

No.

In The

Supreme Court of the United States

Cort Wrotnowski

v.

Susan Bysiewicz, Secretary Of The State Of Connecticut

APPLICATION FOR EMERGENCY STAY AND/OR INJUNCTION AS TO THE 2008 ELECTORAL COLLEGE MEETING AND ALTERNATIVELY AS TO CONNECTICUT ELECTORS

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**ADDRESSED TO THE HONORABLE ASSOCIATE JUSTICE RUTH BADER GINSBURG,
CIRCUIT JUSTICE FOR THE 2nd CIRCUIT.**

AFFIRMATION OF JURISDICTION

Applicant Cort Wrotnowski respectfully submits to this Honorable Court that he has brought this emergency application directly from a final judgment with prejudice issued by the Connecticut Supreme Court. The United States Supreme Court is the final jurisdiction available to him. Applicant respectfully submits that this matter reflects an important public interest and involves a Constitutional issue of first impression as to the legal significance of the term "natural born citizen" as enumerated in Article 2,

Section 1, Clause 5, of the Constitution of the United States.

Furthermore, the Respondent's challenged failure to perform legally prescribed constitutional duties is directly related to Article 6, Section 3, wherein she is required to swear an oath to uphold the United States Constitution.

PROCEDURAL HISTORY

This emergency application is brought to this Honorable Court from a final decision of the Honorable Connecticut Supreme Court, issued Nov. 3 2008, dismissing Applicant's complaint. Before that, Applicant's initial Connecticut Superior Court complaint was dismissed on October 24, 2008 for lack of jurisdiction.

REQUEST THAT APPLICATION BE TREATED AS PETITION FOR WRIT OF CERTIORARI AND/OR MANDAMUS AND /OR PROHIBITION

Because the Electoral College is set to meet in three weeks, Applicant respectfully submits there is no time for a more formal approach to the issues listed herein. In *Bush v. Gore*, 531 U.S. 98 at 98 (2000), this Honorable Court accepted an emergency stay application as a full petition:

"Governor Bush and Richard Cheney, Republican Candidates for the Presidency and Vice Presidency, filed an emergency application for a stay of this mandate. On December 9, we granted the application, treated the application as a petition for a writ of certiorari, and granted certiorari."

In *Purcell v. Gonzales*, 127 S. Ct. 5 (2006), this Honorable Court construed

an application for a stay as a Petition for a Writ of Certiorari, and then granted Certiorari in an election dispute - two weeks before election day - regarding alleged unconstitutional voter registration conditions. Applicant respectfully submits this application be treated the same.

STATEMENT OF FACTS

In mid-October 2008, Applicant took notice of genuine controversies regarding the eligibility of Presidential candidates Barack Obama and John McCain. Applicant studied the reports of multiple law suits brought by citizens against the candidates alleging such candidates could not, or would not, prove they were "natural born Citizens" as required by Article 2, Section 1, Clause 5, of the US Constitution.

Barack Obama was probably born in Hawaii. His mother was a United States Citizen and his Father was a Citizen of what is now called Kenya, but back in 1961, when Obama was born, Kenya was a British Colony. At one of Obama's official web sites, Fightthesmears.com., it states:

"When Barack Obama Jr. was born on Aug. 4, 1961, in Honolulu, Kenya was a British colony, still part of the United Kingdom's dwindling empire. As a Kenyan native, Barack Obama Sr. was a British subject whose citizenship status was governed by The British Nationality Act of 1948. That same act governed the status of Obama Sr.'s children."

If the above is true, and to Applicant's knowledge, Obama has never denied it, then Obama was, at birth, both a British Citizen-Subject as well as a United States Citizen.

John McCain was born in Panama.

On approximately October 16, Applicant contacted the Respondent-Secretary of State's office and inquired as to what steps the Secretary of State had or had not taken to determine the eligibility of the Presidential candidates. On Oct. 17, a counselor from the Respondent's office, Mr. Ramos, phoned Applicant back and said, "It's not our job" to examine the eligibility of the candidates. Applicant avers that Mr. Ramos's statement was an admission that Respondent had failed to protect the integrity of the electoral process.

On October 24, 2008, Applicant filed the complaint in Connecticut Superior Court which initiated this litigation.

REASONS FOR GRANTING WRIT(S)

This Honorable Court is the only legal power that can now grant the extraordinary relief requested herein. No other jurisdiction holds legal dominion over the several Secretaries of State of the United States as well as all Presidential electors casting votes at the Electoral College meeting on December 15, 2008. Furthermore, Applicant's cause of action may become moot if the case is remanded in that Barack Obama is still just a candidate for President. But if the Electoral College meets and causes Barack Obama to become the president-elect, Applicant's standing to maintain this cause of action will be severely jeopardized as specific

powers to challenge the president-elect after the Electoral College meets have been enumerated to Congress, and Applicant's standing is likely to face a "political question" challenge.

Applicant notes that the Senate was negligent in failing to verify the candidates' eligibility and by authoring a legally flawed and publicly deceptive Senate Resolution which attempted to confer, at least in the public eye, the idea that John McCain was a natural born citizen even though he was born in Panama. While that resolution may have looked like a law, it had no legal authority, but rather served to confuse and obfuscate the important Constitutional issue now before this Honorable Court. (See U.S. S. Res. 511, 110th Congress.)

Furthermore, Congress showed no concern whatsoever that candidate Obama was facing multiple legal challenges to his eligibility and was actively concealing all records of his past from public view.

Applicant respectfully submits that Congress has not shown any interest in protecting Applicant from the harms perpetrated upon him by this fraudulent election and so he requests that this Honorable Court accept full review of the underlying merits of this controversy while his case is ripe.

