SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MONTGOMERY BLAIR SIBLEY,

PLAINTIFF,

VS.

YVETTE ALEXANDER, DON R. DINAN AND WILLIAM LIGHTFOOT,

DEFENDANTS.
_____/

Case. No.: 2012-CA-008644 B
Judge: John M. Mott
Next Hearing: None Scheduled

PLAINTIFF'S MOTION FOR RECONSIDERATION AND REQUEST FOR ORAL ARGUMENT

Plaintiff, Montgomery Blair Sibley ("Sibley"), moves this Court: (i) to reconsider and then vacate its March 5, 2013, Order and (ii) for Oral Argument upon the instant motion, and for grounds in support thereof states as follows:

I. SUMMARY OF ARGUMENT

This Court has arbitrarily denied to Sibley a fair hearing which denial was therefore of due process in the constitutional sense. This is an Article I – not an Article III – Court hence the doctrine of "standing" is inapposite to the exercise of this Court's subject-matter jurisdiction. Moreover, the doctrine of "standing" has never been held up for analysis with its conflict with the powers reserved and retained by the People. When done so as Sibley requests here, it must fail to those greater organic rights of the People. Additionally, if applicable, Sibley has "standing".

Finally, proof of the unjustified and/or mistaken deprivation of Sibley's procedural due process right to be heard is that this Court completely – or perhaps conveniently – misunderstood the gravamen of the Complaint in its rush to conclude that the Sibley's claims are "moot" and that the matter does not qualify to be considered under the doctrine of being "capable of repetition, yet

evading review."

Thus this Court is obligated to vacate its order of March 5, 2013, and – to "satisfy the appearance of justice" set this matter for immediate oral argument.

II. THIS COURT HAS ARBITRARILY REFUSED TO HEAR SIBLEY

The Supreme Court stated in *Powell v. Alabama*, 287 U.S. 45 (1932) that: "[i]f in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party . . . it reasonably may not be doubted **that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense**." *Id*. at 69. (Emphasis added).

Here this Court has based its order of dismissal upon two legal theories: (i) lack of "standing" and (ii) "mootness"; both of which are wrongly applied as detailed *infra*. Yet Sibley was never afforded an opportunity to be "heard" on these grounds by this Court. Hence, Sibley's due process rights as detailed in *Powell* have been egregiously violated by this Court's curious rush to avoid deciding a controversial issue: Mr. Obama's ignoring of this Court's lawfully-issued and properly-served subpoena.

In particular, Defendants served Sibley on November 28, 2012, with their *Memorandum of Points and Authorities In Opposition to Plaintiff's Motion for Preliminary Injunction*. See Email from Defendants' Counsel, attached hereto as Exhibit "A". Hence, at the preliminary injunction hearing held before this Court the following day, Sibley had not had a chance to research and thus be prepared to address the novel D.C. Superior Court "standing" issued raised by Defendants. Indeed, at that hearing, the Court – to Sibley's recollection – did not even take up that argument.

Thus for this Court to attempt to justify its refusal to allow Sibley to be properly heard in opposition to the Court's *sua sponte* dismissal violates Sibley's due process right to be heard.

Accord: *Day v. McDonough*, 547 U.S. 198, 209 (2006)("In sum, we hold that district courts are permitted, but not obliged, to consider, *sua sponte*, the timeliness of a state prisoner's habeas petition. . . . Of course, before acting on its own initiative, a court **must** accord the parties fair notice **and an opportunity to present their positions**." (Emphasis added)); *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**."(Emphasis added)).

The Supreme Court has often noted, "constitutional rights would be of little value if they could be . . . indirectly denied." *Smith v. Allwright*, 321 U.S. 649, 664 (1944). The Constitution "nullifies sophisticated as well as simple-minded modes" of infringing on constitutional protections. *Lane v. Wilson*, 307 U.S. 268, 275 (1939). Here, to leap-frog to judgment as this Court has done here renders Sibley's right-to-be-heard of "little value". Accordingly, this Court must vacate its Order of March 5, 2013, and immediately grant oral argument to Sibley on the issues raised by the Court in its order of dismissal.

