Natural Born Citizen

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US Supreme Court case > NJ CITIZEN CHALLENGING OBAMA AND McCAIN ELIGIBILITY CITES LAW IN SUPPORT OF CONTENTIONS BEFORE UNITE

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NJ CITIZEN CHALLENGING OBAMA AND McCAIN ELIGIBILITY CITES LAW IN SUPPORT OF CONTENTIONS BEFORE UNITED STATES SUPREME COURT

I anticipate that the erroneous legal conclusions stated today by blogger Jeff Schrieber of the Americasright blog may be echoed further and so I will use the following argument to counter Mr. Schreiber's false contentions and to pre-empt any future false assertions.

Today, Mr.Schreiber posted a story concerning legal issues in my pending US Supreme Court case seeking to challenge the 2008 Presidential national election. ***Mr. Schreiber failed to even link to this blog.*** I have quoted selected erroneous statements made by Mr. Schreiber with my comments following below:

> "First, Donofrio provides no support whatsoever to his interpretation that the word "natural," in the context of Article II, Section 1, means as he maintains it does, "unencumbered by the laws of any other nation."

The evidence is contained directly in the *14th Amendment,* where it clearly states that people born in the US are **"citizens"**, as long as they are **"subject to the jurisdiction of the US"**. *The 14th Amendment* does **not** grant **"natural born citizen"** status.

Mr. Schreiber may not agree with my evidence/arguments, but he has no right to say I provided "No support whatsoever." I've cited legislative history as well as the direct wording of the Constitution itself. The most important piece of evidence I provide is that the 14th Amendment only confers "citizen" status as that is the word used by the Amendment itself. It is Mr. Schreiber who adds an *implication* to the actual wording of our Constitution's 14 Amendment, I do not.

The wording is clear in that the 14th Amendment confers citizenship. Nowhere does the 14th Amendment confer "natural born citizen" status. The words simply do not appear, but Mr. Schreiber would have us believe they are implied. My argument needs no such implication for it does not seek to read into the Constitution that which was not put there by those who wrote the 14th Amendment which does NOT grant "natural born citizen" status.

More from Mr. Schreiber,

> " While he may very well be right in arguing that Barack Obama is America's first president born with dual citizenship, according to Lawrence Solum's 2008 commentary, *Originalism and the Natural Born Citizen Clause* (reviewed here at *America's Right* in early October), there is currently no clear understanding of our founders' original intent with regard to the Natural Born Citizen clause."

Then this issue is certainly ripe for the SCOTUS to make such a determination and that is all I have ever tried to accomplish with this case. As a citizen, I sought to bring this case before the Supreme Court so that there might be closure on this issue of first impression. Since the country has been so divided on this issue, the highest court in the land needs to settle this once and for all. Of course, I have a strong opinion, supported by law, facts and arguments, but ultimately the issue needs to be decided by the US Supreme Court. It's up to them to make the tough calls. The issue couldn't be more ripe for review.

More from Mr. Schreiber:

> "Now, there may be a clean slate in terms of interpretation, of course, but it would nonetheless behoove Donofrio to provide even a smattering of support as it does run to the heart of his claim that the Secretary of State failed to honor her obligations with regard to balloting."

And here Mr. Schreiber, albeit a struggling law student and not a professional lawyer, fails to grasp the context of my suit. My law suit was originally brought in order to force the Secretary of State to exercise her statutory and Constitutional duty to investigate which candidates are eligible to be President. There is no dispute as to the issue of whether she did anything to "certify" which candidates are "by law entitled" (NJSA 19:13-22) to appear on the ballots, nor is there any evidence that she took any act to uphold her oath of office to support and protect the US Constitution. **She did nothing and it has been admitted by one of her key subordinates.** Indeed, that she did nothing was not even disputed by her counsel, the NJ Attorney General's Office, nor was this fact disputed by Judge Sabatino in his five page Appellate Division opinion.

My law suit was brought in the nature of a traditional "writ of mandamus" (aka "action in lieu of prerogative writs") in order to force the Secretary of State to do "something" to protect the integrity of the ballots as per her oath of office and as is required by *NJSA 19:13-22*, **a statute specifically addressed to the Secretary of State with regards to ballot integrity**.

The fact that Roger Calero, born in Nicaragua, had his name listed on New Jersey ballots is proof positive that Secretary Wells did nothing to protect New Jersey voters from fraudulent and frivolous candidates and she was therefore guilty of

misfeasance since other Secretaries of State did have Mr. Calero's name removed from their ballots in their states.

The NJ Secretary of State also admits she did nothing to determine whether McCain and Obama were eligible. I asked the lower courts to take Judicial Notice of the many cases being run through US federal and state courts in a frenzy of confusion as to the issues surrounding candidate eligibility. I wasn't asking for the court to determine the facts of those cases or the merits, I simply was using the existence of such cases to show that *a genuine controversy was raging in America* as evidence that the "natural born citizen" issue needed to be addressed by the Secretary of State as it is her job to police the integrity of New Jersey elections and if there was no clear determination as to who is eligible under Article 2, Section 1, then *there was no possible way she could certify that these candidates were, in fact, "by law entitled" to have their names of New Jersey ballots.*

By way of evidence, which Mr. Schreiber chose to ignore, I made reference to and quoted the current US Foreign Affairs Manual which states:

7 FAM 1131.6-2 Eligibility for Presidency

> a. **It has never been determined definitively by a court whether a person who acquired U.S. citizenship by birth abroad to U.S. citizens is a natural born citizen within the meaning of Article II of the Constitution and, therefore, eligible for the Presidency.**
>
> b. Section 1, Article II, of the Constitution states, in relevant part that "No Person except a natural born Citizen...shall be eligible for the Office of President,"
>
> c. The Constitution does not define "natural born".
>
> The "Act to establish an Uniform Rule of Naturalization", enacted March 26, 1790, (1 Stat.103,104) provided that, "...the children of citizens of the United States, that may be born ... out of the limits of the United States, shall be considered as natural born citizens: Provided that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States."
>
> d. This statute is no longer operative, however, and its formula is not included in modern nationality statutes. **In any event, the fact that someone is a natural born citizen pursuant to a statute does not necessarily imply that he or she is such a citizen for Constitutional purposes. (Emphasis added.)**

This tells you straight up, directly from a Government publication, that the issue has never been definitively determined. And I point out here, as I did in my SCOTUS stay application, that the *Foreign Affairs Manual* **fails** to mention that Congress *specifically repealed* the "natural born" part of the *1790 Naturalization act* in the Naturalization Act of 1795 leaving only the word "citizen" and repealing the words "natural born".

Secretary Wells had a job to do and she didn't do it. Not having done that job, and there being no issue of genuine fact to dispute, I asked for a stay of the NJ ballots to be put in place for the length of time it would take the Secretary to do her job and make a proper determination as to the eligibility of the candidates. That was her job to do, not mine. I raised the Constitutional issues because these issues were potential road blocks to either of the major candidates being sworn in post-election. And there are, in fact, going to be post election challenges.

I sought to make the Secretary do her job as the chief election official in NJ charged with securing the integrity of New Jersey's electoral process. It's not my job to *do* her job, but rather it's my job as a citizen to use the law to *command her to do her job, and that is exactly what the eloquent process of writ of mandamus was intended to do; to protect the public from Government officials who failed to do their job and fulfill their prescribed duties.*

More from Mr. Schreiber:

> "Secondly, United States law clearly provides now—as it did in August of 1961—that an individual born in the United States is both a 'natural born citizen' and 'subject to U.S. jurisdiction.' "

And where exactly does it say that such a person is a "natural born citizen" in the 14th Amendment? It doesn't say that anywhere, and that's the main point of my case. Had the US Legislature and the States that ratified the 14th Amendment sought to grant the status of "natural born citizen" by virtue of simply having been born on US soil, than that's what the 14th Amendment would say, but it does *not* say that. Such an allegation is pure fiction.

Mr. Schreiber continues:

> "If that child was born in the United States, the nationality of that child's parents has no impact whatsoever on his status as a natural born citizen of the United States of America, dual citizenship be damned; this, of course, is at the heart of the debate over "anchor babies" and illegal immigration."

This is completely false. The "anchor babies" issue deals with whether those children are *"citizens"*, not whether they are *"natural born citizens"* eligible to hold the office of President of the United States. They are *not* eligible since, at birth, they are also subject to the jurisdiction of the countries their parents were citizens of.