While Applicant requests that this Honorable Court grant the injunctive relief requested herein, he also recognizes this Court's authority to issue an extraordinary writ of mandamus and/or prohibition to either the Secretary of

State or the Connecticut Supreme Court and/or the Connecticut Superior Courts.

Applicant respectfully submits that the issuance of an extraordinary writ in this case would be in aid of this Honorable Court's appellate jurisdiction and that such a writ is authorized by the All Writs Act, 28 U.S.C. Sec. 1651. Furthermore, as this case involves the possible voiding of the popular vote of our national election, it concerns a matter of vital public importance and is of such an extraordinary nature that no other Court should be responsible for the incredible weight of decision now before this Honorable Court. That the Court has the power to fashion whatever writ it deems necessary under the extraordinary circumstances of this case was made clear in *Ex Parte Republic Of Peru* 318 U. S. 578, 584-585 (1943) (citing *Ex Parte United States*, 287 U.S. 241 at 248-249 (1932)):

"...[T]his court has full power in its discretion to issue the writ of mandamus...such power will be exercised only where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this court should be taken.

This Honorable Court has also exercised its power to issue extraordinary writs to state courts. See *Deen v. Hickman*, 358 U.S. 57 (1958), and *Bucolo v. Adkins*, 424 U.S. 641 (1976).

RELIEF REQUESTED

Applicant respectfully requests a stay of the certification of Connecticut Electors for Barack Obama and an accompanying order from this Honorable Court by way of a writ of mandamus and/or prohibition preventing Respondent and Connecticut electors from casting Electoral College votes for Barack Obama should this Honorable Court hold that he is not eligible to the office of President of the United States. Applicant requests the same aforementioned relief as to candidate John McCain.

Applicant couldn't request - in the lower courts - that the national election be stayed or enjoined. But since the issue of whether John McCain and Barack Obama are natural born citizens is now before this Honorable Court, Applicant respectfully submits that should this Honorable Court agree with the legal arguments herein, specifically that Barack Obama is not eligible to the office of President of the United States in that he is not a natural born citizen of the United States, Applicant now respectfully requests a stay of the 2008 Electoral College meeting and that an order be issued, whether by mandamus and/or prohibition, to the several Secretaries of State of the United States and to all Presidential electors eligible to cast votes in the 2008 Electoral College, preventing the same from respectively allowing to Electoral College votes to be cast for Barack Obama. Applicant requests the same aforementioned relief as to candidate John McCain.

Applicant also respectfully requests, in the alternative, that Respondent be issued an order commanding her to demand from Barack Obama that he provide proper documentation to prove that he was born in the state of Hawaii. Should this Honorable Court issue such a writ to Respondent, Applicant leaves it to the sound discretion of this Court to determine the nature of such compliance.

Applicant sought "injunctive relief" from the lower courts by requesting orders for Respondent to protect Applicant by ensuring that Connecticut ballots did not present ineligible candidates for the United States Presidency to that state's voters.

Applicant respectfully submits that the defective Presidential election of 2008 may still be cured by this Honorable Court by way of an injunction voiding the election on the grounds that neither Barack Obama nor John McCain are not natural born citizens as is required by the Constitution to be eligible to the office of President.

While some counts of Applicant's lower court pleadings mistakenly sought to tell Respondent how to execute her prescribed duty, for purposes of the action now before the Court Applicant only requests that Respondent be compelled to carry out her exact prescribed duties. Applicant requests the same aforementioned relief as to candidate John McCain.

In *McCarthy v. Briscoe*, 429 U.S. 1317 n.1 (1976), the Honorable

Justice Powell stated:

"Although the application is styled 'Application for a partial stay of an order and judgment of the United States Court of Appeals, Fifth Circuit,' the applicants actually seek affirmative relief. I have therefore treated the papers as an application for an injunction pursuant to *28 U.S.C. § 1651* and Rules 50 and 51 of this Court."

In that case, late in the Presidential election cycle of 1976, six weeks before election day, third party candidate Eugene McCarthy submitted an application for a stay to Justice Powell, in his capacity as Circuit Justice in charge of Texas, for injunctive relief ordering the Texas Secretary of State to cause McCarthy's name to appear on general election ballots in Texas as an independent candidate for the office of President. McCarthy alleged that a Texas statute which prevented third parties from gaining access was unconstitutional. Justice Powell granted relief and the Texas election officials were commanded to alter the ballots to include McCarthy's name.

In the present case, Applicant sought injunctive relief from Respondent to have the names of fraudulent candidates purged from the ballots in Connecticut. Appellant requested that the Connecticut Supreme Court issue a writ of mandamus ordering Respondent to investigate whether national candidates generally, and Barack Obama specifically, had caused a fraudulent election scenario to exist as to the likely ineligibility of certain candidates under Article 2,

Section 1, Clause 5, 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;

Had Respondent been ordered to do such an investigation prior to election day and thereafter learned that candidates Obama and McCain were not natural born citizens, then Respondent would have been required to remove their names from Connecticut ballots to fulfill her prescribed duty under *Connecticut General Statutes Sec. 9-3* in conjunction with Respondent's oath of office duty to uphold the Constitution.

ASSIGNMENTS OF ERROR

Applicant initiated this litigation by filing a complaint in the Superior Court of Connecticut at Stamford on October 24, 2008.

Paragraphs 1 and 2 of Applicant's complaint allege:

"1. The plaintiff being a voter residing in the State of Connecticut seeks injunctive relief against election fraud.

2. The defendant has neglected to certify the eligibility of national candidates...

As a result: Election fraud will be perpetrated against Connecticut voters."

Applicant further alleged, in his supporting memorandum, that Respondent failed both statutory and United States Constitutional

duties to protect the integrity of ballots and to protect voters in the State of Connecticut from the likelihood of fraudulent candidates taking office.

