UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES OF AMERICA, *EX RELATOR*, MONTGOMERY BLAIR SIBLEY,

APPELLANT,

CASE NO. No.:13-5017

APPELLANT'S OPPOSITION TO APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE

VS.

BARRACK HUSSEIN OBAMA, II,

APPELLEE.
_____/

Appellant, United States of America, *Ex Relator*, Montgomery Blair Sibley ("Sibley"), files this, his Opposition to the motion for summary affirmance of Appellee, Barrack Hussein Obama, II ("Obama") and states:

I. SUMMARY OF ARGUMENT

This Article III "inferior" Court has not been given authority by Congress to create its own summary affirmance rule in violation of Congressional restraints on such rules.

Second, if this Court affirms the District Court's ruling that Sibley does not have "standing", then this Court will have repealed two hundred years of American Jurisprudence and completed the judicial *coup d'etat* started by the Nuremberg trial-inspired William Rehnquist with *Lujan v. Defenders of Wildlife* and which has

created a Nazi-like judicial system by using ambiguous legal terms-of-art to achieve the same goals: a revolutionary transformation of the legal order from that envisioned by the Framers to an alternative order which permits the unregulated exercise of judicial brute power employed to assault the fundamentals of the rule of law to the end of creating a modern federal *Volksgebundenheit* and *Artgleichheit*.

Third, in all events, Sibley has standing, notwithstanding Obama's arguments to the contrary.

Fourth, given the absolute judicial immunity that Judge Bates enjoys, to allow the sworn-to behavior of Judge Bates to go unchecked by this Court is to create the very scenario envisioned by Patrick Henry who famously stated: "Power is the great evil with which we are contending. We have divided power between three branches of government and erected checks and balances to prevent abuse of power. However where is the check on the power of the judiciary? If we fail to check the power of the judiciary, I predict that we will eventually live under judicial tyranny."

Fifth, Obama has only raised two issues in his motion for summary affirmance and thus four of Sibley's issues on appeal as outlined in his Docketing Statement would be impermissibly ignored if this Court were to grant Summary Affirmance upon Obama's motion.

Hence, the real issue on this appeal is whether this Article III Court will

continue to: (i) encourage the shredding of the fundamental right of litigants to access court through employment of a legal indeterminate "standing" doctrine to bar such access, (ii) ignore its constitutional and statutory obligations to state the *ratio decidendi* for its rulings and (iii) usurp power not delegated to this Court to acheive its apparent end of denying access to Court to those who would challenge the political *status quo*.

To continue this otiosely dishonest course of action is to confirm that this Court no longer operates a "justice system" but instead has imposed "just-a-system" for disposing of fundamental Article III "cases" without addressing the merits of those claims.

II. SUMMARY AFFIRMANCE VIOLATES FRAP 47 AND THE RULES ENABLING ACT

"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**." *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)(citations omitted, emphasis added). Here, Sibley is maintaining that by employing the mechanism of "summary affirmance", this Court is violating the limitation imposed upon it by *Kokkonen*.

Sibley has raised to this Court on two prior appeals the issue of the

Congressional prohibition to this Court's employing a "summary affirmance" mechanism to dispose of appeals[1]. *See*: D.C. Circuit Court Case No.: 11-7051 ("Contrary to appellant's assertions, the court's summary affirmance procedure, which is based on court precedent, *see i.d.*, does not run afoul of Fed. R. App. P. 47(a)(l) or the Rules Enabling Act, 28 U.S.C. § 2072.") and D.C. Circuit Court Case No.: 12-5198 (this Court ignored Sibley's argument in its order of summary affirmance.)

Notably, no constitutionally-required *ratio decidendi* for those decisions was provided thus this Court violated the obligation imposed upon this inferior Court by *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)("It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.. . .This

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[1] This Court's *de facto* or *de jure* rules may not violate the Rules Enabling Act, 28 U.S.C. §2072(b). Notably, neither the Federal Rules of Appellate Procedure nor this Court's own Rule 36(b) – "Abbreviated Dispositions" – authorize a summary disposition of an appeal. As such, for this Court to have a non-published, summary affirmance rule both on its face and as applied procedurally violates FRAP Rule 47(a)(1), substantively violates the Rules Enabling Act and denies Sibley due process. Moreover, upon filing a notice of appeal, Sibley is entitled to file a timely brief. FRAP, Rule 28. The Rules Enabling Act prevents this "substantive right" of the opportunity to be heard "at a meaningful time and in a meaningful manner" from elimination by this Court's improper *ex cathedra*-adopted summary affirmance rule. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

is of the very essence of judicial duty."). Here, Sibley raised law contrary to the summary affirmance practice of this Court which thus triggered this Court's obligation to "decide on the operation of each". Thus, this Court is in breach of the duty imposed by *Marbury* to "say what the law is" because it failed to do so.