Mr Schreiber continues:

> "Nevertheless, Donofrio suggests that it doesn't matter what Obama's birth certificate says because his father was a Kenyan national, but in fact it does. If Obama was born in Honolulu as he maintains (I'd still like to see a long-form birth certificate, of course), he is a natural born citizen."

Wrong. The 14th Amendment does not use the words "natural born citizen", it uses the word "citizen". The Constitution uses the word "citizen" in the 14th Amendment, but the only place the Constitution discusses "natural born citizen" is in Article 2, Section 1, and **ONLY** as to that being an absolute qualifier for those seeking to hold the highest office in the land, President of the United States. It makes sense that the framers would have required those seeking this office to have a totally pure and natural tie to this country unencumbered by dual nationalities at birth.

But despite whether Mr. Schreiber does or does not believe my evidence and legal arguments, it is specious for him to imply that I have provided no evidence to make my case. I have provided many citations and various legislative history to make my case, and Mr. Schreiber has included none of it in his blog, but has, instead, chosen to hide the fact that such arguments and legal support have been provided by me to the various courts this case has been run through. Any cursory review of the documents provided at this blog will prove Mr. Schreiber has grossly understated my case. And in conclusion, I will point out once more that Mr. Schreiber didn't even provide a link to this blog.

Leo C. Donofrio

US Supreme Court case > APPLICATION FOR EMERGENCY STAY OF 2008 NATIONAL ELECTION FILLED IN UNITES STATES SUPREME COURT

Posted: Nov.12.2008 @ 6:52 am | **Lasted edited:** Nov.19.2008 @ 8:08 am

Below is the actual "Emergency Stay Application" I filed with the United States Supreme Court on November 3rd, 2008.

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No. 08A407

In The

Supreme Court of the United States

Leo C. Donofrio,

v.

Nina Mitchell Wells, Secretary of State of the State of New Jersey

APPLICATION FOR EMERGENCY STAY

Leo C. Donofrio, Pro Se
PO Box 93
East Brunswick
New Jersey, 08816

November 3rd, 2008

AFFIRMATION

Appellant, Leo C. Donofrio, respectfully submits to this most Honorable Court,

having exhausted all available remedies below, that there are no other

jurisdictions available to him for review. Appellant further respectfully

submits to this Honorable Court that this matter reflects a vitally important

public interest, and that it also presents a unique Constitutional question of

first impression as to the legal significance of the term "natural born citizen"
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as enumerated in Article 2, Section 1, of the Constitution of the United States as an absolute qualifier for all who seek the office of President of the United States.

LOWER COURT ORDERS

Appellant, Leo C. Donofrio, Has brought the emergency Application before this most Honorable Court directly from an order denying Appellant's Motion For Emergency Injunctive Relief from The Supreme Court of New Jersey, by the Honorable Justice Virginia A. Long, on Friday October 31, 2008 at approximately 1:30 PM. Prior to making such Motion in The Supreme Court of New Jersey, Appellant sought emergency relief in the Superior Court of New Jersey, Appellate Division, before the Honorable Jack M. Sabatino. Appellant filed various papers in the Appellate Division, including a Fact Sheet Upon Application For Emergent Relief, and a letter supplement thereto, after which His Honorable Jack M. Sabatino granted full review of this matter. Appellant then filed a Complaint In Lieu of Prerogative Writs, followed by a Motion For Summary Judgment.

Appellant's Application for Emergent relief, after having been granted full review by the Honorable Jack M. Sabatino and the Honorable Philip S. Carchman, Presiding Justice, Appellate Division, on October 27, was dismissed on October 30, 2008, by an order and five page decision by the Honorable Jack M. Sabatino at approximately 5:00 PM, October 30, 2008.

RELIEF REQUESTED

Appellant, Leo C. Donofrio, a New Jersey citizen who intends to vote in the pending general election of 2008, requests this most Honorable Court to issue an Emergency Stay prohibiting the use, in the State of New Jersey, of defective ballots containing at least three ineligible candidates for the office of President of the United States, and for such Honorable Court to order Defendant-Respondent, Nina Mitchell Wells, Secretary of State of the State of New Jersey, to remove from New Jersey ballots the names of Republican candidate John McCain, Democratic candidate Barack Obama, and Socialist Worker's Party candidate Roger Calero, as Appellant respectfully submits they are not "natural born citizens" as enumerated in Article 2, Section 1, of the Constitution of the United States.

And should this Honorable Court agree that the aforementioned candidates are not "natural born citizens" of the United States, Appellant respectfully submits, that while he did not request a Stay of the national election in the lower courts, such a Stay be ordered for good and proper

cause. In the alternative, while Appellant's original complaint requested an order staying the ballots until Respondent might complete a proper investigation as to the Presidential eligibility of the candidates, Appellant respectfully submits that the Constitutional issue now before the Court is of the utmost public importance and is also here now before this most Honorable Court as a matter of first impression.

Appellant respectfully submits that the only purpose for remanding the matter back to the Secretary of State would involve the issue of whether Democratic candidate Barack Obama be required to prove to Respondent that he was born in Hawaii.

Appellant, in both his original Complaint and Motion For Summary Judgment, contends that candidate Obama is not eligible to the Presidency as he would not be a "natural born citizen" of the United States even if it were proved he was born in Hawaii , since, as was argued in Appellant's original complaint brief, as well as Appellant's brief in support of Motion For Summary Judgment, Senator Obama's father was born in Kenya and therefore, having been born with split and competing loyalties, candidate Obama is not a "natural born citizen" as is required by Article 2, Section 1, of the United States Constitution.

STATEMENT OF THE FACTS

In early October 2008, Appellant began to fear that controversys surrounding numerous law suits, filed against Presidential candidates Senator John McCain and Senator Barrack Obama, would threaten Appellant's fundamental voting right as well as his fundamental right to be governed by a President with a proper mandate under the Constituion.

On October 22nd, 2008, Apellant phoned the New Jersey Office of Secretary of State, Elections Division, and spoke with Donna Barber, the Elections Manager for the State of New Jersey. During that conversation, Appellant asked Ms. Barber what steps the Secretary had taken to determine whether any of the candidates listed on New Jersey ballots for the upcoming Presidential election were eligible for the office of President.

Donna Barber then informed Appellant that Respondent-Secretary of State took no steps to determine such eligibility but rather assumed the candidates were eligible based upon only the fact that they had

been nominated. Appellant then took a close look at the election statutes.

N.J.S.A 19:13-22 requires Respondent to follow specifically prescribed steps in order to protect and secure New Jersey ballots voters from the destruction of electoral integrity. Specifically, 19:13-22 requires Secretary Wells to make a "statement" wherein she certifies, under her hand and official seal of office, the names...

> "...of all such candidates for whom the voters within such county may be *by law entitled* to vote at such election." (Emphasis added.)

The purpose of the statement is to instruct the clerks, and the board of elections, for each county, as to which candidates are "by law entitled" to have their names printed on the ballots for the upcoming election. The next day, October 23, 2008, Appellant spoke with Elections Manager, Donna Barber, and again was told that Respondent had no reason to object to the party nominations and that the statutory deadline for objection to such nominations had passed. Ms. Barber specifically stated that her office, the Elections Division, would not change the ballots at such a late date.

Appellant considered various options, but ultimately came to the conclusion, after further review of the statutory code, that the only legal force available to him was an Action In Lieu of Prerogative Writs to compel Respondent's ministerial ballot policing duty.

TIMELINESS OF ACTION IN LIEU OF PREROGATIVE WRITS

Counsel below contended, and the Honorable Jack M. Sabatino, in his decision, agreed, that Appellant brought his action too late. Appellant rigorously contends that assertion to be false. Feeling the weight of the impending election, Appellant wasted no time initiating litigation on October 27, 2008, only five days, including a full weekend, after he first learned of Respondent's misfeasance of office. Counsel and his Honor have misinterpreted the statute they rely upon.

Statutory objection deadlines listed in *N.J.S.A. 19:13-10* apply, as to the Presidential race, *only* to certificates (major partys) and petitions (independant partys) of nomination for the *electors* of each party. As long as such nominations follow statutory rules of construction, which Appellant stipulated below that they did, then such nominations were valid under the statute.

Furthermore, Appellant doesn't have the legal right to object to a political party's choice of candidate as such party is not a public official or agency, and has no Constitutional or statutory mandate. As private citizens they may, by law, nominate whoever they like.

