[ORAL ARGUMENT NOT SCHEDULED]

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

MONTGOMERY BLAIR SIBLEY, Petitioner-Appellant, v. BARACK HUSSEIN OBAMA, Respondent-Appellee.	No. 13-5017

MOTION FOR SUMMARY AFFIRMANCE

Respondent-appellee respectfully moves for summary affirmance of the district court's orders dismissing this quo warranto petition by pro se appellant Montgomery Blair Sibley, *see Sibley v. Obama*, No. 12-cv-1832, 2012 WL 6625813 (D.D.C. Dec. 19, 2012) (Bates, J.) (attached as Exhibit A), and denying Sibley's motion to vacate that dismissal order and to disqualify the district judge, *see Sibley v. Obama*, No. 12-cv-1832 (D.D.C. Jan. 10, 2013) (Bates, J.) (docket entry 18) (attached as Exhibit B). Summary affirmance is appropriate where, as here, the merits of a case are so clear that expedited action is justified and no benefit will be gained from further briefing or argument of the issues presented. *Gray v. Poole*, 243 F.3d 572, 575 (D.C. Cir. 2001); *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297-98 (D.C. Cir. 1987) (per curiam).

STATEMENT

1. In January 2012, Sibley brought a pro se action seeking, *inter alia*, issuance of a writ of quo warranto compelling President Barack Obama to demonstrate his eligibility for office.[1] *See Sibley v. Obama*, No. 12-cv-1 (D.D.C.). Sibley contended that President Obama is not qualified to be president because he is not a "natural born Citizen" within the meaning of Article II, § 1 of the U.S. Constitution. The district court dismissed that challenge for lack of standing. On appeal, this Court summarily affirmed. *See Sibley v. Obama* ("*Sibley I*"), No. 12-5198, 2012 WL 6603088 (D.C. Cir. Dec. 6, 2012) (attached as Exhibit C).[2]

2. Following the November 2012 presidential election, Sibley filed this pro se action in district court, again challenging President Obama's qualifications to serve as president and again seeking issuance of a writ of quo warranto. *See* Certified Petition for Writ of Quo Warranto ("Pet.") (attached as Exhibit D). Sibley also sought a preliminary injunction to enjoin President Obama from taking the oath of office in January 2013. Appellee moved to dismiss this action, explaining that Sibley lacks

[1] Quo warranto is a "'writ used to inquire into the authority by which a public office is held or a franchise is claimed.'" *Drake v. Obama*, 664 F.3d 774, 784 (9th Cir. 2011) (quoting Black's Law Dictionary 1374 (9th ed. 2009)), *cert. denied*, 132 S. Ct. 2748 (2012).

[2] Sibley filed a petition for a writ of certiorari of this Court's judgment, s*ee Sibley v. Obama*, No. 12-736 (S. Ct.), which was denied on February 19, 2013.

standing to challenge the President's eligibility for office, notwithstanding his self-declared status as a "write-in candidate" for president in the 2012 election.

On December 19, 2012, the district court granted appellee's motion to dismiss. The court applied this Court's holdings in *Sibley I* that "actions against public officials . . . can *only* be instituted by the Attorney General" and that Sibley's "self declaration as a write-in candidate" was insufficient to confer standing. Ex. C at 1 (internal quotation marks omitted); *see* Ex. A at 1-2. Observing that "[t]his case largely mirrors" Sibley's prior quo warranto challenge, the court reaffirmed that "Sibley simply has no standing to bring this petition." Ex. A at 1, 2. The court therefore denied the motion for a preliminary injunction and dismissed the petition.

Sibley then filed a motion to vacate the dismissal order on the theory that the district court judge was personally biased against him. The district court denied the motion. *See* Ex. B at 1-2. Sibley now appeals those rulings.

ARGUMENT

No substantial question is presented by this appeal, and summary disposition is warranted.

I. Sibley Lacks Standing To Seek A Writ Of Quo Warranto.

The district court correctly held that Sibley lacks standing to compel issuance of a writ of quo warranto. *See* Ex. A at 1-2. This Court held in *Sibley I* that a write-in candidacy generally does not create standing because "the writ is only available for someone who would obtain the office if the incumbent were ousted." Ex. C at 1.