In particular, as justification for its decision in Case No.: 12-5198, this Court only cited-without-explanation *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987)(*per curiam*). Yet in Case No.: 12-5198 Sibley clearly distinguished the illegitimate pedigree of *Taxpayers Watchdog* which this Court conveniently ignored[2]. Moreover, for this Court to employ the justification for its summary affirmance rule upon dubious "court precedent" which *prima facie* violates both the statutes and rules which govern this inferior Court violates each Judge's oath

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[2] A review of the evolution of this Court's summary affirmance rule details what a perversion of due process the summary affirmance rule has become. *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) cited for summary affirmance authority *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir. 1980), which cited for its summary affirmance authority *United States v. Allen*, 408 F.2d 1287, 1288 (D.C.Cir.1969) Yet, *United States v. Allen* was an interlocutory appeal from a mandamus action – not a final order of dismissal – which sought summary reversal, not summary affirmance. In *United States v. Allen*, this Court held: "A party seeking summary reversal by motion has the heavy burden of demonstrating both that his remedy is proper and that the merits of his claim so clearly warrant relief as to justify expedited action. . . . Appellant is not left remediless by our refusal to grant relief on a summary basis, for he may raise all issues relating to eyewitness identification, including those he seeks to raise now, by a motion to suppress. (Emphasis added). Here, unlike in *Allen*, Sibley is left "remediless" by a summary affirmance.

of office and makes such a practice *void ab initio* pursuant to *Kokkonen*. Simply stated: Self-declaration of authority when challenged – as Sibley has repeatedly and properly done here – if ignored is nothing but a naked power grab by this Court secure in the knowlege that its improper and intellectually dishonest actions are immune from consequence.

III. "STANDING" IS A CANARD

"Constitutional 'standing' is a word game played by secret rules."[3] This putative doctrine has been subject to withering academic criticism: "It is difficult to conceive of a constitutional doctrine more riddled with confusion, more unanimously savaged by commentator and court, more important and yet more neglected than the access doctrines which encompass standing jurisprudence." Ryan Guilds, *Jurisprudence of Doubt: Generalized Grievances as a Limitation to Federal Court Access*, 74 N.C. L. Rev. 1863, 1863 (1996).[4]

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[3] *Flast v. Cohen*, 392 U. S. 83, 129 (1968)(Harlan, J., dissenting)("And the role of the federal courts is not only to serve as referee between the States and the center, but also to protect the individual against prohibited conduct by the other two branches of the Federal Government. . . .The interests he represents, and the rights he espouses, are, as they are in all public actions, those held in common by all citizens. To describe those rights and interests as personal, and to intimate that they are in some unspecified fashion to be differentiated from those of the general public, reduces constitutional standing to a word game played by secret rules.")

[4] *See also*: Richard H. Fallon, Jr., *Of Justiciability, Remedies, and Public Law Litigation: Notes on the Jurisprudence of Lyons*, 59 N.Y.U. L. REV. 1, 15-16 (1984)

A. INVOCATION OF A "STANDING" REQUIREMENT INJECTS THE PROHIBITED DOCTRINE OF LEGAL INDETERMINACY INTO AMERICAN JURISPRUDENCE

It is the well known task of the inferior courts to "say what the law is". Just as fundamental is the doctrine of *stare decisis*. As Justice Joseph Story in his *Commentaries on the Constitution of the United States* §377-78 (1983) observed:

> A more alarming doctrine could not be promulgated by any American court, than that it was at liberty to disregard all former rules and decisions, and to decide for itself, without reference to the settled course of antecedent principles. This known course of proceeding, this settled habit of thinking, this conclusive effect of judicial adjudications, was in the full view of the framers of the constitution. It was required, and enforced in every state in the Union; **and a departure from it would have been justly deemed an approach to tyranny and arbitrary power, to the exercise of mere discretion, and to the abandonment of all the just checks upon judicial authority**. (Emphasis added.)

