

No 09-5080
Consolidating No. 09-5161

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GREGORY S. HOLLISTER, et al.,

Case Below 08-2254 JR

Appellant,

v.

Barry Soetoro, in his capacity as a natural
person; de facto President in posse; and as
de jure President in posse , also known as
Barack Obama, et al.

Appellees.

MOTION TO TAKE JUDICIAL NOTICE OF STATUTES, DOCUMENTS
FROM RELATED CASES AND ENTRIES IN OFFICIAL RECORDS,
WITH COMMENTS

The appellants, Gregory S. Hollister and John D. Hemenway, taking note of the argument advanced by the appellees in their Opposition Brief that the Court may take notice of proceedings in related cases and also that courts, including appellate courts, may take notice of statutes and official proceedings, now hereby request that the Court take notice of the attached documents as listed below:

Attachment 1: This is a copy of the statute of Hawaii, *circa* 1982 which specifically empowers the officials of that state to grant a birth

document to a child born outside the state in the preceding year. The statute was the same in the year in which the defendant Soetoro a/k/a Obama was born.

Attachment 2: Here we present the statutes of Hawaii concerning freedom of information in the situation where a state official, in this case Dr. Fukima, has made a statement. The statutes empower a citizen to have access to the support for the statement. In this instance Dr. Fukima, who is a doctor and not a lawyer or constitutional authority, stated that the defendant Soetoro a/k/a Obama was a “natural born citizen,” thus seemingly overruling the United States Supreme Court, or purporting to. The New Jersey attorney Leo C. D’onofrio, who has initiated litigation about Obama’s eligibility, through a reader of his blog and web site, after Hawaii officials refused to disclose the information as required by Hawaii law, is preparing a freedom of information suit. It will be filed before this case is finally fully decided and we will call to the Court’s attention the actual documents in the case as they appear in the court in Hawaii.

Attachment 3: This is the statement under penalty of perjury of Lucas Smith supporting a document filed in the related case of *Barnett v. Obama*, case no. SACV09-00082-DOC (Aux) Judge Carter. The document, as now on file in that case, is the Kenyan birth certificate of the defendant in this

case, Soetoro a/k/a Obama. It is likely that this document will be subject to scrutiny during the pendency of this appeal and it is relevant.

Attachment 4: This is the opposition to the summary judgment and dismissal motion filed by the defendants Obama *et al.* in the Middle District of California. It has some relevant points to this case and mentions this case as related by the unwarranted actions in this case.

Attachment 5: Here we present documents from the official proceedings of the Democratic National Committee during the proceeding of certifying to the state electoral college officials the defendant Soetoro a/k/a Obama as official nominee, the Honorable Nancy Pelosi, Speaker of the House, presiding as a party official but still bound by her duty of honest services. She apparently either herself or through someone under her supervision, altered the document to eliminate the specific certification of constitutional eligibility, raising the presumption of irregularity. This may be raised below if there is a remand and may be raised during the pendency of this appeal in related litigation.

Attachment 6. Here we present excerpts from the proceedings of the United States Senate during the electoral proceedings along with the statutory excerpts showing the requirements and it is clear that the Honorable Vice President Richard Cheney, sitting as President of the Senate,

failed to issue the required call for objections, raising the question of whether or not the process was in fact completed or if objections should now officially be called for. This may be raised below if there is a remand and may be raised during the pendency of this appeal in related litigation.

Respectfully submitted,

/s/

John D. Hemenway D.C. Bar #379663
4816 Rodman Street, NW
Washington DC 20016
(202) 628-4819

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused the foregoing Motion to be served electronically upon counsel of record registered with the court's electronic filing system, and by first class United States Mail, postage prepaid, this 23rd day of September 2009 upon:

Robert Bauer, Esq.
Kate Ellen Andrias, Esq.
Perkins Coie LLP
607 14th Street, NW
Suite 800
Washington, DC 20005-2003

and

R. Craig Lawrence, Assistant U.S. Attorney
U.S. Attorney's Office
(USA) Appellate Division, Civil Unit
555 4th Street, NW
Washington, DC 20530

/s/

John D. Hemenway

ATTACHMENT 1

THE HAWAII STATUTE ALLOWING FOR REGISTERING CHILDREN BORN OUTSIDE HAWAII FOR AN HAWAII BIRTH DOCUMENT AS IT WAS FROM THE TIME OF THE PURPORTED BIRTH OF SOETORO/OBAMA UP THROUGH THE LAWS OF 1982

[§338-17.8] Certificates for children born out of State. (a) Upon application of an adult or the legal parents of a minor child, the director of health shall issue a birth certificate for such adult or minor, provided that proof has been submitted to the director of health that the legal parents of such individual while living without the Territory or State of Hawaii had declared the Territory or State of Hawaii as their legal residence for at least one year immediately preceding the birth or adoption of such child.

(b) Proof of legal residency shall be submitted to the director of health in any manner that the director shall deem appropriate. The director of health may also adopt any rules pursuant to chapter 91 that he or she may deem necessary or proper to prevent fraudulent applications for birth certificates and to require any further information or proof of events necessary for completion of a birth certificate.

(c) The fee for each application for registration shall be established by rule adopted pursuant to chapter 91. [L 1982, c 182, §1]

ATTACHMENT 2, HAWAII FREEDOM OF INFORMATION CASE NOW
BEING BEGUN TO DETERMINE BASIS OF DR. FUKINO STATEMENT
WITH LAWS AND STATEMENT CONCERNING REFUSAL OF HAWAII
OFFICIALS TO COMPLY WITH THEIR OWN LAWS

I will ask readers to study the [UIPA manual](#) and the [UIPA statute](#).

Hawaii has been caught blatantly circumventing their own laws; laws specifically created to foster open government practices.

STANDING

TerriK has standing to pursue this action under the statute. The UIPA manual states:

“Any person” may make a request for government records under part II, the Freedom of Information section of the UIPA. “Person” is defined broadly to include an individual, government agencies, partnerships and any other legal entities.

Under part II, a government agency generally may not limit access to public records based on who the requester is or the proposed use of the record.

ISSUES

[Section 92F-12\(15\)](#) states that the following must be released to the public:

(15) Information collected and maintained for the purpose of making information available to the general public;

On July 27, 2009 Hawaii Department of Health Director Fukino issued a press release which stated:

“I, Dr. Chiyome Fukino, Director of the Hawai‘i State Department of Health, have seen the original vital records maintained on file by the Hawai‘i State Department of Health verifying Barack Hussein Obama was born in Hawai‘i and is a natural-born American citizen. I have nothing further to add to this statement or my original statement issued in October 2008 over eight months ago.”

TerriK requested all information “collected and maintained” for the purposes

of preparing the public statement made by Director Fukino as such information *must* be released according to the statute.

TerriK was interested in knowing how Director Fukino came to the conclusion that the President was a natural born citizen. She was familiar with Section 92F-12(15) which demands that all information collected and maintained for the purposes of making such a public statement be made public. She was denied that information despite the clear wording in the statute. Furthermore, the case law from Hawaii clearly demands production of the records TerriK requested.

I will provide legal research and relevant examples of official correspondence in my follow up report and press release at this blog. TerriK has previously provided details of her investigation and correspondence with the state of Hawaii in comments to this and other blogs. She has also authorized me to speak publicly about her case and to provide the public with all relevant correspondence.

Furthermore, Hawaii officials - upon denying TerriK access to information requested – were *required* by statute to inform her of a right to appeal by trial de novo in Hawaii circuit court. They failed to provide such guidance to her. [Section 92F-15.5\(b\)](#) states:

(b)... If the denial of access is upheld, in whole or in part, the office of information practices shall, in writing, notify the person of the decision, the reasons for the decision, and the right to bring a judicial action under section 92F-15(a). [L 1989, c 192, §1]

The OIP failed to notify TerriK of her right to a judicial appeal. Instead, the OIP simply told her that the decision to deny access was correct and that they could not help her any further.

We will bring this litigation according to the following statute provision:

§92F-15 Judicial enforcement.

(a) A person aggrieved by a denial of access to a government record may bring an action against the agency at any time within two years after the agency denial to compel disclosure.

(b) In an action to compel disclosure the circuit court shall hear the matter de novo. Opinions and rulings of the office of information practices shall be admissible. The circuit court may examine the government record at issue, in camera, to assist in determining whether it, or any part of it, may be withheld.