Sibley would not become president if President Obama were removed from office. *See* U.S. Const. amend. XXV. That Sibley's latest petition affirms that he was a write-in candidate for President in the recent election, *see* Pet. ¶ ¶ 5, 19, does not alter the legal outcome.[3]

Nor can Sibley invoke standing based upon an abstract interest in ensuring that the government adheres to constitutional requirements. The "generalized interest of all citizens in constitutional governance" is insufficient to support Article III jurisdiction. *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1441-42 (2011) (internal quotation marks omitted). Applying that principle, courts have uniformly rejected similar attempts by individual citizens to challenge President Obama's eligibility to serve as President.[4]

II. The District Judge's Impartiality Cannot Reasonably Be Questioned.

Sibley also appeals the district court's decision denying his motion to vacate the dismissal of his quo warranto petition on the theory that the district judge should have

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[3] Sibley's attempt to invoke this Court's jurisdiction to oust President Obama from office would in any event be inconsistent with the Constitution's allocation to Congress of the "sole Power" to remove the President from office. *See* U.S. Const. art. I, §§ 2, 3; *id.* art. II, § 4.

[4] *See, e.g.*, *Drake v. Obama*, 664 F.3d 774, 779-84 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 2748 (2012); *Purpura v. Sebelius*, 446 F. App'x 496, 497-98 (3d Cir. 2011) (unpublished), *cert. denied*, 132 S. Ct. 1037 (2012); *Kerchner v. Obama*, 612 F.3d 204, 206-09 (3d Cir. 2010), *cert. denied*, 131 S. Ct. 663 (2010); *Berg v. Obama*, 586 F.3d 234, 238-42 (3d Cir. 2009); *Cohen v. Obama*, 332 F. App'x 640 (D.C. Cir. 2009) (unpublished); *Taitz v. Obama*, 707 F. Supp. 2d 1, 3-4 (D.D.C. 2010).

been disqualified. Sibley urges that the district court must have been biased against him because, among other things, it did not allow him to present evidence of President Obama's alleged "'criminal behavior'" to the grand jury. Ex. B. at 1.

This challenge is plainly without merit. As the district court explained, "a judge's rulings" are generally not "a proper ground for a recusal motion." Ex. B at 1; *see Liteky v. United States*, 510 U.S. 540, 555 (1994). In this case, Sibley has offered no evidence that would cause a "reasonable and informed observer" to question the district court's impartiality. *SEC v. Loving Spirit Found. Inc.*, 392 F.3d 486, 493 (D.C. Cir. 2004) (internal quotation marks omitted). The district court did not abuse its discretion in denying Sibley's motion to vacate. *Cf. ibid.* (reviewing a district court's refusal to recuse for abuse of discretion).[5]

[5] Nor did the district court abuse its discretion in denying Sibley's motion to present oral argument. *See* D.D.C. Civ. R. 78.1 (providing that "[the] allowance [of argument on a motion] shall be within the discretion of the court").

CONCLUSION

For the foregoing reasons, the district court's judgment should be summarily affirmed.

Respectfully submitted,[6]

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MARCH 2013

[6] The Department of Justice gratefully acknowledges the assistance of Robert Bernstein, a third-year student extern from Columbia Law School, in preparing this filing.

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2013, I electronically filed the foregoing with the Clerk of Court by using the appellate CM/ECF system. I also certify that a copy of this motion has been served on appellant by email to mbsibley@gmail.com. Appellant has consented to service by electronic means pursuant to Fed. R. App. P. 25(c)(1)(D).

/s/ Jeffrey E. Sandberg
Jeffrey E. Sandberg
Counsel for Appellee

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY,

Petitioner

v.

BARACK HUSSEIN OBAMA, II,

Respondent.

Civil Action No. 12-cv-1832 (JDB)

MEMORANDUM OPINION

Petitioner Sibley returns with yet another petition premised on so-called "birther" claims against President Barack Obama. Again, Sibley endeavors – through a writ of quo warranto – to prevent President Obama from holding office because he supposedly was not born in the United States. Now before the Court are miscellaneous motions filed by petitioner, as well as a motion to dismiss filed by respondent. For the reasons described below, the Court will grant respondent's motion to dismiss Sibley's petition, and deny Sibley's motion for a preliminary injunction, as well as his other miscellaneous motions.

This case largely mirrors one Sibley brought earlier this year. See Sibley v. Obama, Civil Action No. 12-0001 (D.D.C. 2012). In that nearly identical action, the Court rejected Sibley's various motions challenging the President Obama's eligibility to hold office, and denied Sibley's petition to the Court for a writ of quo warranto to remove President Obama from his current office and, alternatively, to bar him from running for the office of president again. See Sibley v. Obama, 866 F. Supp. 2d 17, 19, 23 (D.D.C. 2012). The Court concluded that Sibley lacked standing to challenge President Obama's tenure in office and his eligibility for the presidency. Id.

