No. 14-_____

In The

Supreme Court of the United States

MICHAEL VOELTZ,

Petitioner,

v.

BARACK OBAMA, FLORIDA SECRETARY OF STATE KEN DETZNER, and the FLORIDA ELECTION CANVASSING COMMISSION,

Respondents.

On Petition For Writ Of Mandamus To The Supreme Court Of Florida

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PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

1. Whether the state of Florida violated the due process rights of Petitioner Voeltz by not allowing a hearing and illegally dismissing his lawsuit which was properly filed under Florida's Contest of Election statutes.

2. Whether the judiciary of the state of Florida has the authority to determine the constitutional eligibility of the winner of the Florida General Election for the Office of President of the United States in accordance with its own election statutes.

3. Whether the determination of a candidate's eligibility for the Office of President of the United States, according to Article II of the U.S. Constitution, is designated specifically to Congress by the U.S. Constitution or if the Florida courts have the authority to address this issue.

4. Whether the U.S. Constitution, which requires that a candidate for the Office of President of the United States be a "natural born citizen," requires that a presidential candidate be born in the United States to U.S. citizen parents.

5. Whether the U.S. Constitution's Article II requirements for eligibility of a President of the United States are self-executing.

PARTIES TO THE PROCEEDINGS

Petitioner Michael C. Voeltz is a registered voter in Broward County, Florida. Respondent Barack Obama was elected President of the United States on November 6, 2012. Respondent Ken Detzner is the Secretary of State, and chief elections officer of Florida. Respondent Florida Elections Canvassing Commission is an indispensible party, and the state body that certified the results of the general election in Florida on November 20, 2012.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	v
RELIEF REQUESTED	2
OPINIONS BELOW	3
JURISDICTION	3
CONSTITUTIONAL AND STATUTORY PROVISIONS	3
RULE 20.1 STATEMENT	5
STATEMENT OF THE CASE	5
I. PROCEDURAL HISTORY	5
II. FACTUAL BACKGROUND	7
SUMMARY OF THE ARGUMENT	9
ARGUMENT	10
I. MANDAMUS IS APPROPRIATE	10
II. THE U.S. CONSTITUTION REQUIRES A PRESIDENT OF THE UNITED STATES TO BE BORN IN THE UNITED STATES TO U.S. CITIZEN PARENTS	18
A. Under The Principles Of Statutory Construction, The Term “Natural Born Citizen” Must Be Defined Differently Than The Term “Citizen.”	18

TABLE OF CONTENTS – Continued

Page

B. The Framers' Goals In Restricting Eligibility For The Office Of The President Require That "Natural Born Citizens" Be Born Within The Territory Of The United States To Two Citizen Parents 22

III. THE STATES ARE EMPOWERED WITH THE RIGHTS AND DUTIES TO CONDUCT PRESIDENTIAL ELECTIONS 29

CONCLUSION 37

APPENDIX

Supreme Court of Florida, April 16, 2014 .... App. 1

Florida District Court of Appeal, First District, March 13, 2014 .... App. 3

Florida Circuit Court, Second Judicial Circuit, December 20, 2012 .... App. 5

TABLE OF AUTHORITIES

Page

CASES

Ankeny v. Governor of The State of Indiana, 916 N.E.2d 678 (Ind. Ct.App. 2009) 29

Arizona v. United States, 567 U.S. ___, 132 S. Ct. 2492 (2012)...24

Burns v. United States, 501 U.S. 129 (1991) 31

Church of the Holy Trinity v. United States, 143 U.S. 457 (1892)...26

Crawford v. Gibbons, 482 U.S. 437 (1987).................19

De Beers Consol. Mines, Ltd. v. United States, 325 U.S. 212 (1945)...10

Fitzgerald v. Green, 134 U.S. 377 (1890) 33

Gray v. Bryant, 125 So. 2d 846 (Fla. 1960)..........15, 32

Hollingsworth v. Perry, 558 U.S. 183 (2010) 11

Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998).......................................32

Marbury v. Madison, 5 U.S. 137 (1803)...............11, 18

McInnish v. Bennett, 2014 Ala. LEXIS 41 (Ala. Mar. 21, 2014) 35, 36

McPherson v. Blacker, 146 U.S. 1 (1892).............30, 31

Minor v. Happersett, 88 U.S. 162 (1875)............*passim*

Morissette v. United States, 342 U.S. 246 (1952).......28

Morton v. Mancari, 417 U.S. 535 (1974)....................19

Oregon v. Mitchell, 400 U.S. 112 (1970)...............29, 30

Osborne v. Bank, 22 U.S. 738 (1824) 35

TABLE OF AUTHORITIES – Continued

Page

Palm Beach County Canvassing Board v. Harris, 772 So. 2d 1220 (Fla. 2000)........................17

Powell v. McCormack, 395 U.S. 486 (1969) 3, 37

Roe v. Wade, 410 U.S. 113 (1973) 2

Shevin v. Stone, 279 So. 2d 17 (Fla. 1972)...........13, 15

Sosa v. Alvarez-Machain, 542 U.S. 692 (2004)..........25

State ex rel. Cherry v. Stone, 265 So. 2d 56 (Fla. Dist. Ct. App. 1st Dist. 1972)..................................15

The Nereid, 13 U.S. 388 (1815) 25

Tisdale v. Obama, No. 3:12-cv-00036 (E.D. Va. 2012) 29

Train v. Colorado Public Interest Research Group, 426 U.S. 1 (1976) 19

U.S. Alkali Export Ass'n v. United States, 325 U.S. 196 (1945)...10

United States v. Darby, 312 U.S. 100 (1941) 30

United States v. United Continental Tuna Corp., 425 U.S. 164 (1976)...19

United States v. Wong Kim Ark, 169 U.S. 649 (1898)...27

Voeltz v. Obama, et al., No. 2012-CA-00467 (June 29, 2012)...14

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

Art. I, S. 5 ... 35
Art. I, S. 8 ... 27
Art. I, S. 8, c. 10 ... 28
Art. I, S. 10 ... 31
Art. II, S. 1, c. 2 ... 29, 35
Art. II, S. 1, c. 4 ... 7, 9
Art. II, S. 1, c. 5 ... *passim*
Amendment X ... 4, 30, 31
Amendment XIV ... 4, 16, 26
Amendment XX ... 33, 34

STATUTES

3 U.S.C. § 5 ... 4, 15, 16, 34
3 U.S.C. § 15 ... 33, 34
28 U.S.C. § 1651 ... 3, 10
Fla. ss. 97.012 ... 12, 15, 16
Fla. ss. 97.021 ... 13
Fla. ss. 97.041 ... 13
Fla. ss. 99.012 ... 15
Fla. ss. 102.168 ... *passim*

RULES

Sup. Ct. R. 20.1 ... 5, 10

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

Alexander P. Morse, *A Treatise on Citizenship by Birth and by Naturalization*, Little, Brown, 1881 26

E. de Vattel, Law of Nations, (J. Chitty et al. transl. and ed. 1883), Book 1, Chapter 19, § 212 .... *passim*

Federalist 68, Alexander Hamilton, March 12, 1788 ....23, 35

PETITION FOR WRIT OF MANDAMUS

Petitioner Voeltz, as a registered voter in Florida, has the statutory right to challenge the eligibility of any person elected President of the United States in the general election of the state of Florida.