(c) The agency has the burden of proof to establish justification for

nondisclosure.

Please take note of subsection (c) above. The burden of proof is on the agency to establish justification for nondisclosure.

With respect to information collected by Director Fukino for purposes of making her July 27, 2009 press release (and other public statements), the burden cannot be overcome since the statute *demand*s that such information be made public.

**ATTACHMENT 3 AFFIDAVIT OF FILING OF
KENYAN BIRTH CERTIFICATE AND BIRTH
CERTIFICATE AS FILED IN BARNETT v. OBAMA,
UNITED STATES DISTRICT COURT, MIDDLE
DISTRICT OF CALIFORNIA**

SACV09-00082-DOC (Aux) Judge Carter

**Lucas Smith Affidavit now filed with the US District
Court - Obama Kenyan BC**

September 4th, 2009

As of today, September 4, 2009, this Affidavit has been filed with the United States District Court in Southern California ~ represented by Orly Taitz.

This is a legal affidavit that declares Lucas Smith to be of sound mind and judgment. Lucas can go to jail if he lied on this affidavit.

The document (Certified COPY of Obama Kenyan Birth Certificate) you see here, once it is validated by the court, is pretty much the proverbial "smoking gun."

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7 UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
8 SANTA ANA (SOUTHERN) DIVISION

9 Captain Pamela Barnett, et al.,
Plaintiffs,

10 v.

Civil Action:

SACV09-00082-DOC (Anx)

11 Barack Hussein Obama,
12 Michelle L.R. Obama,
Hillary Rodham Clinton, Secretary of State,
13 Robert M. Gates, Secretary of Defense,
Joseph R. Biden, Vice-President and
14 President of the Senate,
15 Defendants.

16 **28 U.S.C. §1746 Declaration of Lucas Daniel Smith**

17 1. My name is Lucas Daniel Smith. I am over 18 years old, am of sound
18 mind and free of any mental disease or psychological impairment of any
19 kind or condition.

20 2. I am a citizen of the United States of America, I am 29 years old and
21 I was born in the state of Iowa.

22 3. I have personal knowledge of all the facts and circumstances
23 described herein below in this declaration and will testify in open court to
24 all of the same.

25 4. On February 19, 2009 I visited the Coast General hospital in
26 Mombasa, Kenya.

27 5. I visited the hospital accompanied by one more person, a natural
28 born citizen of the Democratic Republic of Congo (formerly known as

28 U.S.C. §1746 Declaration of Lucas Smith, September 3, 2009 - 1 -

DR. ORLY TAITZ
FOR THE PLAINTIFFS
26302 LA PAZ SUITE 211
MISSION VIEJO, CALIFORNIA 92691
949.683.5411

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3 "Zaire" and before independence as the "Belgian Congo").

4 6. I traveled to Kenya and Mombasa in particular with the intent to
5 obtain the original birth certificate of Barack Hussein Obama, as I was
6 told previously that it was on file in the hospital and under seal, due to the
7 fact that the prime minister of Kenya Raela Odinga is Barack Hussein
8 Obama's cousin.

9 7. I had to pay a cash "consideration" to a Kenyan military officer on
10 duty to look the other way, while I obtained the copy of the birth
11 certificate of Barack Hussein Obama.

12 8. The copy was signed by the hospital administrator.

13 9. The copy contain the embossed seal.

14 10. The true and correct photocopy of the Birth certificate obtained, is
15 attached to this affidavit as Exhibit A.

16 11. I declare, certify, verify, state, and affirm under penalty of perjury
17 under the laws of the United States of America that the foregoing
18 statements of fact and descriptions of circumstances and events are true
19 and correct.

20 12. I have not received any compensation for making this affidavit.

21 Further, Declarant saith naught.

22 Signed and executed in on this 3rd day of September, 2009.

23
24
25 By: 
26 Lucas Daniel Smith
27
28

COAST PROVINCE GENERAL HOSPITAL
Mombasa, British Protectorate of Kenya

CERTIFICATE OF BIRTH

Certificate No. 32018

Child bearing the name BARACK HUSSEIN OBAMA II / Sex M

was born to

STANLEY ANN OBAMA DUNHAM 11/29/1942
Full Name of Mother Maiden Surname Date of Birth

BARACK HUSSEIN OBAMA 1936
Full Name of Father Date of Birth

on this 4th day of AUGUST, 1961 at 7:24 PM

7 pounds 1 ounce 18 inches 6 inches
Weight of Child at Birth Length Width Between Shoulders

HONOLULU, HAWAII, WICHITA, KANSAS,
UNITED STATES UNITED STATES
Residence of Mother Birth Place of Mother

KANYADHIANG VILLAGE, NYANZA STUDENT STUDENT
Birth Place of Father Occupation of Father Occupation of Mother

JAMES O. W. ANG'AWA John Kwame Odongo 8/8/1961
Name of Attending Doctor Signature of Attending Doctor Date

JOHN KWAME ODONGO
Superior of Obstetrics

John Kwame Odongo 8-7-1961
Signature Date

V452
M37

1
2
3 **Dr. Orly Taitz, Attorney-at-Law**
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10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 SANTA ANA (SOUTHERN) DIVISION

13 Captain Pamela Barnett, et al.,
14 Plaintiffs,

15 v.

16 Barack Hussein Obama,
17 Michelle L.R. Obama, Hilary Rodham
18 Clinton, Secretary of State, Robert M.
19 Gates, Secretary of Defense,
20 Joseph R. Biden, Vice-President and
21 President of the Senate,
22 Defendants.

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Civil Action:

SACV09-00082-DOC

PLAINTIFFS' PRELIMINARY
RESPONSE TO DOC. #56
DEFENDANTS' MOTION TO
DISMISS (with reservation of
right to Amend Complaint)

23 **PRELIMINARY RESPONSE TO DEFENDANTS' 9-4-09**
24 **MOTION TO DISMISS**
25 **(with reservation of rights to Respond further by filing Plaintiffs'**
26 **Second Amended Complaint on or before Friday October 2, 2009)**

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' PRELIMINARY RESPONSE TO DEFENDANTS' MOTION TO
DISMISS, to be supplemented by filing Plaintiffs' Second Amended
Complaint on or before October 2, 2009**

Come now the Plaintiffs with this their Preliminary Response to Defendants' September 4, 2009, Document 56 Motion to Dismiss (with reservation of rights to Respond further by filing Plaintiffs' Second Amended Complaint on or before Friday, October 2, 2009).

**POLITICAL RELATIVITY vs. CONSTITUTIONAL ABSOLUTES:
IS THE POLITICAL QUESTION DOCTRINE VIABLE AS A MEANS TO EVADE
COMPLIANCE WITH UNVARIABLE STANDARDS?**

Fundamentally, this case comes down to a single bifurcated question question: (1A) does the constitution mean what it says when it lays down absolute parameters, such as the age and citizenship qualifications to be President, and (1B) to whom does the investigation and enforcement of this constitutional provision: to the Congress, the People, or can the President get by merely asserting his qualifications without presenting evidence which would be competent as Summary Judgment (admissible) evidence under Rule 56 of the Federal Rules of Civil Procedure?

The Plaintiffs have brought their complaint as a matter of first impression to ask this Court to determine, find, hold, and rule that the investigation and enforcement of this right belongs to ***the people***, even members of a discrete and insular minority of the people, even if this group lacks majoritarian political power. Plaintiffs respond to the Defendants' Motion to Dismiss and ask this Court to rule, pursuant to the First and Ninth Amendments that they may sue to enforce constitutional absolutes, such as the constitutional requirements for President of the United States. Plaintiffs assert an inalienable, reserved right to sue for Constitutional conformity in this case even though they concede that the

Defendants have shown that primary, first line actions ***could*** and ***should*** have been taken by members of Congress or the Electoral College, pursuant to the Twelfth and Twentieth Amendments for instance. **Case 8:09-cv-00082-DOC-AN, Document 56, Filed 09/04/2009, Page 20 of 32: Defendant's Motion to Dismiss at 13, ll. 1-14.**

Of course, what Congress must do in the case of obvious electoral deadlocks or recognized and admitted problems with qualification for office is not at all the point raised by Plaintiffs' complaint and evidence. Plaintiffs' complaint and evidence allege and confirm that the Presidency in 2008 was taken by fraud, and not even by fraud in the counting of votes, but by fraud in the traditional common law sense of a material misrepresentation of an important fact upon which Plaintiffs could be reasonably expected to rely to their detriment, and to the detriment of constitutional government.