at 20. The D.C. Circuit summarily affirmed this Court's decision in an unpublished order. It found that "actions against public officials . . . can *only* be instituted by the Attorney General," and that Sibley's "self declaration as a write-in candidate" was insufficient to confer standing. See Order, Sibley v. Obama, App. No. 12-5198 (D.C. Cir. Dec. 6, 2012) (quoting Andrade v. Lauer, 729 F.2d 1475, 1498 (D.C. Cir. 1984) (emphasis in original)). Although Sibley purports to claim that he "now has standing" because he "was a candidate in the 2012 presidential election," Pl.'s Pet. ¶ 19 [ECF No. 1] (emphasis in original), this case is virtually indistinguishable from his prior case. Hence, the reasoning of this Court and the D.C. Circuit in that case is similarly applicable here. Sibley simply has no standing to bring this petition and, accordingly, respondent's motion to dismiss will be granted.

For similar reasons, Sibley's motion for a preliminary injunction seeking to enjoin President Obama from taking the oath of office on January 21, 2013,[1] utterly lacks merit. A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); see also Sherley v. Sebelius, 644 F.3d 388, 392 (D.C. Cir. 2011). "A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits,[2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." Winter, 555 U.S. at 20.

Sibley fails to establish any of these factors here. It is inconceivable that Sibley could prevail on the merits of his case, for the reasons given in this Court's disposition of his previous case. In addition, courts have repeatedly rejected such attacks on President Obama's citizenship

[1] Contrary to Sibley's petition, President Obama will take the oath on January 20, 2013, as prescribed by the Twentieth Amendment of the United States Constitution. See U.S. Const. amend. XX, § 1. The public ceremony will take place on January 21, 2013.

akin to the one Sibley continues to assert in his suits. See, e.g., Taitz v. Obama, 707 F. Supp. 2d 1, 2-3 (D.D.C. 2010); Hollister v. Soetoro, 601 F. Supp. 2d 179, 181 (D.D.C. 2009); Kercher v. Obama, 612 F.3d 204, 206 (3d Cir. 2010); Order, Tisdale v. Obama, Civ. Action No. 3:12-0036 (E.D. Va. Jan. 23, 2012) [ECF No. 2], aff'd, 473 Fed. App'x 203 (4th Cir. 2012). Moreover, Sibley has failed to demonstrate irreparable harm warranting a preliminary injunction; indeed, he fails to show any actionable injuries at all. See Sibley, 866 F. Supp. 2d at 20 ("A public official's title to office is an injury particularized to an individual only if that individual 'has an interest in the office itself'"). And, as the D.C. Circuit observed with respect to Sibley's previous attempt to secure a writ of quo warranto, "self-declaration as a write-in candidate is insufficient" to satisfy the standing requirement "because the writ is only available for someone who would obtain the office if the incumbent was ousted." Order at 1, Sibley v. Obama, App. No. 12-5198 (D.C. Cir. Dec. 6, 2012) (internal citations and quotations omitted). Finally, the balance of equities tips decidedly against Sibley, and, as respondent rightfully points out, an injunction would not be in the public interest. To the contrary, enjoining President Obama from taking his oath of office and fulfilling the duties entrusted to him would clearly work against the public interest.

Because Sibley's petition will be dismissed for lack of standing and failure to state a claim, and his motion for a preliminary injunction will be denied, Sibley's motion for a preliminary hearing and expedited discovery will be denied as moot. A separate order accompanies this memorandum opinion.

SO ORDERED.

/s/
JOHN D. BATES
United States District Judge

Dated: December 19, 2012

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY,

Petitioner

v.

BARACK HUSSEIN OBAMA, II,

Respondent.

Civil Action No. 12-1832 (JDB)

ORDER

Sibley has moved for an order "to vacate the Court's December 19, 2012, order of dismissal and . . . for entry of an order disqualifying the Honorable John D. Bates from further involvement in this matter." Pl.'s Mot. at 1 [ECF No. 17]. The Court will deny the motion.

Sibley claims that the Court is personally biased against him because it refused to provide Sibley with a hearing, and denied him ECF access, and that the Court's "impartiality might reasonably be questioned" because it refused to allow Sibley's "prompt presentation of evidence of Defendant Obama's criminal behavior to the Grand Jury." Pl.'s Mot. at 3-4.[1] However, a judge's rulings in cases are not a proper ground for a recusal motion. See Liteky v. United States, 510 U.S. 540, 555 (1994). Moreover, these actions cited by Sibley do not suggest that "any reasonable and informed observer" would question this Court's impartiality, as Sibley is required

