

U.S. District Court,
Eastern District of Pennsylvania Case Number: 08-cv-4083

Court of Appeals No. 08-4340

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

_____ O _____

PHILIP J. BERG, ESQUIRE,

Plaintiff – Appellant,

v.

BARACK HUSSEIN OBAMA, JR., et al,

Respondents – Appellee.

_____ O _____

***EMERGENCY MOTION FOR AN IMMEDIATE INJUNCTION TO STAY
THE PRESIDENTIAL ELECTION OF NOVEMBER 4, 2008
PENDING RESOLUTION OF THE PETITIONER’S APPEAL***

NOW COMES the Petitioner, Philip J. Berg, Esquire, and hereby makes this Motion for an emergency Injunction to Stay the Presidential Election of November 4, 2008 pending resolution of the Petitioner’s Appeal.

I. REQUEST FOR EMERGENCY RELIEF

1. The United States Constitution, Article II, Section I, Clause 4 states in pertinent part, “*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...”

2. As this Court is aware, the Presidential Election is Tuesday, November 4, 2008. It is imperative to ensure our Democratic Presidential Candidate is a “natural born” United States citizen and eligible to run for and/or serve as President of the United States.

3. Evidence points to the fact that Barack Hussein Obama, Jr., [hereinafter “Obama”] was born in Mombosa, Kenya to a U.S. citizen mother and a Kenyan citizen father on August 4, 1961. Obama’s mother was not old enough to register Obama’s birth in Hawaii as a “natural born” United States citizen. The laws on the books at the time of Obama’s birth required the U.S. citizen to have resided in the United States for ten (10) years, five (5) of which were after the age of fourteen (14). Obama’s mother was only eighteen (18) when Obama was born in Kenya. Nationality Act of 1940, revised June 1952, *United States of America v. Cervantes-Nava*, 281 F.3d 501 (2002), *Drozdz v. I.N.S.*, 155 F.3d 81, 85-88 (2d Cir.1998).

4. Obama’s Kenyan grandmother, Sarah Obama has repeatedly stated Obama was born in Kenya and she was present during his birth. Bishop Ron McRae, who oversees the Anabaptists Churches in North America and Reverend Kweli Shuhubia, had the opportunity recently to interview Sarah

Obama. Reverend Kweli Shuhubia went to the home of Sarah Obama located in Kogello, Kenya. Reverend Kweli Shuhubia called Bishop McRae from Ms. Obama's home and placed the call on speaker phone. Bishop McRae asked if it was okay to tape the conversation, which permission was granted. Because Ms. Obama only speaks Swahili, Reverend Kweli Shuhubia and another grandson of Ms. Obama's, translated the telephone interview. Bishop McRae asked Ms. Obama where Obama was born; Ms. Obama answered in Swahili and was very adamant that Obama was born in Kenya. Bishop McRae asked Ms. Obama if she was present during her grandson's birth and Ms. Obama answered, "Yes." A copy of Bishop McRae's affidavit is attached hereto as **EXHIBIT "1"**.

5. Reverend Kweli Shuhubia left Kisumu City and traveled to Mombosa, Kenya. Reverend Kweli Shuhubia interviewed personnel at the hospital in which Senator Obama was born in Kenya. Reverend Kweli Shuhubia then had meetings with the Provincial Civil Registrar. Reverend Kweli Shuhubia learned there were records of Ann Dunham giving birth to Barack Hussein Obama, Jr. in Mombosa, Kenya on August 4, 1961. Reverend Kweli Shuhubia spoke directly with an Official, the Principal Registrar, who openly confirmed the birthing records of Senator Barack H. Obama, Jr. and his mother were present, however, the file on Barack H. Obama, Jr. was classified and profiled. The Official explained Barack Hussein Obama, Jr. birth in Kenya

is top secret. Reverend Kweli Shuhubia was further instructed to go to the Attorney General's Office and to the Minister in Charge of Immigration if I wanted further information. See the Affidavit of Reverend Kirori, attached hereto as **EXHIBIT "2"**.

