UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY,

PLAINTIFF,

VS.

YVETTE ALEXANDER, DON R. DINAN AND WILLIAM LIGHTFOOT,

DEFENDANTS.
_____________________________________/

CASE NO.:12-CV-1984 (JDB)

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS AND REPLY TO DEFENDANTS' OMNIBUS RESPONSE

Plaintiff, Montgomery Blair Sibley ("Sibley"), files this, his Response to Defendants' Motion to Dismiss and Reply to Defendants' Omnibus Response [D.E. #s 9 & 10], and states as follows:

I. SUMMARY OF PLAINTIFF'S ARGUMENT

As Justice Douglas wrote in *Branzburg v. Hayes* 408 U.S. 665, 725 (1972): "As the years pass, the power of government becomes more and more pervasive. It is a power to suffocate both people and causes. Those in power, whatever their politics, want only to perpetuate it." Hence, the genesis of the government's motion to dismiss and block documentary discovery which at their core are attacks upon Sibley's efforts to stop the government suffocating its people and their causes. This Court, if true to its Article III genesis, must not be party to this insidious *coup d'Citoyens*.

II. IF MOOT, PLAINTIFF'S CLAIMS ARE CAPABLE OF REPETITION YET EVADING REVIEW

Defendants first ask this Court to dismiss Sibley's suit claiming: "the defendants cast their Electoral College votes on Monday, December 17, 2012, pursuant to 3 U.S.C. § 7.13 Consequently, plaintiff's claims are moot, as the defendants can no longer be enjoined." (Def. Memo, p. 18).

Sibley's pending suit raises three issues. First, whether Congress can remove the "free will"

of the Electors by action of D.C. Code §1-1001.08(g)(2). Second, whether the Electors can vote for an "ineligible" candidate. Last, whether Mr. Obama is so ineligible as a matter of law in so much as he is not a "natural born Citizen" under Article II, §1 of the Constitution and may in fact not even be a citizen. (Complaint, ¶23).

Hence, though the Defendants have cast their Elector votes, they have not been counted as of yet. Moreover, the issues raised by Sibley fall into the exception to the "mootness" argument raised by Defendants: "capable of repetition, yet evading review". That "doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Weinstein v. Bradford*, 423 U.S. 147 (1975).

In this instance, Sibley meets both conditions as Sibley received no opportunity to "fully litigate" the issues and it is a reasonable expectation that he will be subjected once again in four years to Congressional control of Electors whose vote is pre-ordained and made for ineligible candidates.

III. THE DEFENDANTS' OSTRICH-LIKE RESPONSE TO SIBLEY'S MOTION TO REMAND

Trusting that this Court will do the intellectual heavy-lifting to deny remand in this matter, the Defendants remarkably cite no case law in response to Sibley's first-impression arguments that: (i) 28 U.S.C. §1447 is unconstitutional, (ii) Removal was for the sole purpose of avoiding or delaying contempt proceedings currently pending Barack Hussein Obama, II and (iii) the Ninth and Tenth Amendments reserved the power to pursue claims within constitutional bounds to the people and states, respectively.

As such, and upon those grounds, this matter should be promptly remanded.

IV. "The Truth Shall Make You Free"[1]

The Defendants ask this Court to stay all discovery claiming that: "the discovery sought is irrelevant, and must be quashed" as "none of the discovery sought is remotely relevant to these claims, and is concerned solely with plaintiff's obsession with the President's "eligibility" for office." (Def. Memo, pp. 19-21).

First, Sibley does admit to an "obsession" but not to the "President's eligibility for office". Rather, Sibley's obsession is whether the rule of law as memorialized in the Constitution is to be eroded by the unfettered and unreviewable discretion of the Judicial Branch to deny access to court to challenge government action and using ambiguous legal terms-of-art applied differently to similarly situated litigants on his watch. These judicial actions are designed to acheive a revolutionary transformation of the legal order from that envisioned by the Framers to an alternative order which permits the unregulated exercise of judicial brute power employed to assault the fundamentals of the rule of law to the end of creating a modern federal *Volksgebundenheit* and *Artgleichheit*.

Second, the discovery sought is relevant to the issues at hand: Can the Electors cast their votes for an ineligible candidate and is Mr. Obama so ineligible?