Yet the state of Florida and its chief elections officer, Florida Secretary of State Ken Detzner, have systematically broken Federal and state laws in order to avoid determining the eligibility of a candidate that they are legally required to determine. Nevertheless, the question of whether Barack Obama is eligible for the Office of President of the United States must be resolved by the judiciary, or there is a risk that the faith of the American people in a republican form of government will be lost.

This controversy must be resolved, as a great many in the nation are aware of the constitutional eligibility questions revolving around Barack Obama. The fact of the matter is that Mr. Obama is not a "natural born citizen" and is thus not eligible for the Office of President of the United States. The Court has not addressed the issue of "natural born citizen" since *Minor v. Happersett,* 88 U.S. 162, 167 (1875), where this Court defined "natural born citizen" as one born in the United States with U.S. citizen parents. In the years since *Happersett* was decided, courts are continually violating the U.S. Constitution by redefining "natural born citizen" and by not allowing states to investigate eligibility. As such, this Court must decide this important issue and issue a petition for writ

of mandamus requiring the state of Florida, and its secretary of state, to investigate the eligibility of Barack Obama.

This case is not per se about President Obama. There are significant constitutional issues at play which will affect future presidential elections including but not limited to the presidential election of 2016, where some likely presidential candidates will also not qualify under Art. II, S. 1, c. 5 as eligible to run for the Office of President of the United States. *See Roe v. Wade,* 410 U.S. 113 (1973) (Which stands for the proposition that harms that are capable of repetition yet evading review remain ripe for judicial determination). The Supreme Court has a duty on behalf of the American people to address these constitutional issues. Nothing is more important than preserving the integrity of our electoral system as conceived and implemented by our Founding Fathers.

RELIEF REQUESTED

Petitioner respectfully requests that this Court issue a writ of mandamus compelling the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida to hear to the case on the merits and issue a declaratory judgment as to the eligibility of Barack Obama to serve as President of the United States.

OPINIONS BELOW

The rulings under review are the Order Dismissing Case of December 20, 2012 in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, in case number 2012-CA-3857 and the Per Curium Affirmation of the Florida First District Court of Appeal dated March 13, 2014 in case number 1D13-83.

JURISDICTION

This Court's jurisdiction rests on 28 U.S.C. § 1651. This case also presents an actual case and controversy involving an important constitutional question. *See Powell v. McCormack*, 395 U.S. 486 (1969) ("It has long been held that a suit "arises under" the Constitution if a petitioner's claim "will be sustained if the Constitution . . . [is] given one construction and will be defeated if [it is] given another.").

CONSTITUTIONAL AND STATUTORY PROVISIONS

Art. II, S. 1, c. 5, U.S. Const.:

> "No Person except a natural born citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who

shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States."

Amendment X, U.S. Const.:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Amendment XIV, s. 1, U.S. Const.:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3 U.S.C. § 5 – Determination of Controversy as to Appointment of Electors

"If any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the

> electors, such determination made pursuant to such law so existing on said day, and made at least six days prior to said time of meeting of the electors, shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned."

RULE 20.1 STATEMENT

This case presents the exceptional circumstance in which a President of the United States may not be eligible to hold office. Petitioner's pleas for justice have been dismissed by every court in the state of Florida, even though Petitioner had a clear right to a hearing under Florida's election laws. Petitioner has been left with no option but to file this petition for writ of mandamus, in order to seek an actual, bona fide hearing on the eligibility of Barack Obama.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

On November 29, 2012, Petitioner Voeltz filed a contest of election pursuant to Fla. ss. 102.168(1)(3)(b), in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida ("Circuit Court"), asking that court to issue a declaratory

judgment as to whether Barack Obama is a natural born citizen, as required by Article II of the U.S. Constitution to be eligible for the office of President of the United States. The case was assigned to the Honorable Kevin J. Carroll.

Petitioner filed his complaint timely within Florida's Contest of Election Statute, naming the ECC as an "indispensible party," within 10 days after that body's final certification of the 2012 general election on November 20, 2012, which stated that Barack Obama was elected President of the United States.

Judge Carroll dismissed Petitioner's action without a hearing on December 20, 2012, even though Florida statutes forbid dismissal without a hearing (Fla. ss. 102.168(5)(7)). Judge Carroll ruled that "since the United States Government declares this man to be President, this Court will not dispute it, case dismissed," and "notwithstanding section 102.168, the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida does not have jurisdiction to determine the issue of qualification for the Office of President of the United States." (2012-CA-3857 Order Dismissing Complaint at 2, 3).

Petitioner Appealed to Florida's First District Court of Appeal. The First District of Court of Appeal issued an order of "per curiam affirmed" on March 13, 2014. The Florida Supreme Court held that it was without jurisdiction to hear the appeal and dismissed the appeal before hearing the case on its merits on April 16, 2014.

II. FACTUAL BACKGROUND

Petitioner Michael Voeltz, a registered member of the Democratic Party of Florida, having sworn an oath to "protect and defend" the U.S. Constitution as an elector of the state of Florida, filed this lawsuit on November 29, 2012, within the time period allowed for under Fla. ss. 102.168(2)[1] to challenge the election and nomination of Barack Obama as the Democratic Party candidate for the 2012 presidential election. The suit was properly filed in the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida.

Barack Obama was nominated on September 6, 2012 at the Democratic National Convention in Charlotte, North Carolina. Mr. Obama has never established his eligibility for the presidency of the United States and neither he, nor the Democratic Party of Florida has even stated that he is a "natural born citizen" as required to run for President under Article II, section 1, clause 4, of the U.S. Constitution. The only so-called evidence of Mr. Obama's birth within the United States has come in the form of an electronic version posted on the internet. Yet there is uncontroverted evidence on the record to show that

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[1] Fla. ss. 102.168(2) provides the following:

> (2) Such contestant shall file a complaint, together with the fees prescribed in chapter 28, with the clerk of the circuit court within 10 days after midnight of the date the last board responsible for certifying the results officially certifies the results of the election being contested.

this "birth certificate" has either been altered or is entirely fraudulent.