New Jersey voters must rely upon the executive power of the Secretary of State to safeguard the integrity of our electoral process, especially during Presidential cycles when she must be most vigilant of her oath of office. And if Respondent-Secretary doesn't protect the citizens of New Jersey, then it is up to the citizens of New Jersey to *command* her to do so via the eloquent tradition of writ of mandamus which in New Jersey falls under the statute as an action in lieu of prerogative writs.

Appellant's genuine cause of action accrued on September 22, 2008, when Respondent certified and delivered the 19:13-22 statement to the clerks of the several counties. The "statement" was a final State agency decision which triggered Appellant's exclusive avenue of action under *N.J. Ct. R. 2:2-(a)(2)*, a direct appeal, as of right, to the Appellate Division. Since the general limitation for commencing actions in lieu of prerogative writs is set at 45 days, according to *N.J. Ct. R. 4:69-6*, Appellant was well within such timeframe when he filed a Complaint In Lieu of Prerogative Writs with the Honorable Jack M. Sabatino on October 28, 2008.

LEGAL ARGUMENTS

POINT 1

APPELLANT'S MOTION FOR SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED BECAUSE THERE WERE NO GENUINE ISSUES OF MATERIAL FACT AS TO RESPONDENT'S FAILURE TO EXECUTE HER STATUTORY AND CONSTITUTIONAL DUTIES TO PROTECT THE INTEGRITY OF NEW JERSEY BALLOTS

N.J.S.A. 19:13-22 requires the Secretary of State to submit a "statement", prepared by her hand and under her seal of office, to the clerks of the several counties of New Jersey, listing the names,

> "...of all such candidates for whom the voters within such county may be *by law entitled* to vote at such election". (Emphasis added.)

Appellant respectfully submits to this Honorable Court that the purpose of the statement is to instruct the clerks of the several counties of New Jersey as to which candidates are "by law entitled" to have their names printed on the ballots. This was disputed by Respondent's counsel who argues that the statute's use of the term "by law entitled", must refer to the actual voters who are eligible to vote, and not to the legal

eligibility of the candidates. Appellant gives this argument no quarter.

There are various statutes within the code, which govern the citizens as to voting, but this isn't one of them. The statute isn't about suffrage. It commands the Secretary of State to protect voters.

N.J.S.A. 19:13-22:

> The Secretary of State, not later than eighty-six days before any election whereat any candidates nominated in any direct petition or primary certificate of nomination or State convention certificate filed with him are to be voted for, shall make and certify, under his hand and seal of office, and forward to the clerks of the several counties of the State a statement of all such candidates for whom the voters within such county may be by law entitled to vote at such election. This statement, in addition to the names of the candidates for President and Vice-President of the United States, if any such have been included in any such certificate or petition filed with him, shall contain the names and residences of all other candidates, the offices for which they are respectively nominated, and the names of the parties by which or the political appellation under which they are respectively nominated. Candidates nominated directly by petition, without distinctive political appellation, shall be certified as independent candidates. Similar statements shall be made, certified and forwarded, when vacancies are filled subsequently, according to law.

As a result of Respondent's misfeasance, New Jersey ballots for the upcoming election contain the names of three Presidential candidates who are not, *by law entitled*, to hold the office of President of the United States, since they are not "natural born citizens" as is required by *Article 2, Section 1, of the Constitution of the United States.*

Republican candidate John McCain was born in Panama. Socialist Workers Party candidate Roger Calero was born in Nicaragua. And the birthplace of Democratic candidate Barack Obama has not been verified by Respondent.

The State of New Jersey is granted rights under Article 2, Section 1, of the United States Constitution regarding the issuing of ballots for New Jersey voters as well as the qualifying of candidates to appear on those ballots for the Presidential election. The executive in charge of maintaining the integrity of New Jersey ballots is deemed to be the Secretary of State by Title 19 of the New Jersey Statute Annotated.

N.J.S.A 19:13-22 provides no safe harbor to:

- candidates *not* entitled by law to appear on New Jersey ballots
- candidates who *might* be entitled to appear on New Jersey ballots
- candidates who *probably* are entitled to appear on New Jersey ballots

The statute is very specific, the candidates *must* be by law entitled to appear on the ballots.

Respondent took an oath of office and swore to uphold, not just the Constitution of the State of New Jersey, but also the United States Constitution. As the executive in New Jersey charged with securing ballots from fraud and deception, her prescribed duty is merged by legal fusion, in that the statutory term, "by law entitled", *must* be subordinate

to her Constitutional duty as the chief executive in charge of elections who protects the office of President from ineligible candidates. This is because Article 2, Section 1, of the United States Constitution sets forth the minimum requirements which make candidates, by law entitled, to be eligible to hold the office of President of the United States:

> *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.*

The *Supremacy Clause, Article VI, Clause 2 of the United States Constitution*, reads:

> *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*

Therefore, the requirements of *N.J.S.A. 19:13-22* mustbe interpreted, in so far as the election for President of the United States is concerned, in light of Article 2, Section 1, of the Constitution. Therefore, the words "by law entitled" in the aforementioned statute must incorporate the requirements for the Presidency set forth in the United States Constitution.

It is not disputed that Secretary Wells conducted no investigation to determine whether the major party candidates for President were constitutionally eligible for the office of President. She accepted the certifications of nomination from both major parties under the assumption that the candidates were eligible, but she did nothing further to verifiy such eligibility.

Respondent's Counsel's brief in repsonse to Appellant's complaint does not dispute the facts. Instead, Respondent's Counsel argues that the Secretary of State's role, as to elections in New Jersey, is only clerical:

> "This matter rests upon Appellant's misreading of a statute. By misreading a modifying phrase, he has taken what is the Secretary of State's clerical function under N.J.S.A. 19:13-22 to certify a list of names to county clerks, and manufactured a requirement to broadly investigate the lineage of candidates for the highest federal office."

To that, Appellant argues, if not she, who then is responsible for protecting the integrity of New Jersey's electoral process? Respondent is named specifically in *N.J.S.A. 19:13-22*. The statement required therein is required to be made by her hand, under her seal of office.

> "A State has an interest, if not a duty, to protect the integrity of its political processes from frivolous or

> fraudulent candidacies." *Jenness v. Fortson*, 403 U.S. 431, at 442. "It is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal." *Rosario v. Rockefeller*, 410 U.S. 752, 761; *Bullock v. Carter*, 405 U.S. 134, 145 (1972).

If the Secretary of State's role is clerical, than who is responsible for Roger Calero appearing on New Jersey ballots? The official Presidential candidate for the Socialist Workers Party is Roger Calero. Mr. Calero was born in Nicaragua. The Socialist Workers Party has gained official access to ballots in ten States that Respondent is aware of. And, despite the fact that the Socialist Workers Party has qualified to have their chosen candidate listed on those ballots, state election officials from Colorado, Florida, Iowa, Louisiana, and Washington have all, for good and legal cause, refused to list Mr. Calero on the ballots since, having been born in Nicaragua, he is not a "natural born citizen" as is required by Article 1, Section 2, of the United States Constitution. In those states, a stand-in candidate, Mr. James Harris, has been listed in place of Mr. Calero.

Furthermore, Respondent's counsel, in his reply brief, never discusses Respondent's Constitutional duty to uphold the Constitution, nor does the Honorable Jack M. Sabatino address the Secretary of State's oath of office meets Constitutional nexus in his decision.

With three ineligible Presidential candidates on their ballots, New Jersey voters will witness firsthand, the fraud their electoral process has become due to Respondent's misfeasance of office. Appellant respectfully requests emergency relief be granted in order to restore integrity to New Jersey's electoral process.

COUNT 2
CANDIDATES OBAMA, MCCAIN, AND CALERO ARE NOT ELIGIBLE TO THE OFFICE OF PRESIDENT BECAUSE THEY AREN'T NATURAL BORN CITIZENS AS DEFINED BY ARTICLE 2, SECTION 1, OF THE CONSTITUTION OF THE UNITED STATES.

> *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;*

REPUBLICAN CANDIDATE McCAIN

Petitioner begins this argument with a conclusion: had the US legislature intended to grant "natural born citizen" status to all who were born on US soil, then the 14th Amendment would contain the words "natural born citizen", but it doesn't. Republican candidate Senator John McCain was born in Panama. Panama is not considered U.S. soil, nor has it ever been considered as such. *The Naturalization Act of 1790* was the only Congressional act which has ever attempted to confer "natural born citizen" status. The relevant portion reads as follows:

> "...the children of citizens of the United States that may be born beyond Sea, or out of the limits of the United States, shall be considered as natural born Citizens..."

