Case No.: 13-1158

IN THE SUPREME COURT OF THE UNITED STATES

Douglas Vogt,

Petitioner,

vs.

United States District Court, Western District of Washington,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AND THE UNITED STATES CIRCUIT COURT FOR THE NINTH CIRCUIT

MOTION TO DISQUALIFY ELENA KAGAN AND SONIA SOTOMAYOR

Petitioner Douglas Vogt, pursuant to 28 U.S.C. §455, the holding of *Peters v. Kiff*, 407 U.S. 493 (1972), and the federal constitutional and common law right to an impartial tribunal, moves this Court for an order disqualifying Justices Elena Kagan and Sonia Sotomayor from involvement in this matter. For grounds in support thereof Petitioner states pursuant to 28 U.S.C. §1746 under penalty of perjury as follows:

I. FACTUAL BACKGROUND

Justice Sonia Sotomayor was nominated by Barack Hussein Obama, II to replace Justice David Souter on June 1, 2009, and was confirmed on August 6, 2009. She began active service as

a Justice of the United States Supreme Court on August 8, 2009.

Likewise, Justice Elena Kagan was nominated by Barack Hussein Obama, II to replace Justice John Paul Stevens on May 10, 2010, and was confirmed on August 5, 2010. She began active service as a Justice of the United States Supreme Court on August 7, 2010.

The underlying factual issue of the instant Petition – which seeks review of the failure to "summon" a grand jury – concerns the eligibility of Barack Hussein Obama, II to be President of the United States due to the alleged forgery of his birth certificate. Lodged with this Court pursuant to Supreme Court Rule 32 are the Public and Sealed Affidavits of Petitioner which establish probable cause – if not proof beyond a reasonable doubt – that Obama's Certificate of Live Birth ("COLB") is a forgery foisted upon the Citizens of the United States in order to install an ineligible individual into the highest office in the land. In particular, the Public Affidavit identifies twenty (20) points of forgery in Obama's COLB:

1. The first proof of forgery is a forged Registrar's stamp on the Obama Certification of Live Birth (the short form or abstract) created on or before June 12, 2008;

2. The second proof of forgery is the fact that the registration date on the COLB cannot be August 8, 1961 but must be August 11, 1961;

3. The third point of forgery is the Birth Certificate number on the COLB is out of sequence for a registration date of August 8, 1961;

4. The forth point of forgery is that there was no evidence of an embossed Hawaiian Department of Health (DOH) seal on the COLB;

5. The fifth point of forgery is that the size of the COLB is wrong if it was truly a photocopy of the original;

6. The sixth point of forgery on the COLB is that the age of Barack Hussein Obama, Senior was wrong. He was actually 27 not 25 years of age at the time of Obama Jr. birth;

7. The seventh point of forgery is that the typewriter type appearance on the COLB, with holes and notches in the letters, is not what it should look like if it was a copy of a copy of an original;

8. The eighth point of forgery is the "white halo" surrounding the text on the COLBs was not caused by the copier but caused by unsharp mask, a feature in Adobe Photoshop and evidence of computer manipulation;

9. The ninth point of forgery is the 150 dpi of the background color of the PDF version of the COLB where as the other layers on the PDF were 200 and 300 dpi. This is evidence of computer manipulation;

10. The tenth point of forgery is the inconsistent line spacing on the COLB which a manual typewriter would not do. It should have all been 24 points of line spacing with no variations;

11. The eleventh point of forgery is the inconsistencies of the left-hand margins on the COLB. When Obama's COLB was compared to twelve (12) legitimate COLBs acquired from Hawaii, none of those illustrated the same random left-hand margins;

12. The twelfth point of forgery is lower case letters found above the baseline — an impossibility on a manual typewriter and proof of a cut and paste job;

13. The thirteenth point of forgery is that the word spacing on the COLB does not fit a six point grid across the entire length of the form line;

14. The fourteenth point of forgery is the inconsistent placement of the punctuation (commas) which should be in the exact same place all the time;

15. The fifteenth point of forgery is the "kerning" on the COLB is impossible to obtain with a manual typewriter;

16. The sixteenth point of forgery is that the "letter spacing" throughout the COLB is demonstrably the result of a cut and paste job except for some very common words that were lifted from other COLBs;