Even if this purported "birth certificate" is to be believed, Mr. Obama was born to a mother who was a citizen of the United States, and a father who was a subject of the British colony of Kenya. By the operation of the British Nationality Act of 1948, Mr. Obama would also be a British subject at birth. The U.S. Constitution requires that all who serve as President of the United States must be "natural born citizen[s]." The U.S. Supreme Court has defined this term to mean a child born to two citizen parents. Since Respondent Obama was not born to parents who were both citizens of the United States, he is not a "natural born citizen" as required by the Constitution.

As a result of Mr. Obama's ineligibility to run for and hold presidential office, Petitioner properly challenged the results of the 2012 Florida General Election, set forth the grounds for the challenge and sought relief from the Circuit Court, only to have the case dismissed on December 20, 2012 with a fictional movie as the only basis for dismissing the action. Petitioner appealed the decision of the Circuit Court, only to have the First District Court of Appeal affirm the decision without even writing an opinion. Petitioner now seeks justice from this Court.

Petitioner, now pursuing his third lawsuit, and second appeal simply to fulfill his duty as a voter to "protect and defend" the U.S. Constitution, is entitled to have his case finally heard and it is time for this

Court to finally address the eligibility requirements of the U.S. Constitution.

SUMMARY OF THE ARGUMENT

Petitioner filed a lawsuit under Florida's Contest of Election Statute, section 102.168(1)(3)(b), clearly stating, in support of his Florida elector oath to protect and defend the U.S. Constitution, that Barack Obama was ineligible to be on the Florida General Election Ballot for President because he is not a "natural born citizen" as required by Art. II, s. 1, c. 4 of the U.S. Constitution due to foreign citizenship at birth. Petitioner provided sworn affidavits of an official investigation attesting that the birth documents displayed by Respondent Obama on the White House website were entirely fraudulent. Judge Carroll ignored all the evidence and instead ruled that "notwithstanding section 102.168, the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida does not have jurisdiction to determine the issue of qualification for the Office of President of the United States."

Florida's Contest of Election statute clearly enables Petitioner to challenge the eligibility of any candidate, and candidates for the Office of President of the United States are no exception. The state of Florida, and Florida Secretary of State Ken Detzner, have continually violated the due process rights of Petitioner by dismissing and refusing to investigate

the eligibility of Barack Obama. As such, a writ of mandamus is required to compel the state of Florida and its Secretary of State into investigating the eligibility of Barack Obama.

In determining the eligibility of Barack Obama, this Court must respectfully affirm its finding in *Minor v. Happersett,* 88 U.S. 162, 167 (1875), which held that "natural born citizens" were those born in the United States to U.S. citizen parents, a term used extensively and defined in the Law of Nations by Emmerich de Vattel.

ARGUMENT

I. MANDAMUS IS APPROPRIATE

The All Writs Act, 28 U.S.C. § 1651, authorizes the Supreme Court to issue extraordinary writs in its discretion. "To justify granting any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court." Sup. Ct. R. 20.1. *See also U.S. Alkali Export Ass'n v. United States*, 325 U.S. 196, 201-02 (1945); *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 217 (1945).

In order for a writ of mandamus to issue, a party must simply establish that (1) "no other adequate

means [exist] to attain the relief he desires," (2) the party's "right to issuance of the writ is 'clear and indisputable,'" and (3) "the writ is appropriate under the circumstances." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) *citing Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380-81, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004) (some internal quotation marks omitted).

No Other Adequate Means Exist To Attain The Desired Relief

There is no remedy described in Fla. ss. 102.168 for an elector contesting an election based on the eligibility for office. There is only a remedy described for another candidate's contest (Fla. ss. 102.168(2)). Likewise, there is no duty of the circuit judge to investigate any evidence made by a contesting elector, only that an elector present such contest to a circuit judge (102.168(7)). However, "every right must have a remedy." *Marbury v. Madison*, 5 U.S. 137 (1803) (citing Blackstone's Commentaries). Petitioner has a clear legal right to challenge the eligibility of Barack Obama, given by Florida statute, and equity demands a remedy.

A writ of mandamus by this court compelling the District Court of Appeals to reopen the Petitioner's appeal of the Circuit Court decision would be a proper way of finally obtaining a ruling on the merits in this case. In the alternative, Petitioner prays for a writ of mandamus, issued to Secretary Detzner, compelling

him to do his required duty of Fla. ss. 97.012(14), and compel the Circuit Court to allow full discovery, and to comply with the election contest statute 102.168(1)(3)(b), and rule on the record as to the eligibility of Barack Obama, whose eligibility for Office of President of the United States is in question.

Rights of Petitioner

Any Florida elector, eligible to vote in an election, has a statutory right, given by Florida's Contest of Election Statute, section 102.168 et seq., to contest the eligibility of "any person" elected or nominated to Office of President of the United States. Petitioner filed his action as required by Fla. ss. 102.168(2).[2]

Judge Carroll incorrectly stated that, "Florida does not have jurisdiction to determine the issue of qualification for the Office of President of the United States" but conveniently states that this is "notwithstanding section 102.168." The Florida legislature has specifically enacted a statute to do just that, and as shown below, the Florida Supreme Court has held that qualification is a judicial determination.

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[2] Fla. ss. 102.168(2) provides the following:

(2) Such contestant shall file a complaint, together with the fees prescribed in chapter 28, with the clerk of the circuit court within 10 days after midnight of the date the last board responsible for certifying the results officially certifies the results of the election being contested.

The Florida Supreme Court has held that eligibility for office is a judicial determination upon any challenge properly made. *Shevin v. Stone,* 279 So. 2d 17, 22 (Fla. 1972). This action is properly made, as to eligible plaintiff, time, venue, cause and parties, and is ripe for a judicial holding with precedent, as to the eligibility of Barack Obama to be on the Florida General Election ballot. Petitioner has cited Supreme Court precedent which would appear to say that Mr. Obama is not an eligible natural born citizen and thus not eligible to be on the Florida General Election Ballot for President of the United States. Petitioner has brought further evidence that Mr. Obama's birth records are fraudulent.

