

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CHARLES TISDALE

Plaintiff-Appellant

No. 12-1124

v.

APPELLANT'S RESPONSE BRIEF

BARACK OBAMA, et al.,

Defendants-Appellees

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U.S. COURT OF APPEALS
FOURTH CIRCUIT

**APPELLANT CHARLES TISDALE'S RESPONSE BRIEF IN OPPOSITION TO APPELLEE
FEDERAL ELECTION COMMISSION'S INFORMAL BRIEF FILED MARCH 8, 2012.**

JURISDICTION

Respectfully, this court has jurisdiction under Article III, Section II of the United States Constitution. Disputes arising under the Constitution provides jurisdiction to the federal courts to resolve. The federal courts are an independent judiciary, separate from both the Executive and legislative branches of the federal government. The Separation of Powers Doctrine of the United States mandates an independent judiciary to decide questions of law under the Constitution and to enjoin state actors such as the Virginia State Board of Elections and its Secretary (Don Palmer) from violating Plaintiff's federal rights under state law (42 U.S.C. 1983).

It is not Congress, nor the President, nor the Virginia State Board of Elections, nor the Electoral College, nor Presidential primaries, nor general elections, nor state courts or state

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agencies, not even the voters, and certainly not the Commission, which decides questions of law under the Constitution.

NATURAL BORN CITIZEN

The United States Supreme Court provided precedent of defining what is a natural born citizen? In *Minor v. Happersett*, 88 U.S. 162 (1875), the High Court confirmed that a natural born citizen is "citizens born of citizens". Re-affirmed in *United States v. Wong Kim Ark*, 169 U.S. 649 (1898). The Supreme Court clearly established "precedent". We, as a nation are required to follow that precedent or amend it if we choose.

Respectfully, here in *Tisdale v. Obama*, 3:12 cv 36 E.D. VA (JAG), the federal question is whether or not the lower court's order of January 23, 2012, declaring, "It is well settled that all persons born in the United States are natural born citizens" under American law since the founding...and thus eligible for President, is in violation of Article II, Section I of the Constitution, holding that only a natural born citizen may be eligible for President.

The district court erred in establishing that all persons born in the United States are "natural born", no, they are "**native born**" from the soil and ineligible for President.

Plaintiff concurs with the position of Defendant Federal Election Commission in its informal brief, at page 1, paragraph 1:

...it is an erroneous legal theory that a person is not eligible to be President unless both of his parent(s) were born in the United States...

Respectfully, the above is not relevant to Plaintiff's case. Plaintiff's case is on point with the legal theory that a person is eligible to be President when either of his parent(s) or both are

born-or-naturalized in the United States. The Commission misstated the law of the case restricting a person's birth to parent(s) who are only born in the United States. The Fourteenth Amendment makes clear:

...All persons born or "naturalized" in the United States and subject to the jurisdiction thereof, are citizens of the United States...

Thus, Defendant Federal Election Commission is out of court in its offer of proffer that only persons whose parent(s) are born in the United States may be natural born citizens.

These parent(s) may also be "naturalized" as well as born, meaning they are citizens of the United States, thus entitled, even as foreigners but "American citizens" through naturalization to bear children after naturalization, born in America and eligible for President.

As to those parent(s) born in America, there is no doubt as to their citizenship, y birth on the soil (jus soli), they are automatically "American citizens" and no Act of Congress can deny them, whatever their nationality from bearing children born in America eligible for President.

Respectfully, President Obama's mother was a citizen of the United States at the time of President Obama's birth here in the United States. American law established by Congress, not the Constitution, deems President Obama an "American citizen" under the Fourteenth Amendment, not an Article II citizen under the Constitution.

Republican Presidential candidate Rick Santorum follows in the same shoes as President Obama. Mr. Santorum's birth here in the United States, also did not have citizen parents who were either born or naturalized in the United States, specifically Mr. Santorum's father,

foreclosing him as eligible for the office of President which he is actively unconstitutionally campaigning for.

