

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

MICHAEL C. VOELTZ,  
Plaintiff,

Case No.: 2012 CA 003857

vs.

BARACK HUSSEIN OBAMA, et. al.  
Defendants.

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**Plaintiff's Reply In Support Of Expedited Motion For Rehearing**

Plaintiff Michael Voeltz, by and through his undersigned counsel, hereby files his Reply in Support of Expedited Motion for Rehearing on an emergency basis, as time is extremely short before the electoral college votes on January 6, 2013.

First, Defendant Obama's "argument" that Plaintiff did not request a hearing is absurd and frivolous. Indeed, in Plaintiff's Emergency Response to the Court's Order of December 13, 2012 it states plainly that he did request a hearing and once Plaintiff filed the Motion for Temporary Injunction, an evidentiary one as well. However, the court's hastily crafted precipitous Order Dismissing Complaint was an obvious attempt to extinguish Plaintiff's right to any hearing, evidentiary or otherwise.

Second, contrary to the potentially politically motivated decisions of three judges of this Court, Section 102.168, Florida Statutes, plainly provides that Plaintiff does have a right to contest eligibility and candidate fraud in this Court.

Third, the role of the Electoral College is not in lieu of Florida law but complimentary to Florida law. It is axiomatic and constitutionally sacrosanct that states have rights; this should

come as no surprise to anyone who has read the Florida and U.S. Constitutions, in particular in the 10th Amendment. The state obviously has a right and a duty to police candidacy fraud and ineligibility before its voters are lead down the primrose path to voter nullification by dishonest candidates for either state or federal office. In this case, involving defendant Barack H. Obama, federal law does not take precedence over clear cut unambiguous, and black letter Florida statutory law for the following reasons:

The text of 3 U.S.C. § 5 does not end timely filed and continuing litigation nor does it state that any decision made after the deadline is not conclusive. The Florida courts have the power and the duty to decide any election contest, and must do so in this case. See *State ex rel. Cherry v. Stone*, 265 So. 2d 56, 58 (Fla. Dist. Ct. App. 1st Dist. 1972); *Shevin v. Stone* 279 So. 2d. 17, 22 (1972).

Read simply, 3 U.S.C. § 5 provides that any conclusive determination made prior to that particular date "shall be conclusive, and shall govern in the counting of the electoral votes." This creates a sense of finality for Florida court decisions and mandates that these state decisions govern, as the states are responsible for the determination of electoral votes.<sup>1</sup>

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<sup>1</sup> Defendant Obama claims federal statutes 3 U.S.C §§ 5, 15 preclude this court's ability to decide eligibility. Yet these statute simply states the procedure for counting the electoral votes, and objections if improper votes are cast. See *Fitzgerald v. Green*, 134 US 377, 378 (1890) ("The sole function of the presidential electors is to cast, certify, and transmit the vote of the state for president and vice-president of the nation"). *Nothing* is stated about challenging the *qualification* of a candidate.

Nor is Florida law interfering with the Presidential Electors. The Florida law allows challenges to those who are nominated or elected. These actions occur *before* the electors cast their votes, and are simply in place to ensure that the presidential elector votes for an eligible candidate. It would surely be possible for a disqualified candidate to be declared ineligible, leaving the electors with the duty to vote for the remaining candidates.

A presidential election is not an exclusively federal but is also a state process. In fact, electors, those chosen to ultimately select the President, were to be designated exclusively by the *state* legislatures. Article II, s. 1, c. 2. See *Mcpherson v. Blacker*, 146 US 1, 35 (1892) ("The appointment and mode of appointment of electors belong exclusively to the states under the constitution of the United States"). Presidential elections are thus a cooperative and complementary effort of both the state and federal government. The state of Florida, through its legislative branch, is simply ensuring that eligible candidates who do not defraud voters, for *all* elected offices, are chosen.

Otherwise the state of Florida would be left "defenseless" against a federal candidate who is intent on defrauding as well as maintaining eligibility when there's no eligibility with regard to voters of the state.

Fourth, two judges of this court have abdicated this responsibility and we respectfully trust that this judge will follow his responsibility and "the rule of law" under Florida statutory law and the state's and U.S. Constitutions, and reconsider -- despite what two other judges of this Court decided to do -- based on their apparent politically motivated decision - making.

WHEREFORE, Plaintiff respectfully requests that this court rehear its Order Dismissing Complaint of December 20, 2012 and immediately set down a hearing not only to hear argument with regard to this court's jurisdiction, but also an evidentiary hearing which is required to properly and fully adjudicate Plaintiff's Motion for Temporary Injunction.

Dated: December 26, 2012

Respectfully submitted,

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**CERTIFICATION**

I HEREBY CERTIFY that a true copy of the foregoing Reply in Support of Expedited Motion for Rehearing has been filed electronically and served via email this 26th day of December, 2012 upon the following:

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Respectfully submitted,

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