[1] Sibley also takes issue with the Court's use of the term "birther" in describing the nature of Sibley's actions. Other courts have applied this term to describe the same challenges that Sibley makes to President Obama's eligibility to hold the office of President. See, e.g., Berg v. Obama, 586 F.3d 234, 239 n.4 (3d Cir. 2009)); Annemarie v. Electors ex rel. Louisiana, 12-601, 2012 WL 5878153 at *1 (M.D. La. Oct. 15, 2012); Farah v. Esquire Magazine, Inc., 863 F. Supp. 2d 29, 31 (D.D.C. 2012); United States v. Huff, 3:10-cr-73, 2011 WL 4916195 at *4-5 (E.D. Tenn. Oct. 17, 2011); Liberi v. Tatiz, 759 F. Supp. 2d 573, 575 (E.D. Pa. 2010); Rhodes v. MacDonald, 670 F. Supp. 2d 1363, 1366 (M.D. Ga. 2009).

to show under 28 U.S.C. § 455. See, e.g., SEC v. Loving Spirit Found., 392 F.3d 486, 493-94 (D.C. Cir. 2004). In addition, Sibley has not provided the requisite affidavit pursuant to 28 U.S.C. § 144.

Accordingly, it is hereby **ORDERED** that Sibley's motion to vacate the Court's December 19, 2012 order on the basis of his disqualification motion is **DENIED** and it is further **ORDERED** that the motion to disqualify is **DENIED**.

SO ORDERED.

/s
JOHN D. BATES
United States District Judge

Dated: January 10, 2013

Exhibit C

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12-5198 **September Term, 2012**

1:12-cv-00001-JDB

Filed On: December 6, 2012

Montgomery Blair Sibley, Individually,

Appellant

v.

Barack Obama, et al.,

Appellees

BEFORE: Rogers, Garland, and Brown, Circuit Judges

O R D E R

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam).

With respect to plaintiff's petition for writs quo warranto, the district court was correct that, under this court's precedent, "actions against public officials (as opposed to actions brought against officers of private corporations) can *only* be instituted by the Attorney General." *Andrade v. Lauer*, 729 F.2d 1475, 1498 (D.C. Cir. 1984) (emphasis in original). Moreover, the court was also correct that plaintiff is also ineligible for such a writ because he "does not set up any claim to the office" held by President Obama, *Newman v. United States ex rel. Frizzell*, 238 U.S. 537, 547 (1915). As the district court said, "self declaration as a write-in candidate" is insufficient, *Sibley v. Obama*, 866 F. Supp. 2d 17, 20 (D.D.C. 2012), -- both because if it were sufficient any citizen could obtain standing (in violation of Article III of the U.S. Constitution) by merely "self declaring," and because the writ is only available for someone who would obtain the office if the incumbent were ousted, *see Newman*, 238 U.S. at 544, 547, 550-51.

With respect to plaintiff's petition to mandamus the Attorney General to act on his request to seek a quo warranto writ, the district court was correct to deny the writ because it is only available if "the plaintiff has a clear right to relief [and] the defendant has a clear duty to act." *Baptist Memorial Hospital v. Sebelius*, 603 F.3d 57, 62 (D.C. Cir. 2010). The statute is phrased in the permissive ("the Attorney General . . . *may*

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

institute a proceeding . . . on his own motion or on the relation of a third person," D.C. Code § 16-3502) (emphasis added)), and there is no law or case requiring the Attorney General to respond, one way or the other, to a request from a third person. Hence, there can be no "clear duty." Moreover, as the district court also noted, even if the Attorney General were to respond by formally refusing plaintiff's request, "precedent bars his bringing a quo warranto action himself." *Sibley v. Obama*, 866 F. Supp. 2d at 21(citing *Andrade*, 729 F.2d at 1498).

The district court was also correct in rejecting plaintiff's claim that statutes and rules that bar him from communicating his evidence directly with members of the grand jury violate the First and Fifth amendments. *See Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 9-10 (1986) (noting the grand jury as a "classic example" of a proceeding as to which there is no First Amendment "right of access"); *Wagner v. Wainstein*, No. 06-5052, 2006 U.S. App. LEXIS 16026, at *2 (D.C. Cir. June 22, 2006) (granting summary affirmance because a private citizen "lacks standing to force presentation of his alleged evidence to a grand jury"); *Sargeant v. Dixon*, 130 F.3d 1067, 1069-70 (D.C. Cir. 1997) (denying plaintiff's request to have his evidence presented to grand jury because the interest "in seeing that the laws are enforced [is] not legally cognizable within the framework of Article III").

Petitioner's remaining claims are likewise without merit for the reasons stated by the district court.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By: /s/
Timothy A. Ralls
Deputy Clerk

Exhibit D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *EX RELATOR*,
MONTGOMERY BLAIR SIBLEY, 4000
MASSACHUSETTS AVE., N.W., #1518,
WASHINGTON, D.C. 20016, 202-478-0371,

PETITIONER,

VS.