On October 24, 2008, Applicant's complaint was dismissed by the Honorable Taggart G. Adams, stating lack of jurisdiction. Judge Taggart based this decision on Connecticut *General Statutes* Section 9-323, which requires a complaint filed thereunder to be brought before a Judge of the Connecticut Supreme Court. But Applicant didn't rely on - nor did he even mention - Sec. 9-323 in his Superior Court complaint or brief in support thereof. Furthermore, Sec. 9-323 *only* applies to actions brought by "*any candidate or elector*". Applicant is neither a candidate nor an elector, and therefore Sec. 9-323 was not in any way applicable to the action Applicant brought as a citizen voter.

On October 31, 2008, Applicant filed a continuing complaint to the Connecticut Supreme Court. On that day, the Honorable Chief Justice Chase T. Rogers ordered that a hearing on Applicant's complaint be held on Nov. 3, 2008, at which,

"...the plaintiff should be prepared to show cause why his complaint should not be dismissed because he ha[d] not alleged facts that would confer subject matter jurisdiction on the court under General Statutes [Sec.] 9-323."

After the hearing on Nov. 3, the Honorable Chief Justice Chase T. Rogers granted Respondent-Defendant's motion to dismiss Applicant's

complaint. At that time, Chief Justice Rogers stated that an opinion explaining the reasons for the dismissal would follow in due course. The opinion was published by the Connecticut Supreme Court a few days later, but dated retroactively back to Nov. 3, 2008. In what can only be characterized as a confounding and extreme action, Chief Justice Chase Rogers misstated the statutory authority upon which Applicant relied for relief.

She erroneously stated that Applicant sought relief under Connecticut General Statute 9-323, the same statute invoked by the lower Superior Court Judge and the same statute she instructed Applicant to show conferred subject matter jurisdiction. But Applicant never sought relief pursuant to 9-323 because it was not applicable to him. The single-minded determination to ascribe such action to Applicant in both lower courts is perplexing. Applicant's complaint and supporting brief were subject to the same failure in the Supreme Court as was made in the lower court: By relying exclusively on Section 9-323 as the basis for dismissing Applicant's successive complaints, neither decision accurately recognized *the actual claims Applicant made or the actual law upon which Applicant relied*.

The following sections of Applicant's Superior Court complaint memorandum clarify the core issues raised in Applicant's initial complaint. All of these were ignored by Judge Taggart when he

dismissed the action based on Sec. 9-323, a statute which has no applicability to Applicant or his complaint:

1.4. Plaintiff argues that the Office of Secretary of State has the Constitutional and Statutory authority to make such determinations as part of certifying and executing fair and open elections...

2.1. Article II, Section I of the United States Constitution, states in particular part, "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;..."

2.2. Mr. Barack H. Obama is a candidate for United States Office of the President. However, Mr. Obama must meet the qualifications specified for the United States Office of the President, which is, he must be a "natural born" citizen. Mr. Obama has failed to demonstrate that he is a "natural born" citizen. There are other legal challenges before the Federal Courts regarding aspects of lost or dual citizenship, in addition to legal challenges filed in other states. That challenge in and of itself further demonstrates plaintiff's argument that reasonable doubt exists as to the veracity of the electoral process that would allow such fundamental questions exist at this late hour preceding the election.

2.3. The Connecticut Secretary of State is responsible for the veracity of the Connecticut State election process from verifying ahead of time the qualification of the voters, the ballots themselves, the candidates and the final counting and certification of results. That office is intended to be non-biased and to provide the critical sense of fairness and correctness necessary for the people to have faith in the fundamental underpinnings of the democratic basis for our republic.

2.4. There is a reasonable and common expectation by the people that to qualify for the ballot that the individuals so listed meet the minimum qualifications as outlined in the

constitutions and that proof of those minimum qualifications has been received by the officials executing the election process...

2.8. This complaint seeks specifically to verify through the office of the Connecticut Secretary of State that Mr. Obama is a "natural born" citizen.

2.12. Should Mr. Obama be discovered, whether by virtue of malfeasance, or negligence, or ignorance on his part to not have a valid certified US birth certificate or to otherwise due to have been revealed by such examination of original records to be ineligible for the Office of President of the United States of America and thereby his nomination be declared void by the appropriate authorities acting under the law, Plaintiff as well as other Americans will suffer irreparable harm...

6.2. Failure to grant injunctive relief would allow a potentially corrupted, fraudulent nomination and election process to continue.

6.3. Failure to grant injunctive relief demanding the Connecticut Secretary of State certify the minimum qualifications of challenged candidates not only allows, but promotes an overwhelming degree of disrespect and creates such a lack of confidence in voters of the primary and electoral process itself, so that it would cement a prevailing belief that no potential candidate has to obey the laws of this country, respect our election process, follow the Constitution, or even suffer any consequence for lying and defrauding voters to get onto the ballot when they have no chance of serving if they fraudulently manage to get elected.

6.4. As stated above, Plaintiff as well as all American citizens will suffer irreparable harm if injunctive relief is not granted. Plaintiff does not have any other way of redress regarding these very significant and important issues.

On October 31, 2008, Applicant filed a continuing complaint before the

Honorable Connecticut Supreme Court. On that day, the Honorable Chief Justice Chase T. Rogers ordered that a hearing on Applicant's complaint be held on Nov. 3, 2008, at which,

"...the plaintiff should be prepared to show cause why his complaint should not be dismissed because he ha[d] not alleged facts that would confer subject matter jurisdiction on the court under General Statutes [Sec.] 9-323.