Accord: *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984)("[A]ny departure from the doctrine of *stare decisis* demands special justification.")

Yet here, by employing the legally-indeterminate, judicially-created doctrine

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("Regrettably, it long since has become 'commonplace to begin any discussion of the doctrine of standing by decrying the confusion which persists in this area of the law.' This conventional introduction remains appropriate today." (citation omitted)); William A. Fletcher, *The Structure of Standing*, 98 Yale L.J. 221, 221 (1988) ("The structure of standing law in the federal courts **has long been criticized as incoherent**.")(Emphasis added).

of "standing" as a bar to adjudication of Sibley's chilling and factually-substantiated claims that Obama is neither a "citizen" nor a "natural born Citizen" and thus ineligble to be President, the District Court departed from the settle law that Sibley possesses: "the right, possessed by every citizen, to require that the Government be administered according to law. . . ." *Fairchild v. Hughes*, 258 U.S. 126, 130 (1922).[5] Hence, this departure which creates a clear conflict with *Fairchild*'s recognition of Sibley's right to "require the Government be administered according to law" must be resolved pursuant to *Marbury*'s *ratio decidendi* requirement if this Court is to be true to its Article VI oath of office rather than its Article III masters.

Indeed, this employment of the doctrine of legal indeterminacy – which infected William Rehnquist during the Nuremberg trials which he attended – is the same judicial tactic employed by the *Nationalsozialistische Deutsche Arbeiterpartei* starting in 1933: Definite legal standards – which constrained the judiciary – were abandoned towards the end of creating a *Volksgericht* to permit persecution and encourage intimidation of opponents of Adolf Hitler's massively inflated,

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[5] Thus Obama's argument under *Ariz. Christian Sch. Tuition Org. v. Winn,* 131 S. Ct. 1436, 1441-42 (2011) must be regarded as a nullity for the Court in that case *never* reconciled the conflict between *Fairchild* and its holding. Such intellectual dishonesty by the Supreme Court frees this Court from any alleigence to such a decision. Moreover the conflation of "cases" with "controversies" ignores the fundamental difference between the two. Plainly, for the latter, "standing" is a prerequisite. But for the former, "standing" was never a requirement.

constitutionally-impermissible, post-Weimar Republic German state. This of course was a perversion of the very security which legal determinacy provides litigants in a judicial system against arbitrary and capricious decision making. Thus at the Wannsee Conference the foundation for Hitler's "final solution" was adopted which included the employment of indeterminate legal terms to ultimately allow the German judiciary to approve the Holocaust as authorized by the rule of law.[6]

Justice Douglas summed up best the conflict that the indeterminate "standing" doctrine creates with a judge's duty: "The judiciary is an indispensable part of the operation of our federal system. With the growing complexities of government it is

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[6] *Legal Indeterminacy and the Origins of Nazi Legal Thought*, History of Political Thought, Vol. XVII. No. 4. Winter 1996, pp. 572-573: "[V]ague legal standards potentially provide a starting point for transforming the remnants of liberal law in accordance with National Socialist ideals. Consequently, jurists sympathetic to the ongoing 'national renewal' should exploit ambiguous legal clauses by interpreting them in a manner compatible with Nazi aspirations. . . . Just after endorsing the expulsion of Jews and purported political radicals from the civil service, Schmitt argued that only a "bindedness to the folk' (*Volksgebundenheit*) and 'ethnic homogeneity' (*Artgleichheit*) within the ranks of German jurists could successfully assure a measure of coherence within judicial decision making. . . . Legal determinacy can never be adequately achieved by means of a particular set of legal statutes or doctrines. Yet a deeper and more dependable degree of legal determinacy allegedly might be realized by establishing an ethnically homogeneous judiciary, free of alien (*artfremende*) ethnic and racial tendencies. Because legal decision-making relies to a significant degree on 'unconscious movements' of ethnic origin, only a judiciary possessing a homogeneous, ethnically predictable composition can guarantee legal predictability and determinacy."

often the one and only place where effective relief can be obtained. . . . But where wrongs to individuals are done by violation of specific guarantees, it is abdication for the courts to close their doors." *Flast v. Cohen*, 392 U.S. 83, 111 (1968). Here, Sibley alleges that by invoking "standing" to close the courthouse "doors" to Sibley who claims that he has a "specific guarantee" to a Constitutionally-eligible President is an "abdication" of each Judge of this Panel's obligation.

