraudulently creating a forgery that the White House characterized, knowingly or unknowingly, as an officially produced governmental birth record; and second, in fraudulently presenting to the residents of Maricopa County and to the American public at large, a forgery the White House represented as "proof positive" of President Obama's authentic 1961 Hawaii long-form birth certificate. These conclusions were based upon, but not limited to, input from numerous experts in the areas of typesetting, computer generated documents, forensic document analysis and Adobe computer programs, as well as, review of Hawaii state law, Hawaii Department of Health policies and procedures, and comparisons with numerous other birth records.

8. The Cold Case investigators further determined that the Hawaii Department of Health has engaged in what Sheriff's investigators believe is a systematic effort to hide from public inspection whatever original 1961 birth records the Hawaii Department of Health may have in their possession, including changing policies and procedures and denying valid Freedom of Information Act (FOIA) requests for information related to the 1961 birth records (said requests were not for any birth records).

9. Among the evidence released at the March 1, 2012, press conference were five videos the Cold Case Posse produced to demonstrate why the Obama long-form birth certificate is suspected to be a computer-generated forgery.

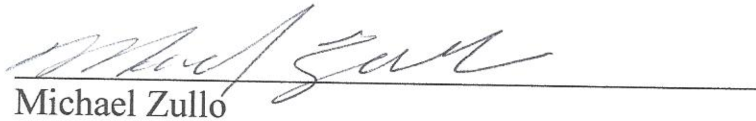
10. The videos provide a true and correct point-by-point illustration of the investigators' conclusion that the features and anomalies observed on the Obama long-form birth certificate were inconsistent with features produced when a paper document is scanned, even if the scan of the paper document had been enhanced by Optical Character Recognition (OCR) and optimized.

11. Additionally, the videos demonstrated that the Hawaii Department of Health Registrar's name stamp and the Registrar's date stamp were computer-generated images imported into an electronic document, as opposed to actual rubber stamp imprints inked by hand or machine onto a paper document. Based upon this, the document published on the White House website, is, at a minimum, misleading to the public as it has no legal import and cannot be relied on as a legal document verifying the date, place and circumstance of Barack Obama's birth.

12. The investigators also chronicled a series of inconsistent and misleading representations that various Hawaii government officials have made over the past five years regarding what, if any, original birth records are held by the Hawaii Department of Health.

13. The Cold Case Posse's law enforcement investigation into Barack Obama's birth certificate and his eligibility to be president is continuing, as additional information has been obtained and developed supporting the current findings of the Cold Case Posse. As soon as that information is properly sourced and verified, that additional information will be released to the public at the direction of Maricopa County Sheriff Joe Arpaio.

Executed this 11 day of June, 2012, in
Maricopa County, Arizona.



Michael Zullo

Sworn to and subscribed before me this
11th day of June, 2012.

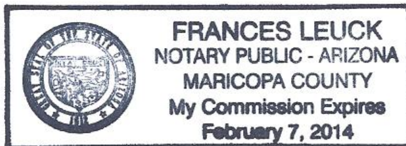


Exhibit 2

State of Arizona)
) ss.
County of Maricopa)

AFFIDAVIT

I, the undersigned, being first duly sworn, do hereby state under oath and under penalty of perjury that the facts are true:

1. I am over the age of 18 and am a resident of Arizona. The information contained in this affidavit is based upon my own personal knowledge and, if called as a witness, could testify competently thereto. I am the duly elected Sheriff of Maricopa County, Arizona, and I have been a law enforcement officer and official, in both state and federal government, for 51 years.

2. In August of last year, a group of citizens from the Surprise Arizona Tea Party organization met with me in my office and presented a petition signed by approximately 250 residents of Maricopa County, asking if I would investigate the controversy surrounding President Barrack Obama's birth certificate authenticity and his eligibility to serve as the President of the United States.

3. This group expressed its concern that, up until that point, no law enforcement agency in the country had ever gone on record indicating that they had either looked into this or that they were willing to do so, citing lack of resources and jurisdictional challenges.

4. The Maricopa County Sheriff's Office is in a rather unique position. Under the Arizona Constitution and Arizona Revised Statutes, as the elected Sheriff of Maricopa County, I have the authority to request the aid of the volunteer posse, located in the county, to assist me in the execution of my duties. Having organized a volunteer posse of approximately 3,000 members, I, as the Sheriff of the Maricopa County Sheriff's Office, can authorize an investigation go forward to answer these questions at virtually no expense to the tax payer.

5. The Cold Case posse agreed to undertake the investigation requested by the 250 citizens of Maricopa County. This posse consists of former police officers and attorneys who have worked investigating the controversy surrounding Barack Obama. The investigation mainly focused on the electronic document that was

presented as President Obama's long form birth certificate to the American people and to citizens of Maricopa County by the White House on April 27, 2011.

6. The investigation led to a closer examination of the procedures regarding the registration of births at the Hawaii Department of Health and various statements made by Hawaii government officials regarding the Obama birth controversy over the last five years.

7. Upon close examination of the evidence, it is my belief that forgery and fraud may likely have been committed in key identity documents including President Obama's long-form birth certificate, his Selective Service Registration card, and his Social Security number.

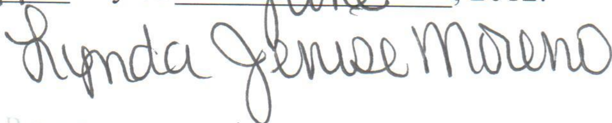
8. My investigators and I believe that President Obama's long-form birth certificate is a computer-generated document, was manufactured electronically, and that it did not originate in a paper format, as claimed by the White House. Most importantly, the "registrar's stamp" in the computer generated document released by the White House and posted on the White House website, may have been imported from another unknown source document. The effect of the stamp not being placed on the document pursuant to state and federal laws means that there is probable cause that the document is a forgery, and therefore, it cannot be used as a verification, legal or otherwise, of the date, place or circumstances of Barack Obama's birth.

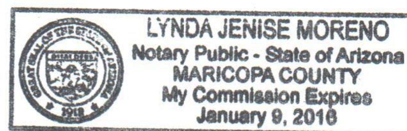
9. The Cold Case Posse law enforcement investigation into Barack Obama's birth certificate and his eligibility to be president is on-going. The on-going nature of the investigation is due to additional information that has come to light since we held the press conference in March, 2012. As soon as that information has been properly verified by the Cold Case Posse, I will release that information to the public.

Executed this 11th day of June, 2012, in Maricopa County, Arizona.

Joseph M. Arpaio, Maricopa County Sheriff

Sworn to and subscribed before me this 11th day of June, 2012.





CERTIFICATION

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. mail this 11th day of June, 2012 to the following:

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Respectfully submitted,

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