After the hearing on Nov. 3, the Honorable Chief Justice Chase T. Rogers granted Respondent-Defendant's motion to dismiss Applicant's complaint. At that time, Chief Justice Rogers stated that an opinion explaining the reasons for the dismissal would follow in due course. The opinion was published by the Connecticut Supreme Court a few days later, but dated retroactively back to Nov. 3, 2008.

Chief Justice Rogers's order and opinion, like that of the lower Court, dismissed Applicant's complaint on the basis that he had failed to establish subject matter jurisdiction in that he lacked statutory standing under *General Statutes* Sec. 9-323, Sec. 9-324, Sec. 9-328, and Sec 9-329a. Incredibly, *none* of these statutes were relied upon by Applicant in his complaint or brief in support thereof, and none of those statutes even *apply* to him since those sections are completely restricted to complaints or objections made by "*any elector or candidate.*" As stated above, Applicant is neither.

Furthermore, in the first paragraph of her opinion, while raising

the "natural born Citizen" issue, it is respectfully submitted that Chief Justice Rogers begins with an obviously false premise:

"The plaintiff, Cort Wrotnowski, brought a complaint pursuant to General Statutes [Sec.] 9-323 against the defendant, Susan Bysiewicz, the secretary of the state, alleging that the defendant unlawfully had failed to verify that Barack Obama, the democratic nominee for the office of president of the United States for the November 4, 2008 presidential election, was a natural born citizen of the United States as required by the United States constitution..."

Applicant did *not* bring a complaint pursuant to Sec. 9-323. Applicant did not rely on - or even mention - that statute in the lower court complaint or brief. And Applicant does not rely on - or even mention - that statute in his Connecticut Supreme Court complaint.

Moreover, Applicant *could* not rely on that statute because it is only applicable to "any elector or candidate" while Applicant is a citizen voter. And while Applicant does briefly mention Sec. 9-323 in his Supreme Court complaint brief, he does so primarily while making reference to the lower court's grounds for dismissal. He also mentions it in passing one time in his eleven page brief, but in no way does he rely on it or attempt to apply it to the facts of his case:

3.6 The plaintiff asserts that Connecticut law is not explicit with respect to taking action against potential election fraud at the national level. It neither authorizes nor prohibits. In fact, it is silent on this important issue. The only statutes providing direction are 9-323, and for Federal Election Disputes, sec. 10-13, 10-14, 10-15...

Applicant, in the passage above, simply mentions Sec. 9-323 by way of making

a point that, for the most part, Connecticut law is basically silent with respect to election fraud at the national level. But while the General Statutes are not explicit, the Constitution is, and so is the oath of office sworn by Respondent wherein she swears to uphold the Constitution.

Applicant remains perplexed as to why *General Statute* sec. 9-323, which is restricted to complaints made by electors or candidates, was relied upon by both the Connecticut Superior Court and the Chief Justice of the Connecticut Supreme Court in dismissing his complaints, while the actual arguments he made and the laws he did, in fact, rely upon, were completely ignored by both lower courts. For example, the following is taken from count one of the Applicant's Connecticut Supreme Court complaint:

Susan Bysiewicz, the Connecticut Secretary of State, is being negligent about preventing election fraud in Connecticut. Her representatives have claimed it is not her job to check for potential fraud. Evidence of fraud is substantial and clear. They have chosen to ignore the information and claim that checking the eligibility of national candidates is "not their job." She has not followed: 1) Her oath of office, 2) Her own biographic statements about concern for election integrity, or 3) Connecticut Statute, Sec. 9-358. Connecticut Statutes, while not explicit, do imply that the Secretary of State has a duty prevent election fraud from occurring in this state, whatever the source may be.

Applicant clearly raised the issue of Respondent's oath of office. This oath which includes a specifically prescribed duty, in her capacity as Secretary of State and as the Commissioner of Elections in the state of Connecticut, to uphold the Constitution of the United States. This argument will be discussed thoroughly in Applicant's legal argument below, but Applicant raises the issue here by way of illustration of the lower courts' failure to acknowledge the actual claims made by Applicant.

Chief Justice Rogers did correctly dismiss, in footnote 2 of her opinion, Applicant's claim as to the applicability of Sec. 9-358 to his cause of action, but Chief Justice Rogers's opinion fails to recognize, discuss, consider or even mention Applicants genuine reliance upon General Statute Sec. 9-3. The following, wherein Applicant cites the text of *General Statutes* Sec. 9-3, is taken directly from paragraph 4.4 of Applicant's brief in support of his complaint in the Connecticut Supreme Court:

4.4 Sec. 9-3. Secretary to be Commissioner of Elections. Presumption concerning rulings and opinions. The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law...

Chief Justice Rogers, in her opinion, and Respondent's counsel's in brief in support of the motion to dismiss, failed to address, or even recognize the most basic claim made by applicant below, that *Connecticut General Statutes* 9-3 as well as Respondent's oath of office imposed a prescribed duty upon her to protect Applicant from fraudulent candidates seeking the office of President.

Paragraph 4.5 further clarifies the point:

4.5 The bolded language in Sec. 9-3 demonstrates that the legislature fully expected the Secretary of State to act independently and proactively to address situations germane to the task of executing elections consistent with all[] requirements of constitution and statutes.

Applicant's brief also stated:

4.7 As the Chief of Elections, the Secretary of State is the final authority for protecting Connecticut voters from unfair elections. She has a responsibility to ensure fair and equitable elections by preventing fraud against Connecticut voters.

4.8 Eligibility is a fundamental issue that strikes at the heart of fair elections. Where the question of eligibility has become so obvious and clear, as in the case of Sen. Obama's missing birth certificate, the Secretary of State must move to protect the voters, investigating the allegations of fraud or directing such agency as deemed proper such as the SEEC which would investigate and inform the Secretary of State of their findings.