B. THE JUDICIALLY-CREATED DOCTRINE OF STANDING HAS NO HISTORICAL PRECEDENT

Unlike "case or controversy" which the Framers understood and expressly employed in Article III, the legal notion of "standing" is not mentioned in our Constitution nor was it the records of the several conventions. Thus it can be fairly said that "standing" was neither a legal term-of-art nor a familiar doctrine at the time the Constitution was adopted.[7]

For much of our nation's history, the terms "case" or "controversy" were interpreted to impose upon those seeking redress in the court the simple requirement that a plaintiff must have a cause of action in order for his or her grievance to be

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

heard in federal court.[8] How inconvenient for a federal government which seeks repeatedly to trample on the rights of its citizens that such behavior could be held up to the lens of judicial resolution and adverse consequences applied to the government actors. See: *National Security Agency Spying*.[9]

In response to the threat that the First Amendment right to access court represents, the judicially-created doctrine of "standing" began to evolve in the last half of the 20th Century to permit the Courts to abdicate their role to review the merits of a plaintiff's claim.

The gravamen of modern "standing" doctrine is not the existence of a cause of

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[8] *See, e.g.*, Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III*, 91 Mich. L. Rev. 163, 170 (1992) ("There had always been a question whether the plaintiff had a cause of action, and this was indeed a matter having constitutional status. Without a cause of action, there was no case or controversy and hence no standing."); Akhil Reed Amar*, Law Story,* 102 Harv. L. Rev. 688, 719 n.154 (1989)("Attention to the etymological linkages between "case' and "cause' should help to remind us that a properly framed case in which a plaintiff has "standing' is simply one in which she has a cause of action. . . . Whether such a cause of action exists cannot be determined by staring at the words of article III; one must look outside that article to substantive constitutional, statutory, and common law norms.");Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 885 (1983)("Legal injury is by definition no more than the violation of a legal right; and legal rights can be created by the legislature.")

[9] "The U.S. government with assistance from major telecommunications carriers including AT&T has engaged in a massive program of illegal dragnet surveillance of domestic communications and communications records of millions of ordinary Americans since at least 2001." See: https://www.eff.org/issues/nsa-spying

action, but instead the suffering by the plaintiff of a "direct injury". The genesis of the "standing" doctrine is found in the case of *Frothingham v. Mellon*, 262 U.S. 447, 488 (1923). In *Frothingham*, the court held that the judiciary is not competent to adjudicate the legality of the action of a coordinate branch unless the plaintiff is threatened with "direct injury" as distinguished from what "he suffers in some indefinite way in common with people generally." Significantly, the word "standing" is never once mentioned in *Frothingham,* where the Supreme Court declined to entertain a suit by a taxpayer challenging as unconstitutional a federal appropriations act. The then 120-year-old duty of the courts to "say what the law is" was newly interpreted to be limited as follows: "When the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon [an act of Congress] the party who [seeks to invalidate the law] must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally." *Id.* at 488.

Yet, this *ex cathedra* pronouncement in *Frothingham* radically deviates from the preceding 150 year history without explanation and in defiance of the strictures of *stare decisis*. 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 complaint heard in a court of law. Such a blatantly anti-originalist position reads into Article III a limitation found neither in its text nor blatant structure, nor in the general judicial practice running deep in our history. Indeed, "when we turn to pre-Constitution English law . . . we find that attacks by strangers on action in excess of jurisdiction [occupied] the courts in Westminster." *Berger*, supra note 255, at 819; see also Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 Stan. L. Rev. 1371, 1396-97 (1987)("Prior to the Revolution, other writs as well as equity practices brought before the courts cases in which the plaintiff had no personal interest or injury-in-fact. Under the English practice, 'standingless' suits against illegal governmental action could be brought via the prerogative writs of mandamus, prohibition, and certiorari issued by the King's Bench."); 2 Edward Coke, *Institutes of the Laws of England* 602 (1797)("The kings courts that may award prohibitions, being informed either by the parties themselves, **or by any stranger**, that any court termporall or ecclesiasticall doth hold plea of that (whereof they have not jurisdiction)").