Guidance from Vattel's "Law of Nations" as well as the framers debate before the adoption of the Constitution. It was clear the framers desired the blood line of natural born citizens eligible for President and the Commander In Chief, would flow from citizenship of the parent(s) rather than from the nationality of the parent(s).

Simply placed, it would be the allegiance of citizenship to the United States for those naturalized parents whose children born in the United States, would acquire eligibility for President. Any parent(s) born in the United States, there would be no question as to their citizenship and the inherited rights of their children born in America, to be eligible for President. The framers objected to foreign influence in the oval office from foreigners who would not commit allegiance to and only to the United States through citizenship.

The above are protections under the Fourteenth Amendment, however, the Fourteenth Amendment created only "citizenship" rights to those born or naturalized in the United States.

The Fourteenth Amendment absolutely created "no" natural born citizens". Article II, Section I did not extend to the Fourteenth Amendment.

SUMMARY OF ARGUMENT

It is not in dispute the Federal Election Commission's role is to administer, interpret and enforce the Federal Election Campaign Act of 1971 (2 U.S.C. 431-57).

The Commission in carrying out its mission, may not trump the United States Constitution. *United States v .Wong Kim Ark(citations omitted)*. When the Constitution states only a natural born citizen may be eligible for the office of President, the Commission may not promote, authorize, sanction, grant, or certify any “ineligible” person for President in light of the Constitution’s mandamus prohibitions against those not natural born citizens from becoming President.

The withholding of matching funds from an ineligible candidate for President cannot substitute for the requirements under Article II, Section I. Abdul Hassan, a naturalized citizen, Is constitutionally ineligible for President and is not entitled to an advisory opinion from the Commission under any circumstances allowing him in any way, be declared a candidate for the office of President. Other federal offices are available to Mr. Hassan, should he so choose.

If, under the “Act”, Mr. Hassan is required to report or file financial statements of publicly received donations **as a candidate for President**, to the Commission, he (Hassan), is in effect seeking to qualify as candidate for President through the Commission whether or not he receives “matching funds”. Such would be unlawful.

Mr. Hassan cannot receive donations under the “Act” as a candidate for President, the Commission has a fiduciary and legal duty to declare Mr. Hassan ineligible not only for matching funds, but also from receiving any donations as a candidate under the “Act” for President.

The Commission knows it has many powers under the “Act”, however, none of those powers may supersede the provisions of the Constitution prohibiting those who are not natural born citizens from qualifying for President in any capacity. The United States Constitution is

the Supreme Law of the land in every state, territory, and federal domain. The conduct of the Commission should be enjoined with sanctions and all costs and punitive damages.

STANDING

While the Commission complains about Plaintiff's standing, and they have a right, however, it is they who lack standing. This Court sits as a Court of review of the lower court's record. **The Commission never entered its appearance in the district court, therefore, the Commission lacks standing to submit to the Court of Appeals, legal briefs on any issue, the Commission may not enter into an appeal once the lower court's records are closed without permission from the Court of Appeals.**

Plaintiff upon filing any of his appellate papers in this Court has consistently under oath noted there were no opposing parties to be served in that the district court sua sponte dismissed Plaintiff's case and none of the named defendants entered an appearance in the district court.

Plaintiff took the liberty twice to call the clerk of the district court and inquire as to why none of the defendants were served with the lower court's order of January 23, 2012, although the district court implied that they be served in the order itself.

The clerk's office of the district court responded "none of the defendants had entered an appearance on the record" and the court's order was simply standard language.

The fact the Commission failed to enter its appearance in the district court upon service of the R.65 Notice, now bars them from proceeding in this Court without permission.

Plaintiff for the sake of expediting this appeal and for the extraordinary remedies which Plaintiff seeks by way of Injunction pending full appeal against the lower court's order, respectfully prays this Court deny the Commission (without prejudice) the relief they seek in support of the district court's dismissal of Plaintiff's case. The Commission rebuttal case styled as an informal brief, is not procedurally or judicially "ripe" for review in this Court.

Plaintiff certainly was not looking forward to a decision from the district court until the issue of "recusal" was finalized. At some point, Plaintiff believed there would be a minimum of process on the defendants, a hearing, and judgment.