III. THE ISSUE OF "STANDING" IS INAPPOSITE IN THIS ARTICLE I COURT

This Court first grounded dismissal of Sibley's suit holding: "When analyzing the likelihood that the plaintiff will prevail on the merits of this case, the court concludes that the plaintiff cannot do so because he lacks standing to bring the present suit."[1] (March 5, 2013, Order, p. 1). For support, the Court cited only one D.C. Court of Appeals case to conclude that the "standing" doctrine first enunciated in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) – which declared that a plaintiff's claim must satisfy injury-in-fact, causality, and redressability requirements to be justiciable

[1] Of course, to ground dismissal upon the legal standard of a preliminary injunction is manifestly improper.

under Article III – had validity in this Article I Court. Such a conclusion is – respectfully – asinine.

A. THIS IS A COURT OF UNLIMITED SUBJECT MATTER JURISDICTION

Initially, it cannot be gainsaid that this is an Article I, §8 Court. *See*: *District of Columbia v. Walters, D.C.App.*, 319 A.2d 332, 338 n.13 (1974), *appeal dismissed, cert. denied*, 419 U.S. 1065 (1974)("[J]urisdiction is limited to that which Congress has bestowed upon us (pursuant to its Article I power to 'constitute Tribunals inferior to the Supreme Court'").

The jurisdiction of this Article I Court is set out at D.C. Code §11-921(a) which states: "Except as provided in subsection (b), the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia." Hence, unlike the Article III courts established by the Constitution which are expressly limited by Article III to "cases" or "controversies", this Court's jurisdiction is that of any state Court: in a word, unlimited. *Palmore v. United States*, 411 U.S. 389 (1973)("Seeking to improve the performance of the court system, Congress, in Title I of the Reorganization Act, invested the local [District of Columbia] courts with jurisdiction equivalent to that exercised by state courts. S.Rep. No. 91-405, pp. 2-3; H.R.Rep. No. 91-907, pp. 23-24.").

Hence, the "standing" issue does <u>not</u> limit this Court's subject matter jurisdiction and thus its ability to hear Sibley's claims. *Accord*: *N.J. Citizen Action v. Riviera Motel Corp.*, 686 A.2d 1265, 1272 (N.J. Super. App. Div. 1997) ("We have recognized often that . . . state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability **even when they address issues of federal law**." (emphasis added)); Helen Hershkoff, *State Courts and the "Passive Virtues": Rethinking the Judicial Function*, 114 Harv. L. Rev. 1833, 1836 (2001) ("Judicial practice in some states differs - and differs radically - from the federal model."); *Vill. of Arlington*

Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 262 n.8 (1964)("The constitutional and prudential considerations [of federal standing doctrine] respond to concerns that are peculiarly federal in nature.").

Indeed, Article III standing does not apply to non-Article III courts – such as this Court – because the prime rationale for that constitutional limit – separation of powers – does not apply to non-Article III courts. Justice Scalia foreshadowed his holding in *Lujan* with an article that described Article III standing as a safeguard for separation of powers. He argued that federal courts unbridled by federal standing step outside their constitutional role by prematurely resolving public policy issues and forsaking "their traditional undemocratic role of protecting individuals." In other words, Article III courts which are restricted to "cases and controversies", cannot take over the respective roles of the Legislative and Executive Branches of creating and executing majoritarian public policy, but instead can only interpret law through its protection of injured individuals. See Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 886-90 (1981).

B. *FRIENDS OF TILDEN PARK INC.* IS SO INTELLECTUALLY DISHONEST THAT IT SHOULD BE IGNORED BY THIS COURT

This Court's sole reliance upon *Friends of Tilden Park Inc. v. District of Columbia*, 806 A.2d 1201, 1206 (D.C. 2002) to import the limitation on subject-matter jurisdiction of the doctrine of "standing" is misplaced and – due to the intellectual dishonesty implicit in *Friends of Tilden Park* – must be ignored by this Court.

Notably, *Friends of Tilden Park* held:

> Congress did not establish this court under Article III of the Constitution, but we nonetheless apply in every case "the 'constitutional' requirement of a 'case or controversy' and the

> 'prudential' prerequisites of standing." *Speyer v. Barry*, 588 A.2d 1147, 1160 (D.C. 1991); *see also* D.C. Code § 11-705 (b) (2001) (stating that divisions of this court hear and determine "cases and controversies").

Id. at 1206. The reference to *Speyer* starts the trail of discovery of the disingenuous genesis for applying Article III "standing" to this Article I Court. *Speyer* held: "In order to reach the merits, the Georgetown residents must satisfy both the 'constitutional' requirement of a 'case or controversy' and the 'prudential' prerequisites of standing. *See Community Credit Union Servs., Inc. v. Federal Express Servs. Corp*., 534 A.2d 331, 333 (D.C. 1987).