The Constitution's textual commitment of this responsibility is a responsibility that Congress has embraced. Both the House and the Senate have standing committees with jurisdiction to decide questions relating to Presidential elections.

***Idem*: Defendant's Motion to Dismiss at 13, ll 15-17.**

Where Congress has done absolutely nothing to investigate or prosecute a question, Defendants' position appears to be that this very inaction or acquiescence by Congress creates a presumption of legitimacy. Apparently, Defendants would have this Court believe, hold, rule, and accept that utter and complete inaction, stony silence even by the Vice-President of an opposing party sitting as President of the Senate during the certification of the electoral vote to Congress pursuant to 3 U.S.C. §15, is and must be sufficient to satisfy the people that the President has met the Constitutional qualifications for office. ***Idem*: Motion to Dismiss at 13-14.** The Defendants' position in this regard is simply

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3 a preposterous “cop out”. Defendants in effect ask this Court to conclude, find,
4 hold, and rule that “willful disregard of the letter of the law is proof of
5 compliance with that law.” Plaintiffs submit and contend, by contrast, that
6 Congress’ neglect and derogation of its duty to take investigative or
7 prosecutorial action does not render any unchallenged action legitimate. Surely
8 in a free society, the **sovereign people** have more and better rights.

9 Nor is Congressional inaction sufficient to nullify and obliterate the rights
10 of **the people** to Petition the Federal Courts for Redress of one or more very
11 specific constitutional violations, or for that matter to petition a court to declare
12 and adjudge that the electoral process has been perverted by fraud. The rule in
13 a free society must be the contrary: whenever authority or eligibility are
14 questioned, Congress, and in default of Congressional action, **the people**, may
15 and should presume the absence of authority and eligibility. The Federal
16 Judicial Courts are the final recourse of the people, and the access of **the people**
17 to the Courts to challenge the unconstitutional exercise of authority is
18 guaranteed by the First and Ninth Amendments.

19 **QUO WARRANTO**

20 Or at least, this is the theory behind the law of **quo warranto**, which is
21 and was (as a practical matter) the point at which the undersigned counsel, on
22 behalf of her clients, the Plaintiffs, began her quest for the preservation of truth,
23 justice, and the American Way: by what credentials, qualifications, right or title
24 does any person who holds office claim his right to that office. The common law
25 writ of **quo warranto** has been all but completely suppressed at the federal
26 level in the United States (in that it is limited in exercise to the Attorney
27 General), and deprecated at the state level.
28

Plaintiffs contend that *quo warranto* remains a right under the Ninth Amendment as this clause of the Bill of Rights was understood and presumed by the Founders. It is the promise of the reservation of the right to bring the sovereign prerogative writ of *quo warranto*, which affords the only judicial (and indeed, only politically realistic) remedy for violations of the Constitution by public officials and agents. It was to give the Courts the independence to judge and punish constitutional violations and derogations without fear of political reprisal that the Founders gave life tenure to Article III judges.

Plaintiffs accordingly demand that this Court breathe life into *quo warranto* and all the other royal prerogative writs preserved in the Ninth Amendment which must be combined with a general reinvigorating standing for private prosecution of public rights, subverted by the decision in *Frothingham v. Mellon*, 262 U.S. 447 (1923), as is discussed in S. Winter's, *The Metaphor of Standing and the Problem of Self-Governance*, Stanford Law Review July, 1988, 40 Stan. L. Rev. 1371 (see further discussion below):

It is almost de rigueur for articles on standing to quote Professor Freund's testimony to Congress that the concept of standing is "among the most amorphous in the entire domain of public law." One of the traditional criticisms of standing law is that it is confusing and seemingly incoherent. Even the staunchest judicial advocates of the doctrine readily admit as much: "We need not mince words when we say that the concept of 'Art. III standing' has not been defined with complete consistency...."

The history of Plaintiffs' struggles to raise an effective challenge to the Defendants' failure to prove the President's constitutional qualifications for office merit some brief attention here.

PLAINTIFFS' PRELITIGATION INQUIRIES: quo warranto & FOIA

Quo Warranto

On March 3rd undersigned attorney has submitted a *quo warranto* complaint on behalf of some of the plaintiffs as relators to the Attorney General

of the United States, Mr. Eric Holder (Letter and Application for Writ attached as Exhibit G). Mr. Holder did not respond.

On April 1st the undersigned attorney has submitted **quo warranto** request on behalf of some of the plaintiffs as relators to the U.S. attorney for the District of Columbia Jeffrey A Taylor. Mr. Taylor never responded, but rather quit his job within 60 days. No response was ever received from his successor U.S. Attorney Channing Philips either (Certified Receipts of letter to Mr. Taylor Exhibit H). When the government (attorney general) does not proceed with **quo warranto** action, the plaintiffs can step into the shoes of the government and institute their own action as Relators. That what was done in this action.

Defendants show a certain confusion of mind at several points in their Motion to Dismiss, for example in their discussion of **quo warranto** on pages 16-18 of their September 4, 2009, Motion to Dismiss when they write that Plaintiffs express “apparent dissatisfaction with the precedents in the District of Columbia” (Motion to Dismiss at 18, ll 1-3).

What Plaintiffs actually reported on pages 14-16, ¶¶32-38 of their First Amended Complaint, was the story of **Hollister v. Soetero** and how this case shows the futility of making demands on the Attorney Genral in the District of Columbia not as shown by precedent but by treatment involved in silencing a fellow attorney (Hemenway) who earlier this year dared to TRY to raise questions concerning Obama’s eligibility in the D.C. circuit, he was sanctioned merely for trying. The mere fact that several courts have unjustly closed the door on this inquiry is not evidence that the inquiry itself is frivolous or unwarranted. It is more likely evidence of the political nature of some of the courts, and of a concerted effort to “chill” professional enthusiasm for politically dangerous constitutional challenges (See C.J. Taney in **Luther v. Borden** below).

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3 The question is not one of precedent, the question is whether politics
4 dictate the outcome in many or most Obama-related cases, where avoiding
5 discovery and fact-finding is the primary (and outcome-determinative) goal.
6 Plaintiff submits that if discovery is ever allowed in this case, it will be rapidly
7 settled by the resignation or impeachment of the President. If the stone wall of
8 secrecy and suppression is ever removed, if California sunshine is ever allowed
9 to shine for one day on the real evidence, the Presidency of Barack Hussein
10 Obama will be rapidly brought to a rather embarrassing close, and the
11 Defendants' counsel know it, just as Judges Land and Lazzara know it in Georgia
12 and Florida. Secrecy and refusal to divulge information can have only one
13 possible purpose: to hide an inconvenient truth. Everywhere the Plaintiffs or
14 their counsel have gone, they have been met with resistance, which can only be
15 described as irrational if there were nothing to hide.

16 The purpose of pleading and arguing the elements and history of **quo**
17 **warranto** in this case is to breach the barriers in this case and cut through to
18 the heart of the matter. This Court has the power to do one of two things:
19 under choice of law principles this Court MAY (because of the residence or
20 principle place of residence or offices of most of the Defendants), under choice
21 of law principles, apply the **quo warranto** statute of the District of Columbia,
22 acknowledging on venue principles that Plaintiffs will never have any fair trial
23 or anything close to due process in what is effectively the Defendants' backyard.
24 Alternatively, this Court, pursuant to its powers under the declaratory judgment
25 principles of 28 U.S.C. §2201-2202 or 42 U.S.C. §1988(a), utilize the principles of
26 constitutional and common law to fashion an appropriate modern remedy to
27 take the place of the "ancient writ" of **quo warranto**. Traditional petitions for
28 writ of **quo warranto** or an equivalent remedy SHOULD be available to ensure

the sovereignty of the people over their government, and the democratic ability of the people to engage in self-governance and supervision over their servants:

The notion that standing is a bedrock requirement of constitutional law has a surprisingly short history. ***Frothingham v. Mellon***, which rejected a taxpayer suit to enjoin a federal spending program, is generally thought of as the first modern standing case.

.

One legitimately may wonder how a constitutional doctrine now said to inhere in article III's "case or controversy" language could be so late in making an appearance, do so with so skimpy a pedigree, and take so long to be recognized even by the primary academic expositors of the law of federal courts.