In particular, an information of *quo warranto*, brought to challenge the usurpation of a public franchise was available to strangers unable to demonstrate personal injury. As Professor Berger concludes after a thorough review of English practice:

> At the adoption of the Constitution, in sum, the English practice in prohibition, certiorari, quo warranto, and informers' and relators' actions encouraged strangers to attack unauthorized action. So far as the requirement of standing is used to describe the constitutional limitation on the jurisdiction of [the Supreme] Court to "cases" and "controversies;" so far as "case" and "controversy" and "judicial power" presuppose a historic content; and so far as the index of that content is the business of the ...courts of Westminster when the Constitution was framed, the argument for a constitutional bar to strangers as complainants against unconstitutional action seems to me without foundation.

Berger, *supra* note 255, at 827 (citations omitted).

A painstaking search of the historical material demonstrates that – for the first 150 years of the Republic – the Framers, the first Congresses, and the Court were oblivious to the modern conception either that standing is a component of the constitutional phrase "cases" or that it is a prerequisite for seeking governmental compliance with the law.[10]

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[10] Upon completing an exhaustive study of American jurisprudence in the years between the Founding and *Frothingham*, Professor Cass Sunstein concluded: "In that period, there was no separate standing doctrine at all. No one believed that the Constitution limited Congress' power to confer a cause of action. Instead, what we now consider to be the question of standing was answered by deciding whether Congress or any other source of law had granted the plaintiff a right to sue. To have standing, a litigant needed a legal right to bring suit. The notion of injury in fact did not appear in this period. . . . But if a source of law conferred a right to sue, 'standing' existed, entirely independently of 'concrete interest' or 'injury in fact.'" *Sunstein*, at 170.

Thus the historical precedent for this suit in which Sibley is acting *ex Relator* to enforce the government's compliance with Article II, §1 is well-founded and cannot be denied upon the doctrine of standing which is nothing more than an abdication of this Court's duty to adjudicate. As Justice Harlan noted in *Flast v. Cohen*, 392 U.S. 83, 120 (1968): "Federal courts have repeatedly held that individual litigants, acting as private attorneys-general, may have standing as 'representatives of the public interest.' The various lines of authority are by no means free of difficulty, and certain of the cases may be explicable as involving a personal, if remote, economic interest, but I think that it is, nonetheless, clear that non-*Hohfeldian* plaintiffs as such **are not constitutionally excluded** from the federal courts." (Emphasis added).

Thus in *Flast*, recognizing the "uncertain historical antecedents" of standing and other "justiciability" doctrines, the Court concluded that we must turn to "the implicit policies embodied in Article III, and not history alone," to understand the jurisdictional limitations imposed by the term "case". *Id.* at 96. Thus unmoored from historic precedent, the doctrine of "standing" became a harlot of judicial discretion, guided only by the "implicit policies" the judiciary was able to *ex cathedra* divine from Article III for whatever end their whim or caprice desired. The result: the

cloaking of merits-based decisions as standing-based rulings obfuscates the laws controlling government action and limits the ability of plaintiffs to bring such actions. The judiciary is then able to avoid "saying what the law is" by preventing plaintiffs from petitioning for relief.

As Chief Justice Marshall established in *Marbury*, it is the province of the courts to "decide on the rights of individuals." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 170 (1803). Yet this is not possible when the courts refuse to decide the merits of a claim, instead denying the right to petition by erection of the "standing" barrier. Indeed, *Marbury* continues: "Where a specific duty is assigned [to the executive branch] by law, and individual rights depend upon the performance of that duty, it seems ... clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy." *Id*. at 166. Yet with the judicial evolution of "standing", Sibley is now being <u>denied</u> "resort" to this Court "for a remedy" to his claim that Obama is <u>not</u> eligible to serve as President.