Community Credit held: "Although this court is not governed by standing requirements under article III of the Constitution, we look to federal jurisprudence to define the limits of 'cases and controversies' **that our enabling statute empowers us to hear**. *See Lee v. District of Columbia Bd. of Appeals & Review*, 423 A.2d 210, 216 n.13 (D.C. 1980); D.C. Code § 11-705 (b) (1981)(Emphasis added)". And therein lies the disingenuity.

Lee was an <u>original</u> jurisdiction proceeding brought in the D.C. Court of Appeals pursuant to D.C. Code 1978 Supp., §1-1510 (now D.C. Statute §2-510) which vested jurisdiction **in the D.C. Court of Appeals – <u>not</u> the D.C. Superior Court** – to entertain only petitions brought by: "[any] person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case . . . ." In *Lee*, the D.C. Court of Appeals held:

> This court, of course, is not bound by the mandates of Article III, since it was created by Congress as an Article I court. *See* D.C. Code 1973, § 11-102(2)(A); *Palmore v. United States*, 411 U.S. 389, 36 L. Ed. 2d 342, 93 S. Ct. 1670 (1973). In creating this court, however, Congress provided that we, like the federal courts, should hear only "[cases] and controversies." D.C. Code 1973, § 11-705(b); see *United States v. Cummings*, D.C.App., 301 A.2d 229, 231 (1973).

What intellectual rubbish. First, the jurisdiction "created by Congress" of the D.C. Court of Appeals

for agency review is found at D.C. Statute §2-510 which states: "(a) Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Mayor or an agency in a contested case, is entitled to a judicial review thereof in accordance with this subchapter upon filing in the District of Columbia Court of Appeals a written petition for review." Moreover, the citation in *Lee* to D.C. Code §11-705(b) for the proposition that the D.C. Court of Appeals subject-matter jurisdiction is limited to "[cases] and controversies" is ridiculous.

D.C. Code §11-705(b) "Assignment of judges; divisions; hearings" states: (b) Cases and controversies shall be heard and determined by divisions of the court unless a hearing or a rehearing before the court in banc is ordered. Each division of the court shall consist of three judges." This is not a jurisdictional "enabling statute" as argued in *Community Credit.* Indeed, the legal term-of-art "jurisdiction" is not even mentioned in either the chapter, title or text of §11-705.

Thus to base the holding in *Friends of Tilden Park Inc*. upon its ancestor *Lee* is legal dissimulation at best. Most importantly, the holding of *Friends of Tilden Park Inc*. is limited to the jurisdiction of the D.C. Court of Appeals – not the D.C. Superior Court.

Accordingly, it was legal error for this Court to import the Article III limitation of "standing" into this Article I Court's jurisdictional limits. Indeed, to do so is manifestly improper. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) stated: "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is **not to be expanded by judicial decree**."(citations omitted, emphasis added). Thus, just as Court's may not expand its jurisdiction, it may not likewise contract that jurisdiction.

For the reasons aforesaid, the doctrine of "standing" has no relevance in this Article I Court and thus it was improper for this Court to base in part it dismissal upon such.

C. THE DOCTRINE OF "STANDING" IS A CANARD

Assuming *arguendo* that "standing" is a valid legal doctrine applicable to this Court's subject matter jurisdiction, Sibley challenges the darling-of-the-government argument that citizens may not 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) is invalid as it was adopted – and blindly followed – without considering whether such a doctrine runs afoul of the powers reserved to the People under the Ninth and Tenth Amendments.

Simply stated, the People did not create a system of law which fails to satisfy certain *moral minima* for such would **not** to be a justice system but instead just-a-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 only 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 the decision of *Lujan* in 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 **neithe**r a legal term-of-art **nor** a familiar doctrine at the time the Constitution was adopted.[2] **Nowhere** in English common law practice can be found the requirement that a plaintiff must show an actual or threatened direct personal injury in 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* 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.

D. SIBLEY HAS STANDING

The proof of Sibley's assertion that he has "standing" to challenge the free will impairment by Congress of the Defendants-as-Electors and their ability to vote for non-eligible Presidential candidates is proved by query: If not Sibley, a registered D.C. voter who voted and an eligible Presidential candidate, then who has standing? The Defendants will never raises the challenges

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

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?