Steven L. Winter, ***supra***, 40 Stan.L.Rev. at 1375-1377

It does indeed seem that the doctrine of standing has served to act as a highly arbitrary and somewhat capricious guard at the Courthouse door, and Plaintiffs demand their sovereign right of entry, even if this requires that the Court reform or restrict the doctrine of standing to reinvigorate the First Amendment in the Federal Courts by reinforcing the right to petition for redress of grievances. As has been shown above, legal criticism of the effect of the standing doctrine on jurisprudence is very intense. The simple truth is that this doctrine is overextended and overreaching and should be reigned in.

Without the sovereign right of to presume lack of authority, and to demand strict proof thereof, via ***quo warranto*** or its declaratory judgment equivalent pursuant to 42 U.S.C. § 1988(a), there may be no residual rights or powers of self-governance left in the United States of America. The majority of ***the people*** by majority vote control all that happens within the framework of constitutional law.

By judicially revisiting its origins in the First Amendment ("right to petition") and Ninth Amendment (intended to reserve royal prerogative writs to

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3 the people) this Court can and should allow and empower the Plaintiffs by
4 resuscitation and renewal of **quo warranto** under its civil rights declaratory
5 judgment power or borrowing the use of this writ (by choice of law from the
6 District of Columbia).

7 To the extent that it allows Plaintiffs' Complaint and thereby does so
8 (resuscitates or renews the vitality of **quo warranto**), this Court will give fresh
9 breath to Footnote 4 as it declines to construe the Constitutional provisions and
10 statutes cited by the Defendants in their Motion to Dismiss in a manner which
11 would tend only to disempower or disenfranchise the Plaintiffs as a discrete and
12 insular minority, in particular as members of a conscientiously objecting
13 minority. In short, Plaintiffs ask this Court allow the constitutionally correct but
14 politically powerless minority to restore the majority to the straight and narrow
15 path, not just even, but especially when this majority have lost their path
16 midway along the road of life in a dark wood. (cf. Dante, *Inferno, Canto 1, ll. 1-4*).

17 **FOIA**

18 Lead Plaintiff Captain Pamela Barnett alleges that she has in effect
19 exhausted her FOIA requests to the United States State Department, United
20 States Department of Justice, and other sources prior to the **de facto**
21 inauguration of Barack H. Obama in January 2009 (Captain Pamela Barnett's
22 January 2009 FOIA Request and State Department Response and Related
23 Documents are attached as Exhibit A). In addition, other Plaintiffs have
24 submitted FOIA requests and the structural and functional equivalent thereof
25 since becoming aware of the doubt concerning Barack H. Obama's citizenship,
26 but the details on these other Plaintiffs' requests were not available at the
27 present time. Plaintiffs can and do allege exhaustion of FOIA requirements as a
28 practical and substantive matter. The most valiant efforts on Plaintiffs' behalf,

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3 however, were not made formally under the rubric of FOIA, but directly and
4 informally by their undersigned counsel in the format of her dossiers (Exhibits
5 B-F). Another one of the concerns raised by the defendants, was that of venue
6 based on residence in Orange County, and in fact, several plaintiffs reside in
7 Orange County or elsewhere within the territorial jurisdiction of the United
8 States District Court for the Southern Division of the Central District of
9 California, although this is one of several matters that will best be resolved by
10 the filing of Plaintiffs' Second Amended Complaint.

11 **CLASSES OF PLAINTIFFS: OATH TAKERS and CANDIDATES**

12 In addition to being citizen members of the body politic, American
13 Citizens at least within the meaning of the 14th Amendment, electorate, ***the***
14 ***people***, all the Plaintiffs in the case in any event, are taxpayers, and they possess
15 the reserved rights of the First and Ninth Amendments, as well as certain more
16 specific rights, according to the several classes of the Plaintiffs (civilian,
17 legislative, and military). Four Plaintiffs in this case are also candidates for
18 Article II elective office who ran against the ***de facto*** President and Vice-
19 President in 2008, two of whom (Dr. Alan Keyes and Gail Lightfoot) are
20 represented by the undersigned counsel.

21 First to be noted is that there are currently 46 Plaintiffs represented by
22 the undersigned counsel. The largest group of Plaintiffs is composed of
23 members of the United States Military (all branches), Active, Reserved and
24 Retired subject to lifetime recall. The oath of a military officer is established by
25 5 U.S.C. §3331, which states:

26 An individual, except the President, elected or appointed to an
27 office of honor or profit in the civil service or uniformed services,
28 shall take the following oath: "I, AB, do solemnly swear (or affirm)
that I will support and defend the Constitution of the United States
against all enemies, foreign and domestic; that I will bear true faith

and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.” This section does not affect other oaths required by law.

See also: <http://www.history.army.mil/faq/oaths.htm>

Any officer who has taken this oath faces a personal decision and choice regarding his answer to a question in life, the importance of which is hard to measure or understand: what does it mean to “support and defend the Constitution of the United States against all enemies, foreign, and domestic,” and what general or specific conduct does it require “to bear true faith and allegiance to the same?” The answer is that if the Courts will not decide, “say what the law is,” it is difficult to know or imagine who will. Cf., e.g., **Marbury v. Madison**, 5 U.S. 137 (1803).

But given the doctrines of standing, redressability, and political question, who enforces the Constitution and by what presumptions should an officer¹ answer or even evaluate the critical question:

When the whims of a political majority violate the constitution, how does a soldier reconcile the liquid and transient, almost effervescent, political realities of command with his or her absolute constitutional oath, which brooks no exceptions? The oath of a commissioned military officer is a solemn covenant between that officer and all higher authorities, both of this earth and outside it, that he will do not merely that which is ordered, but that which he believes to be right. During the conduct of this case, the undersigned attorney

¹ Or for that matter an enlisted man, who takes a significantly different oath, which includes, significantly, [inserted after exactly the same language to take this obligation freely, adds the language] “and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the regulations and the Uniform Code of Military Justice”.

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3 has seen at least two fine military officers punished and threatened on account
4 of their exercise of conscience, in accordance with their oath.

5 When the military Plaintiffs became commissioned officers and officers of
6 the United States, they took an oath to support, defend, and bear true faith and
7 allegiance to the Constitution and to “well and faithfully discharge” the duties of
8 their commissions. Plaintiffs herein allege that they are being injured in their
9 employment by being required to serve under, take direction from, and report
10 to a constitutionally ineligible superior, Mr. Barack Obama. Plaintiffs allege that
11 this requirement is in direct and unequivocal conflict with their oath and that
12 they cannot serve under Mr. Obama, without violating their oaths. Plaintiffs
13 also allege that, should they refuse to serve under, take direction from, or report
14 to Mr. Obama, they will be at substantial risk of disciplinary action, including
15 removal, for insubordination or other, related grounds. The recent cases of
16 Major Stefan Frederick Cook and Captain Connie Rhodes lend credence to the
17 fears of swift and brutal D.o.D retaliation for military officer’s exercise of their
18 First Amendment rights (Exhibit I).

19 Plaintiffs further allege that being required to serve under, take
20 direction from, and report to a constitutionally ineligible superior materially
21 and fundamentally (and adversely) changes the terms and conditions of their
22 employment as Military Officer. Both the U.S. Supreme Court and several lower
23 courts have recognized that placing a plaintiff in a position where he either
24 must violate his or her oath of office or risk substantial, adverse consequences
25 constitutes a direct, personal, and concrete injury for purposes of standing. In
26 ***Board of Education v. Allen***, 392 U.S. 236 (1968), a local school board brought
27 an action challenging the constitutionality of a state statute that required local
28 public school authorities to lend textbooks free of charge to private parochial

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3 schools. The Court found there could be “no doubt” that the school board
4 members had a personal stake in the outcome of litigation sufficient to confer
5 standing:

6 Appellants have taken an oath to support the United States
7 Constitution. Believing [the state statute] to be unconstitutional,
8 they are in the position of having to choose between violating their
9 oath and taking a step -- refusal to comply with [the state statute] --
10 that would be likely to bring their expulsion from office
11 *Allen*, 392 U.S. at 241, n.5.