Under Florida Election Code section 102.168(1), "the certification of election or nomination of any person to office . . . may be contested in the circuit court . . . by any elector qualified to vote in the election related to such candidacy, or by any taxpayer, respectively." Under Section 97.021(14), Florida Statutes (2011), "Elector" is defined as "synonymous with the word 'voter' or 'qualified elector or voter.'" Petitioner was a registered voter in the State of Florida, having met the qualifications of Section 97.041(1)(a), Florida Statutes (2011); a member of the Democratic Party; and a taxpayer. Thus, Petitioner had standing under Section 102.168(1) to contest the certification of a nomination of a person to office.

Under Section 102.168(3), a plaintiff "must set forth the grounds" on which the contest challenge is based upon. Section 102.168(3), Florida Statutes

(2011). The statute goes on to provide the grounds on which a challenge may occur: a) misconduct, fraud, or corruption; b) ineligibility of the successful candidate for the nomination or office in dispute; c) receipt of a number of illegal votes; or d) proof that any elector, official, etc. was given or offered a bribe. Section 102.168(3)(a)-(d), Florida Statutes (2011). Petitioner's complaint alleged that Respondent Obama is in-eligible for the Office of the President of the United States.

Judge Carroll's decision does not address the merits of the lawsuit, but instead cites simply to Judge Terry Lewis' decision in *Voeltz v. Obama, et al.*, No. 2012-CA-00467 (June 29, 2012). The ruling in Judge Lewis' opinion was simply that there was no cause of action prior to the 2012 Florida General Election. No other issues were resolved as a result of his decision, and none of the issues to be decided in this case were resolved previously. Judge Lewis even stated in his decision that he was not deciding whether Petitioner would have a lawsuit after the 2012 Florida General Election.

Petitioner clearly set forth grounds of contest, and the Circuit Court was obliged to make a legal determination on the record as to the eligibility of Barack Obama. The requirement that the President be a natural born citizen is self executing, a "provision that lays down a sufficient rule by which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected

without the aid of legislative enactment." *Gray v. Bryant*, 125 So. 2d 846, 851 (Fla. 1960).

Significantly, Florida Statutes, section 97.012(14) stipulates that the secretary of state must "[b]ring and maintain such actions at law or in equity by mandamus or injunction to enforce the performance of any duties of a county supervisor of elections or any official performing duties with respect to chapters 97-102 and chapter 105 or to enforce compliance with a rule of the Department of State adopted to interpret or implement any of those chapters." 3 U.S.C. § 5 mandates a ministerial duty, to be carried out by the Secretary of State, to direct a final determination of any controversy regarding the appointment of electors by six days prior to the meeting of electors.

Even the Florida Supreme Court has held that eligibility for office is a judicial determination upon any challenge properly made. 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 (Fla. 1972).

In *Shevin v. Stone,* 279 So. 2d 17, 22 (Fla. 1972), the Petitioner sought a writ of mandamus to challenge the eligibility of a candidate for office who had not complied with the requirements of Fla. ss. 99.012, the so-called "resign to run" law. The Supreme Court held that the challenge of the eligibility of a candidate "is for appropriate judicial determination upon any challenge properly made." *Id.* at 22.

It is therefore unacceptable and unconstitutional that Florida circuit courts have invalidated and nullified Florida's Contest of Election Statute, section 102.168, with respect to presidential elections. Secretary of State Ken Detzner has failed to uphold his duty to expedite Petitioner's action, and has failed to support the will of the Legislature to conform to 3 U.S.C. § 5.

Petitioner's election challenge within the Circuit Court was properly made. Petitioner was a proper plaintiff, and the time, venue, cause and parties were proper for a judicial determination as to the eligibility of Barack Obama to be on the Florida General Election ballot. Petitioner has further presented this Court's precedent which definitively held that Mr. Obama was not and is not a natural born citizen and thus not eligible to be President of the United States.

The State Of Florida Has Violated The Fourteenth Amendment Due Process Rights Of Petitioner

By allowing the judiciary to deny standing, and failing to timely shepherd a judicial determination of the eligibility demanded by Florida state statute, Secretary Detzner has violated Fla. ss. 97.012(1), which demands that he apply the Florida election statutes equally. Petitioner used the same Contest of Election Statute, section 102.168, as Vice President Al Gore did after the 2000 General Election, but with entirely

different results.[3] Mr. Gore was afforded expeditious adjudication all the way to the Florida Supreme Court, prior to the "safe harbor" deadline, so as not to disenfranchise Florida voters. It is absurd to rule that Florida's Contest of Election statutes do not apply, when they were used in a high profile case pertaining to a presidential election merely fourteen years ago.

Florida Secretary of State Ken Detzner, and the Judiciary of Florida, officers of the state of Florida, and acting as the state of Florida, have violated due process and equal protection of Petitioner that has resulted in the dissolution of his right to vote, by failing to adjudicate his contest of election by Declaratory Judgment prior to December 12, 2012.

No Other Remedy Is Available

The state of Florida has continually denied Petitioner his right to challenge the election. The Circuit Court dismissed Petitioner's lawsuit by doing nothing more than citing to a fictional movie, *Miracle on 34th Street*. Florida's First District Court of Appeal affirmed the Circuit Court's decision without an opinion, and foreclosed any future appeal by Petitioner.

Further, there is no remedy described in Fla. ss. 102.168 for an elector contesting an election based on the eligibility for office. There is only a remedy described for another candidate's contest (Fla. ss.

[3] *See Palm Beach County Canvassing Board v. Harris*, 772 So. 2d 1220 n.20 (Fla. 2000) ("[A]ll of Florida's election statutes apply to presidential elections.").

102.168(2)). Likewise, there is no duty of the circuit judge to investigate any evidence made by a contesting elector, only that an elector present such contest to a circuit judge (Fla. ss. 102.168(7)). However, "every right must have a remedy." *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (citing Blackstone's Commentaries). Petitioner has a clear legal right to challenge the eligibility of Barack Obama, given by Florida statute, and equity demands a remedy.

II. THE U.S. CONSTITUTION REQUIRES A PRESIDENT OF THE UNITED STATES TO BE BORN IN THE UNITED STATES TO U.S. CITIZEN PARENTS

In order for Florida Secretary of State Ken Detzner to determine the eligibility of a candidate for Office of President of the United States, the Secretary of State must know, once and for all, what the term "natural born citizen" requires for the eligibility of one to hold the Office of President of the United States. As set forth below, historical evidence shows that the Founding Fathers intended a "natural born citizen" to be one who was born in the United States to U.S. citizen parents.