Last, the People did not invest this Court with a lifetime appointment in order for the Court to man the barricades to prevent the truth about Mr. Obama from being revealed. Plainly, this Court can with a stroke of its pen bury Sibley's subpoenas so that the evidence relevant to the birth of Mr. Obama is sealed from public view. Just as plain, with a different stroke of the pen, this Court can

[1] John 8:32: "And ye shall know the truth, and the truth shall make you free."

fulfill its obligations to the People to prevent the working of a massive fraud upon the electorate. Such a claim is not irrational or due to be pejoratively characterized as "birther" claims in order to avoid addressing them.

This Court has been presented with *prima facie* proof contained in the pleadings before it that the so-called Certificates of Live Birth issued by Mr. Obama are forgeries. This Court also now has photographic proof that someone has tampered with National Archive documents relevant to the date and location of Mr. Obama's birth. And most telling, this Court has a desperate Mr. Obama seeking to prevent[2] disclosure of documentary evidence which would dispositively establish whether Mr. Obama meets the requirements of Article II, §1 of the Constitution to be President. Indeed, the attempt by Mr. Obama to quash the subpoenas raises to this Court the adverse inference that he has something to hide. *Accord*: *Baxter v. Palmigiano* , 425 U.S. 308, 318 (1976)("[T]he Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them.")

The documentary evidence sought by Sibley poses no real burden on the entities subpoenaed. Photocopy and mail to Sibley of the documents is all that is required. Notably, Defendants proffer no evidence to the contrary of any burden in the form of affidavits from those subpoenaed.

Last, Mr. Obama's argument has been raised – and rejected – before. In April 1973, James D. St. Clair, Nixon's attorney, argued to Judge John Sirica of this Court seeking to quash a subpoena of Nixon's records: "The President wants me to argue that he is as powerful a monarch as Louis XIV, only four years at a time, and is not subject to the processes of any court in the land except the

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[2] See: "Motion of the United States for a Stay of Discovery Or, Alternatively, to Quash Subpoenas, and Response in Opposition to Plaintiff's Motion with Respect to the Department of State", [D.E. #11].

court of impeachment."[3] The same argument is being made here and this Court – as did the Supreme Court in *United States v. Nixon*, 418 U.S. 683 (1974) – must reject the monarchial claims of Mr. Obama to being above the law.

As such, this Court should not shirk the historical moment it is presented with and order the expedited response to Sibley's subpoenas and requests for Privacy Act orders and address promptly the pending motions for contempt against Mr. Obama.

V. SIBLEY SHOULD BE CELEBRATED, NOT SANCTIONED

The Defendants motion to sanction is so frivolous that in fact Defendants should be sanctioned for bringing it before the Court.[4]

While Defendants' counsel does an admirable first-year law student job at reciting the black letter law of Rule 11, the Defendants fail to raise to the Court any basis for invoking such questionable First Amendment-impairing remedies. Assuming – as it is not stated in the motion – that the Defendants mean to argue that Sibley's pleadings are "frivolous", such an argument is absurd. Each claim and legal argument made by Sibley are first impression arguments made in good faith for "extending, modifying, or reversing existing law or for establishing new law." Moreover, every factual contention made by Sibley has "evidentiary support". Notably, the Defendants do not argue to the contrary. Thus, what is the basis of the government's motion to sanction – Sibley

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[3] Trachtman, Michael G. (2007). *The Supremes' Greatest Hits: The 34 Supreme Court Cases That Most Directly Affect Your Life*. Sterling. p. 131. ISBN 978-1-4027-4107-4.

[4] Federal Rule 11 states: "As under former Rule 11, the filing of a motion for sanctions is itself subject to the requirements of the rule and can lead to sanctions. However, service of a cross motion under Rule 11 should rarely be needed since under the revision the court may award to the person who prevails on a motion under Rule 11– whether the movant or the target of the motion – reasonable expenses, including attorney's fees, incurred in presenting or opposing the motion."

doesn't know and thus can't respond thereby denying him due process.

As for the improper *ad hominem* arguments raised to the Court regarding Sibley's prior litigation history, Sibley stands on the simple proposition articulated by Barry Goldwater in his 1964 Republican Presidential candidate acceptance speech: "I would remind you that extremism in the defense of liberty is no vice. And let me remind you also that moderation in the pursuit of justice is no virtue."