17. The seventeenth point of forgery is that there are sixteen (16) different letters with two different font styles and size differences

on the same COLB which is impossible if the Hospital used only one typewriter to type up Obama's COLB. Another definite proof that letters came from two different typewriters indicating a cut and paste forgery;

18. The eighteenth point of forgery is that Obama's COLB was not perfectly flat on the glass when the forger scanned it so some of the lines are slightly curved up on the left-hand side starting from box line 7a down to about box line 13. The problem is that the typewriter line is straight but the form line below slightly curves down so we see a half to one point difference where there should be no difference;

19. The nineteenth point of forgery is the manifest errors on the Registrar's stamp on Obama's COLB that should not be there but was put there deliberately. The reason and significance of those errors are explained in the accompanying Sealed Affidavit of Douglas Vogt; and

20. The twentieth point of forgery is the use of "JBIG2 compression" on the PDF version of the COLB which is evidence of computer manipulation to cover-up the bad letter placement and multiple typefaces used by the forger. In sum, the Petition alleges that the COLB of Barack Hussein Obama, II is demonstrably a forgery – publicly issued with the knowledge and consent of Barack Hussein Obama, II – to defraud the United States and its Citizens. As such, it was a breach of the District Court's duty to refuse to "summon" a grand jury to inquire into Vogt's allegations give the obvious "public interest" in such a seminal question.

II. ELENA KAGAN AND SONIA SOTOMAYOR IMPARTIALITY MIGHT REASONABLY BE QUESTIONED AND THEY CANNOT APPEAR UN-BIASED

Disqualification of justices of this Court is first governed by federal statute found at 28 U.S.C. §455(a) which states: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Likewise, as stated in *Peters v. Kiff*, 407 U.S. 493 (1972): "Moreover, even if there is no showing of actual bias in the tribunal, this Court has held that due process is denied by circumstances that create the likelihood or the appearance of bias."

Here, it is reasonable to question: (i) whether Justices Elena Kagan and Sonia Sotomayor can be impartial, and/or (ii) whether refusing to disqualify themselves would create an "appearance of bias" for the following reasons:

A. OBAMA APPOINTED JUSTICES ELENA KAGAN AND SONIA SOTOMAYOR

It strains credibility to the breaking point to maintain that Justices Elena Kagan and Sonia Sotomayor can be impartial – as Obama appointed them to the Supreme Court – when involved in a case which will determine whether Vogt's allegations will be seen by a Grand Jury which could well result in Obama being impeached and/or indicted.

B. OBAMA'S APPOINTMENT OF JUSTICES ELENA KAGAN AND SONIA SOTOMAYOR TO THE SUPREME COURT WAS *ULTRA VIRES* AND *VOID AB INITIO*

Moreover, as both Justices Elena Kagan and Sonia Sotomayor well know[1], when it is ultimately proven that Obama was not eligible to be President, each and every act he took – including their appointment to the Supreme Court – would be *ultra vires* and *void ab initio*. As such, they would lose their position as Justices of the Supreme Court. Such self-interest certainly raises the appearance of lack of bias by Justices Elena Kagan and Sonia Sotomayor in the pending matter.

While no federal court has addressed the issue of the President acting *ultra vires*, the issue has been raised and determined at the State level. In *Tappy v. State ex rel. Byington*, 82 So.2d 161, 165-166 (Fla. 1955), the Florida Supreme Court was faced with the question of when a governor assumed the duties of that office and thus was empowered to appoint judicial officers. In

1 As Justice Rutledge in his concurring opinion in *Screws v. United States*, 325 U.S. 91, 129 (1945) stated: "Ignorance of the law is no excuse for men in general. It is less an excuse for men whose special duty is to apply it, and therefore to know and observe it."

particular, Florida Governor Collins took the Florida Constitutionally-required oath of office at Noon on January 4, 1955. However, a state judge had resigned his office effective at midnight on January 3, 1955. When the acting Governor Johns appointed Tappy prospectively to fill that judicial vacancy and Governor Collins appointed Byington to fill that same judicial vacancy subsequent to his swearing-in as governor, the conflict between the two men arose.