However, the *Naturalization Act of 1795* specifically repealed the act of 1790 and replaced it with virtually the same clause as that of 1790, except the words "natural born" were deleted and have never been replaced by Congress. The 1795 act reads as follows:

> "the children of citizens of the United States born out of the limits and jurisdiction of the United States, shall be considered as citizens of the United States."

So Congress effectively kept the part of that clause which granted citizenship, but repealed the words "natural born" from that level of citizenship. Congress never again attempted to legislate a definition of "natural born citizen", and it's probably not even possible for them to do so without a Consitutional Amendment. The United States Department of State's *Foreign Affairs Manual at 7FAM1116.1-4(c)* states:

> "Despite widespread popular belief, U.S. military installations abroad and U.S. diplomatic facilities are not part of the United States within the meaning of the 14th Amendment. A child born on the premises of such a facility is not subject to U.S. jurisdiction and does not acquire U.S. citizenship by reason of birth."

Indeed, it is well established by precedent that children born abroad of United States citizens are not granted citizenship by the Constitution, but rather by statute. The 14th Amendment states:

> *Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States*

John McCain was neither born on United States soil, nor was he naturalized. He is a citizen at birth by statute. This is discussed in the *Foreign Affairs Manua*l:

7 FAM 1131.6-3 Not Citizens by “Naturalization”

> Section 201(g) NA and section 301(g) INA (formerly section 301(a)(7) INA) both specify that naturalization is "the conferring of nationality of a state upon a person *after* birth." Clearly, then, Americans who acquired their citizenship by birth abroad to U.S. citizens are *not* considered naturalized citizens under either act. (Emphasis added.)

The Constitution confers three types of citizen status:

- "natural born citizen", but *only* with regard to eligibility to hold the office of President

- "citizen" to those born in the United States via the 14th Amendment

- "citizen" to those naturalized in the United States via the 14th amendment

McCain is none of the above. He wasn't born on United States soil and he wasn't naturalized in the United States. Instead,

McCain may claim citizenship from *8 USC 1403(a)*:

> "Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this chapter, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States."

McCain is in the class of citizens who obtain their citizenship at birth, but not from the Constitution, but rather federal statute. In *Rogers v. Bellei,* 401 U.S. 815, 828 (1971). The Supreme Court stated:

> *...[C]children born abroad of Americans are not citizens within the citizenship clause of the 14th Amendment."... "To this day, the Constitution makes no provision for jus sanguinis, or citizenship by descent... "Our law in this area follows English concepts with an acceptance of the jus soli, that is, that the place of birth governs citizenship status except as modified by statute." Id. at 828.*

So, not being born on US soil, McCain cannot be a "natural born citizen".

The *Foreign Affairs Manual* weighs in on the issue as follows:

7 FAM 1131.6-2 Eligibility for Presidency

> a. It *has never been determined definitively* by a court whether a person who acquired U.S. citizenship by birth abroad to U.S. citizens is a natural born citizen within the meaning of Article II of the Constitution and, therefore, eligible for the Presidency.
>
> b. Section 1, Article II, of the Constitution states, in relevant part that "No Person except a natural born Citizen...shall be eligible for the Office of President,"
>
> c. The Constitution does not define "natural born".
>
> The "Act to establish an Uniform Rule of Naturalization", enacted March 26, 1790, (1 Stat.103,104) provided that, "...the children of citizens of the United States, that may be born ... out of the limits of the United States, shall be considered as natural born citizens: Provided that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States."
>
> d. This statute is no longer operative, however, and its formula is not included in modern nationality statutes. *In any event, the fact that someone is a natural born citizen pursuant to a statute does not necessarily imply that he or she is such a citizen for Constitutional purposes.* (Emphasis added.)

Appellant would point out that the manual fails to mention that Congress specifically repealed the "natural born" part of the 1790 act. Recently, the US Senate has issued a resolution stating that McCain is a "natural born citizen" eligible to be President, but the resolution has *absolutely no legal effect*. It is simply an opinion and as such it holds no authority whatsoever.

Furthermore, while Congress could have at least *attempted* to pass legislation granting "natural born citizen" status to children of US citizens born abroad such as Senator McCain, Congress has not done so. The 14th Amendment also requires that, in order for citizenship to be conferred thereby, whether born on US soil, or naturalized in the US, the person also be subject to

the jurisdiction of the United States. And because of this caveat, "natural born citizen" status is proved to be a very special requirement specifically necessary for those who would be eligible to the office of President of the United States. A natural born citizen has no encumbrances or conditions whatsoever upon his citizenship.

Senator John McCain is an American patriot who has valiantly suffered more for this country than most of us ever will. He has shown bravery beyond that which the country has any right to ask, and it is with very deep and sincere regret that I respectfully request that this Honorable Court order the Secretaries of the several States to remove John McCains name from the ballots.

DEMOCRATIC CANDIDATE BARACK OBAMA:

First, I must address, out of respect for Senator Obama, that Judge Sabatino's lower court decision makes an egregious error wherein it states that Appellant suggested Senator Obama's father might have been born in Indonesia. Appellant never made any such allegation in any of Appellant's papers. I have been assured by his Honor's clerk that the error will be corrected.

As regarding the issues surrounding Senator Obama's birth certificate, and if it may please this Honorable Court, I would point out that Senator Obama has *not* been presented with a genuine legal request from a party with proper standing to command him in any way, and therefore he has no legal responsibility to submit or to bend his integrity. And for that, he certainly deserves respect.

Appellant believes that if Senator Obama is presented with a legal request from a government authority sanctioned to make such request, that Senator Obama will respond accordingly and put this issue behind him forever.

That being said, petitioner regretfully submits that since candidate Obama was born to a Kenyan father, he also is not eligible to the office of President since is not a "natural born citizen" by the Constitution. Appellant respectfully requests that this Honorable Court order the Secretaries of the several States to remove Barack Obama's name from the ballots.

CONCLUSION

Appellant respectfully submits to this Honorable Court, once again, that had the legislature intended to grant "natural born citizen" status to all who were born on US soil, then the 14th Amendment would contain the words "natural born citizen", but it doesn't.

And so this proposition leads to the logical conclusion that a natural born citizen is a citizen born in the United States to parents, neither of which is an alien. Having an alien parent would tie such person at birth to the possibility of other loyalties and laws. And such a person, even if he be as loyal and devoted to this country as Senators Obama and McCain have proven to be, is not eligible to hold the office of President of the United States.

STANDING

Appellant's standing was not challenged in Respondent's reply brief, nor was it challenged in his Honorable Sabatino's order and decision. However, Appellant discusses the issue below in respect to this most Honorable Court's superior jurisdiction. In *Ridgewood Education Association v Ridgewood Board Of Education*, 284 N.J. Super. 427 (App. Div. (1995)), the Court stated, "We see no reason why this State's historic liberal approaches to the issue of standing in general....should not apply to taxpayer suits challenging the quasi-legislative actions of local boards of education." *Silverman v. Board of Ed., Tp. of Millburn*, 134 N.J. Super. 253, 257-58 (Law Div.), aff'd o.b. 131 N.J. Super. 435 (App. Div. 1975).

The policies of justice regarding the sanctity of voting rights were also stated in *New Jersey Democratic Party v. Samson*, 175 N.J. 178, 814 A.2d 1028 (October 2, 2002). Although the petitioner bringing suit in that case was a political party, the voting rights discussed and protected were those of individuals. Therefore, the reasoning of that case should apply when the petitioner is an individual voter.

Appellant's fundamental right to vote for a candidate who will not be disqualified after the election is now threatened by the inclusion on New Jersey ballots of three ineligible candidates.

> "When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." *Bush v. Gore*, 531 U.S 5, 6 (2000)

And finally, Appellant's fundamental right to live in the United States governed by a President and Commander In Chief who is Constitutionally

eligible to the office of President is also threatened. Since this action is so very grounded in the interests of justice, and supported by all of the above, Appellant respectfully requests that this court recognize his standing.

FINAL CONCLUSION

Appellant respectfully submits to this Honorable Court that while the limitations of our Constitution may at times appear unfair, it is important to remember that it is the restrictions which hold us to the Document, as much as it is the freedoms that bind us together as a nation.