And as to the Respondent's duties to the Electoral College, Applicant stated:

5.1 The electoral college is a state level system. For the office of President of the United States, the U.S. Constitution prescribes a system of electors where citizens of the respective state have a state controlled election wherein electors representing the interest of the candidate will vote on behalf of the state's winning candidate in the electoral college. Thus, we do not have a federal ballot controlled by the federal government; we have a Connecticut State ballot where we elect electors who in turn represent the named individual on the ballot.

5.2 That is a significant reason why our Secretary of State has pervue over certification of not just the counts of the ballots so cast for the Office of President, but also the veracity of the system including publishing and promoting the ballot and for certifying or decertifying challenged candidates; in this case a placeholder or proxies for the candidate.

As to Applicant's request for mandamus relief, his brief stated:

5.5 If Secretary Bysiewicz is unclear on this issue, then we ask this court to clearly explain it to her in the form of a Writ of Mandamus since she has clearly ignored prudence and the petitions of citizens.

5.6 States do not have the right to run presidential candidates that violate the eligibility standards of the U.S. Constitution. This is not their choice to make. But that is what Secretary Bysiewicz chooses to do.

5.7 The plaintiff asserts again that any FEC oversight is

either broken in this regard or non-existent. Allowing an ineligible candidate on the ballot in Connecticut is an act of negligence by the Secretary of State. She has failed to provide Connecticut voters with the most basic protections against fraud. She wishes to be consistent in her negligence by neglecting to demand Sen. Obama produce his authentic birth certificate.

CONSTITUTIONAL ISSUE RAISED IN CONNECTICUT SUPREME COURT

Neither Chief Justice Rogers in her written opinion, nor Respondent's counsel, in their reply brief, attacked Applicant's core legal argument that Respondent failed to protect Applicant from fraudulent Presidential candidates who were not eligible to be President of the United States. Both Chief Justice Rogers and Respondent's counsel, while having raised the Constitutional natural born citizen issue in their respective papers, never attacked the actual arguments made by Applicant thereto:

"The plaintiff, Cort Wrotnowski, brought a complaint pursuant to General Statutes § 9-323 against the defendant, Susan Bysiewicz, the secretary of the state, alleging that the defendant unlawfully had failed to verify that Barack Obama, the democratic nominee for the office of president of the United States for the November 4, 2008 presidential election, was a natural born citizen of the United States as required by the United States constitution, article two, § 1.2"

Applicant did bring a complaint on the Constitutional grounds mentioned above, but he did *not* bring that claim pursuant General Statutes 9-323. Chief Justice Rogers (and Judge Taggart) appears to pull this statute out of thin air. The same is true for the following:

"The Supreme Court also has held that constitutional claims are not within the ambit of General Statutes §§ 9-324, 9-327, 9-328 and 9-329a. See *Scheyd v. Bezrucik*, 205 Conn. 495, 506, 535 A.2d 793 (1987). When an election official has complied with existing law, but the plaintiff claims that the law is unconstitutional, "the plaintiff may well be aggrieved by the law or regulation, but he or she is not aggrieved by the election official's rulings which are

in conformity with the law.”

Plaintiff has neither claimed that these statutes are unconstitutional, nor has he ever relied on, or utilized, any of the above statutes throughout this litigation. The statutes cited above apply to "electors or candidates", not ordinary citizen voters. They are irrelevant to Applicant yet his complaint was dismissed thereupon.

Applicant raised serious federal constitutional issues. While these issues were addressed below, they weren't properly discussed by Respondent or judged by Chief Justice Rogers. Regardless, as the issues were raised below, Applicant respectfully submits that they are properly before this Honorable Court. The Constitutional issues were alleged by Applicant throughout all stages of this litigation and are addressed in his legal arguments to this application. Moreover, Applicant recognizes that the stated core Constitutional (and statutory) issues he raised below are of such great public importance that, despite Respondent's failure to even address them below, Applicant does not petition this Honorable Court to deem any further argument by Respondent thereto as having been waived.

Finally, even though Chief Justice Rogers failed to address Applicant's core constitutional issues - natural born citizen status, and the oath of office fusion to *Connecticut General Statutes* Sec. 9-3 - Applicant respectfully submits that the appellate jurisdiction of the Supreme Court cannot be defeated by improper activity in the lower courts. Applicant relies on *Ex Parte United States*, 287 U.S. 241 at 249-250 (1932), where this Honorable Court held that the refusal of a district court to issue a warrant upon a justified indictment had the effect of curtailing Supreme Court appellate jurisdiction. Therefore this Court issued a writ of mandamus upon the rogue

District Court below to expedite settlement of the vital issue involved.

The same principle controls here where the lower courts fabricated a defective cause of action out of thin air, attributed it to Applicant, and then dismissed his case citing to the self imposed defect. At the same time, they treated the genuine complaint as invisible, never discussing or judging it at all. It is respectfully submitted that such conduct should neither be allowed to defeat this Honorable Court's appellate jurisdiction nor cause Applicant's case to become moot. The lower courts can't avoid the constitutional issues by making believe Applicant's case could be dismissed on a statutory basis when Applicant didn't rely on that statute and the statute, on its face, couldn't possibly apply to Applicant or his case.

QUESTIONS PRESENTED

POINT I

DID THE LOWER COURTS ERR IN DENYING APPLICANT'S REQUEST FOR INJUNCTIVE RELIEF OR A WRIT OF MANDAMUS ORDERING RESPONDENT TO EXECUTE A LEGALLY PRESCRIBED MINISTERIAL DUTY - AS THE COMMISSIONER OF ELECTIONS - TO PROTECT APPLICANT FROM FRAUDULENT PRESIDENTIAL CANDIDATES HOLDING THE OFFICE OF PRESIDENT OF THE UNITED STATES?