IV. THIS CASE FALLS SQUARELY INTO THE EXCEPTION OF *WEINSTEIN V. BRADFORD*

As this Court noted there is a doctrine which would authorize continuation of this suit notwithstanding that – due to this Court's failure to move expeditiously – this matter has become moot due to the passage of time. That doctrine is known as "capable of repetition, yet evading review" and is 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. First, Sibley received no opportunity to "fully litigate" – note again this Court's refusal to allow Sibley to be heard. Second, Sibley has a reasonable expectation that he will be subjected once again in four years to Congressional control of Electors whose vote is pre-ordained and could again be made for ineligible candidates.

Hence, this Court's myopic – understandable as it failed to accord Sibley and opportunity to be heard and for thus this Court to be fully informed – description of Sibley's claims is clearly misplaced. "Plaintiff rests this argument on the claim that President Obama is not a 'natural born citizen' because President Obama's father was not a citizen of the United States at the time of

President Obama's birth." (March 5, 2013, Order, p. 2).

Did this Court not read the Complaint? Sibley must assume that to be the case for his claims are not so singularly stated: Sibley's pending suit raises not one – as this Court claimed – but 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, while the third claim may not be repeated[3], the first two most surely will and hence Sibley's claim is "capable of repetition, yet evading review" and thus is not moot.

V. DEMAND FOR ORAL ARGUMENT

Sibley respectfully demands that to which he is entitled: his inalienable right under the Fifth Amendment of the United States Constitution – to a "hearing" which in this case given this Court's behavior now requires oral argument. 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."); *Federal Communications Commission v. WJR, The Goodwill Station, Inc.*, 337 U.S. 265, 276 (1949)("Without in any sense discounting the value of oral argument wherever it may be appropriate or, by virtue of the particular circumstances, constitutionally required . . ." (Footnote omitted).)

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[3] Though given the Judiciary's complicit and improper disregard for the Constitution's Article II, §1 eligibility limitation on the Presidency, Sibley would not be surprised if Mr. Obama – aided again by a Judiciary which *de facto* has repealed Article II, §1 by refusing to find that anyone has "standing" to challenge Mr. Obama's eligibility – ignores the term limitation contained in Twenty-Second Amendment of the United States Constitution, §1 and seeks a third term.

Given the "circumstances" here – the Court's rush to judgment entered by mischaracterization of Sibley's arguments and pleadings to avoid upsetting the political apple cart – oral argument is now "constitutionally required".

VI. CONCLUSION

For the reasons aforesaid, this Court is now obligated to vacate its order of March 5, 2013, and – to "satisfy the appearance of justice" – set this matter for immediate oral argument.

RULE 12.I(A) STATEMENT

The undersigned has consulted with Defendants' counsel who has indicated that he does oppose the relief requested herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served by U.S. Postal Service first class mail this March 10, 2013, on 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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Montgomery Blair Sibley

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
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MONTGOMERY BLAIR SIBLEY,

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YVETTE ALEXANDER, DON R. DINAN AND WILLIAM LIGHTFOOT,

DEFENDANTS.
_____/

Case. No.: 2012-CA-008644 B
Judge: John M. Mott
Next Hearing: None Scheduled

[PROPOSED]

ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION AND REQUEST FOR ORAL ARGUMENT

THIS MATTER came on to be heard on Plaintiff's Motion for Reconsideration of this Court's March 5, 2013 Order and Request for Oral Argument, and the Court being advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the motion is Granted. This Court's March 5, 2013, Order is vacated and Plaintiff's request for Oral Argument is granted which argument is set for one (1) hour on _____, 2013.

DONE AND ORDERED in Chambers this ____ day of _____, 2013.

_____
Judge John M. Mott

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Sibley, Montgomery Blair v. Alexander, 2012 CA 008644 B

5 messages

Saindon, Andy (OAG) <andy.saindon@dc.gov> Wed, Nov 28, 2012 at 10:26 AM
To: "judgemotteserve@dcsc.gov" <judgemotteserve@dcsc.gov>, "mottjm3@dcsc.gov" <mottjm3@dcsc.gov>
Cc: Montgomery Blair Sibley <mbsibley@gmail.com>, "2024780371@oag.fax.dcgov.priv" <2024780371@oag.fax.dcgov.priv>

Pursuant to Administrative Order No. 06-17 of this Court, attached please find a Microsoft Word version of the proposed Order accompanying the defendants' Opposition to plaintiff's motion for preliminary injunction, filed electronically today in the above-referenced matter. Also attached is a courtesy copy of the Opposition.

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