BARRACK HUSSEIN OBAMA, II,
1600 PENNSYLVANIA AVENUE,
WASHINGTON, D.C. 20500
202-456-1414,

RESPONDENT.

_____/

CASE NO.:

CERTIFIED PETITION FOR WRIT OF QUO WARRANTO

JURY TRIAL REQUESTED

Petitioner, Montgomery Blair Sibley ("Sibley"), pursuant to 28 U.S.C. §1746, states that the matters stated herein are true under penalty of perjury and sues Respondent Barack Hussein Obama, II ("Obama").

INTRODUCTION

1. By this lawsuit, Sibley seeks issuance of a Writ of Quo Warranto to Obama requiring him to show by what warrant he holds and will hold again the public office of President of the United States upon the allegations contained herein that Obama is neither: (i) a United States Citizen nor (ii) a "natural born Citizen", both of which are conditions precedent to holding the office of President of the United States according to Article II, §1, of the U.S. Constitution which is "the supreme Law of the Land" according to Article VI, §2, of the U.S. Constitution

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to: (i) 28 U.S.C. §1331, (ii) 28 U.S.C.

§1343(a), and (iii) D.C. Code, Division II, Title 16, Chapter 35.

3. Venue in this district is proper under 28 U.S.C. §1391(b)(2) as a substantial part of the events or omissions giving rise to the claims herein occurred in the District of Columbia.

GENERAL ALLEGATIONS

4. Sibley, is a "natural born Citizen" of the United States as he was born in 1956 in Rochester, New York, the child of two United States citizens, Harper Sibley, Jr. and Beatrice Blair Sibley and has continuously resided in the United States since his birth. As such, due to the nature of his citizenship, age and residence, he is eligible pursuant to Article II, §1, of the U.S. Constitution to serve as President of the United States.

5. On November 11, 2011, Sibley formally announced his candidacy for the Office of President and qualified as a Write-In candidate for that Office by filing with the District of Columbia Board of Elections and Ethics his "Affirmation of Write-In Candidacy". A copy is attached hereto as Exhibit "A".

6. "[C]itizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization." *United States v. Wong Kim Ark*, 169 U.S. 649, 702 (1898). Congress has first defined the circumstances that qualify for U.S. Citizenship-by-birth at 8 U.S.C. §1401(a) – "Nationals and citizens of United States at birth" which states: "The following shall be nationals and citizens of the United States at birth: (a) a person born in the United States, and subject to the jurisdiction thereof." In the case of Obama as alleged below, there is a substantial question of whether Obama was "born in the United States" and thus whether Obama is a U.S. Citizen-by-birth by action of §1401(a).

7. Alternatively, Congress at 8 U.S.C. §1401(g) recognizes Citizenship-by-birth which, at the time of Obama's birth in 1962, in pertinent part stated: "The following shall be nationals and citizens of the United States at birth: (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years." Obama's mother, Stanley Ann Dunham was born on November 29, 1942. When her son, Barack Hussein Obama, II was born on August 4, 1961, Stanley Ann Dunham was 6,823 days or 18.69 years old. In so much as §1401(g) in 1961 required that the United States citizen parent must have been a U.S. Citizen for five years "after attaining the age of fourteen years", i.e., nineteen (19) years old, Obama cannot qualify for U.S. Citizenship under §1401(g) as his mother was less than nineteen (19) when Obama was born.

8. Obama's father was not a United States citizen when Obama was born. In his two books, *Dreams from My Father* (1995) and *The Audacity of Hope* (2006),Obama states that his father was Barack Hussein Obama, Senior, and that he was a British subject at the time Obama was born.

9. In an attempt to demonstrate that he is a citizen of the United States by being born in the United States, Obama has only released two putative "Certificates of Live Birth" ("COLB") from the State of Hawaii. Expert document examiners have examined copies of each of the COLBs and found significant indications of forgery raising the very real specter that Obama was not born in the United States and thus is not a United States Citizen.

10. As to Obama's Short Form COLB, a copy of which is attached hereto as Exhibit "B", the following anomaly is present: The text in the image bears the signs of being graphically altered

after the image had been created. Specifically, given that the text in the Short Form COLB is printed on a green background, there should be green dots, or pixels, visible in between the black letters that comprise the text. Yet there is a total absence of any green pixels. In their place, there are gray and white pixels. These pixel patterns are significant because they would never be found in a genuine color document scan.