"I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

_____, November 3rd, 2008
Leo C. Donofrio, Pro Se

US Supreme Court case > **NJ CITIZEN LAW SUIT CHALLENGING 08' ELECTION- UNORTHODOX PROCEDURAL HISTORY**

Posted: Nov.11.2008 @ 6:53 pm | **Lasted edited:** Nov.17.2008 @ 10:24 pm

UNORTHODOX PROCEDURAL HISTORY by way of sworn certification in the pending Supreme Court case, Leo C. Donofrio v. Nina Mitchell Wells, Secretary of State of the State of New Jersey:

1. At approximately 11:30 AM, on October 27, 2008, I faxed an official Appellate Division form "Fact Sheet On Application For Emergent Relief" to the chamber of Judge Sabatino concerning Appellant's need to file a Complaint in Lieu of Prerogative Writs, as per *N.J. Ct. R. 2:2-3(a)(2)*, regarding the failure of Respondent, Nina Mitchell Wells, Secretary of State of the State of New Jersey, to adequately perform her statutory duty under N.J.S.A 19:13-22 and her Constitutional duty as per her oath of office regarding her dominion of security as to the integrity of ballots and the electoral process for the November 4th, 2008 election. Question 14 of the Fact Sheet requires a description of the relief sought. I asked for three things:

- an injunction compelling the Secretary of State to execute her statutory and Constitutional duty to make certain which candidates for President were eligible under Article 2, Section 1, of the Constitution

- a stay of the defective ballots

- injunction for new ballots to be printed

2. Approximately two hours later, I was contacted by Judge Sabatino's law clerk, Matt Nunn, Esq., and informed that his Honor had denied the application, and that a fax was being sent to me including a letter from his Honor to such effect, but also stating that I was welcome to resubmit a more detailed fact sheet. Mr. Nunn told me that I was no longer limited to the constraints of the form for purposes of the supplemental fact sheet and that Judge Sabatino genuinely wanted to hear more.

3. Along with the letter from Judge Sabatino, I was faxed a list containing phone/fax numbers for the Hon. Philip Carchman, Presiding Judge of the Appellate Division, the Secretary of State, and the Attorney General's office with instructions to fax copies of all future papers submitted by me

4. I prepared and faxed a three page summary "Supplemental fact Sheet on Application For Emergent Relief" and forwarded it to Judge Sabatino's office at 6:10 PM that evening.

5. The next morning, I spoke with Mr. Nunn, and he informed me that Judges Sabatino and Carchman would entertain my application. I was then told to submit a Notice of Motion and an Appellate brief. But this didn't sit right with me. My fact sheet application and supplement clearly stated that I was going to file a "Complaint In Lie of Prerogative Writs" as a *direct* appeal as of right under N.J. Ct. R. 2:2-3(a)(2), but Mr. Nunn said the Judge wanted it in the form of a motion and appellate brief. I was given until 4:00 PM to write this out and also drive over an hour to Trenton. I was also told to send a letter to Judge Carchman, Secretary Wells and the Attorney General regarding the schedule of paper submission.

6. I put together a quick pleading sufficient to make my case as a Complaint In Lieu of Prerogative Writs. I wrote

"Complaint In Lieu of Prerogative Writs" - as is required by *N.J. Ct. R. 4:69-1* - on the motion form sheet, and I submitted my complaint and haphazard brief knowing that as long as I wrote "In Lieu of Prerogative Writs" on the pleading, then the case must, by law, be treated as a direct appeal, not a motion. The difference is procedurally critical. An action In Lieu of Prerogative Writs to compel a ministerial duty is allowed by *direct appeal* straight to the Appellate Division, and once filed can be immediately followed by a Motion for Summary Judgment without leave of the court, but rather by law and by right.

7. I was instructed to file my papers with Judge Sabatino's law clerk and not the Appellate Division Clerk's office. I thought this was odd, but being a Pro Se plaintiff, I trusted that this was proper. That evening, I filed the Complaint In Lieu of Prerogative Writs with Judge Sabatino's law clerk and also gave him a $200 Money Order which I was told to bring. Mr. Nunn had me make it out to the "Clerk of the Appellate Divsion". I was given no receipt, no Docket number and no stamp for my records.

8. I stayed up through the night preparing a very thorough Motion for Summary Judgment and a much stronger, more thorough brief.

9. Early on October 29, 2008, I called Judge Sabatino's office and informed his receptionist that I would be submitting an additional filing with brief. Later that morning, Judge Sabatino's secretary called to inform me that his Honor would *not* accept any other papers from me. This was very strange. According to *N.J. Ct. R. 4:69-2*, a plaintiff in an action in lieu of prerogative writs may move for summary judgment in an action demanding the performance of a ministerial act or duty at any time after filing the original complaint. That meant I was entitled, by law, to file the motion for summary judgment and Judge Sabatino had no authority to deny me that right.

10. I then then prepared a letter to Judge Sabatino.The letter respectfully informed his office that I did not expect his Honor would accept an uninvited supplement to my original filing, nor would I disrespect the bench by attempting such, but rather, pursuant to *N.J. Ct. R. 4:69*-2, I would be submitting the Motion For Summary Judgment according to the Rule of law.

11. Appellant arrived at the Court House later that afternoon with 9 copies of the bound Motion and supporting brief, affidavits, proposed orders and a money order for $30. Mr. Nunn spoke to me on the lobby phone and inquired as to why I had come to submit the Motion and brief since he had informed me earlier that his Honor would not be accepting another brief. I respectfully explained to Mr. Nunn that I was entitled by the rule of law, specifically *N.J. Ct. R. 4:69-2*, to file the Motion for Summary Judgment and brief. I also told Mr. Nunn that I did not want to impose on him or his Honor improperly and that I would simply file the Motion with the Clerk of the Appellate Division. To this, Mr. Nunn responded, "No. I'll come right down and get it," which he did.

12. Nunn met me in the lobby and accepted seven copies of the Motion for Summary Judgment and brief in support thereof as well as a Money Order for $30 made out to the Clerk of the Appellate Division. I inquired of Mr. Nunn as to why I had not received a docket number since I'd paid the $200 fee along with my pleadings. Nunn informed me that it was standard operating procedure that a docket number wouldn't be issued in instances like this. I asked him, if in the alternative, I could at least have my pleadings stamped by the Judge. I was informed by Nunn that his Honor had instructed his office not to give me "anything." That really got my attention. I've never heard of a case being dealt with in this manner.

13. Nunn asked me to wait while he served my papers on the Attorney General's office. And once again, I felt like this was very unorthodox. I was supposed to make service upon my adversary. That's not a job for the Judge's staff to do as a convenience to me. When Nunn returned, he gave me the AG's reply brief, which also did not have a docket number on it. Then the clerk handed me a copy of my Motion For Summary Judgment which had finally been stamped by Judge Sabatino, but still not docketed. I asked Mr. Nunn if this was to protect the candidates from bad publicity, but he just shrugged. Then I asked him if the candidates had been informed and I was then told that the Secretary of State had informed both candidates.

14. Sample ballots had arrived earlier in the mail that day, and later that evening I became aware of the candidate for the Socialist Workers Party, Roger Calero. The Socialist Workers Party gained official access to ballots in ten States. And, despite the fact that the Socialist Workers Party qualified to have their chosen candidate listed on those ballots, state election officials from Colorado, Florida, Iowa, Louisiana, and Washington have all, for good and legal cause, **refused** to list Mr. Calero on the ballots since, having been born in Nicaragua, he is not a "natural born citizen" as is required by Article 2, Section 1, of the United States Constitution. In those states, a stand-in candidate, Mr. James Harris, was listed in place of Mr. Calero.

15. I phoned Judge Sabatino's chambers, informed Nunn about Mr. Calero and requested to amend my pleadings so as to include demands that Mr. Calero also be removed from the ballots. But most important was the fact that this Calero matter proved that other Secretaries from various states were actually exercising their prescribed authority to protect ballots from fraudulent candidates whereas the defendant-Secretary of State here in New Jersey was remiss in allowing such a fraud to be perpetrated upon New Jersey voters. Mr. Nunn told me that Judge Sabatino wanted me to call the Elections Division and complain to them about Mr. Calero's name being on the ballots. Specifically, Mr. Nunn told me to "exhaust my administrative remedy". So I called that office and faxed a letter objecting to Mr. Calero being on the ballots. Then I called back Judge Sabatino's office for guidance as to making an amended complaint, as Nunn had told me to do, but my calls weren't taken.

16. Later that day, October 30, 2008, at approximately 5:00 PM, I received word from Mr. Nunn that Judge Sabatino had denied my application for emergency relief. Mr. Nunn actually *suggested* that I might appeal his Honor's decision, and I should speak with Mark Nealy, a staff attorney at the New Jersey Supreme Court. Why was Judge Sabatino's law clerk giving me Ex Parte communications pushing me to appeal a decision of his boss to a specific staff attorney at the NJ Supreme Court?