RESPONDENT'S PRESCRIBED DUTY TO UPHOLD THE US CONSTITUTION

Respondent, as required by Article 6, Section 3, of the United States Constitution swore an oath to uphold the Constitution. Article 11, Section 1, of the Connecticut Constitution requires her to do the same. *Connecticut General Statutes* Sec. 9-3 deems Respondent to be the Commissioner of Elections. In that capacity, her oath of office is of paramount importance to the execution of

her duties:

Sec. 9-3. Secretary to be Commissioner of Elections.
Presumption concerning rulings and opinions.

The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, **with such powers and duties relating to the conduct of elections as are prescribed by law** and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title... (Emphasis added.)

The statute not only empowers Respondent - it *commands* her - as the top official in the State's executive branch responsible for conducting elections and as such it specifically burdens her with all duties "prescribed by law." Her ministerial duty to uphold the Constitution of the United States *is* prescribed by the highest law of the land, as well as the highest law of Connecticut. The Supremacy Clause, Article VI, Clause 2 of the United States Constitution, reads:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The duties prescribed in Sec. 9-3 must be interpreted, in so far as the election for President of the United States is concerned, in light of Article 2, Section 1, of the Constitution:

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;

Respondent's minimum standard in fulfilling her prescribed duty to uphold the Constitution must require that she protect the electoral process in Connecticut from candidates who are not natural born citizens. The exact manner in which she goes about executing that duty is certainly up to her. Applicant seeks a writ of mandamus, and/or injunctive relief, not to tell her how to do that job, but simply to compel her to do it.

Applicant was told by counselor Ramos from Respondent's office, as to the question of whether Respondent did anything to determine the eligibility of the candidates, "It's not our job." Applicant put this statement in his Connecticut Supreme Court complaint and it was not disputed in Respondent's Counsel's brief.

STANDING TO REQUEST WRIT OF MANDAMUS

Respondent's Counsel is the Connecticut Attorney General, Richard Blumenthal. As Attorney General of Connecticut, Mr. Blumenthal has occasion to publish official opinions as to various issues of law which may arise in his capacity as Connecticut's executive counsel. His opinions are codified and cited.

In, *1992 Conn. Op. Atty. Gen.* (12/21/92) (available online at <http://ct.gov/ag/cwp/view.asp?A=1770&Q=281376&pp=12&n=1>), Att. Gen. Blumenthal issued a well stated opinion as to the history and proper use of writs of mandamus:

"In general, if a public official has a duty to perform a particular act and fails in the discharge of that duty, a writ of mandamus is the proper remedy for compelling performance of the act. *Raslavsky v. Moore*, 167 Conn. 363, 355 A.2d 272 (1974)...

There are three preconditions to the issuance of a writ of mandamus. First, the law must impose a duty on the party against whom the writ is sought and the performance of the duty must be ministerial as opposed to discretionary. Second, the party applying for the writ must have a clear legal right to have the duty performed. And third, there must be no other adequate remedy. *Chamber of Commerce v. Murphy*, 179 Conn. 712, 427 A.2d 866 (1980). The Connecticut Supreme Court has elaborated on the requirement that the duty be ministerial, stating that:

[M]andamus will lie even if the exercise of the duty involves discretion, so long as the existence of the duty is ministerial, and provided that the order issued does no more than require the duty to be performed, leaving the manner of its performance to the good-faith discretion of the official charged.

State ex. rel. Golembeske v. White, 168 Conn. 278, 284, 362 A.2d 1354, 1358 (1975)."

As to that last paragraph, Applicant submits that Respondent's prescribed ministerial duty to secure the electoral process from fraudulent candidates invading Connecticut ballots would involve discretion. While Applicant did attempt to tell Respondent how to accomplish that prescribed duty in some paragraphs of his lower court brief, other paragraphs requested that she simply protect the electoral process. But she didn't.

The three preconditions stated by Att. Gen. Blumenthal above have been met:

1. An exact ministerial duty is imposed upon Respondent by legal fusion of Sec. 9-3

merged to her oath of office to uphold the Constitution. In *Cooper v. Aaron*, 358 U.S. 1, 18 (1958), the Honorable Chief Justice Black stated:

"Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, cl. 3 'to support this Constitution.' Chief Justice Taney, speaking for a unanimous Court in 1859, said that this requirement reflected the framers' 'anxiety to preserve it [the Constitution] in full force, in all its powers, and to guard against resistance to or evasion of its authority, on the part of a State. . . .' No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."

Respondent's oath of office to uphold the Constitution has force of law. It cannot be discharged by a phone call saying, "It's not our job" to protect voters from constitutionally disqualified candidates. And Sec. 9-3 reinforces the certainty of this duty. And while the statute provides a presumption of correctness as to Respondent's "regulations, declaratory rulings, instructions and opinions, if in written form", it provides no such presumption for inaction related to duties she has failed to perform.

Furthermore, it is well established precedent that a state has a great interest in securing the integrity of the electoral process. "Confidence in the integrity of our electoral process is essential to the functioning of our participatory democracy." *Purcell*, supra at 4.

"A State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Jenness v. Fortson*, 403 U.S. 431, at 442 (1971). "It is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal." *Rosario v. Rockefeller*, 410 U.S. 752, 761 (1973); *Bullock v. Carter*, 405 U.S. 134, 145 (1972).

2. Applicant had a clear legal right to have the duty performed. The duty is meant to protect applicant from seeing his vote voided by a fraudulent

candidate, and the duty also protects Applicant from being governed by a President who is not constitutionally eligible. *In Bush v. Gore*, 531 U.S. 98, 104 (2000), this Honorable Court stated:

"When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." *Bush v. Gore*, 531 U.S. 5, 6 (2000).