11. As to Obama's Long Form COLB, a copy of which is attached as Exhibit "C", the following anomalies are present:

a. The Hawaiian State seal on the COLB is the wrong size.

b. The hand-stamped State Seal on the two "certified" copies of the COLB are in exactly the same location, an improbable event.

c. The COLB has two different type of scans contained in it, binary and grayscale, an impossibility in one scanned object.

d. The parallax of the type reveals that there has been tampering. For example, on the COLB: "the word *Name* drops down 2 pixels, but the typed hospital name, *Kapiolani*, does not drop down at all, and again the line just below drops down 2 pixels, but not the name *Kapiolani*."

e. There is white "haloing" around all the type on the form, an indication of tampering with the image.

f. The typewritten letters were "cut" and "pasted" into place.

g. The "Bates Stamped" sequential number is out of sequence.

h. There are two different colors in Box 20 and Box 22, an impossibility on an originally scanned document.

i. The Rubber Stamp contains an "X" rather than an "H" in the work "the" when other contemporaneous COLBs with the same stamp do not contain the "X".

j. There are nine "layers" to the Adobe Portable Document File COLB, an indication of a forgery.

k. The typewritten letters change size and shape, an impossibility on 1961

typewriters.

l. Even a teenager can see that the long form COLB is a forgery. *See*: "Obama Birth Certificate Faked In Adobe Illustrator – Youtube – 14 year old's analysis".[1]

12. Additionally, other relevant documentary evidence which would qualify as "ancient documents" under Rule 901(b)(8), Federal Rules of Evidence, are publically available (or readily obtainable through this Court's compulsory process) which lend credence to the significant concern that Obama: (i) is not who he says he is and (ii) was not born in the United States:

a. Obama has refused to release copies of his college applications and transcripts from Occidental College, Columbia University and Harvard Law – each of which would provide relevant evidence of Obama's name, place of birth and citizenship as such documents regularly solicit that information.

b. Obama has refused to permit release of his U.S. Passport application. That application requires proof of U.S. citizenship as part of the application process.

c. In 1991 Obama's then-literary agency, Acton & Dystel, published a booklet, which was distributed to the publishing industry. The booklet includes a brief biography of Obama among the biographies of eighty-nine other authors represented by Acton & Dystel. Along with other factually accurate information about Obama, that biography lists Obama's place of birth as: Kenya. A copy of that biography is attached hereto as Exhibit "D".

d. In 2010, Obama posted online on "WhiteHouse.gov" his 2009 tax returns and thus his Social Security number – 042-xx-xxx – became visible to the public. Social Security numbers starting with "042" were issued only to those residing in Connecticut.[2] A SS-5 application for a Social Security number for a man who received a number close in sequence to Obama's number is attached hereto as Exhibit "E". It shows that basic information including "Place of Birth" is required. When Obama's Social Security number was issued, *circa* 1977, Obama was living in Hawaii and if he had at that time applied for his Social Security number it should have started with "575", "576", "750" or "751"[3], not "042".

d. A publically released copy of Obama's Selective Service registration form SS-

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1 Viewable at: http://www.youtube.com/watch?v=7s9StxsFllY&feature=youtu.be

2 Retrieved from: http://socialsecuritynumerology.com

3 Retrieved from: http://socialsecuritynumerology.com

1 is attached hereto as Exhibit "F". Noteworthy is the cancellation date-stamp by the Post Office bears the anomaly of a year date "80" when contemporary cancellation stamps all show "1980" as the year as detailed in Exhibit "G". A detailed explanation of this anomaly – which might well be the year "2008" with the "20" removed and the "08" inverted to make it appear it was stamped in "1980" – can be viewed on-line.[4] Obviously, failure to timely register with the Selective Service precludes as a matter-of-law Obama's employment as President. *See*: 5 USC § 3328(a).

13. Regardless of the authenticity of the COLBs, one fact is indisputable: Obama's Father was never a United States Citizen. Sibley assumes solely for the sake of argument here that Obama's COLBs are genuine and that Obama was born in the State of Hawaii, on August 4, 1961, to Stanley Ann Dunham, a citizen of the United States and Barrack Hussein Obama, Senior.

14. At the time of Obama's birth in 1962, his Father was British subject admitted into the United States on a temporary student visa, with the express condition that he was a "non-immigrant student". Obama's Father never became a U.S. citizen; never applied for U.S. citizenship; never declared an intention to become a U.S. citizen; and never became a resident alien. Accordingly, *a priori*, Obama is not a "natural born Citizen" as required to be eligible to be President of the United States under Article II, §1, clause 5 of the U.S. Constitution as he is not the child of two United States citizen parents.