12 The U.S. District Court for the District of Columbia reached a substantially
13 similar conclusion in *Clarke v. United States*, 705 F. Supp. 605 (D.D.C. 1988). In
14 *Clarke*, the members of the City Council of the District of Columbia brought suit
15 to challenge a federal statute that required them to adopt an amendment to the
16 District of Columbia Human Rights Act or face a loss of federal funding. The
17 Court found that the members had “oath” standing, citing the Supreme Court’s
18 ruling in *Allen*:

19 Alternatively, the court finds plaintiffs have oath of office standing,
20 under the principles recognized by the Supreme Court in [*Allen*]. In
21 *Allen*, the Court found that legislators who had taken an oath to
22 uphold the Constitution had standing to challenge the
23 constitutionality of a law when they risked a concrete injury by
24 refusing to enforce the law. In that case, plaintiffs faced a choice of
25 violating their oaths by enforcing a law which they believed to be
26 unconstitutional or risk expulsion from their jobs. Plaintiffs here
27 are similarly placed. Because Congress has conditioned all District
28 funds on the Council’s vote, the Council members must either vote
in a way which they believe violates their oaths, or face almost
certain loss of their salaries and staffs as well as water, police and
fire protection.

Clarke, 705 F. Supp. at 608 (internal citations omitted).

Other courts have reached this conclusion as well. *See Regents of the Univ.*
of Minn. v. NACC, 560 F.2d 352, 363-64 (8th Cir.), *cert. dismissed*, 434 U.S. 978

(1977); *Aguayo v. Richardson*, 473 F.2d 1090, 1100 (2d Cir. 1973), *cert. denied*, 414 U.S. 1146 (1974).

If anything, Plaintiffs' injuries in this case is more concrete and compelling than the circumstances of the board members in *Allen* and the city council members in *Clarke* because Plaintiffs' injuries is far more directly and inextricably inter-twined with his employment. Because Plaintiffs are military officers, they must serve under, take direction from, and report to ***de facto*** President Obama. Requiring Plaintiffs to serve under, take direction from, and report to a constitutionally ineligible superior in violation of their oath is not merely an "emotional response" that Plaintiffs might have to seeing ***de facto*** President Obama's name on official documents, orders, or photographs in a military mess hall. It is a fundamental and material change in the terms and conditions of Plaintiff's employment. ***De facto*** President Obama and the Department of Defense have placed Plaintiffs in the position of either violating their oaths or disregarding their chain of command, either action which would result in almost certain disciplinary action, including removal, being taken against Plaintiffs.

WHAT IF THE POLITICAL MAJORITY CHOSE SLAVERY?

If the State of California were, for example, by its famous system of "Propositions" whereby the people amend the state constitution regularly, to violate the plain letter of the Federal constitution by reinstituting chattel slavery, in violation of the Thirteenth Amendment, there is little doubt that the reaction would be swift: the United States Department of Justice would file suit (with hundreds of ***amici curiae***) to have the newly (but democratically) enacted proposition declared unconstitutional. The reason for this is simple: the constitution places outer boundaries on that which is politically permissible.

The restrictions on the natural born citizenship status of a President of the United States constitute a similarly absolute boundary. This United States District Court can and indeed must decide whether the First and Ninth Amendments reserve to the people their sovereign right to question (by Petition) their grievances concerning electoral (political) violations of or derogations from the absolute constitutional qualifications of the President. As Daniel Webster argued to the Supreme Court in “the mother of all” political question cases, *Luther v. Borden*, 48 U.S. 1, 12 L.Ed. 581, 7 HOW 1, 43-44 (1849):

1st. That the sovereignty of the people is supreme, and may act in forming government without the assent of the existing government.

2d. That the people are the sole judges of the form of government best calculated to promote their safety and happiness.

3d. That, as the sovereign power, they have a right to adopt such form of government.

4th. That the right to adopt necessarily includes the right to abolish, to reform, and to alter any existing form of government, and to substitute in its stead any other that they may judge better adapted to the purposes intended.

5th. That if such right exists at all, it exists in the States under the Union, not as a right of force, but a right of sovereignty; and that those who oppose its peaceful exercise, and not those who support it, are culpable.

6th. That the exercise of this right, which is a right original, sovereign, and supreme, and not derived from any other human authority, may be, and must be, effected in such way and manner as the people may for themselves determine.

In that case, Chief Justice Taney also held that whatever the power granted by Article III, the power of the Federal Judiciary did not extend to judging state constitutional violations of the “Republican form of Government” guarantee of Article IV, Section 4:

Again, the Constitution of the United States enumerates specially

the cases over which its judiciary is to have cognizance, but nowhere includes controversies between the people of a State as to the formation or change of their constitutions. (See Article 3, sec. 2.)

.....
If it be asked what redress have the people, if wronged in these matters, unless by resorting to the judiciary, the answer is, they have the same as in all other political matters. In those, they go to the ballot-boxes, to the legislature or executive, for the redress of such grievances as are within the jurisdiction of each, and, for such as are not, to conventions and amendments of constitutions. And when the former fail, and these last are forbidden by statutes, all that is left in extreme cases, where the suffering is intolerable and the prospect is good of relief by action of the people without the forms of law, is to do as did Hampden and Washington, and venture action without those forms, and abide the consequences. Should strong majorities favor the change, it generally is completed without much violence. In most states, where representation is not unequal, or the right of suffrage is not greatly restricted, the popular will can be felt and triumph through the popular vote and the delegates of the people in the legislature, and will thus lead soon, and peacefully, to legislative measures ending in reform, pursuant to legislative countenance and without the necessity of any stronger collateral course. But when the representation is of a character which defeats this, the action of the people, even then, if by large majorities, will seldom be prosecuted with harsh pains and penalties, or resisted with arms.

Changes, thus demanded and thus supported, will usually be allowed to go into peaceful consummation. But when not so allowed, or when they are attempted by small or doubtful majorities, it must be conceded that it will be at their peril, as they will usually be resisted by those in power by means of prosecutions, and sometimes by violence, and, unless crowned by success, and thus subsequently ratified, they will often be punished as rebellious or treasonable.

48 U.S. at 54-55, 12 L.Ed. at 604-605, 7 HOW at 122-124 (1849).

Whatever the virtues of this bright-line choice (between political action by ballot and revolution, with no possibility of judicial intervention) may have

seemed to Chief Justice Taney's "political question" doctrine plainly was NOT intended to restrict the power of the Article III Federal judiciary to regulate the Federal Government's compliance with the Constitution.

As an alternative to Taney's somewhat brutal implicit formulation "love the status quo, change it by politics, or go foment a violent revolution and deal with the consequences," Plaintiffs herein join with and in the arguments presented by their co-Plaintiffs Robinson and Wiley in their parallel brief in this case. Robinson & Wiley have pointed out that where no Constitutional remedy exists for an outrageous and egregious constitutional violations, the Courts ought to infer one, as they did in the application of the standards of a civil action under 42 U.S.C. §§1983, 1988 to Federal Law Enforcement officers in the case of *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971). See **Case 8:09-cv-00082-DOD-AN, Document 67, Filed 09/18/2009, Page 6 of 18**: Markham Robinson & Wiley Drake's Response to Motion to Dismiss at 2.

Standing-Political Question-Redressability
The *Flast v. Cohen* + First & Ninth Amendment
"Reserved Rights" Solution

As discussed above, the Defendants ask this Court to dismiss the Plaintiff's complaint within a triangular stranglehold and vice of standing-redressability-political question. Parallel to but independent of this three-pronged argument, the Defendants claim that certain statutes, as well as the historical custom, practice, and policy, of the evaluation of elections in the United States has effectively deprived the Article III Courts of any power to adjudicate the constitutional qualifications of the president.

The Defendants also claim that these same statutes, historical customs, practices, and policies, deprive the *people* of any meaningful access to the Courts to determine whether their highest Constitutionally designated officers

are in compliance with the elemental mandates set forth in Article II of the U.S. Constitution. Accordingly, Defendants would now and forever leave **the people** bereft of all power, short of the electoral power achieved by tyrannical majorities (as they were described by Hamilton, Jay, and Madison in the **Federalist Papers**) to demand that constitutionally unqualified leaders be removed from office. As suggested above by the quote from Chief Justice Taney--this only leaves the unattractive option of armed revolution, and one primary social function and practical purpose of the Courts is to uphold respect for law and government and thereby to maintain the peace.