A. Under The Principles Of Statutory Construction, The Term "Natural Born Citizen" Must Be Defined Differently Than The Term "Citizen."

Although the Framers of the U.S. Constitution did not define "natural born citizen" within the actual

text of the U.S. Constitution, and, while intending for its meaning to require that a citizen have had both of his parents born in the United States, the Court must now step in to correct recent judicial opinions that go against this Court's definition of a "natural born citizen" as held in *Happersett*.

It is a fundamental principle of statutory interpretation that where two different and distinct terms have been used, each is to be given its own meaning. "As always, '[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.' . . . *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974) . . . Any argument that a federal court is empowered to exceed the limitations [of a statute] . . . without plain evidence of congressional intent to supersede those sections ignores our longstanding practice of construing statutes in pari materia." *See United States v. United Continental Tuna Corp.*, 425 U.S. 164, 168-169 (1976); *Train v. Colorado Public Interest Research Group*, 426 U.S. 1, 24 (1976); *Crawford v. Gibbons*, 482 U.S. 437, 445 (1987).

The rationale behind this rule is based on the intent of the statute's drafters. When undertaking the important task of crafting law, the drafter of a statute certainly chooses his or her words carefully. A drafter's goal is to create a statement of the law that is as clear and concise as possible. Thus, when an idea has been memorialized in one word or phrase, the drafter uses that one word or phrase, and it alone, to communicate the idea, since the use of two or more words

or phrases would risk creating an interpretive ambiguity that would threaten to defeat purposes of the law being drafted. It is the application of this principle that gives rise to the question presently before this court.

No statutory drafters undertook their task with greater care than the Framers of the U.S. Constitution. Seeking to establish a new form of government, the Framers engaged in over four months of rigorous debate. The fact that the result of their efforts spans a mere four pages is a testament to the Framers' commitment to concisely stating the law and proof of their intention that every word be given meaning. Thus, the requirement that the President be a "natural born citizen," a phrase used nowhere else in the U.S. Constitution, must be given a meaning distinct from the term "citizen," a word employed on its own ten times within the U.S. Constitution.

The context in which the Framers use the unique phrase "natural born citizen" further establishes their intention that it be distinguished from the term "citizen." Under Article II of the U.S. Constitution, eligibility for the office of the President is only open to those who are "a natural born citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution." This two pronged approach to satisfying the citizenship requirement for presidential eligibility clearly establishes the fact that the Framers contemplated a future citizen class, distinct from "a Citizen of the United States." A "natural born citizen" must, therefore, possess qualifications that "a

Citizen of the United States" was unable to attain "at the time of the Adoption of this Constitution." Thus, it is necessary to identify these qualifications in order to define "natural born citizen."

First, naturalization must be eliminated as a means of attaining "natural born citizen" status because it was through naturalization that all "Citizens of the United States, at the time of the Adoption of this Constitution" became citizens, having previously been citizens of England or their various countries of origin. Therefore, it would be unnecessary to specify the two modes of acquiring citizenship. By eliminating naturalization, only two qualifications for "natural born citizen" status can remain: birth within the territory of the United States and two United States citizen parents.

The first qualification of a "natural born citizen" – birth within the territory of the United States – could not have been attained by anyone prior to the founding of our country. Since the United States was hardly more than a decade old at the time the Constitution was drafted, the only persons that would meet this qualification would have been far too young to serve as President, thus necessitating the provision for "Citizens of the United States, at the time of the Adoption of this Constitution."

The second qualification of a "natural born citizen" – being born to two United States citizen parents – was similarly unattainable by anyone prior to the founding of our country. This additional requirement

was necessary, however, since many British citizens remained within the territory of the United States. As explained in greater detail below, the Framers were acutely concerned about the danger of foreign influence in the Office of the President. By requiring a person to be born to two United States citizen parents, the Framers insured that hostile foreign interests would not be able to infiltrate the highest office of our fledgling country through a child born to foreign citizens on United States soil.

B. The Framers' Goals In Restricting Eligibility For The Office Of The President Require That "Natural Born Citizens" Be Born Within The Territory Of The United States To Two Citizen Parents.

At the time of the drafting of the U.S. Constitution, the United States was hardly more than a decade old. With the Revolutionary War still fresh in their minds, the Framers of the Constitution were acutely aware of the country's susceptibility to foreign influence. In this regard, the Framers were centrally concerned with the office of the President.

On July 25, 1787, in a letter to George Washington, who had been elected to preside over the Constitutional Convention, future Chief Justice of the Supreme Court John Jay states:

> Permit me to hint, whether it would not be wise & seasonable to provide a strong check to the admission of Foreigners into the

> administration of our national Government; and to declare expressly that the Command in chief of the American army shall not be given to, nor devolve on, any but a natural born citizen.[4]

Similarly, in 1788, Federalist 68, Alexander Hamilton, who himself was born outside of the United States, recognized the need for the stringent requirements for the office of President of the United States:

> Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one quarter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union? But the convention have guarded against all danger of this sort, with the most provident and judicious attention.

Federalist 68.

The Framers of the Constitution were very concerned about the danger of foreign influence undermining American society, so much so, that John Jay

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[4] Available at http://wwwapp.cc.columbia.edu/ldpd/jay/image?key=columbia.jay.10627&p=1&level=1. (last viewed on June 5, 2012) (emphasis in original).

wrote five Federalist Papers on the dangers of foreign influence (#2-6), and George Washington warned direly about it in his "Farewell Speech" in 1796:

> Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government.

In order to protect and safeguard against this foreign influence, the Founding Fathers placed within the U.S. Constitution the unique requirement that the President of the United States, the highest office in the land, be a "natural born citizen." The Framers of the U.S. Constitution intended to include this requirement in order for there to be at least a single generation of those loyal to the United States before their children were to be leaders of this nation.

The term "natural born citizen" was well established at the time the U.S. Constitution was drafted and enacted, coming from the law of nations as compiled and set forth in the historic treatise the "Law of Nations," a treatise crafted by the renowned Emmerich de Vattel, and which the Framers consulted and replied upon in crafting and enacting the Constitution.[5]

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[5] Recently, in this Court's decision of *Arizona v. United States*, 567 U.S. ___, 132 S. Ct. 2492 (2012), Justice Scalia made use of Vattel's "Law of Nations" in the writing of his opinion.