15. The phrase "natural born Citizen" is an 18th Century legal-term-of-art with a definite meaning well known to the Framers of the Constitution. At the time of the adoption of the Constitution, that phrase was defined as: "The natives, or natural-born citizens, are those born in the country, of parents who are citizens." (*The Law of Nations*, Emerich de Vattel, 1758, Chapter 19, § 212). Notably, there are two requirements: (i) born in the United States and (ii) of two parents,

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[4] See: http://www.westernjournalism.com/sheriff-joe-arpaio-cold-case-posse-video-on-obama-selective-service-fraud/

both of whom must be United States citizens. Clearly, Obama fails to qualify for this level of citizenship and thus is ineligible to be President.

16. Significantly, Congress exercised its authority to expand beyond de Vattel's definition of "natural born Citizen" in the Act of 1790, stating: "**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**: Provided, that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States." 1 Stat. 104. (Emphasis added). Thus, until the act of 1790 was replaced by subsequent statutes regarding citizenship, if both parents were citizens, then the place of birth was immaterial and the resulting offspring was a "natural born Citizen" and thus eligible to be President. Notably, Congress subsequently removed the legal-term-of-art "natural born Citizen" from all citizenship statutes post-1790 and now solely confers "citizenship". *See*: 8 U.S.C. §1401 – "Nationals and citizens of the United States at birth", *supra*.

17. Moreover, Obama is not a "natural-born Citizen" of the United States as defined by the United States Supreme Court in *Minor v. Happersett*, 88 U.S. 162 (1874):

> The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of **parents who were its citizens** became themselves, upon their birth, citizens also. These were natives, or **natural-born citizens**, as distinguished from aliens or foreigners.

Minor v. Happersett at 168 (Emphasis added). Therefore, the "natural-born Citizen" clause only pertains to a requirement for holding the highest public office, that of President and requires both parents to be U.S. Citizens. Thus, as a matter of law, Obama is ineligible to be President as his Father was not a U.S. Citizen.

18. On November 26, 2011, Sibley requested Eric H. Holder, Jr. as U.S. Attorney General and Ronald C. Machen Jr. as United States Attorney for the District of Columbia to institute *Quo Warranto* proceeding against Obama. See Exhibit "H" attached hereto. Significantly, in that letter Sibley stated: "Accordingly, I have confidence you will respond by January 2, 2012, to this letter and I will take your silence after that date to be an expression of refusal to institute the requested quo warranto proceeding." To date, Sibley has not received a response to the November 26th letter, thus confirming Holder and Machen's respective refusals to file such a suit. Accordingly, this Court must hold under its equitable jurisdiction that under the express language of the November 26th letter and the doctrine of *qui tacet consentire vidétur*, Holder and Machen have "refused" to file a quo warranto action and thus Sibley is a "person interested" under D.C. Code, Division II, Title 16, §3503. See 1 Story, *Commentaries on Equity Jurisprudence as Administered in England,* §§ 588-591. To hold otherwise would make this Court party to a new rule of procedure which would allow the Executive to extinguish the express right granted under §3503 to the People by Congress by refusing to "refuse". Such a result eviscerates the *quo warranto* rights vested in Sibley as a "person interested" as defined by §3503.

19. Sibley is well aware of this Court's June 6, 2012, ruling in *Sibley v. Obama*, Case No.:12-cv-00001(JDB)("*Sibley v. Obama I*") and the mandates of Rule 11, Federal Rules of Civil Procedure. Accordingly, Sibley makes the following points:

a. Sibley now has standing to challenge Obama's recent November 6, 2012, election to the Office of President. In this Court's June 6th Order, the Court held: "Since Sibley was not a candidate in the 2008 presidential election, the injury he faces from President Obama's current tenure in office is generalized. . . .The Court will dismiss plaintiff's claim for lack of standing,

because the defect of standing is a defect in subject matter jurisdiction." (June 6, 2012 order, p. 4). In the instant suit, Sibley was a candidate in the 2012 presidential election and as such has standing to bring this claim.

b. As such, the Court's subsequent – though not comprehensive – discussion of the other issues raised in *Sibley v. Obama I* are nothing more than *obiter dicta* and thus due to be ignored as not qualifying for *stare decisis*. See: *Humphrey's Executor v. United States,* 295 U.S. 602, 626-627 (1935)("In the course of the opinion of the court, expressions occur which tend to sustain the government's contention, but these are beyond the point involved and, therefore, do not come within the rule of *stare decisis*.")