17. Then Mr. Nunn told me that the Judge had treated my original application as a "Motion" and not an "appeal" and

that t*hey were going to return my $200 money order*. This is unprecedented. I never received a docket number, and now they wanted to give me my money back. Nunn then asked me if I wanted to pick it up, or would I rather he mailed it to me. I told him to hold onto it because I wasn't sure what all of this meant to the procedural aspects of the case.

18. At approximately 5:17 PM, I received a fax transmission containing Judge Sabatino's five page order and opinion dismissing the action and all relief requested. This was now four days past the date *he specifically initiated such review* by accepting this Pro Se Appellant's original submission of Appellate Division form, "Fact Sheet On Application of Emergency Relief" and supplement thereto. Judge Sabatino effectively ran the clock down to the election by four full days. The five page opinion doesn't discuss the Constitutional question at all; doesn't discuss the oath of office; doesn't discuss the undisputed fact that a high placed Elections Division official admitted the Secretary did nothing to verify the candidates; doesn't mention or pass judgment on my Motion for Summary judgment; does accept that the AG brief's contentions are convincing even though they are completely off point and specious.

19. Judge Sabatino's order appears to deny a "Motion For Leave to Appeal" even though Appellant never submitted such a Motion as Appellant was not involved in any lower court matter or controversy which would have invited such an interlocutory Appeal. Furthermore, Appellant, as to Question number 5 listed on his original Appellate Division form, "Fact Sheet Upon Application For Emergent Relief", specifically answered *"N/A"*. Question number 5 reads exactly as follows (emphasis added in original form, and not by Appellant):

"5. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? **IF SO, THE DECISION IS NOT FINAL, BUT RATHER INTERLOCUTORY, AND LEAVE TO APPEAL MUST BE SOUGHT."**

Once again, Appellant, to this question, answered, "N/A".

The front page of the NJ Appellate Division web site includes the following guidance to potential litigants:

"The Appellate Division considers appeals timely taken **as of right** from the final judgments of the Law Division and the Chancery Division of the Superior Court, in addition to the final d**ecisions of State administrative agencies**. Litigants requiring Appellate Division review of interlocutory or interim orders of a trial court or agency may do so only with **leave of the Court**." (Emphasis added.)

How could Judge Sabatino deny a "motion for leave to appeal" *when no such motion had been made* by me? Furthermore, I couldn't have made such a Motion even if I wanted to since I wasn't involved in a lower court case. My pleading was taken "as of right", no leave to appeal was necessary as is explicitly made clear on the Fact Sheet and on the front page of the Appellate Division web site.
(See http://www.judiciary.state.nj.us/appdiv/index.htm)

The Fact Sheet On Application For Emergent Relief was Appellant's initial filing and Appellant's intentions were made explicitly clear in Question Number 1:

"1. What is the vicinage of the matter? (i.e, what judge, in what county or what agency entered the decision?)"

And to this, Appellant answered:

"The Office of the Secretary of State of the State of New Jersey. It will be filed as a Complaint In Lieu of Prerogative Writs in the App. Div..."

Appellant's intention was clear and procedurally correct in that both the official Appellate Division form/Fact Sheet, as well as a three page letter supplement thereto, detailed *exactly* the nature of Appellants claim, a Complaint In Lieu Of Prerogative Writs, which, by demand of *N.J. Ct. R, 2:2-3(a)(2)*, is the exclusive method for reviewing a final action or inaction of a state administrative agency or officer, such method being allowed by *direct appeal* to the Appellate Division. Judge Sabatino's order, at the bottom of page 5 states:

"Appellant's motion for leave to appeal the Secretary's alleged inaction is denied and his emergent application is consequently dismissed."

I became very upset in that the order and decision appeared to be pertaining to *an action I never took*, nor did I have standing or reason to take, from a procedural point of view. I made no "Motion For Leave To Appeal". This was never part of my case, but looking back on it now, it appears as if Appellant was being led somewhere he had no reason to go. Perhaps this is why Judge Sabatino wanted to give me back my original $200 Money Order.

I was a Pro Se party involved in one of the most complex legal situations one could ever imagine, and I was subjected to Judicial Misconduct and delay. Why did Judge Sabatino accept review in the first place? Why did he try to transform the nature of my pleadings? One possible answer springs forth: to stop the case from gaining the full attention of the US Supreme Court.

I expressed distress to Mr. Nunn over the phone and a total lack of respect for Judge Sabatino's order and opinion. I was very distraught. Mr. Nunn kept saying things like, "I tried for you," and also something to the effect of, "You raised good issues but there's other factors." At this time, I also mentioned to Mr. Nunn that myself and my sister, a retired prosecutor who helped with some of the legal research, had been subjected to electronic treachery via our private cell phones having been hacked. At this time, Mr. Nunn said something like, "You know which candidate was responsible for that, right? The candidate that's been known to pull that kind of thing right?" And then I told him, "Matt, stop. You've gone too far." I was very upset but I didn't have a clear suspect in mind. I had just sued the Secretary of State in her own backyard. I had tried to get both major candidates thrown off the ballots as well as attacking the eligibility of the Socialist Workers Party candidate. It could have been any of the above or supporters thereof. I felt like Mr. Nunn was trying to elicit a defamatory comment about one of the candidates, and I wouldn't be surprised if the conversation had been taped.

20. Appellant stayed up through the night preparing a Motion For Emergency Injunctive Relief for submission to the New Jersey Supreme Court along with a seventy-five page appendix generated by this very unorthodox litigation.

21. The next morning I made my way to the US Supreme Court and was introduced to Staff Attorney Carol Huxe who took a serious look at my Motion, had a short talk with me about the case and then decided to accept the Motion for the review of a NJ Supreme Court Justice. She assured me that a Justice of the Supreme Court would examine my case and then she told me one of three outcomes would apply:

- a single Justice would deny the application
- a single Justice could grant the emergency relief
- a single Justice could call in the other Justices on an emergency basis

22. Later that afternoon, I spoke with Ms. Huxe on the phone, and she informed me that my papers were in good shape and that the the Justices were looking it over and to expect a decision within the next 45 minutes.

23. About ten minutes later, I received a phone-call from a clerk at the NJ Supreme Court. I was told that an order had been written and I should expect it by FAX as soon as we hung up the phone. They then faxed me an order from the New Jersey Supreme Court, Justice Virginia A, Long, denying my motion for emergency relief. Here is the full text of the denial motion:

"This matter having come before the court on an application for emergent relief pursuant to RULE 2:9-8, and the undersigned having reviewed the movant's papers and the papers filed by the defendant in the Superior Court, Appellate Division, it is hereby Ordered that the application for emergent relief is denied." (Emphasis added.)

This particular wording is very significant for two reasons. First, while it cross references the lower court case, it makes no mention of Sabatino, his order or his five page decision. This has the effect of causing an incredible procedural legal right to accrue in that it gave me the proper authority to bring my case, on an emergency basis, directly to the United States Supreme Court.

Judge Sabatino's order and decision never made any reference to the Constitutional issues involved in the case. But Justice Virginia Long's carefully worded order specifically relied upon "movant's papers", and *movant's papers* include a Constitutional issue of first impression as to the "natural born citizen" clause which was now ripe to be put squarely before the United States Supreme Court for the first time in US history.

24. I then called the US Supreme Court and left a message for the stay clerk, Mr. Danny Bickell, but received no return phone call.

25. Over the weekend of Nov1st and 2nd, I prepared a twenty page Application For Emergency Stay according to Supreme Court Rules 22 and 23. An application seeking review of a state court matter must be addressed to the Justice for the Circuit the state is in. For New Jersey, it's Justice Souter. According to the common practice involved with *Rule 22*, an emergency application *mus*t be read by the Justice it is addressed to on the same day it's filed. The reason for this is that, if it is denied, the Appellant is entitled to resubmit it to any other Justice of his choice. My second choice was Justice Clarence Thomas.

On Sunday evening, I left New Jersey in order to be in DC to file the application before the court closed at 4:30 PM. This would assure that the Supreme Court had a chance to stay the popular vote in the National Election before election day polls opened.