In determining the definition of "natural born citizen," this Court has previously turned to the "common law," which this very Court has held is the Law of Nations. *See Minor v. Happersett,* 88 U.S. 162, 167 (1875) (defining "natural born citizen" using "the common law" or "the nomenclature of which the framers of the Constitution were familiar."); *Sosa v. Alvarez-Machain,* 542 U.S. 692 (2004) ("When the United States declared their independence, they were bound to receive the law of nations, in its modern state of purity and refinement."); *see also The Nereid*, 13 U.S. 388, 423 (1815) ("[T]he Court is bound by the law of nations, which is a part of the law of the land.").

In a section titled "Of the Citizens and Natives" the "Law of Nations" spoke of the difference between citizens and natural born citizens as follows: "The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives, or ***natural-born citizens, are those born in the country, of parents who are citizens***." "Law of Nations," Book 1, Chapter 19, § 212 (emphasis added). Vattel went on to clarify and confirm, the "**country of the father is the country of the son**." *Id.*

The Framers desired and mandated that a deep abiding allegiance to the United States for the future President must be had, as this person would be the Commander In Chief of the U.S. Armed Forces. They were looking for allegiance derived from at least naturalized U.S. citizen parents, on the standing of a "Native," who had legally thrown off native allegiances

and pledged sole allegiance to their new nation, not the temporary allegiance of inhabitants, simply changed by moving domicile. As this Court has held, "[A]nother guide to the meaning of a statute is found in the evil which it is designed to remedy." *Church of the Holy Trinity v. United States*, 143 U.S. 457, 463 (1892). Given the Framer's intent to remove foreign influence, a heightened requirement would be appropriate.

The definition that a natural born citizen was one born in the country with two citizen parents, was the prevalent view of the time. In his landmark treatise, *A Treatise on Citizenship by Birth and by Naturalization*, Little, Brown, 1881, following the law of nations codified in Vattel's "Law Of Nations," Alexander Porter Morse definitively stated and reiterated the accepted law on "natural born citizen," **"A citizen, in the largest sense, is any native or naturalized person who is entitled to full protection in the exercise and enjoyment of the so-called private rights. The natural born, or native is one who is born in the country, of citizen parents."** Morse, Alexander Porter, *A Treatise on Citizenship by Birth and by Naturalization*, Little, Brown, 1881 pp. xi (1881). **"Under the view of the law of nations, natives, or natural born citizens, are those born in the country, of parents who are citizens."** *Id.* at § 7.

This Court has similarly made clear that "citizen" and "natural born citizen" were two distinct and separate terms. Less than a decade after the passage of the Fourteenth Amendment, the Supreme Court

clarified that only **"all children born in a country of parents who were its citizens" were in turn "natural born citizens."** *Minor v. Happersett,* 88 U.S. 162, 167 (1875).

Justice Horace Gray's Supreme Court opinion in *United States v. Wong Kim Ark,* merely held that the children of domiciled resident aliens, would be "citizens" at birth, if born in America, since they would be "subject to the jurisdiction" of the United States through the jurisdiction had over their parents. *United States v. Wong Kim Ark*, 169 U.S. 649, 693 (1898). This case merely determined that the child was a "citizen" and did not establish that he was a "natural born citizen" since that was not at issue. In fact, "natural born citizen," a requirement for President, had *nothing* to do with the case. Not surprisingly, Justice Grey reiterated the *Minor v. Happersett* definition, that natural born citizens are born of U.S. citizen parents, and noted that the parents at issue in the *Wong Kim Ark* case were not U.S. citizens. *Id. citing Minor v. Happersett,* 88 U.S. 162. Justice Gray certainly was not ruling that children of domiciled resident aliens were natural born citizens, eligible to be President.

Not surprisingly, a direct reference to legal incorporation of the law of nations as codified in Vattel's "Law of Nations" also appeared in the Constitution itself. In Art. I, S. 8, the U.S. Constitution granted enumerated powers for the legislative branch. One of these enumerated powers was "To define and punish Piracies and Felonies committed on the high seas,

and **Offenses against the Law of Nations**"; U.S. Constitution, Art. I, S. 8, c. 10 (emphasis added). The Framers took care in incorporating and recognizing the law of nations, and providing Congress with a means of legislating crimes committed against it.

It is thus clear that "natural born citizen" was a term of art borrowed from the "Law of Nations." As this Court has held,

> where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed. In such a case, absence of contrary direction may be taken as satisfaction with widely accepted definitions, not as departure from them.

Morissette v. United States, 342 U.S. 246, 263 (1952). Thus, the "Law of Nations," and its borrowed term of art, "natural born citizen" must be used in defining the term under the U.S. Constitution.

Even after the U.S. Constitution was written, Vattel's "Law of Nations" continued to be consulted and utilized by the leaders of the United States. On October 5, 1789, President George Washington borrowed from the New York Society Library a copy of Vattel's "Law of Nations," as evidenced by his entry in the ledger. In short, the Supreme Court's decision in

Minor v. Happersett recognized the law of nations' definition of "natural born citizen" which was adopted by the Framers of the U.S. Constitution.

Throughout various lawsuits involving the issue of "natural born citizen," various state and federal courts have held that a "natural born citizen" is nothing more than an individual born within the United States or its territories. *See, e.g., Ankeny v. Governor of The State of Indiana*, 916 N.E.2d 678 (Ind. Ct.App. 2009) (stating, *in dicta*, that a "natural born citizen" is simply one born within the United States or its territories."); *Tisdale v. Obama*, No. 3:12-cv-00036 (E.D. Va. 2012) ("it is well settled that those born in the United States are considered natural born citizens.").

With these varying definitions of the term "natural born citizen," it is clear that this Court must respectfully put this issue to rest and set a more recent precedent that a "natural born citizen" is one born in the United States to U.S. citizens.

III. THE STATES ARE EMPOWERED WITH THE RIGHTS AND DUTIES TO CONDUCT PRESIDENTIAL ELECTIONS

A presidential election is not an exclusively federal 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. As this Court has held in *Oregon v. Mitchell*, 400 U.S. 112, 123 (1970), "the Constitution allotted to the States the power to make laws regarding national

elections, but provided that if Congress became dissatisfied with the state laws, Congress could alter them." *Id. See also McPherson v. Blacker*, 146 U.S. 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. In fact, the federal government did not at the time of ratification have the power to conduct an election without the cooperation of the states.

Further, in 1791, the Tenth Amendment was ratified in order to reaffirm the limited and enumerated powers of the federal government. Specifically, the Tenth Amendment states that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Indeed, as the Supreme Court indicated,

> The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers.

United States v. Darby, 312 U.S. 100, 124 (1941).