6. Obama continues to verbally deny he was born in Kenya and states he was born in Hawaii. Upon investigation into the alleged birth of Obama in Honolulu, Hawaii, Obama's birth is reported as occurring at two (2) separate hospitals, Kapiolani Hospital and Queens Hospital. The Rainbow Edition News Letter, November 2004 Edition, published by the Education Laboratory School, attached as **EXHIBIT "3"**, did a several page article of an interview with Obama and his half-sister, Maya. The Rainbow Edition News Letter reports Obama was born August 4, 1961 at Queens Medical Center in Honolulu, Hawaii. More interesting in February 2008, Obama's half-sister, Maya, was again interviewed in the Star Bulletin, attached as **EXHIBIT "4"**, and this time, Maya states Obama was born August 4, 1961 in Kapiolani Medical Center for Women & Children.

7. Matters are further complicated by the fact Obama in or about 1965, when Obama was approximately four (4) years old, his parents divorced and thereafter, Obama's mother, Stanley Ann Dunham, married Lolo Soetoro, a citizen of Indonesia. Obama lost his U.S. citizenship, when his mother married

Lolo Soetoro, and took up residency in Indonesia. A minor child follows the naturalization and citizenship status of their custodial parent. A further issue is presented that Obama's Indonesian stepfather, Lolo Soetoro, either signed an acknowledgement acknowledging Obama as his son or Lolo Soetoro adopted Obama, giving Obama natural Indonesia citizenship which explains the name Barry Soetoro and his citizenship listed as Indonesian on his school record.

8. Obama admits in his book, "*Dreams from my father*" Obama's memoir (autobiography), that after his mother and Lolo Soetoro were married, Lolo Soetoro left Hawaii rather suddenly and Obama and his mother followed thereafter. Obama admits when he arrived in Indonesia he had already been enrolled in an Indonesia school. Lolo Soetoro, an Indonesian State citizen, could not have enrolled Obama in school unless Lolo Soetoro signed an acknowledgement acknowledging Obama as his son, which had to be filed with the Government. Under Indonesian law, when a male acknowledges a child as his son, it deems the son, in this case Obama, as an Indonesian State citizen. Constitution of Republic of Indonesia, Law No. 62 of 1958 Law No. 12 of 2006 dated 1 Aug. 2006 concerning Citizenship of Republic of Indonesia, Law No. 9 of 1992 dated 31 Mar. 1992 concerning Immigration Affairs and Indonesian Civil Code (Kitab Undang-undang Hukum Perdata) (KUHPer) (Burgerlijk Wetboek voor Indonesie).

9. Furthermore, under the Indonesian adoption law, once adopted by an Indonesian citizen, the adoption severs the child's relationship to the birth parents, and the adopted child is given the same status as a natural child, Indonesian Constitution, Article 2.

10. The public schools in Indonesia did not allow foreign students, only citizens were allowed to attend as Indonesia was under strict rule and decreed a number of restrictions; therefore, in order for Obama to have attended school in Jakarta, which he did, he had to be a citizen of Indonesia, as the citizenship status of enrolled students was verified with Government records.

11. Obama was enrolled by his parents in a public school, Fransiskus Assisi School in Jakarta, Indonesia. Plaintiff has received a copy of the school registration, attached as **EXHIBIT "5"**, in which it clearly states Obama's name as "Barry Soetoro," and lists his citizenship as Indonesian. Obama's father is listed as Lolo Soetoro. At the time Obama was registered the public schools obtained and verified the citizenship status and name of the student through the Indonesian Government.

12. Regardless of whether Obama was officially adopted, (which required a Court process), by his Indonesian stepfather, Lolo Soetoro, or his birth was acknowledged (which only required the signing of a birth acknowledgement form), by Lolo Soetoro, one of which had to occur in order

for Obama to have the name Barry Soetoro and his citizenship status listed as “Indonesian”, in either and/or both cases Obama’s name was required to be changed to the Indonesian father’s name, and Obama became a natural citizen of Indonesia. This is proven by the school records in Jakarta, Indonesia showing Obama’s name as Barry Soetoro and his citizenship as Indonesian. *Again*, the registration of a child in the public schools in Jakarta, Indonesia was verified with the Government Records on file with the Governmental Agencies.

13. The Indonesian citizenship law was designed to prevent apatride (stateless) or bipatride (dual citizenship). Indonesian regulations recognized neither apatride nor bipatride citizenship.

14. In addition, since Indonesia did not allow dual citizenship; neither did the United States; and since Obama was a “natural” citizen of Indonesia, the United States would not step in or interfere with the laws of Indonesia, Hague Convention of 1930.