26. The Application For Emergency Stay was filed by me on Monday November 3rd, 2008, at 3:33 PM. A few minutes later, while still in the Supreme Court, I phoned the Stay Clerk, Mr. Danny Bickell, and we spoke for 7:00 minutes (according to my phone log). I told Mr. Bickell the whole story insisting that the Court Rule required the Application to be delivered *promptly* to Justice Souter. Mr. Bickell assured me that Justice Souter would have the case on his desk that evening if my papers were in order, which they were.

It was very important that the Court Rules be followed since I didn't expect Justice Souter to grant the application, but I was ready to resubmit it to Justice Clarence Thomas with along with a letter to His Honor and ten copies of the original application shoulld he pass it on to the entire Court.

27. I arrived at the SCOTUS on Monday Nov 3rd, got the case filed and stamped at 3:30PM, then went back inside and pleaded with the stay clerk for 7 minutes (as shown by my phone log) to please follow the rules and get this on Justice Souter's desk as was required by Rule 22(1):

"1. An application addressed to an individual Justice shall be filed with the Clerk, *who will transmit it promptly* to the Justice concerned if an individual Justice has authority to grant the sought relief." (Emphasis added.)

Mr. Bickell agreed that if my papers were in order, Justice Souter would receive the case that night, sometime after 4:30 pm.

"Rule 22(6). The Clerk will advise all parties concerned, by appropriately speedy means, of the disposition made of an application."

It's important that the disposition be delivered by "speedy means" because the denial of a stay sets the trigger for resubmission to a Justice of your choice under Rule 22(4).

28. The next day, election day, I received no message from the Court. I went back to the SCOTUS on Election Day with my sister who is also retired from the practice of law (she was an Assistant DA in Detroit for many years), and was told Mr. Bickell wasn't available to speak with me. And he was not picking up his phone.

29. On Thursday, I finally got through to Mr. Bickell and was informed by him that the case was never passed on to

Justice Souter because *Mr. Bickell* didn't think it was an appropriate Application. I was absolutely astounded. He made a substantive law judgment thereby effectively impersonating a Supreme Court Justice. Mr. Bickell told me that I should have made a full Petition for Writ of Certiorari and since I didn't then my stay application was defective. And that's not only illegal for him to make such a decision, but this decision itself is not grounded in law or precedent, but rather the exact opposite. And I told him he was flat out wrong, because :

- I followed the Court Rules perfectly

- he and I spoke all about this on Monday in a seven minute phone conversation wherein he agreed to forward the Application

- the case was properly before the court from the Supreme Court of NJ

- the precedent was *Bush v. Gore* where no Petition was necessary since the court decided to treat the Stay application as a full Petition for Writ of Certiorari.

It's not the Clerk's job job to play Supreme Court Justice. The stay clerk's job is to collect the papers and pass them onto the Justices, but as to this action Mr. Bickell basically made a substantive judgment of law and denied my application on his own. That must be criminal in some way, perhaps impersonating a US Supreme Court Justice, or subordination of Judicial intent? It's just wrong and Mr. Bickell needs to be called on it.Either he did this on his own volition or somebody pressured him to do it. After explaining the precedent in *Bush v. Gore*, where the Supreme Court treated the Stay application as a Petition for Cert. and then granted that virtual Petition, he blinked and agreed to Docket the case.[See Bush v. Gore, page 1, http://www.law.cornell.edu/supct/html/00-949.ZPC.html]

Mr. Bickell also stated that, "Justice Souter will deny it and so will Justice Thomas", but I wouldn't let it go and finally he agreed to Docket the case.

30. The next day, I checked the Supreme Court Docket and the case had finally been docketed but in a completely incorrect manner. Mr. Bickell docketed the case incorrectly as follows (this is from my recording of the original Docket):

~~~Date~~~ ~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~
Nov 6 2008 Application (08A407) for injunction pending the filing and disposition of a petition for a writ of certiorari, submitted to Justice Souter.

Three glaring errors:

- The case was actually filed and stamped received on November 3rd, not November 6th as Mr. Bickell had listed above.

- My application was for a "Stay" not an "injunction". Filing for an injunction does not bring expedited review, while a Stay is entitled to the most expedited review the SCOTUS has to offer. The distinction is very important.

- I never submitted a full Petition nor did I submit a letter stating any such intention to do so. The Stay Clerk just took this out of thin air. He made it up out of the blue. Nothing in my Application indicates I intended to file a full Petition for Write of Certiorari. There was no time for that. The proper procedural tool was a Stay application as per the precedent set in *Bush v. Gore*.

31. I then called Mr. Bickell and left three loud and direct messages to the effect of, "Fix my docket or I'm going to suggest criminal charges against you as well as a civil suit against the Clerk's office." I also told Mr. Bickell that I suspected he was being pressured from within, and that he should inform whoever was pressuring him that I'd kept solid phone records and that my pleadings were stamped, "Nov. 3rd."

32. Later than morning, I checked the US Supreme Court docket search engine again, and saw that Mr. Bickell had corrected the Docket to reflect that the case had been filed on November 3rd and he also now had it listed as a "Stay" application.

However, this second Docket listing was equally bizarre. Whereas the first Docket listing discussed a pending application for injunction, the new Docket reflected that Justice Souter had already denied the Stay application a day earlier on Nov. 6th, which is very confusing since this was now Friday November 7th and the first Docket listed no such disposition.

Here is the Docket as it appeared one hour after the first Docket listing. And this is also how it appears today, Nov. 11th:

~~~Date~~~ ~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~~
Nov 3 2008 Application (08A407) for stay pending the filing and disposition of a petition for a writ of certiorari, submitted to Justice Souter.

Nov 6 2008 Application (08A407) denied by Justice Souter.

None of this makes any sense. Calling this activity "unorthodox" is to be very kind. It's Judicial misconduct and perhaps it's even worse.

The reference to a "pending" Petition is incorrect and should be removed because it effects the favor-ability of review available to the case as resubmissions for Stay applications are not looked on favorably if the Stay denial is "without prejudice". If I were actually in the process of submitting a full Petition for Cert., which I'm not, then the denial might be considered "without prejudice", and in that case, Mr. Bickell might , once again, decide not to pass on the Stay Application to Justice Clarence Thomas.

Seeing as how the Electoral College is just one month away, this is still an emergency, and *Bush v. Gore* is still precedent. I have made no submission of a full Petition, so the Docket is still incorrect as I intend to resubmit the "Stay Application" this week and the case will live or die on the resubmission.

These Court Rules are no joke. They have a purpose. On Monday November 3rd, Mr. Bickell disposed of my Application acting as if he were a United States Supreme Court Justice. That's certainly bad enough, if not criminal, but then he did nothing between then and Thursday November 6th to notify me, certainly not by "speedy means", of the disposition of my Stay Application. This is Judicial misconduct.

Mr. Bickell took my cell number on Monday Nov. 3rd, and had I been notified properly, by a phone call, that my Stay Application was not going to be forwarded to Justice Souter, then I could have corrected Mr. Bickell as I did on Thursday Nov. 6th.

This case was stopped in its tracks starting in the Appellate Division and leading right to the US Supreme Court. The shame of the delay lies in the fact that the case was bi-partisan and should have been decided before the election when nobody knew what the outcome would be. Now, once Obama is disqualified, which I believe will be the final disposition of this case, it's going to cause so much more pain to the country.

The law and the facts of this case have the ability to strip Obama of the Presidency just as the law and the facts of this case would have had the power to also strip McCain of the Presidency if he had won. I argued the same law as to McCain and Roger Colera as well as Obama.

This is NOT the way the US Supreme Court usually does business. And the citizens of this country should be angry that this institution has slipped to this level.

"I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

____
Leo C. Donofrio, Pro Se

(see signature page)

US Supreme Court case > **NATURAL BORN CITIZEN "AT BIRTH"? - STANDING - WARNING REGARDING DEFAMATORY COMMENTS**

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NATURAL BORN CITIZEN "AT BIRTH"? - STANDING - WARNING REGARDING ALL DEFAMATORY COMMENTS POSTED ABOUT LEO C. DONOFRIO

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NATURAL BORN CITIZEN "AT BIRTH"?

Throughout the Berg vs Obama ordeal the issue of "standing" was always going to stop Mr. Berg's case, a case which has consistently failed to zero in on the main issue, whether Mr. Obama was a natural born citizen **"at birth",** which Obama was not, since he had dual nationality at birth and was therefore subject to the jurisdiction of Kenya as well as the USA. If Mr. Obama wasn't a natural born citizen **"at birth"** he can never satisfy the requirement. Mr. Berg's case touches on everything *bu*t the main issue and as such it has no chance of succeeding even if he did have standing, which he most certainly does not.