VI. SIBLEY HAS STATED A CLAIM

Defendants, incorporating their arguments contain in response to the motion for preliminary injunction, ask this Court to dismiss Sibley's Complaint for "failure to state a claim". (Def. Memo, p. 17.) A reasoned review of those arguments reveal that Defendants' motion in this regard is due to be denied.

A. STANDING IS A CANARD

Sibley first challenges the darling-of-the-government argument that citizens may <u>not</u> challenge the wrong doing of government actors as they no longer have "standing". Sibley asserts that the judicial fiat of "irreducible constitutional minimum" found first in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) has <u>no</u> Constitutional basis and – if this Court is to be true to its oath and <u>not</u> its judicial overlords – this Court must state such. Simply stated, a system of law that fails to satisfy certain *moral minima* is **not** to be considered a legal system. An unjust positive law – such as the doctrine of "standing" – can be refused the character of law if its injustice is so great that it no longer deserves the title of law. Here, that injustice is the notion that the <u>only</u> person who can challenge Mr. Obama's legitimacy is the Attorney General whom he appointed. This, of course, is madness and raises significant equal protection concerns. Do only some get protection from

government malfeasance while other are destined to suffer that wrong without a remedy?

A review of the growth of the grotesque doctrine of standing reveals its uncertain historical roots and the real basis for its cancer-like spreading through the judicial system. As of 1992, in the history of the Supreme Court, standing has been discussed in terms of Article III on 117 occasions. Of those 117 occasions, 55, or nearly half, of the discussions occurred after 1985 – that is, within seven years of 1992. Of those 117, over two thirds of the discussions occurred after 1980 – that is, in just over a decade before 1992. Of those 117, 109, or nearly all, of the discussions occurred since 1965. The first reference to "standing" as an Article III-limitation can be found in *Stark v. Wickard*, 321 US 288 (1944). The next reference does not appear until eight years later in *Adler v. Board of Education*, 342 U.S. 485 (1952). Not until the *Data Processing v. Camp*, 397 U.S. 150 (1970) did a large number of cases emerge on the issue of "standing". The explosion of judicial interest in "standing" as a distinct body of constitutional law is an extraordinarily recent phenomenon. Its rise can be seen as part of the continued expansion of federal power encouraged by the judiciary which has ignored the Ninth and Tenth Amendments expressly raised by Sibley here as the Constitutional authority to bring this suit.

Unlike "case or controversy" which the Framers understood and expressly employed in Article III, "standing" is **not** mentioned in our Constitution, **nor** was it in the records of the several conventions. Thus it can be fairly said that "standing" was **neither** a legal term-of-art **nor** a familiar doctrine at the time the Constitution was adopted.[5] **Nowhere** in English common law practice can be found the requirement that a plaintiff must show an actual or threatened direct personal injury in

[5] Raoul Berger, *Standing to Sue in Public Actions: Is It a Constitutional Requirement?*, 78 Yale L.J. 816, 818 (1968).

order to have his or her "case or controversy" heard in a court of law. Hence, Sibley calls into question the validity of *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) and its noxious progeny given its invalid historical roots and the failure of the courts to reconcile such a doctrine with the overriding authority of the Ninth and Tenth Amendments.

B. SIBLEY HAS STANDING

The proof of Sibley's assertion that he has "standing" to challenge the Defendants as Electors' free will impairment by Congress and their ability to vote for non-eligible Presidential candidates is proved by query: If not Sibley, a registered voter who voted and an eligible Presidential candidate, then who has standing? The Defendants will never raises the challenges brought by Sibley as they are tools of the Democratic Party machine in the District of Columbia. Hence, to deny Sibley access to Court to raise the challenges brought herein is to deny to a him, a citizen: "the right, possessed by every citizen, to require that the Government be administered according to law and that the public moneys be not Wasted." *Fairchild v. Hughes*, 258 U.S. 126, 130 (1922). Is the Court really ready to shut the door to Sibley and thus destroy this long-recognized right by denying a remedy for its breach?