15. In or about 1971, Obama’s mother sent Obama back to Hawaii. Obama was ten (10) years of age upon his return to Hawaii.

16. As a result of Obama’s Indonesia “natural” citizenship status, there is absolutely **no** way Obama could have ever regained U.S. “natural born” status, if he in fact ever held such. Obama could have **only** become “naturalized” if the proper paperwork was filed with the U.S. State Department, in which case,

Obama would have received a Certification of Citizenship, after U.S. Immigration.

17. Plaintiff is informed, believes and thereon alleges Obama was never naturalized in the United States after his return. Obama was ten (10) years old when he returned to Hawaii to live with his grandparents. Obama's mother did not return with him, and therefore, unable to apply for citizenship of Obama in the United States. If citizenship of Obama had been applied for in 1971, Obama would have a Certification of Citizenship. If Obama was returned in 1971 to Hawaii without going through U.S. Immigration, today he would be an illegal alien.

18. There is serious question into the eligibility of Barack Hussein Obama, Jr. to run for and/or serve as the President of the United States. Barack Hussein Obama, Jr. may not be a "natural born" citizen or a "naturalized" citizen for that matter. Therefore, he is ineligible to serve as the President of the United States should he be elected.

19. Plaintiff as well as all citizens of the United States are in grave danger if Obama is not a "natural born" citizen. Obama has been privy to our Country's top secret information and classified information.

20. On July 27, 2008, a New York Times Op-Ed Columnist wrote, in an article entitled, "How Obama Became Acting President", that Obama has been

“treated as a president-in-waiting by heads of state” and noted the “raw power Mr. Obama has amassed: the power to start shaping events.” One event that Obama has tried to shape, according to the New York Post, dated September 15, 2008, is the withdrawal of American troops:

“While campaigning in public for a speedy withdrawal of U.S. troops from Iraq, Sen. Barack Obama has tried in private to persuade Iraqi leaders to delay an agreement on a draw-down of the American military presence.”

21. According to Iraqi Foreign Minister Hoshyar Zebari, Obama made his demand for delay a key theme of his discussions with Iraqi leaders in Baghdad in July.

22. Zebari said in an interview, "He [Obama] asked why we were not prepared to delay an agreement until after the U.S. elections and the formation of a new administration in Washington."

23. Obama insisted that Congress should be involved in negotiations on the status of U.S. troops - and that it was in the interests of both sides not to have an agreement negotiated by the Bush administration in its "state of weakness and political confusion."

24. Obama has also been given important intelligence information. On September 2, 2008 CNN, the cable channel, reported that Obama received

“private intelligence briefings” from the FBI. On September 15, 2008, The Washington Post reported:

“At the CIA, as with most federal agencies, officials are beginning to prepare for the first new president in eight years. During a "town meeting" with agency employees last Wednesday, Director Michael V. Hayden discussed the upcoming transition, describing it as an opportunity for the agency to demonstrate its skill and agility to new "customers."

25. Hayden told employees that Obama had his first intelligence briefing last week (McCain will get one soon), and among the subjects covered was terrorism. After the November 4th election, the process will become even more active, with the President-elect offered the daily briefing received by the President, Hayden told the group. “Writers Post That Foreign Policy Could Be a Bush Legacy.” Washington Post, September 15, 2008.

26. These reports show the urgency and extreme public importance of this case. If Obama is not eligible to be President his receipt of intelligence information and his power to negotiate with Heads of State puts the citizens of this country at great risk. Therefore, this matter requires an immediate determination by this Honorable Court.

27. The deprivation of the right to such a challenge would result in the infringement on a citizen’s Constitutional right to vote. Although this case is pending before this very Court, and the Court has not entered any order or

judgment, the Supreme Court may still rule and grant a stay of the Presidential election or an Injunction staying the Presidential election because these issues herein are of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination of this Court.