IV. SIBLEY HAS STANDING

In *U.S.A. ex relator Sibley v. Obama et al.,* Case No.: 12-cv-00001, the District Court denied Sibley standing stating:

> Self-declaration as a write-in candidate in the upcoming presidential election does not enable plaintiff to challenge President Obama's present position. 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 - **if he or she sought the office at the same time as the current officeholder**. . . **Since Sibley was <u>not</u> a candidate in the 2008 presidential election, the injury he faces from President Obama's current tenure in office is generalized**. It seek[s] relief that no more directly and tangibly benefits him than it does the public at large [, so] does not state an Article III case or controversy. . . . The Court will dismiss plaintiffs claim for lack of standing, because the defect of standing is a defect in subject matter jurisdiction.

In this instant case, Sibley officially qualified as a Write-In candidate for the 2012 Presidential Election.. Thus, Sibley "**sought the office at the same time as the current officeholder**" and as such – by the District Court's own order – Sibley had standing to bring this suit.

Moreover, a review of the so-called Electoral College system established by the Twelfth Amendment belies a conclusion that the so-called "standing" issue is applicable in a U.S. Presidential *quo warranto* challenge. Twelfth Amendment Electors are obligated to: "analyz[e] the qualities adapted to the station and acting under circumstances favorable to deliberation, and to a judicious combination of all the reasons and inducements which were proper to govern their choice." *The Federalist No.* 68, at 412 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

Notably, in *Ray v. Blair*, 343 U.S. 214, 225 (1952) the Supreme Court famously

reserved the question of whether Elector-binding laws are constitutional in footnote #10, noting in part pertinent here:

> *Opinion of the Justices*, No. 87, 250 Ala. 399, 34 So. 2d 598. . . That opinion said: "The language of the Federal Constitution clearly shows that it was the intention of the framers of the Federal Constitution that the electors chosen for the several states would exercise their judgment and discretion in the performance of their duty in the election of the president and vice-president and in determining the individuals for whom they would cast the electoral votes of the states. History supports this interpretation without controversy."

Persuasively, Justice Jackson in his dissent in *Ray v. Blair*, stated: "No one faithful to our history can deny that the plan [for election of the President] originally contemplated, what is implicit in its text, **that electors would be free agents, to exercise an independent and nonpartisan judgment as to the men best qualified for the Nation's highest** offices." *Ray* at 234, (Emphasis added).

As such, if a timely determination that Obama was ineligible to be President had been made, anyone – including Sibley – could have been chosen by Two Hundred Seventy (270) Twelfth Amendment Electors to be President; provided that the chosen person satisfied Article II, §1's eligibility requirements. Accordingly, "standing" to challenge Obama is conferred on every "natural born Citizen" who – like Sibley – is over thirty-five (35) years of age and has lived in the United States for

the past fourteen (14) years.

Therefore, for the reasons aforesaid, Sibley was empowered by Article III to bring this suit.

V. THE EGREGIOUS BEHAVIOR OF JUDGE BATES DESERVES FULL APPELLATE REVIEW

Sibley demanded disqualification of Judge Bates for violation of Sibley's (i) fundamental right to an impartial tribunal, (ii) due process, (iii) 28 U.S.C. §455(b)(5)(i) and/or (iv) 28 U.S.C. §144. For factual grounds, Sibley swore that the reasons for the belief of the bias or prejudice of Judge Bates were found in his Memorandum Order of December 19, 2012. In particular, in that opinion, the Honorable John D Bates:

- Applied the **pejorative** term "birther"[11] to Sibley thus utilizing *ad hominem* reasoning as offensive and improper as if Judge Bates had called Sibley – who is a white, Anglo-Saxon Protestant – a "cracker", "honky" or "burg-nigga"; and

- Arrogantly violated LCvR 65.1(d) which required Judge Bates to rule upon Sibley's Motion for Preliminary injunction within twenty-one (21) days.

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[11] "Birther: A racist sore loser who can't deal with having a black president so they make up absurd conspiracy theories about Barack Obama's birth certificate. These nutjobs actually believe that there has been a conspiracy going back 48 years to fake Barack Obama's birth certificate. Just ignore that racist nutjob foaming at the mouth. He's a right wing 'birther' conspiracy nut." Retrieved from: http://www.urbandictionary.com.

