

Obama Presidency Challenged By New Jersey Voter re:"natural born citizen" - Before US Supreme Court

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Obama presidency challenged by New Jersey voter re: "natural born citizen" now before US Supreme Court. Standing not an issue-Birth Certificate not main point of suit. Action was originally filed against both Obama and McCain alleging ineligibility.

On October 27, 2008, plaintiff-appellant, Leo Donofrio, a retired attorney acting Pro Se, sued Nina Mitchell Wells, Secretary of State of the State of New Jersey, in the Superior Court of New Jersey, Appellate Division, demanding the Secretary execute her statutory and Constitutional duties to police the security of ballots in New Jersey from fraudulent candidates ineligible to hold the office of President of the United States due to their not being "natural born citizens" as enumerated in Article 2, Section 1, of the US Constitution.

Unlike other law suits filed against the candidates, Berg etc., this action was the only bi-partisan suit, which sought to have both McCain and Obama removed for the same reason. (Later, Plaintiff also sought the removal of Nicaraguan born Roger Colera, the Presidential candidate for the Socialist Workers Party). The Berg suit will almost certainly fail on the grounds of "standing", but *Donofrio v. Wells*, having come directly from NJ state courts, will require the SCOTUS to apply New Jersey law, and New Jersey has a liberal history of according standing to citizens seeking judicial review of State activity.

While raising it as an ancillary issue, Plaintiff in this case didn't rely upon questioning Obama's birth certificate as the core Constitutional issue. Rather, he alleges that even if Obama was born in Hawaii, he was born to a Kenyan national father and is therefore not eligible to be President due to having dual loyalties at birth and split jurisdiction at the time of his birth.

The cause of action first accrued on September 22, 2008, when Secretary Wells certified to county clerks, for ballot preparation, a written "statement", prepared under her seal of office, that was required by statute to contain names of only those candidates who were "by law entitled" to be listed on ballots in New Jersey. The statement is demanded by N.J.S.A. 19:13-22.

The law suit raises a novel contention that the statutory code undergoes legal fusion with the Secretary's oath of office to uphold the US Constitution thereby creating a minimum standard of review based upon the "natural born citizen" requirement of Article 2, Section 1, and that the Supremacy clause of the Constitution would demand those requirements be resolved prior to the election.

The key fact, not challenged below, surrounds two conversations between the plaintiff-appellant and a key Secretary of State Election Division official wherein the official admitted, twice, that the defendant-Secretary just assumed the candidates were eligible taking no further action to actually verify that they were, in fact, eligible to the office of President. These conversations took place on October 22nd and 23rd.

Plaintiff-Appellant then initiated the litigation process on Monday, October 27th.

Now, post-election, plaintiff is seeking review by the United States Supreme Court to finally determine the "natural born citizen" issue. Plaintiff alleged the Secretary has a legal duty to make certain the candidates

pass the "natural born citizen" test. The pre-election suit requested that New Jersey ballots be stayed as they were defective requiring replacements to feature only the names of candidates who were truly eligible to the office of President.

The action was brought as a "Complaint In Lieu of Prerogative Writs" (aka writ of mandamus) directly to the Appellate Division in NJ. An arduous four day litigation ended with Judge Sabatino denying plaintiff emergency relief.

Plaintiff then submitted the matter to the New Jersey Supreme the next morning, and after an emergency review by multiple Supreme Court Justices, the application for emergency relief was denied.

However, in an incredible turn of events, the NJ Supreme Court specifically ignored the lower court's five page opinion – such opinion having avoided the Constitutional question presented – and relied upon "Movant's Papers" which did discuss and employ Constitutional issues.

This then opened a door to US Supreme Court review. Since "Movant's papers" are based on a Constitutional issue, it is proper for the US Supreme Court to review the case.

Plaintiff-appellant prepared the US Supreme Court emergency stay application over the weekend and then rushed off to Washington DC on November 3rd where he filed an Application For Emergency Stay of New Jersey ballots, and/or a stay of the "national election". Plaintiff's terminology is of vital importance here. Plaintiff's use of the term "national election" includes all aspects thereof, including the popular vote, full election results, and the Electoral College process.

Justice Souter, facing a tough decision in the wake of Obama's landslide victory, took four days to examine the extensive lower court paper trail and legal precedents pertaining thereto, but he eventually denied the application on Nov. 6th, 2008. However, the case is still live, but not for the reason erroneously listed on the SCOTUS Docket.

It appears Justice Souter was misinformed by the US Supreme Court Stay Clerk, Mr. Danny Bickell. A full Petition for Writ of Certiorari is listed as "pending" on the Supreme Court docket, and such Petition having not been dismissed by Justice Souter indicates the serious merits of the case, but plaintiff-appellant did not make a full Petition, and so its existence is a procedural fiction. But the case is still live and pending as an Emergency Stay Application.

Due to the emergent nature of Stay proceedings, plaintiff is entitled - by law - under US Supreme Court Rule 22 to resubmit the Application for an Emergency Stay to another Justice of his choice along with a supplemental letter to accompany the original Stay application. Justice Souter had right of first review because he is charged with review of 3rd Circuit actions, and New Jersey is in the 3rd Circuit.

But now that Justice Souter has denied the emergency stay with prejudice, Plaintiff may resubmit the Application For An Emergency Stay of the national election results and Electoral College meeting to the Honorable US Supreme Court Justice Clarence Thomas. Furthermore, all nine Justices will be served on this round, according to Rule 22 which requires Appellant to submit 10 copies of the original Stay application for the entire Supreme Court.

A supplemental letter detailing the unorthodox procedural history involved with this case is being prepared for Justice Thomas to review along with the prior Stay application. submitted to the SCOTUS.

Instead of making a full Petition for Certiorari, plaintiff-appellant, as to his Emergency Stay Application,

relied on the procedural history in Bush v. Gore, wherein Bush also chose to fore go a full Petition for Cert., and instead relied exclusively on an emergency Stay application handed to one Justice who then empaneled the entire court. The Supreme Court then granted the Stay, treated the Stay application as a full Petition for Certiorari and granted that Petition despite the fact that Bush only submitted the one Application for Emergency Stay. That was done because the urgency of the situation begged resolve of the national Presidential election. The same conditions apply here as the clock is ticking down to December 15th, the day for the Electoral College to meet.

The bi-partisan case progressed quietly through the lower courts with no publicity as the plaintiff-appellant sought to respect court authority seeking only to have the "natural born issue" determined once and for all. He didn't create a web site or request donations. The suit is self financed.

However, due to some very unorthodox treatment of the case in the NJ Appellate Division, and also by the US Supreme Court Clerk's office, a press conference is now being prepared to coincide with the resubmission of the Stay application to Justice Clarence Thomas.

To view the official court documents, pleadings and orders,
please see <http://www.blogtext.org/naturalborncitizen>

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Leo Donofrio is a citizen rights advocate. He is a retired attorney who now uses his legal background to identify Government abuse of citizen rights in order to educate the public, "We The People".

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