A. Standards to Be Applied on an Application for an Injunction to Stay the Presidential Election

28. This Court has jurisdiction and the inherent power to issue an Injunction to Stay the Presidential Election, until Petitioner's Appeal is heard and resolved, 28 U.S.C. §1651(a) (the All Writs Act). Before seeking release from the United States Supreme Court, or from a single Justice, a stay must first be requested from the Court below or a Judge thereof, Rule 23.3 is mandatory. *Bush v. Gore*, 531 U.S. 1046 (2000) [granted stay while application for a stay was pending in State Court]. The issuance of the requested Injunction to Stay the Presidential Election is imperative to protect Plaintiff and all citizens of the United States from being further harmed by allowing an ineligible Presidential candidate to continue campaigning and take the Office of the Presidency if elected. Thus, the issue is clear and appropriate for this Court to grant Petitioner's request. *Communist Party of Indiana v. Whitcomb*, 409 U.S. 1235 (1972), (Rehnquist, J., in chambers.); *Ohio Citizens for Responsible Energy*, 479 U.S. at 1313 (Scalia, J.) (because a Justice's grant of a writ of injunction,

“unlike a §2101(f) stay; does not simply suspend judicial alternation of the status quo but grants judicial intervention that has been withheld by lower courts”. *Lucas v. Townsend*, 486 U.S. 1301 (1988) (Kennedy, J.) (enjoining referendum pending appeal to Supreme Court of denial of Voting Rights Act challenge. *Clark v. Roemer*, 498 U.S. 953 (1990) (granting application for injunction to prevent election being held). *Wisconsin Right to Life v. Federal Election Comm’n*, 542 U.S. 1305, 1306 (2004) (Rehnquist, C.J.) (observing that such an injunction is appropriate only “where necessary or appropriate in aid of [the Supreme Court’s] jurisdiction and where “the legal rights at issue are indisputably clear”) (citations and internal quotations omitted).

29. The standard to be applied in regards to an emergency Motion for an Injunction requires the Court to consider: (1) the threat of irreparable harm if the stay is not granted; (2) the absence of harm to opposing parties if the stay or temporary injunction is granted; (3) the likelihood of success, and (4) whether there was any prior ruling on the application by another judge of a lower court. *Rosker v. Goldberg*, 448 U.S. 1306, 1308 (1980).

B. Likelihood of Success on the Merits of the Writ

30. Of the four (4) considerations, the likelihood of success is arguably the most important. Here Petitioner has attempted to verify the United States

Citizenship status of Obama, however, has been refused. Petitioner filed suit in the United States District Court, Eastern District of Pennsylvania, instead of simply providing the proof necessary to show his eligibility to run for and/or serve as the President of the United States, Obama chose to litigate the issues. Obama and the DNC filed a joint Motion to dismiss pursuant to Federal Rules of Civil Procedure, Rule 12(b)(1) and 12(b)(6). Although discovery had been served on Obama and the DNC by way of Request for Admissions and Request for Production of Documents, Obama and the DNC filed for a Protective Order staying all discovery pending the decision on their Motions to Dismiss, a Motion that was not ruled on. Moreover, Obama and the DNC failed to respond, by answer or objection, the Request for Admissions, therefore, they are deemed admitted pursuant to Federal Rules of Civil Procedure Rule 36. A true and correct copy of the Request for Admissions served upon Obama is attached hereto as **EXHIBIT “6”**. Obama’s stubborn refusal to provide what he claims is “his own” country with conclusive proof on that score compels the presumption that he knows, or at least strongly suspects, that no sufficient evidence in his favor exists. Obama has only been asked to provide the public with the original copy of some official records that establishes his citizenship. The vast majority of Americans could easily do so. Why will Obama not dispel the doubts about his eligibility — unless he cannot?

31. Now that Obama's citizenship has been seriously questioned, the burden of proof rests squarely on his shoulders. The "burden of establishing a delegation of power to the United States * * * is upon those making the claim."
Bute v. Illinois, 333 U.S. 640, 653 (1948).

32. Thus, no issues remained for the trial Court. For these reasons, the consideration – a likelihood of success on the merits – falls strongly in favor of the Petitioner.

C. Irreparable Harm if the Injunction to Stay Election is not Granted

33. Allowing an ineligible Presidential candidate to run for Office of the Presidency and serve if elected is in clear violation of our United States Constitution, Article II, Section I, Clause 4 without proper due process of law and in violation of the Fourteenth Amendment. Furthermore, sharing the United States top secrets and classified information with a person who may not be a legal citizen at all places Petitioner and all citizens of the United States in grave danger. Moreover, the issues presented are of public importance and national security. Petitioners as well as all citizens of the United States are in grave danger if the issues are not resolved and will continue to suffer violations of their legally protected rights to life, liberty and property guaranteed by the Fourteenth Amendment, due process of laws, and equal protection of the laws.