Although Chief Justice Rogers didn't discuss whether Applicant had standing outside of her Honor's mistaken reliance on Sec. 9-323, Respondent's counsel did raise the issue in their brief, arguing that Applicant had neither statutory standing nor classical standing. Applicant disagrees. He had statutory standing under Sec. 9-3 since Respondent owed him the protective "duties relating to the conduct of elections as are prescribed by law" which were discussed above.

But Applicant also has standing to request a writ of mandamus as the three requirements listed in Att. Gen. Blumenthal's opinion have been satisfied. In *Chamber of Commerce of greater Waterbury v. Eugene v. Murphy*, 179 Conn. 712 (1980), the plaintiff there was an ordinary property owner and taxpayer who sought to compel, by writ of mandamus, the public assessor to do a land assessment for all of Waterbury that was due every ten years. Plaintiff in that case was simply a member of the community of Waterbury property owners. He had no special reason to sue different than the rest of the community at large, but the Connecticut Supreme Court held that he had a clear legal right to have the duty performed. That decision also reiterated:

" [M]andamus will lie even if the *exercise of the duty* involves discretion, so long as *existence of the duty* is ministerial, and provided that the order issued does no more than require the duty to be performed, leaving the

manner of its performance to the good-faith discretion of the official charged.' (Emphasis added.) *State ex rel. Golembeske v. White*, 168 Conn. 278, 284, 362 A.2d 1354; see *State v. Erickson*, 104 Conn. 542, 545-46, 133 A. 683." Id. at 718-719.

3. There was no other adequate remedy available. Applicant had no other option but to bring this action against Respondent to compel her to fulfill her electoral policing duties. While Respondent's counsel insists in their brief that the issue of Presidential eligibility is one best left for Congress under the 20th Amendment, Applicant respectfully submits that the 20th Amendment only takes effect once there is a President-elect chosen by the Electoral College.

Applicant's cause of action is therefore proper in that it seeks to pre-empt an ineligible candidate from being chosen by the Electoral College. Furthermore, neither the House of Representatives nor the Senate has shown any willingness to protect applicant from ineligible candidates holding the office of President.

CONCLUSION

For all of the foregoing reasons, Applicant respectfully requests that this Honorable Court find that applicant has standing to bring this action; that the Respondent has prescribed legal duty to protect Applicant from ineligible Presidential candidates; that the lower courts erred in not ordering the Respondent to verify said eligibility; and Order to do so forthwith.

POINT II

IS PRESIDENTIAL CANDIDATE BARACK OBAMA INELIGIBLE TO HOLD THE OFFICE OF PRESIDENT FOR FAILING TO MEET THE CONSTITUTIONAL REQUIREMENT OF BEING A NATURAL BORN CITIZEN?

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;

By this clause, the Framers established two strict sets of citizens eligible to be President. It is respectfully submitted that discovering the intended distinction is the primary issue now before this Honorable Court.

The grandfather clause allowed all those who were citizens of the United States "at the time of the adoption of this Constitution" to be President. Nobody alive today can claim Presidential eligibility thereunder. And it's clear that the Framers sought to exclude those same classes of citizens from being President in future generations by reducing the field of eligible people to only natural born citizens once the grandfather clause had run its course..

The Framers probably didn't consider themselves to be natural born citizens as they were, for the most part, British subjects at the time of their birth. Considering they had recently fought a difficult war to rid themselves of the British monarchy, it doesn't seem likely they intended that those born subject to the British monarchy would be eligible to hold the office of President.

Barack Obama, at birth, was both a British citizen as well as a United States citizen. And like the Framers, Applicant respectfully submits that he is not a "natural born Citizen", but rather a "native born Citizen" (if it be established that he was actually born in Hawaii.).

Article 1, Section 2, provides that Representatives must be seven years a "Citizen" while the Senate requires nine. Again, what distinction have the Framers drawn here between "Citizens" and "natural born Citizens"?

In 1790, Congress sought to expand the pool of natural born Citizens.

The *Naturalization Act of 1790* was the only Congressional legislation which has ever attempted to confer "natural born citizen" status. The relevant portion reads as follows:

"...the children of citizens of the United States that may be born beyond Sea, or out of the limits of the United States, shall be considered as natural born Citizens..."

However, the *Naturalization Act of 1795* specifically repealed the act of 1790 and replaced it with virtually the same clause as that of 1790, except the words "natural born" were deleted and have never been replaced by Congress. The 1795 act reads as follows:

"the children of citizens of the United States born out of the limits and jurisdiction of the United States, shall be considered as citizens of the United States."

So Congress effectively kept the part of that clause which granted citizenship, but repealed the words "natural born" from that level of citizenship. Congress never again attempted to legislate a definition of "natural born citizen."

Congress and the several states had their chance to expand the pool of "natural born Citizens" with the 14th Amendment. Had they sought to avenge their prior attempt in 1790 to expand the pool of natural born Citizens, a Constitutional amendment would have been the perfect chance for them to have done so. But they didn't. The 14th Amendment only confers the status of Citizen, and only to those born under the jurisdiction of the United States.

Since the Constitution, from its very genesis, has distinguished between "natural born Citizens" and other "Citizens" in Article 2, Section 1, as well

as Article 1, Section 2, "Citizen" status under the 14th Amendment also must be distinguished from that of "natural born Citizens." And it is the burden of those seeking an implication to prove otherwise. The plain meaning and spelling of the word "Citizen" in the 14th Amendment evidences the same status as is used to set the requirements for those wishing to become Representatives or Senators, as well as those who were "Citizens at the time of the adoption" of the Constitution.