Powers granted to the federal government are the limited and enumerated powers specifically granted in the Constitution. The powers "prohibited by it to the states" are those the Constitution specifically prohibited in Article I, Section 10. Since the Constitution neither exclusively grants the federal government the right to conduct investigations, nor specifically prevents the states from doing so, the right of the state to protect its citizenry and elections, in this instance, must be one reserved for the state, as confirmed by the Tenth Amendment.[6]

As this Court has held, " . . . the power and jurisdiction of the State is exclusive, with the exception of the provisions as to the number of electors and the ineligibility of certain persons, so framed that Congressional and Federal influence might be excluded." *McPherson v. Blacker,* 146 U.S. 1, 35 (1892). One must recognize that those who are not natural born citizens are excluded from the Office of President of the United States by Article II, and the Florida legislature is not at liberty to alter that requirement.

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[6] *See Burns v. United States*, 501 U.S. 129, 136 (1991) ("An inference drawn from congressional silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of congressional intent.").

ARTICLE II'S REQUIREMENTS ARE SELF-EXECUTING AND THUS THE FLORIDA SECRETARY OF STATE DOES NOT NEED A SPECIFIC STATUTE IN ORDER TO ENFORCE ITS REQUIREMENTS.

Even if Florida's Contest of Election statute did not exist, that the president "shall" be a natural born citizen is a self-executing constitutional provision relating to the security of the nation (*see* Federalist 68). Under Art. II's language, no person other than a natural born citizen "*shall* be eligible" for the Office of President of the United States. Art. II, S. 1, c. 5 (emphasis added). As this Court has stated, "[t]he mandatory 'shall' . . . normally creates an obligation impervious to judicial discretion." *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach,* 523 U.S. 26, 35 (1998).

Further, as the Florida Supreme Court has itself held, self-executing constitutional provisions need no statute to be enforced, stating, "[T]he modern doctrine favors the presumption that constitutional provisions are intended to be self-operating. This is so because in the absence of such presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people." *Gray v. Bryant,* 125 So. 2d at 851 (Fla. 1960).

Thus, even absent a specific statute allowing for the determination of the eligibility of a candidate, the Florida Secretary of State was required to act in accordance with the U.S. Constitution.

Federal Preemption Does Not Apply

Judge Conner incorrectly applied federal preemption in dismissing Petitioner's case when he held "notwithstanding section 102.168, the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida does not have jurisdiction to determine the issue of qualification for the Office of President of the United States." (2012-CA-3857 Order Dismissing Complaint at 2, 3), citing clauses in the Twentieth Amendment, and 3 U.S.C. § 15 as proof that the question of whether a President-elect is eligible is relegated specifically to the legislative branch. Judge Conner's argument is non-meritorious. The Twentieth Amendment simply states the procedure "*if* the President elect shall have failed to qualify." There is no mention about the method of qualification, only that the electors shall meet and vote by ballot. States similarly claim federal statute 3 U.S.C. § 15 also preempts the states from determining eligibility. Yet this statute simply states the procedure for counting the electoral votes, and objections if improper votes are cast. *See Fitzgerald v. Green*, 134 U.S. 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. Further, the provisions of the Twentieth Amendment specifically take into account a future case where a president-elect has been deemed disqualified prior to the meeting of the joint session of Congress to count the electoral votes.

Florida's Contest of Election statutes are designed to occur *before* the electors cast their votes, and are simply in place to ensure that presidential electors vote 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.

The fact is that the Florida and federal statutory schemes were not allowed to work, since the state of Florida failed to issue a Declaratory Judgment, as Petitioner had legally asked for, before the date mandated in subsection 2 of 3 U.S.C. § 5. The Joint Session of Congress only did its ministerial duty to accept the state of Florida's ascertainment of electors according to the Electoral Count Act of 1887 (now 3 U.S.C. §§ 5-15). As such, the final electoral count remains a decision that is judicially reviewable.

The argument, that since subsection 2 of 3 U.S.C. § 5 has passed, and that this action is foreclosed, is an injustice. The actions of the Florida judiciary, and the Florida Secretary of State, in breaking state and federal law, have caused that defense. Secretary Detzner refused to apply Florida statutes equally before the subsection 2 deadline, and the judiciary dismissed Petitioner's case illegally, and after the federal deadline had passed. This case must refer back to the time when Petitioner filed the case, when Barack Obama was still "president-elect." As such the mechanizations of the Twentieth Amendment, that the vice

president-elect would assume his position, are in effect.[7]

The text of the U.S. Constitution mandated that members of the government were barred from the selection of the president (*see* Art. II, S. 1 c. 2, stating that "no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector".) If the members of government were barred from selecting the president, it would seem illogical that the Framers would give them the sole discretion as to determining the eligibility of the president-elect. As stated in Federalist 68, the Framers of the U.S. Constitution "[h]ave not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes." Further, it would also seem illogical that the Framers would relegate discretion of the qualifications and elections of Congress' own members (*See* Art. I, S. 5) with specificity, yet would leave the question as to presidential qualifications vague.

In another recent court decision from the Alabama Supreme Court dealing with the eligibility of presidential candidates, *McInnish v. Bennett*, 2014

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[7] *See Osborne v. Bank*, 22 U.S. 738, 824 (1824) ("His right to sue is anterior to that defence, and must depend on the state of things when the action is brought.).

Ala. LEXIS 41 (Ala. Mar. 21, 2014),[8] Chief Justice Roy Moore of the Alabama Supreme Court agreed with Petitioner and held in his dissenting opinion:

> "A state law that required birth certificates from presidential candidates as a precondition to placement on the ballot would likely pass muster under federal preemption law." Such a law would not conflict with the Constitution, but would rather harmonize with the natural-born-citizen clause. New Hampshire, for example, requires an affirmation that a person is a "natural born citizen" as a condition to placing that person's name on a presidential-election ballot. N.H. Rev. Stat. Ann. § 655:47. *See also Hassan v. Colorado*, 870 F. Supp. 2d 1192, 1201 (D. Colo. 2012), aff'd, 495 F. App'x 947 (10th Cir. 2012) (upholding a Colorado law requiring all presidential candidates to affirm that they are natural-born citizens). Although states have no power "to add qualifications to those enumerated in the Constitution," *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 805 (1995), they certainly are not limited in enforcing those stated therein.

McInnish at *63-64.