The residual power of discrete and insular minorities to protect not only their own constitutional rights, but to assert the constitutional rights of all **the people**, is one of the great and perennially recurring constitutional conundrums in American legal history (cf. **United States v. Carolene Products Co.**, 304 U.S. 144, Footnote 4---“the most famous footnote in history”). In the field of First Amendment freedom of speech and religious free exercise, the power of discrete and insular minorities such as the Amish to delineate constitutional absolutes is legendary, see e.g. **Wisconsin v. Yoder**, 406 U.S. 205 (1972).

In the present case, Plaintiffs are a discrete and insular minority who demand full enforcement and respect be afforded to that clause of Article II of the Constitution which states: “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.” This clause is not self-enforcing on its face, unfortunately. Who is to judge whether a person has met

these qualifications? Are any rights reserved by the Constitution to ***the people***, except as political majorities?

Plaintiffs contend that the First, Second, Ninth, and Tenth Amendments all reserve rights to ***“the people”*** acting neither as individuals nor as political majorities, but collectively as discrete and insular minorities of conscience, and that Complaint or Petitions filed with the Article III Constitutional Courts are the legitimate paths of access by which ***the people***, so defined, may address the wrongs, and correct the deviations and derogations, which the somnolent if not somnambulating political majority may from time-to-time allow. In short, it is the right, province, and constitutional place and power of discrete and insular minorities of dissenters to utilize their equal access to the courts to preserve the constitution when the political system fails so to do, regardless of long-standing but constitutionally untested customs, practices, and policies. The theory, the hope, the dream is, upon proper petition, the Article III judiciary alone will have the strength and courage to reaffirm the Constitution as the Supreme Law of the Land, and thereby to set aside abuses or individual violations and derogations that long-standing customs, practices, and policies (which is to say political decisions) have allowed to occur.

The boundary between custom, practice, and policy having the appearance or force of law and actual law is often difficult to survey and trace in the landscape of litigation, and it is quite true that as a matter of historical custom, practice, and policy, the Courts of the United States have never been seriously called upon to judge the constitutional qualifications of any person politically elected to the office of President of the United States. But at some stage, the Courts must accept and recognize their judicial responsibility and status as the effective forum of last peaceful resort in hours of national crisis.

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3 The Court's duty in this case is to address first whether the Article II, U.S.
4 Constitutional legal requirements have been followed by the body politic, and
5 then to investigate whether any derogations resulted from fraud, which was, if it
6 occurred, massive, systematic, and quite unprecedented.

7 That is the sum and substance of Plaintiffs' complaint, and by its very
8 nature these questions, which attack the heart and function of the political
9 system as having been constitutionally corrupted, are not susceptible to a
10 merely political resolution.

11 The Plaintiffs in this case demand that the Court delineate the boundaries
12 of the political and the constitutional, and declare and adjudge that the *people*
13 of the United States have the right to delineate that which is the constitutional
14 right of a politically powerless minority of the people to secure for themselves,
15 and to protect the majority, even, from the follies of their own majoritarian
16 blindness.

17 All the cases concerning the establishment clause, and the excessive
18 entanglement of Church and State in this country, have been raised on behalf of
19 minorities such a Catholics, Jehovah's Witnesses, Seventh Day Adventists,
20 Quakers, and similar groups whose specific beliefs were offended by
21 majoritarian laws enacted by political majorities.

22 Plaintiffs propose quite simply that the rule of taxpayer standing
23 applicable to public support of religion, e.g. *Flast v. Cohen*, 392 U.S. 83, 88 S. Ct.
24 1942, 20 L. Ed. 2d 947 (1968), be applied to the constitutional qualifications of
25 the President. The general rule is that both federal and state taxpayers do not
26 have Article III "case and controversy" standing to challenge a particular
27 expenditure of funds simply because they are taxpayers. Plaintiffs submit that
28 the *Flast v. Cohen* exception is applicable in this case, essentially for all the

same reasons (including a focus on the fundamental rights secured by the First Amendment) that it was applied in that other case to which no other ready means of allowing entry to the Courthouse was possible. By application of Ockham's razor, ***Flast v. Cohen*** offers the simplest, and for that reason the best, possible solution to the question of standing. It is appropriate because the First Amendment's Establishment clause is analogous to the Article II "natural born citizen" clause as an absolute limitation on the unconstitutional exercise of power by government whose effect (i.e. injury) will always be by definition diffuse rather than particularized to any individual or group of individuals.

**THE CONSTITUTION IS AN IMMUTABLE FRAME:
POLITICS ARE A MOVING PICTURE WHICH CANNOT EXTRUDE**

Another way of putting this is that the "political question doctrine," properly applied, should exclude court challenges to anything, which may be constitutionally done within the framework of the Constitution. It is well known, however, that different levels of scrutiny apply even to that which may (under certain circumstances), permissibly be done within the constitution². But in no case should the ability of ***people*** to assert constitutional absolutes be limited or constrained, because of Congress and the President fail to abide by the Constitution, what recourse is there other than to the Court? Titles of nobility, bills of attainder, ex-post facto laws, and intergenerational "corruption of blood" are all absolutely forbidden, just like slavery. But so is the accession

² For example, content-based restrictions on Freedom of Speech should only be allowed on the most extreme of circumstances, whereas "time-place-and-manner" (e.g. "media or location specific") limitations on Freedom of Speech are subject to only intermediate scrutiny, and restrictions on the content of purely commercial speech (e.g. commercial advertising) is often subjected only to the lowest "rational basis"- test of constitutional scrutiny.

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3 to the presidency of any person who is not a natural born citizen of the United
4 States.

5 This case, the Plaintiffs' status as a discrete and insular minority (which
6 includes an exceptionally large number of members of the U.S. Military) has
7 made them members of new class, scorned in the establishment press as
8 "birthers". Plaintiffs' status as an ideological, politically powerless, minority
9 arises from their constitutional devotion to the enforcement of a constitutional
10 clause which, probably because of its simple and self-explanatory nature, has
11 never before been judicially recognized as an enforceable right of the people to
12 be pronounced and enforced in a constitutional court. Defendants' attempt to
13 trivialize the importance of the constitution and its mandates by arguing that
14 any supposed violation of Plaintiffs' individual rights is too slight to support
15 standing.

16 Earlier in this Memorandum of Points and Authorities, an implausible
17 hypothetical reintroduction of Slavery by popular plebescite in California was
18 proposed as an example of a popular electoral act that would not receive even
19 the slightest "political question" abstention nor demand that anyone be
20 "enslaved" before a Court would declare this proposition to be unconstitutional.
21 The redress would come in the declaration of unconstitutionality. Even if the
22 proposed new slavery had no proposed "target class" of persons to be enslaved,
23 it would doubtless be enough to say that "all Americans are offended if there is
24 the chance that even one would ever be sold and reduced into slavery." The
25 offense to all Americans is likewise complete if a President was inaugurated on
26 January 20, 2009, despite having concealed, disguised, and obfuscated his true
27 natural born citizenship as that of another country.
28

So, the fact that this is a case of first impression does not render it frivolous. In fact, in this case, it is the Plaintiffs who rest their case on an express, simple, but sound constitutional mandate, and the Defendants who can find no constitutional text whatsoever to support their own position.

The Defendants' open, and make a cornerstone, of their September 4, 2009, Motion to Dismiss with a rather curious confusion arising from their own difficulty in line-drawing between the roles of Congress and the Courts when they write:

Plaintiffs cannot use this Court to investigate and decide the President's fitness for office or their related claims, however, without contravening the very Constitution that they purport to uphold, which provides that the Electoral College and the Congress have exclusive jurisdiction of such political disputes.
 . . Plaintiffs have failed to meet the jurisdictional and statutory prerequisites or again seek to have this Court adjudicate issues that are textually committed to other branches.

Case 8:09-cv-00082-DOD-AN Document 56 at Page 8 of 32; Obama et al. Defendants Motion to Dismiss at 1, ll. 8-12.

The issues sought to be raised by Plaintiffs in this case regarding both whether President Obama is a "natural born citizen of the United States," and therefore qualified to be President, as well as any purported claims raised by any criminal statutes cited in the First Amended Complaint are to be judged, according to the text of the Constitution, by the legislative branch of the government, and not the judicial.