34. America is facing potentially the gravest constitutional crisis in her history. If Obama is not eligible to serve as the President of the United States, if elected, and allowed to take Office of the Presidency, Obama will not constitutionally be the “Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States” (see Article II, Section 2, Clause 1). Therefore, he will be entitled to no obedience whatsoever from anyone in those forces. Indeed, for officers or men to follow any of his purported “orders” will constitute a serious breach of military discipline — and in extreme circumstances perhaps even “war crimes.” In addition, no one in any civilian agency in the Executive Branch of the General Government will be required to put into effect any of Obama’s purported “proclamations,” “executive orders,” or “directives.” “We the people” of the United States will suffer irreparable harm to all the protections guaranteed by the United States Constitution.

D. Harm to Opposing Party

35. If the injunction for stay is issued staying the Presidential election, there will be absolutely no harm to the Defendants of this case. If Obama is able to prove his citizenship status and eligibility to serve as President of the United States, if elected, the Presidential election will reinstate and Obama’s

name will be on the ballots for citizens to cast their votes. However, if Obama is unable to prove his United States “natural born” citizenship status, then he will be replaced on the ballots with a qualified and eligible Democratic Presidential candidate and Petitioner as well as all other democratic citizens will be able to cast their vote for an eligible democratic candidate, who will be able to serve as President of the United States, if elected. Therefore, there is not even an arguable harm to Obama or the other Defendants in the granting of an injunction staying the Presidential election. The only person who has the power to resolve the citizenship and eligibility issues is Obama.

E. Risk to the Public Interest

36. The risk to the public interest is huge, just as the risk to the Petitioner. If it is later learned that Obama is not a “natural born” citizen and eligible to serve as the President of the United States, all the democratic votes will be deemed void and the democratic citizens are deprived of their rights to vote. Moreover, the fact Obama was born in Kenya, if he takes the Office of the Presidency, he is subjected to being blackmailed for not only money including Government funds (taxpayers money), but government contacts and top secret information, which if placed in the wrong hands places Petitioner and all citizens of the United States in great danger. Allowing a candidate who may

not be eligible to serve as the President of the United States, if elected, is not in the public interest.

37. Allowing the Presidential election to continue, without verifying the citizenship status and eligibility of Obama, where many questions have been raised as to whether or not he is a United States “natural born” citizen or “naturalized” citizen, to run for and/or serve as President of the United States, if elected, would be unfair, unjust, and a violation of Petitioner’s rights to procedural and substantive due process of law, and not in the public interest.

WHEREFORE, for good cause shown, Petitioner, Philip J. Berg, Esquire, respectfully requests this Honorable Court for an emergency Injunction to Stay the Presidential Election of November 4, 2008 pending the resolution of Petitioner’s Appeal.

Respectfully submitted,

Dated: October 30, 2008

s/ Philip J. Berg
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**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

————— O —————

PHILIP J. BERG, ESQUIRE,

Plaintiff – Appellant,

v.

BARACK HUSSEIN OBAMA, JR., et al.,

Respondents – Appellee.

————— O —————

CERTIFICATE OF SERVICE

I, Philip J. Berg, Esquire, hereby certify that Petitioner’s Motion for stay or temporary Injunction staying the Presidential Election pending the resolution of Petitioner’s Appeal was served upon the following Defendants via First Class Mail, postage fully prepaid, this 30th day of October 2008

Benjamin A. Streeter, III, Esquire
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In Pro Se

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CERTIFICATE OF SERVICE, Continued

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s/ Philip J. Berg

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMITATIONS

I, Philip J. Berg, Esquire, Petitioner and a member of the Bar of this Court, certify that the Application for a Stay of the Presidential election and/or a temporary Injunction staying the Presidential election contains 3,690 words, excluding the parts of the Application that are exempted.

Dated: October 30, 2008

s/ Philip J. Berg
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(610) 825-3134

EXHIBIT “1”

EXHIBIT “2”

EXHIBIT “3”

EXHIBIT “4”

EXHIBIT “5”

EXHIBIT “6”