In resolving the conflict, the Florida Supreme Court recognized that an executive officer who proceeds to "execute the duties" before executing the required Oath of his office is acting without authority and all acts taken thereby are *void*, holding:

> Section 2, Article XVI, of the Constitution provides, so far as it is material here, that 'Each and every officer of this State * * * shall **before** entering upon the discharge of his official duties take the following oath of office * * *.' There can be no doubt that because of this provision, the **taking of the official oath** by Governor Collins was an **indispensable ingredient** of the installation in office which the Constitution required, and that **until this oath was taken Governor Collins was not 'duly qualified' as governor**, for the reason that without the oath he had **no power or authority to discharge the official duties of the office of governor**." (Emphasis added)).

Accordingly, the Florida Supreme Court held that the appointment by Governor Collins of Byington to fill the judicial vacancy was *void ab initio*. *Accord*: *Treasure, Inc. v. State Beverage Department*, 238 So. 2d 580 (Fla. 1970)("Never having received a duly executed and authenticated commission with the oath of office endorsed thereon, and never having taken the oath of office, the Substitute Director had no power or authority to act in place of the disqualified Beverage Director.")

Analogously here, if Obama is proven – through Vogt's allegations and a subsequent Grand Jury investigation – to be missing the "indispensable ingredient" for being President – to

wit, the Article II, §1[2] eligibility requirement of citizenship and being a "natural born Citizen" – then Obama had "**no power or authority to discharge the official duties**" of the Office of the President. As such, Obama was not invested with the Article II, Section 2, Clause 2[3], authority to appoint Justices Elena Kagan and Sonia Sotomayor as Justices of the Supreme Court.[4]

Thus, just as decisions by an individual who has not properly qualified as a judicial actor are *void ab initio* and must be vacated, so too will all actions taken by Obama be *void ab initio* once his ineligibility to be President is established. *Accord*: *Nguyen v. United States*, 539 U.S. 69 (2003)(Any decision of an improperly constituted judicial body must be vacated); *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 83-85 (1982) (holding that delegation to adjunct bankruptcy judges of powers beyond those conferred to non-Article III judges rendered an entire administrative scheme unconstitutional); *Moran v. Dillingham*, 174 U. S. 153, 158 (1899); *American Constr. Co. v. Jacksonville, T. & K. W. R. Co.*, 148 U. S. 372 (1893).

In such a case, the appointment by Obama of Justices Elena Kagan and Sonia Sotomayor to the Supreme Court would be an *ultra vires* act requiring their ouster. Accordingly, given the

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2Article II, §1, clause 5 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."

3Article II, Section 2, Clause 2 states in pertinent part: "[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law . . ."

4As such, Obama did not possess the authority to sign Congressional bills – such as the Patient Protection and Affordable Care Act – into law, issue the 172 Executive Orders he has issued, appoint any federal official nor enter into any "Treaties": All leading to the inescapable conclusion that every putative Presidential act by Obama is ***void ab initio***.

consequences of Vogt's Petition, it would be inappropriate for Justices Elena Kagan and Sonia Sotomayor to sit in judgment of that Petition for their impartiality might reasonable be questioned given that they would lose their jobs if Vogt's Petition is granted and the Grand Jury determines that Vogt's allegations to be true.

III. CONCLUSION

As Justice Brandeis sagely observed:

> Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. **If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy**. (Emphasis added).

Olmstead v. United States, 277 U.S. 438, 485 (1928). Here, substantial allegations are lodged with this Court that establish probable cause to believe that Obama is a "lawbreaker". This Court cannot stand as a shield for him from the legitimate investigation by a Grand Jury into those allegations without inviting "contempt for the law". Thus, for Justices Elena Kagan and Sonia Sotomayor to sit in judgement on Vogt's Petition would deny to Vogt due process of law through an impartial tribunal to resolve this very important question.

For the reasons stated above, Petitioner requests that Justices Elena Kagan and Sonia Sotomayor disqualify themselves from any involvement in this matter.

I Declare under Penalty of Perjury under the Laws of the United States of America That the Foregoing Is True and Correct.

By:_____
Douglas Vogt

CERTIFICATE OF SERVICE

I hereby certify that on this the March ___, 2014, a true copy of the foregoing was caused to be served on the following by U.S. First Class Mail, postage Pre-paid: Honorable Judge James L. Robart, U.S. District Court, 700 Stewart Street, Suite 2310, Seattle, WA 98101.

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By:_____
Douglas Vogt