It is respectfully submitted that the Framers, in their wisdom, sought to restrict the office of President to those Citizens who had a slightly closer bond to the United States. And if history is any guide, other than those Presidents who were eligible to that office via the Article 2, Section 1, grandfather clause, it does not appear that the United States has ever had a President who wasn't born in the United States to parents who were both United States citizens. There have been Presidents who had one parent born abroad, but as far as Applicant has been able to verify, in each of those cases, the alien parent had become a Citizen prior to giving birth to their child who later became President.

NATURAL BORN STATUS OF PRESIDENTIAL CANDIDATE AT BIRTH

Since Article 2, Section 1, Clause 5, limits itself to a status available at birth - as evidenced by its use of the words "natural born Citizen" - Applicant respectfully submits that Barack Obama, having been a British citizen (as well as a United States citizen), at birth, can never cure the presidential defect. Article 2, Section 1, Clause 5, eligibility is set *at birth*, not at the time the proposed candidate is running for office.

DUAL NATIONALITIES

It is respectfully submitted that the Framers sought to exclude dual

national Citizens from holding the office of President since having dual nationalities, at birth, would help create the conditions whereby a future President might take the office with a competing loyalty to another nation. And at the time of the adoption of the Constitution, the Framers would have been particularly wary of the British monarchy calling for some degree of loyalty by the Commander in chief.

As to the problems associated with dual nationalities, the U.S. Department of State *Foreign Affairs Manual* at 7 FAM 081 states:

"e. **U.S. Policy on Dual Nationality:** While recognizing the existence of dual nationality, the U.S. Government does not encourage it as a matter of policy because of the problems it may cause. Dual nationality may hamper efforts by the U.S. Government to provide diplomatic and consular protection to individuals overseas. When a U.S. citizen is in the other country of their dual nationality, that country has a predominant claim on the person. A foreign country might claim you as a citizen of that country if (a) you were born there; (b) your parent or parents (and sometimes grandparents) are or were citizens of that country or (c) you are a naturalized U.S. citizen but are still considered a citizen under that country's laws. (The oath you take when you are naturalized as a U.S. citizen (8 CFR 337.1) doesn't mean the foreign country does not still regard you as a citizen of that country.)"

And at 7 FAM 082 it states:

"Current U.S. nationality laws do not explicitly address dual nationality, but the U.S. Supreme Court has stated that dual nationality is a 'status long recognized in the law' and that 'a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both.' See *Kawakita v. United States*, 343 U.S. 717 (1952)."

NATURAL BORN CITIZEN V. NATIVE BORN CITIZEN

In *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), this Honorable Court held that a child born in the United States, of parents of Chinese descent, who, at the time of his birth, were subjects of the Emperor of China, but had a permanent domicile and residence in the United States, was, at the time of his birth, a citizen of the United States, by virtue of the first clause of the Fourteenth Amendment of the Constitution.

That case also engaged in a thorough discussion of the history of citizenship in as much as the United States has been influenced by the English common law. Indeed, the opinion in that case is a dissertation on citizenship wherein it was discussed that "natural born subjects" of the King were person's born in the King's land. But despite the exhaustive undertaking of that opinion, and the careful deconstruction of British and United States common law, the Honorable Justice Gray comes to the conclusion that those born in the United States are "native born" citizens.

And for well over 200 years this phrase "natural born Citizen" has continued to remain elusive. The Framers were very aware of the common law but the weight of evidence is against the term "natural born Citizen" being equal to "natural born subject". If one returns to the pre-Amendment initial Constitution, the most compelling evidence available that "natural born Citizen" status - as it pertains to Presidential eligibility - was intended to restrict rather than enlarge the pool of possible Presidents can be found in the grandfather clause and the requirements to be a Representative or Senator.

THAT WHICH IS NATURAL IS SELF EVIDENT.

It is common parlance to say that one has a natural born right to something. Being that one has the natural right to it, there is no need for a statute to confer it. The absence of statutory use of this term "natural born citizen" for 200 years witnesses to the

truth of this interpretation. Because statutory grants of citizenship confer citizenship when there is some defect to or absence of the claim of a natural right. Indeed every statutory grant of citizenship, excepting naturalization of a foreign born foreigner, is a certain sort of sanitation of the defect which bases its title of justice to confer the rights of citizenship on the partial right the person already has. Thus the very requirement in the minds of some that the phrase be previously defined in law for it to have a clear meaning is itself a testimony to their misunderstanding of its authentic meaning.

Throughout the writings of the Founders there is a constant reference to the natural right to do this or that, whether regarding expatriation, freedom of taxation, self determination etc.. It would be historical to confer a meaning on "natural born citizen" which conforms to statutory definitions. Indeed to expand on its meaning apart from a Constitutional amendment - which opportunity was present in the past, but rejected - would alter the contract of the sovereign people with the government and violate the fundamental norms upon which they have conferred authority on the government and the court to exercise their appropriate powers.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that a natural born

Citizen – as required by Article 2, Section 1, Clause 5, of the Constitution of the United States - is a person born in the United States to parents who are both citizens of the United States, and as such Barack Obama would not be eligible to be president.

IS JOHN McCAIN A NATURAL BORN CITIZEN?

Having been born in Panama, Applicant respectfully submits that John McCain is not a natural born citizen. The United States Department of State's *Foreign Affairs Manual at 7FAM1116.1-4(c)* states:

"Despite widespread popular belief, U.S. military installations abroad and U.S. diplomatic facilities are not part of the United States within the meaning of the 14th Amendment. A child born on the premises of such a facility is not subject to U.S. jurisdiction and does not acquire U.S. citizenship by reason of birth."

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that a natural born Citizen – as required by Article 2, Section 1, Clause 5, of the Constitution of the United States - is a person born in the United States to parents who are both citizens of the United States, and as such Barack Obama would not be eligible to be

president.

“I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.”

_____, November 25, 2008
Cort Wrotnowski, Pro Se