Idem at 11, ll. 23-29,-12, l. 1

Plaintiffs and their undersigned counsel are astonished at this bold assertion by the Defendants of a precept of constitutional law, without any textual citation. The Defendants' failure to cite or quote any language from the Constitution is understandable because the precept articulated above simply does not exist. Nowhere does the constitution or any statute or other law limit

the direct power and right of the **people** to demand an accounting of the constitutional qualifications of their (even if duly) elected leaders, including a judicial interpretation of the “natural born citizen” clause of Article II, and a resulting judicial application of that interpretation to the President, even if that application includes a recommendation of removal:

In interpreting this text, we are guided by the principle that “[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” **United States v. Sprague**, 282 U.S. 716, 731, 51 S.Ct. 220, 75 L.Ed. 640 (1931); see also **Gibbons v. Ogden**, 22 U.S. 1, 9 Wheat. 1, 188, 6 L.Ed. 23 (1824). Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.

D.C. v. Heller, 128 S.Ct. 2783, 2788; 171 L.Ed.2d 637, 648 (2008)

A further source of the Defendants’ confusion and inability to draw proper lines and boundaries between historical custom and practice, on the one hand, and the right and power of the **people** to demand punctilious compliance with the plain letter of the constitution on the other, arises from their profound mischaracterization of this case as one exclusively concerning elections and electoral procedure and related law. Electoral law concerns the procedures for voting and allocation of representation among the population and geographic territory of the United States.

The Plaintiffs’ complaint in this case concerns the reserved rights of the **people**, specifically the fundamental First and Ninth Amendment rights of the **people**. The First and Ninth Amendments to the Constitution give power to the people individually and collectively, by and through all lawful means and not merely through the electoral process, to demand strict conformity and compliance with the elementary precepts of constitutional integrity. Defendants

show their confusion of questions of electoral procedure with the constitutionally absolute rights of the **people** in writing:

Plaintiffs ask this Court to entertain a challenge to the 2008 election of President Barack Obama by requiring the President to disprove, in this Court, their innuendo alleging that he is not a "natural born citizen" within the meaning of the United States Constitution.

Case 8:09-cv-00082-DOD-AN Document 56 at Page 8 of 32; Barack Obama et al. Defendants' Motion to Dismiss at 1, ll. 4-8.

And then further:

This Court, therefore, is without jurisdiction to determine any issues related to the President's fitness to hold office, and this case should be dismissed with prejudice and judgment entered accordingly.

Idem at 1, ll. 21-24

The word "**people**" is highlighted above because the Supreme Court has recently and importantly construed the rights of the "**people**" as having certain rights secured to them as a group. Indeed, Plaintiffs dare to approach this Court to assert that the enforcement of the letter of the Constitution is in fact a "**Right of the People**":

The first salient feature of the operative clause [of the Second Amendment] is that it codifies a "**right of the people**." The unamended Constitution and the Bill of Rights use the phrase "right of the people" two other times, in the First Amendment's Assembly-and-Petition Clause and in the Fourth Amendment's Search-and-Seizure Clause. The Ninth Amendment uses very similar terminology ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"). All three of these instances unambiguously refer to individual rights, not "collective" rights, or rights that may be exercised only through participation in some corporate body.

Three provisions of the Constitution refer to "the people" in a context other than "rights"--the famous preamble ("We the people"), § 2 of Article I (providing that "the people" will choose

members of the House), and the Tenth Amendment (providing that those powers not given the Federal Government remain with "the States" or "the people"). Those provisions arguably refer to "the people" acting collectively—but they deal with the exercise or reservation of powers, not rights. Nowhere else in the Constitution does a "right" attributed to "the people" refer to anything other than an individual right.

"[T]he people' seems to have been a term of art employed in select parts of the Constitution. . . . [Its uses] sugges[t] that 'the people' protected by the Fourth Amendment, and by the First and Second Amendments, and to whom rights and powers are reserved in the Ninth and Tenth Amendments, refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

D.C. v. Heller, supra, 128 S.Ct. at 2790-1; 171 L.Ed.2d at 650 (2008)(citing *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265, 110 S.Ct. 1056, 108 L.Ed.2d 222 [1990])(bold emphasis added).

CONCLUSIONS

This response is timely filed on the Equinox, Monday, September 21, pursuant to Rule 6(a)(2) because of the intervening Federal Holiday on Labor Day. Plaintiffs pray that the Court deny Defendants' Document #56 Motion to Dismiss in all respects, grant Plaintiffs' taxpayer standing on analogy to the Establishment Clause standing authorized by the United States Supreme Court in *Flast v. Cohen* and/or, either in addition or in the alternative, find and hold that the First and Ninth Amendments expressly reserve to **the people** a generalized right to petition for redress of grievances caused by constitutional violations such as the establishment of religion or the violation of the "natural born citizenship" requirement of Article II.

Respectfully submitted,

Monday, September 21, 2009
The Equinox

By: _____
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PROOF OF SERVICE

I the undersigned Charles Edward Lincoln, being over the age of 18 and not a party to this case, so hereby declare under penalty of perjury that on this, Monday, September 21, 2009, I provided facsimile or electronic copies of the Plaintiffs' above-and-foregoing Plaintiffs' Preliminary Response to Defendants' 9-4-09 (Document #56) to the following attorneys attorneys whose names were affixed to the "STATEMENT OF INTEREST" who have appeared in this case in accordance with the local rules of the Central District of California, to wit:

THOMAS P. O'BRIEN

LEON W. WEIDMAN

ROGER E. WEST roger.west4@usdoj.gov (designated as lead counsel for President Barack Hussein Obama on August 7, 2009)

DAVID A. DeJUTE David.Dejute@usdoj.gov

GARY KREEP usjf@usjf.net

FACSIMILE (213) 894-7819

DONE AND EXECUTED ON THIS Monday the 21st day of September, 2009.

Charles Edward Lincoln, III
Tierra Limpia/Deo Vindice
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EXHIBIT A:
***“Capt. Barnett’s January 2009 FOIA Request
& State Dept. Response”***

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EXHIBITS B-F:
“Dossiers # 1,3,4,5,6”

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EXHIBIT G:
“Letter & Application for Writ”

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Exhibit H
“Certified Receipts of letter to Mr. Taylor”

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Exhibit I:

**“Capt. Roads letter reporting pressure against
testifying”**

**ATTACHMENT 5: FROM THE OFFICIAL CERTIFICATION
PROCEEDINGS OF THE DEMOCRATIC NATIONAL COMMITTEE,
HOUSE SPEAKER THE HONORABLE NANCY PELOSE PRESIDING
AS PARTY OFFICIAL WHILE IN OFFICE: SHE OMITTS
CERTIFICATION OF CONSTITUTIONAL ELIGIBILITY AS IT IS
REQUIRED BEFORE TRANSMITTING TO STATE ELECTORAL
COLLEGE OFFICIALS IN AN APPARENT ACT OF DECEPTION

WITH ELUCIDATING COMMENTARY FROM ATTORNEY LEO
D'ONOFRIO**

The Evidence

In this case, the Democrat Party was responsible for vetting and certifying Barack Hussein Obama as legally eligible to seek the Oval Office. The U.S. Constitution has only three very specific requirements for the job. The proper legal text used on the DNC Party "Official Certification of Nomination" document reads as follows, and I quote;

"THIS IS TO CERTIFY that at the National Convention of the Democrat Party of the [United States of America](#), held in Denver, Colorado on August 25 though 28, 2008, the following were duly nominated as candidates of said Party [for President](#) and Vice President of the United States respectively and that the following candidates for President and Vice President of the United States are legally qualified to serve under the provisions of the [United States Constitution](#)."

ATTACHMENT 6: OFFICIAL RECORDS OF ELECTORAL PROCEDURES IN
SENATE SHOW THAT THEN VICE PRESIDENT CHENEY, PRESIDING AS
PRESIDENT, DID NOT CALL FOR OBJECTIONS AS PRESCRIBED BY
STATUTE: COMMENT ON LANGUAGE IN ATTACHMENT 5 RE: RULE 56
DISCOVERY TO BE SOUGHT

While reading Judge Carter's limited discovery order, the following passage caught my eye:

In this case, Defendants have alleged that the Court lacks subject matter jurisdiction for various reasons, including that the case presents a non-justiciable political question that is properly addressed by the legislative branch of government, not the judicial branch. Defendants' Motion to Dismiss at 11.

As you know, Judge Carter agreed to stay discovery until the motion to dismiss was resolved regarding whether the district court has subject matter jurisdiction.