Plainly, as is this Court's want, it can invoke the vague rule of *Liteky v. United States*, 510 U.S. 540, 555 (1994) cited by Obama and summarily conclude without stating its *ratio decidendi* that this uncontradicted behavior raises no concern that Sibley did not received a "fair trial in a fair tribunal." *In re Murchison*, 349 U.S. 133, 136 (1955). Coupled with the doctrine of absolute judicial immunity, this Court by summarily affirming on this point simply opens the doors for the noxious exercise of judicial bias unchecked by any consequence.

VI. SUMMARY AFFIRMANCE WOULD NOT ADDRESS ALL OF SIBLEY'S ISSUES ON APPEAL

Finally, summary affirmance is not appropriate as Sibley has raised four (4) significant issues in his Docketing Statement which Obama ignored and hence would not be addressed by this Court if it granted summary affirmance. In particular those issues are:

1. Whether it was error for the District Court to act as the final arbiter of all questions of fact and law raised by the parties;

2. Whether it was error for the District Court to refuse oral argument as requested by Sibley;

3. Whether Sibley failed to provide the requisite affidavit pursuant to 28 U.S.C. § 144 in his motion to disqualify; and

4. Whether Article III actors can amend the Congressionally-

> enacted D.C. Code, Division II, Title 16, Chapter 35 to limit those who may bring a quo warranto action to solely the Attorney General.

Plainly, Sibley is entitled to a hearing on the issues he raises. 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). To deny Sibley the opportunity to fully brief these four issues is "arbitrarily to refuse to hear" Sibley and thus denies to him of the process to which he is due.

VII. CONCLUSION AND REQUEST FOR ORAL ARGUMENT

The fundamental legitimacy of this Court is founded upon the assumption that the courts are populated by men and women of "conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances." *United States v. Morgan*, 313 U.S. 409, 421 (1941). Here, for the reasons aforesaid, Sibley alleges that *Morgan*'s "presumption" has fallen away as this Court marches the Citizens of these United States to a regime with much more in common with that create by the *Nationalsozialistische Deutsche Arbeiterpartei* than that envisioned by the Framers of our political system.

As Mr. Justice Bradley famously wrote in *Boyd v. U. S.*, 116 U. S. 616, 635, 6

(1886): "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens and against any stealthy encroachments thereon. Their motto should be *obsta principiis*."

Here, to allow a pretender to sit in the Oval Office through the abdication of the duty of Article III actors to hear Sibley's plea fully realizes Justice Boyd's fear.

Sibley is not *jejune* about this Court's propensity to tacitly approve of illegal government behavior by denying a forum to a citizen who challenges such behavior. All Sibley can do – and has done – is provide the opportunity so that hopefully someday this Court may be "Hoist with his owne petar."[12] Accordingly, for the reasons aforesaid, Obama's motion for summary affirmance must be denied.

VIII. 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" and

[12] Hamlet, Act 3, scene 4, 202–209.

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).)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was served pursuant by U.S. mail upon: Jeffrey E. Sandberg, United States Department of Justice, Appellate Staff, 950 Pennsylvania Ave., N.W., Room 7214, Washington, D.C. 20530; E-mail: jeffrey.e.sandberg@usdoj.gov, Telephone: (202) 532-4453; Fax (202) 514-9405 this March 8, 2013.

MONTGOMERY BLAIR SIBLEY
Appellant
4000 Massachusetts Ave, NW, #1518
Washington, D.C. 20016
Voice/Fax: 202-478-0371
Email: mbsibley@gmail.com

By: _____
Montgomery Blair Sibley

ADDENDUM

CERTIFICATE OF PARTIES, RULINGS AND RELATED CASES AND DISCLOSURE STATEMENT PURSUANT TO RULE 28(A)(1)

Pursuant to Local Rule 28(a)(1), Sibley states as follows:

A. PARTIES, INTERVENORS AND AMICI

Montgomery Blair Sibley and Barrack Hussein Obama, II.

There is no corporation, association, joint venture, partnership, syndicate, or other similar entity which must make the disclosure required by Circuit Rule 26.1.

B. RULINGS UNDER REVIEW

The ruling under review are: (i) the December 19, 2012, Order dismissing this case with prejudice and (ii) the January 10, 2013, Order denying Petitioner's Motion to Vacate December 19, 2012, Order of Dismissal and to Disqualify the Honorable John D Bates.