This Court must make the decision as to whether the determination of presidential eligibility is textually

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[8] The appellants in this case have filed a Petition for Writ of Certiorari before this Court, *McInnish v. Bennett*, No. 13A1274, and this petition is still pending.

assigned to the legislative branch by the Constitution. As this Court has held, "[s]uch a determination falls within the traditional role accorded courts to interpret the law, and does not involve a "lack of the respect due [a] coordinate [branch] of government," nor does it involve an "initial policy determination of a kind clearly for non-judicial discretion." *Powell v. McCormack,* 395 U.S. 486, 549 (1969).

CONCLUSION

Petitioner respectfully requests that this Court issue a writ of mandamus ordering that this case be remanded back to Florida's First District Court of Appeal, or in the alternative, to the Circuit Court in and for Leon County, Florida, so that the declaratory judgment that is mandated by the operation of Florida law may be forthcoming in accordance with the law and that Petitioner finally receives the hearing that he is entitled to by law.

Respectfully submitted,

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Supreme Court of Florida

WEDNESDAY, APRIL 16, 2014

CASE NO.: SC 14-715
Lower Tribunal No(s).: 1D13-83;
2012-CA-03857

MICHAEL C. VOELTZ	vs.	BARACK HUSSEIN OBAMA, ETC., ET AL.
Petitioner(s)		Respondent(s)

Having determined that this Court is without jurisdiction, this case is hereby dismissed. *See Jackson v. State,* 926 So. 2d 1262 (Fla. 2006); *Jenkins v. State,* 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing will be entertained by this Court.

A True Copy
Test:

/s/ John A. Tomasino [SEAL]
John A. Tomasino
Clerk, Supreme Court

kb
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HON. BOB INZER, CLERK
HON. JON S. WHEELER, CLERK
HON. KEVIN JOHN CARROLL, JUDGE

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

MICHAEL C. VOELTZ,

Appellant,

v.

BARACK HUSSEIN OBAMA, Florida Democratic Party nominee for President to the 2012 Democratic National Convention; KEN DETZNER, Secretary of State of Florida; FLORIDA ELECTIONS CANVASSING COMMISSION,

Appellee.
/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D13-83

Opinion filed March 13, 2014.

An appeal from the Circuit Court for Leon County. Kevin Carroll, Judge.

Larry Klayman, Washington, D.C., for Appellant.

Mark Herron, Joseph Brennan Donnelly, and Robert J. Telfer III of Messer Caparello, P.A., Tallahassee; Stephen F. Rosenthal of Podhurst Orseck, P.A., Miami, and Richard B. Rosenthal of The Law Offices of Richard B. Rosenthal, P.A., Miami, for Appellee President Barack Obama; J. Andrew Atkinson, General Counsel, and Ashley E. Davis, Assistant General Counsel for Appellees Florida Secretary of State Kenneth W. Detzner and The Florida Elections Canvassing Commission.

PER CURIAM.

AFFIRMED.

THOMAS, RAY, and SWANSON, JJ., CONCUR.

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

MICHAEL C. VOELTZ,
Plaintiff,

CASE NO.
2012-CA-3857

v.

BARACK HUSSEIN OBAMA,
et. al.,

Defendants.
______________________________/

ORDER DISMISSING COMPLAINT

THIS CAUSE comes before the Court upon The Secretary and Canvassing Commission's Motion to Dismiss, filed on December 10, 2012, and President Obama's Notice of Applicability of Title 3 U.S.C. § 5, filed on December 12, 2012. The Court having considered the motion and response from plaintiff finds the following:

Plaintiff brings this action under Florida Statute Section 102.168. He alleges that Barack Obama is constitutionally ineligible to be President of the United States.

This is the Plaintiff's third challenge to President Obama filed in the Circuit Court in and for Leon County, Florida. In *Voeltz I,* Case No. 2012-CA-467 this Court (The Honorable Terry Lewis presiding) dismissed Plaintiffs challenge to President Obama's candidacy asserting that the President was not a

"natural-born citizen" within the meaning of the Constitution of the United States. That action was dismissed with prejudice on June 29, 2012, and is on appeal.

Thereafter, in *Voeltz II,* Case No. 2012-CA-2063, this Court (The Honorable John Cooper presiding) was presented with a complaint that sought to have this Court "*to declare that Barack Hussein Obama is not eligible to serve as president of the United States*". Judge Cooper found that this Court lacked jurisdiction under Chapter 86 Florida Statutes to grant the declaratory relief sought by the Plaintiff. Judge Cooper's detailed 19 page order considering the matter found that "issues concerning President Obama's eligibility to be president of the United States have been committed under the Constitution to the presidential electors and the Congress and, as a consequence, this Court lacks subject matter jurisdiction to consider the issue." No appeal was taken from Judge Cooper's ruling.

We are now presented with *Voeltz III.* This Court notes that President Obama lives in the White House. He flies on Air Force One. He has appeared before Congress, delivered State of the Union addresses, and meets with Congressional leaders on a regular basis. He has appointed countless ambassadors to represent the interests of the United States throughout the world. President Obama's recent appointment of The Honorable Mark Walker, formerly a member of this Court, has been confirmed by the United States Senate. Judge Walker has been sworn in as a United

States District Court Judge and currently works at the Federal Courthouse down the street. The Electoral College has recently done its work and elected Mr. Obama to be President once again. As this matter has come before the Court at this time of the year it seems only appropriate to paraphrase the ruling rendered by the fictional Judge Henry X. Harper from New York in open court in the classic holiday film *Miracle on 34th St. "Since the United States Government declares this man to be President, this Court will not dispute it. Case dismissed."*

In conclusion, this Court finds that notwithstanding section 102.168, the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida does not have jurisdiction to determine the issue of qualification for the Office of President of the United States, particularly at this late date in the process. In accordance with Florida Statute 103.061, the Florida electors to the Electoral College met and voted on December 17, 2012. Consistent with the Twelfth Amendment to United States Constitution, this Court cannot now alter the Electoral College process. Plaintiff's remedy, *if there is any* (and this Court does not suggest there is) lies with the Congress pursuant to Title 3 U.S.C. § 15. *See also Robinson v. Bowen,* 567 F. Supp. 2d 1144, 1147 (N.D. Cal. 2008) (concluding that issues regarding Presidential qualification are committed to the Congress). Because the Court finds that Plaintiff cannot amend his complaint to cure this jurisdictional issue, the complaint is **DISMISSED** with prejudice. All other pending motions

are rendered moot. This Court retains jurisdiction to award fees and costs to the Defendants as appropriate

DONE AND ORDERED this 20th day of December, 2012.

/s/ Kevin J. Carroll
KEVIN J. CARROLL
Circuit Judge

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