With Judge Carter's reasoning guiding my analysis, I carefully examined the [DOJ motion to dismiss](#) paying special attention to the arguments made starting on page 11. When I got to page 13, I found something interesting:

Under [3 U.S.C. § 15](#), Congress is directed to be in session on the appropriate date to count the electoral votes for President, with the President of the Senate presiding. The statute further directs that the electoral votes be counted, and then the results be presented to the President of the Senate, who shall then "announce the state of the vote." The statute then provides a mechanism for objections to be registered and resolved in the following language:

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

That's an interesting quote... interesting for what the DOJ *left out*.

They conveniently cut the statute off when they bring it into the brief. The uncensored passage from [3 U.S.C. § 15](#) states:

Upon such reading of any such certificate or paper, the President of the Senate shall call for objections, if any. Every objection shall be made in writing, and shall state clearly and concisely, and without argument, the ground thereof...

The DOJ clipped the statute so as to leave out the part which places a burden on the Vice President, acting in his role as President of the Senate, to call for objections after the count of votes.

Vice President Cheney failed to call for objections as the statute requires.

(See the You Tube video of the [2009 electoral vote count](#) at about the 27:00 minute mark.)

The DOJ motion to dismiss relies upon separation of powers and the political question doctrine alleging the district court has no authority to entertain the case. In doing so, the DOJ cites specifically 3 U.S.C. § 15 as proof that challenges to the President's eligibility are provided for by Congress.

This is true, but those provisions were not properly followed on January 8, 2009 when the votes for Obama were counted. And the district court therefore *does have jurisdiction* to review a failure of the Government to follow the laws enacted to protect the integrity of the electoral process.

There are, as usual, many opinions as to why the specific letter of the law was not carried out and a call for objections made. But I see no *official* explanation available to the public.

Therefore, since the issue was *specifically* raised by the DOJ motion to dismiss in a quotation which fails to provide the court with the full context of the law cited, I see no reason why the court should deny the plaintiffs discovery on this particular issue.

Since the DOJ raised the statute and relied upon it for the motion to dismiss, and since Judge Carter has allowed immediate discovery necessary for purposes of opposing the motion to dismiss, Orly should demand discovery of the following:

1. Since no call for objections was made, each member of Congress and the Senate should be ~~served with interrogatories requesting~~ deposed as to whether they would object on the basis of Obama's *eligibility*.

NOT ON THE BASIS OF HIS BIRTH CERTIFICATE.

Got that? Make it broad, not specific.

- Some may have objections to his admission of British birth.
- Some may have objections regarding his place of birth.

Don't limit the ~~interrogatories~~ deposition to any specific objection. Just ask each Representative or Senator whether they would object to Obama's eligibility.

The Constitution does *not* require a birth certificate be offered. The Constitution *does* require that the President be a natural born citizen. The interrogatories should be simple. For example:

Dear Congressman Ron Paul – Had Vice President Cheney called for objections after the counting of electoral votes as is required by 3 U.S.C. § 15, would you have objected?

That's sufficient as written. Send that to each Senator and Representative.

Usually depositions are limited to a certain amount, but the court may order depositions as well if the court is convinced they are necessary. In this case, the depositions would be very short, just a few minutes each.

~~2. Interrogatories should be issued which question~~ Cheney should be deposed as to why he didn't call for objections as was required by the statute.

Depending on the answers in those ~~interrogatories~~ depositions, the court might order the Senate and Representatives to meet for the purpose of hearing a call for objections.

After all, if the Government is going to cite 3 U.S.C. § 15 as evidence that the process of approving the President's eligibility belongs to Congress, then the plaintiffs ought to be entitled to the protection of the statute by an enforcement of the duties *specifically* prescribed therein.

District courts do have the power to issue a writ of mandamus to compel a ministerial duty owed. Calling for objections was a ministerial duty owed – that was not performed.

In my opinion, this is the best chance of getting any meaningful discovery approved.



DEMOCRATIC NATIONAL COMMITTEE

OFFICIAL CERTIFICATION OF NOMINATION

THIS IS TO CERTIFY that at the National Convention of the Democratic Party of the United States of America, held in Denver, Colorado on August 25 through 28, 2008, the following were duly nominated as candidates of said Party for President and Vice President of the United States respectively and that the following candidates for President and Vice President of the United States are legally qualified to serve under the provisions of the United States Constitution:

For President of the United States

Barack Obama
5046 South Greenwood Avenue
Chicago, Illinois 60613

For Vice President of the United States

Joe Biden
1209 Berley Mill Road
Wilmington, Delaware 19807

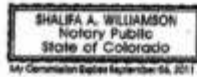
Nancy Pelosi
Nancy Pelosi
Chair, Democratic National
Convention

Alice Travis Germond
Alice Travis Germond
Secretary, Democratic National
Convention

City and County of Denver

State of Colorado

Subscribed and sworn to before me in the City and County of Denver, State of Colorado,
this 28th day of August, 2008.



Shalifa A. Williamson
Notary Public
September 8, 2011
Commission expiration date

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Yes, I know.... there is a typo in there. Not my typo, it belongs to whoever prepared the official document at the DNC. Did you catch it?

The document is signed by Chair of the DNC Convention and [Speaker of the House](#) Nancy Pelosi, DNC Secretary Alice Travis Germond and Colorado Notary of Public Shalifa A. Williamson. It is dated August 28, 2008.

However, this document was never delivered to a single state DNC Office for state certification, and it was therefore, never presented to any state Election Commission as certification of these candidates, although I do have a copy of this notarized document myself.

Instead, a very similar document was delivered to fifty state DNC offices, which those offices certified to each of fifty state Election Commissions, who then date-stamped the document and stuck it in a file cabinet, and proceeded to place these "certified" candidates on the ballot.

The "Official Certification of Nomination" that was presented by the DNC in all fifty states for the [2008 Presidential election](#), in which Barack Hussein Obama became the new President of the United States, was almost identical, and it too was signed by Chair of the DNC Convention and Speaker of the House Nancy Pelosi, DNC Secretary Alice Travis Germond and Notary of Public Shalifa A. Williamson, dated August 28, 2008.

But this version of the document was missing the following text, and I quote;

"- and that the following candidates for President and Vice President of the United States are legally qualified to serve under the provisions of the United States Constitution."

The legal certification text on the DNC certified nomination document used for the DNC ticket was limited to, and I quote;

"THIS IS TO CERTIFY that at the National Convention of the Democrat Party of the United States of America, held in Denver, Colorado on August 25 though 28, 2008, the following were duly nominated as candidates of said Party for President and Vice President of the United States respectively:

RECEIVED
AUG 29 2008
DNC ELECTION COMM.

DEMOCRATIC NATIONAL COMMITTEE

OFFICIAL CERTIFICATION OF NOMINATION

THIS IS TO CERTIFY that at the National Convention of the Democratic Party of the United States of America, held in Denver, Colorado on August 25 though 28, 2008, the following were duly nominated as candidates of said Party for President and Vice President of the United States respectively:

For President of the United States

Barack Obama
5046 South Greenwood Avenue
Chicago, Illinois 60615

For Vice President of the United States

Joe Biden
1209 Barley Mill Road
Wilmington, Delaware 19807

Nancy Pelosi
Nancy Pelosi
Chair, Democratic National Convention

Alice Travis Germond
Alice Travis Germond
Secretary, Democratic National Convention

City and County of Denver)
State of Colorado) ss:

Subscribed and sworn to before me in the City and County of Denver, State of Colorado, this 28 day of August, 2008.

SHALIFA A. WILLIAMSON
Notary Public
State of Colorado
My Commission Expires September 06, 2011

Shalifa A. Williamson
Notary Public
September 6, 2011
Commission expiration date

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Oops, another typo? The reference to Obama's constitutional eligibility was missing... An accidental omission?

The text certifying that Barack Hussein Obama was "*legally qualified to serve under the provisions of the United States Constitution*" had been removed from the document sent to the states. And yes, I have a copy of this version of the DNC Official Certification of Nomination letter too!

In fact, this version is in Election Commission files of all fifty state Election Commission offices, state DNC headquarters, complete with date stamps, matching signatures, even the same Notary of Public authentication, and absent the constitutional text.

Just in case you are wondering, the answer is yes. This version also includes the same typo present in the version not submitted by the DNC, but including the constitutional text, which means both documents have the same place of origin.

The individual at DNC headquarters who prepared this very important document was not only a poor typist... they were sloppy enough to leave both versions of the signed documents lying around.

Now this is the stuff real conspiracies are made of!