C. DEFENDANTS DO NOT CHALLENGE SIBLEY'S CLAIM

Most telling, the Defendants do not argue in their over-sized memorandum of law that Sibley's claims do not have merit. No argument is raised as to the first question of whether Congress can limit by D.C. Code §1-1001.08(g)(2) the ability of the Electors to cast their Twelfth Amendment votes for whomever they please. Indeed, Defendants do not challenge Sibley's proposition that Electors, like their regular Congressional brethren (and sisteren) hold a "public trust" which obligates the Electors to: "analyz[e] the qualities adapted to the station and acting under circumstances

favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice" of President. *The Federalist No.* 68, at 412 (Alexander Hamilton) (Clinton Rossiter ed., 1961). *Accord*: *Ray v. Blair*, 343 U.S. 214, 225 (1952)(Justice Jackson, dissent)("No one faithful to our history can deny that the plan [for election of the President] originally contemplated, what is implicit in its text, that electors would be free agents, to exercise an independent and nonpartisan judgment as to the men best qualified for the Nation's highest offices.")

Second, the Defendants do not challenge Sibley's proposition that the Electors can only vote for "eligible" candidates, an undecided issue in the jurisprudence of the United States.

Last, the Defendants ignore – for obvious reasons – addressing the seminal issue of whether Mr. Obama is ineligible as a matter of law and/or fact to be President.

Thus, once again, the fact that the Defendants are desperate to avoid addressing the merits should compel this Court to ignore the putative procedural roadblocks raised by the government to the end of shielding scrutiny of its actions and move to the merits. Simply stated, "there comes a point where this Court should not be ignorant as judges of what we know as men."[6]

VII. SIBLEY'S AMENDMENT TO THE COMPLAINT SHOULD BE PERMITTED

To deny to Sibley the requested amendment to the Complaint would be to deny the proper presentation of the issues raised by that amendment for appellate review, an abuse of this Court's discretion. Plainly, Congress has not counted the Electors' votes, hence the amendment – followed by a motion for preliminary injunction to Mr. Biden – would not be futile at this time. Of course, this Court can allow the passage of time to accomplish that which it wants to avoid – ruling on the

[6] Justice Felix Frankfurter in *Watts v. Indiana*, 338 U.S. 49, 52 (1949).

merits.

VIII. Oral Argument

Plainly, oral argument is constitutionally required in certain circumstances. *See*: *Londoner v. Denver*, 210 U.S. 373 (1908)("On the contrary, due process of law has never been a term of fixed and invariable content. This is as true with reference to oral argument as with respect to other elements of procedural due process. For this Court has held in some situations that such argument is essential to a fair hearing."). Moreover, though this Court deems the procedural rules which Congress promulgated to regulate this Court's affairs to be aspirational only[7], Federal Rules of Civil Procedure, Rule 78(b), expressly requires such an oral hearing is mandatory unless: "By rule or order, the court may provide for submitting and determining motions on briefs, without oral hearings". Notably, the Local Rules of this Court provide for no such determination without oral hearings.

As such, Sibley demand his Constitutional and Congressionally granted right to an oral hearing on the significant, subtle and singular questions raised herein in order to at least accord to Sibley the appearance of an impartial tribunal.

IX. Conclusion

"A popular Government, without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power which

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[7] *Viz*, this Court repeated disregard of the mandate of LCvR 65.1(d) in this, and other matters before it. Indeed, given the filing date –albeit in D.C. Superior Court – of November 13, 2012, and Sibley's demand for a preliminary injunction hearing at that time coupled with the removal to this Court on December 12, 2012, this Court is once again in violation of the 21 day requirement to resolve Sibley's pending motion for Preliminary Injunction imposed LCvR 65.1(d).

knowledge gives. 9 *Writings of James Madison* 103 (G. Hunt ed.1910). Here, that power is to uncover the documentary evidence held by the government which evidence is determinative of whether Mr. Obama is in fact eligible to be President and thus whether the Defendants can properly cast their votes for him. For this Court to act as Mr. Obama's Praetorian Guard and deny to Sibley access to the subpoenaed information is surely a "Prologue to a Farce or a Tragedy, or perhaps both" by this appointed-for-life Magistrate.

WHEREFORE, Sibley respectfully request that this Court deny Defendants' Motion to Dismiss and get on with the job the People have invested this Court with – to see the rights reserved unto the People are secured to them as presented by Sibley's pending motions.

CERTIFICATE OF SERVICE

I hereby certify that on December 25, 2012, a true copy of the foregoing was caused to be served pursuant to LCvR 5.4 upon Andrew J. Saindon, Assistant Attorney General, Equity Section, 441 Fourth Street, N.W., 6th Floor South, Washington, D.C. 20001, Telephone: (202) 724-6643, Facsimile: (202) 730-1470, E-mail: andy.saindon@dc.gov.

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