To be a naturally born citizen, this is the issue. You are either "born" one or you are not, and if not, you can't be President. The 14th Amendment can make one a "citizen" but not a "natural born citizen". This is the backbone of my case. Had the US legislature, and the States who ratified the 14th Amendment, sought to bestow "natural born citizen" status, then the 14th Amendment would say so, but it does not. It confers "citizen" status, and *only* if the person is subject to the jurisdiction of the United States.

While issues concerning Obama's birth certificate and his time spent in Indonesia might effect his actual "citizenship", the case I have made does not rely in any way upon those questions. My argument is much more simple to prove and understand. Obama's father was a Kenyan national and so, regardless of where Obama was born, he was "at birth" subject to the laws of both the United States and of Kenya and as such he is not a natural born citizen of the United States and cannot hold the office of President. It's really that simple.

The nature of the issue flows from the word, "born". The status required by Article 2, Section 1, must be present "at birth". To be a "natural born citizen" there must be nothing unnatural about your citizenship "at birth". *Natural,* in this context, means to be unencumbered by the laws of any other nation. Regardless of the fact that Obama came to reside in the United States, *at the time of his birth* another country could also claim him as its own and vice versa.

That is the essence of my case as to Obama, and it was the same argument I made as to McCain who was also not eligible to be President. While this might seem unfair, such unfairness must be respected as the guardian to the slippery slope inherent in making exceptions to the rule. The final conclusion in my SCOTUS stay application was as follows:

> *Appellant respectfully submits to this Honorable Court that while the limitations of our Constitution*

may at times appear unfair, it is important to remember that it is the restrictions which hold us to the Document, as much as it is the freedoms that bind us together as a nation.

STANDING

As a New Jersey citizen, I have proper standing. In fact, my standing wasn't challenged by the NJ Attorney General's office in their reply brief in defense of the Secretary of State, nor was my standing challenged by Judge Sabatino in his five page opinion from the NJ Appellate Division. Despite there having been no challenges to my standing raised below, out of respect for the United States Supreme Court, I did address the issue in my application for an emergency stay as follows:

Appellant's standing was not challenged in Respondent's reply brief, nor was it challenged in his Honorable Sabatino's order and decision. However, Appellant discusses the issue below in respect to this most Honorable Court's superior jurisdiction. In Ridgewood Education Association v Ridgewood Board Of Education, 284 N.J. Super. 427 (App. Div. (1995)), the Court stated, "We see no reason why this State's historic liberal approaches to the issue of standing in general....should not apply to taxpayer suits challenging the quasi-legislative actions of local boards of education." Silverman v. Board of Ed., Tp. of Millburn, 134 N.J. Super. 253, 257-58 (Law Div.), aff'd o.b. 131 N.J. Super. 435 (App. Div. 1975).

The policies of justice regarding the sanctity of voting rights were also stated in New Jersey Democratic Party v. Samson, 175 N.J. 178, 814 A.2d 1028 (October 2, 2002). Although the petitioner bringing suit in that case was a political party, the voting rights discussed and protected were those of individuals. Therefore, the reasoning of that case should apply when the petitioner is an individual voter.

Appellant's fundamental right to vote for a candidate who will not be disqualified after the election is now threatened by the inclusion on New Jersey ballots of three ineligible candidates.

> "When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." *Bush v. Gore*, 531 U.S 5, 6 (2000)

And finally, Appellant's fundamental right to live in the United States governed by a President and Commander In Chief who is Constitutionally eligible to the office of President is also threatened. Since this action is so very grounded in the interests of justice, and supported by all of the above, Appellant respectfully requests that this court recognize his standing.

While Mr. Berg, who has made a valiant effort, does not have legal standing, I *do* have a right of review by the US Supreme Court since New Jersey recognizes my standing and also because I have exhausted all of my state court options and there is nowhere else for me to go for justice.

Due to the impending Electoral College meeting, a genuine emergency exists and the case *must* be resolved by the US Supreme Court, and it *will* be resolved by the Supreme Court unless the SCOTUS Clerk's office interferes once again with the next phase of this litigation, that being my letter to Justice Clarence Thomas which is attached to my renewed application for an Emergency Stay of the 2008 national election.

Later today, I will release my letter to Justice Thomas as a sworn certification detailing the various unorthodox judicial activity my case has suffered. The case is officially named, "Leo C. Donofrio v. Nina Mitchell Wells, Secretary of State of the State of New Jersey".

PENDING DEFAMATION SUITS

To whom it may concern,

I have seen my good name made filthy by various comments on blogs regarding my law license. This coupled with the Judicial misconduct I was privy to and the clerical sabotage the case has been subjected to in the US Supreme Court, evidence that my case vs. the New Jersey Secretary of State has strong merit and is causing fear to those who may be potentially effected by the case.

For the record, I was admitted to practice law in the State of New Jersey and the Federal District Courts in 1991. I graduated from St. John's University, School of Law in 1990. I retired my law license a few years back to pursue my love of the arts and golf. Last year, I found that I had a skill for tournament poker and in 2008, I turned pro and have won two significant tournaments this year including a World Series of Poker Circuit event Gold/Diamond ring.

You may see my Bluff Magazine profile here:

https://www.Bluff Magazine.com/players/leo-donofrio/42071/player-profile.asp

My law license is clean as a whistle and I may return to practice law at any time simply by writing a letter and paying NJ Client Protection fees to the State of New Jersey.

Be warned, whether you are making comments or hosting comments at a blog or website, I will sue, for defamation, any responsible parties. Unfortunately, if they are not removed from his blog, I will be forced to set an example and have my personal attorney file a defamation suit immediately.

I will not sit by and watch my good name by made filthy just because I brought a fair and legal law suit which is now properly before the US Supreme Court.

Very Truly Yours,

Leo C. Donofrio

US Supreme Court case > NEW JERSEY VOTER VS. OBAMA AND McCAIN ON "NATURAL BORN CITIZEN" STATUS NOW BEFORE SUPREME COURT - ST

Posted: Nov.10.2008 @ 7:40 am | **Lasted edited:** Nov.17.2008 @ 10:25 pm

NEW JERSEY VOTER VS. OBAMA AND McCAIN ON "NATURAL BORN CITIZEN" STATUS NOW BEFORE US SUPREME COURT - *DONOFRIO v. WELLS* - STANDING NOT CHALLENGED IN LOWER COURTS - OBAMA BIRTH CERTIFICATE *NOT* MAIN ISSUE

UNITED STATES SUPREME COURT Docket #: 08A407

UNITED STATES SUPREME COURT Application for Emergency Stay and supporting brief: ScotusStayAppBrief.doc

NEW JERSEY SUPREME COURT ORDER

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 1, Section 2, 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 dilemma. 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. The Appellate Division case generated the following documents:

NJ Appellate Division Fact Sheet Upon Application For Emergent Relief

Judge Sabatino's initial response

Supplemental Fact Sheet Upon Application For Emergent Relief

Fax letter to all parties regarding schedule for submitting briefs

Complaint In Lieu of Prerogative Writs

Letter to Judge Sabatino re: Motion for Summary Judgment

Notice of Motion For Summary Judgment, Counts 1and 2

NJ Attorney General's reply brief for Secretary of State Wells

Judge Sabatino's Opinion and Order, 5 pages

Plaintiff then submitted the case on an emergency basis to the New Jersey Supreme Court where a staff attorney reviewed it, requested 10 copies each of the Motion and 75 page appendix, and informed Plaintiff that a Supreme Court Justice would review it immediately with three possible scenarios unfolding:

- the Supreme Court Justice could grant the application on their own

- the Supreme Court Justice could deny the application on their own

- the Supreme Court Justice could call in the other Justices to review the case

Later that afternoon, Plaintiff was informed by telephone that his papers were in order and that other Justices of the Supreme Court had been brought in to discuss the case.

Regardless, later that afternoon, 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.

Here is the decision of the Honorable Justice Virginia A. Long:

> "This matter having come before the court on an application for emergent relief pursuant to Rule 2:9-8, and the undersigned having reviewed the movant's papers and the papers filed by the defendant in the Superior Court, Appellate Division, it is hereby Ordered that the application for emergent relief is denied."

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.

The SCOTUS stay application had to be addressed to Justice Souter since he is the designated Justice for the 3rd Circuit, which includes New Jersey. 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 any such 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. This letter will be available at this site before it is actually 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.

More to follow. Developing.

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