c. As to this Court's *obiter dicta* regarding "ripeness", this Court gratuitously volunteered: "Plaintiff has cited no law to support his assertion that a lack of response in this context should be considered a refusal. Since the refusal condition of D.C. Code §16-3503 has not been met, plaintiffs quo warranto petition is not ripe." (June 6, 2012 order, p. 4). Under such reasoning, by refusing to "refuse", the Attorney General could prevent the Congressionally-granted right of an "interested person" to proceed *ex relator* the United States from ever being allowed to proceed. Plainly, Congress does not grant such Potemkin-village rights to the Citizens of these United States.

d. Second, this Court's *obiter dicta* that only the Attorney General "has standing to bring a quo warranto action challenging a public official's right to hold office" ignores the plain language of D.C. Code, Division II, Title 16, §3503 which expressly authorizes an "interested person" to bring a *quo warranto* action. (June 6, 2012 order, p. 4). That section states: "If the Attorney General or United States attorney refuses to institute a quo warranto proceeding on the request of a person interested, the **interested person may apply to the court by certified petition**

for leave to have the writ issued." (Emphasis added). Moreover, the propriety of an "interested person" seeking such a writ was confirmed in *Newman v. United States ex Rel. Frizzell*, 238 U.S. 537 (1915), a case which has superceding precedential value over *Andrade v. Lauer*, 729 F.2d 1475, 1498 (D.C. Cir. 1984) cited by this Court.

e. Third, this Court's *obiter dicta* that "The separation of powers doctrine expressed in the Constitution places the duty to select and remove the President not with individual citizens, but rather with the Electoral College and with the Congress, respectively. See U.S. Const. art. II, §§1, 4; *id.* amend. XII" ignores the basic issue. First, this is not an issue of removal, but of qualification for the office of President for the term commencing January 20, 2013. Second, Article II, §§1 & 4 do **not** speak to the issue of judging the qualification of an individual to be President. Third, there is no "Electoral College" but only "electors" designated by the Twelfth Amendment which only provides that: (i) on a day specified by Congress, the electors meet in their respective states and vote for President, (ii) the votes are not officially tallied on that date, however; they are transmitted from the states to the nation's Capitol, where they are counted before the assembled Congress, (iii) the person receiving a majority of electoral votes is elected President. Notably, no power is vested in the "electors" but to vote.

f. Finally, this Court's *obiter dicta* citation to *Kerchner v. Obama*, 612 F.3d 204, 207 (3rd Cir. 2010) and *Barnett v. Obama*, 2009 U.S. Dist. LEXIS 101206, at *40, *48 (C.D. Cal. 2009) as authority for any proposition allowing this Court to ignore its Congressionally-placed duty is intellectually irresponsible. In *Kerchner*, the Court singular ruling was: "The District Court concluded that Appellants lacked Article III standing. *See Kerchner v. Obama*, 669 F. Supp. 2d 477, 479 (D.N.J. 2009). We agree." Nowhere in *Kerchner* does the Third Circuit address their

jurisdiction to grant the relief sought. In *Barnett*, the district court dismissed Barnett's *quo warranto* demand for improper venue stating: "The writ of quo warranto must be brought within the District of Columbia because President Obama holds office within that district. . . . D.C. Code §§ 16-3501 - 16-3503. Should a person other than the Attorney General of the United States or the United States Attorney wish to bring a quo warranto claim, that person must receive leave of court to do so. *Id.* at § 16-3502. This leave of court must be granted, according to the text of the statute, by the District Court for the District of Columbia." *Id.* at *50. Hence, *Barnett* expressly stands for the proposition that Sibley is in the right court with the proper standing to bring this *quo warranto* claim.

RELIEF REQUESTED

WHEREFORE, Sibley requests that this Court:

A. Assume jurisdiction of this petition as authorized by Congress;

B. Issue to Obama an order to show cause requiring him to show by what warrant he holds and will hold again the public office of President of the United States given the sworn allegations contained herein that Obama is neither: (i) a United States Citizen nor (ii) a "natural born Citizen", both of which are conditions precedent to holding the office of President of the United States according to Article II, §1, of the U.S. Constitution which is "the supreme Law of the Land" according to Article VI, §2, of the U.S. Constitution;

C. Refer, as was done in *Newman v. United States ex Rel. Frizzell*, to a jury all issues of fact and law raised herein;

D. Retain jurisdiction of this matter to enforce its writ if necessary; and

E. Enter such other and further relief as the Court deems just and proper.

JURY TRIAL REQUESTED

Sibley requests a jury be empaneled to determine the issues of facts, including without limitation, whether Sibley is an "interested person", and the law raised herein.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 12, 2012.

MONTGOMERY BLAIR SIBLEY
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By: _____
Montgomery Blair Sibley