Plaintiff is now in a place where he has appealed the only issue which can be appealed, the final "Order" with prejudice, of the district court establishing "those born in the United States are natural born citizens".

The lower court's order while evading all defendants save the President who appointed the District Court Judge (John A. Gibney, Jr.) to the federal bench, however, no recusal from Judge Gibney, did not declare the other named party defendants as "mooted".

Plaintiff has every right as he did to address those defendants in the Informal Brief filed before this Court as well as the R. 8 appellate motion to expedite and issue an Injunction against the lower court's order, deeming those born in the United States are natural born citizens, further to "reverse and remand" the lower court's order to the Chief Judge of the District for re-assignment to an impartial judge not appointed to the bench by President Obama.

Mr. Hajjar as an attorney for the Commission's Informal Brief as filed in this Court March 8, 2012, informed me by phone he believed the Commission filed its informal brief in response

to this case being posted on the internet! The Commission's right to be here at the Fourth Circuit Court of Appeals on Appellant's appeal rights, is for the moment "foreclosed" in light of the "doctrine of ripeness".

Plaintiff for the foregoing reasons, respectfully prays the Court to deny without prejudice the Commission's request to affirm the lower court's order.

Alternatively, should this Court decide to accept the Commission's Informal Brief. Plaintiff would rely upon each and every statement supporting his standing as contained in the district court's records, and the Court of Appeals records.

Plaintiff's standing as a natural born citizen whose rights of eligibility to be President **are not generalized** as purported by the Commission, but are related only to a "unique" group of Americans known as natural born citizens. *Hollander v. McCain*, 566 F. Supp. 2d 63, 66 (2008).

The framers original intent was to distinguish this group of citizens as natural born citizens born to citizen parent(s), from citizens born or naturalized in the United States born to non-citizen parent(s).

The Commission's actions in permitting ineligible persons to campaign for President, is a violation of Plaintiff's First Amendment rights of association. An ineligible person has no message to share as a Presidential candidate, because he is ineligible.

Where there is an actual case and controversy under the United State Constitution, jurisdiction and standing is appropriately cognizant by the federal courts. Here, the issue of the Commission in exercising its statutory authority in advising that a naturalized citizen such as Mr. Hassan can be a candidate for President so long as he is not receiving matching funds, is

contra to Article II, Section I of the Constitution, presenting on the merits, a case and controversy that is not conjecture or legal conclusions.

The Commission seeks to disqualify Plaintiff's standing to bring them into court. Plaintiff sued the Commission for its advisory opinion as to Mr. Hassan only.

The issue of "natural born citizen" is left to defendants the Honorable Barack Obama. The Virginia State Board of Elections, Don Palmer, as Secretary of the Virginia State Board of Elections, and Neil H. MacBride, the United States Attorney for the Eastern District of Virginia.

Respectfully, the federal Election Commission does not have a dog in this fight on the issue of natural born citizen outside the scope of Mr. Hassan. There is "no" dispute that Hassan is a naturalized citizen and thus ineligible for the office of President.

The Court of Appeals pursuant to Article III, Section II, should issue an Injunction pending full appeal against the Federal Election Commission's advisory opinion holding naturalized citizens may be candidates for the office of President.

CONCLUSION

It is well settled "American citizen" is not the qualifications to be a natural born citizen of the United States, and thus eligible for the President. Citizenship as a natural born citizen must be more than birth on the soil or naturalized.

Natural born citizenship must be attached to parent(s) who are citizens themselves by birth or naturalization, "citizens born of citizens" is the Constitutional qualifications for natural born citizen, thus eligible for the President, *Minor v. Happersett*, *United States v. Wong Kim Ark* (citations omitted). American citizens who are not natural born, are persons who are born or naturalized without regards to their parent(s) citizenship status. These are the "native" born

of the land (born on the soil), not “natural” born of the land to citizen parent(s). Their citizenship is not “common” as one requires “no citizen parent(s) (“American citizens”) and the other requires “citizen parent(s)”.

REQUEST FOR ORAL ARGUMENT


Plaintiff requests oral argument on the issue of “natural born citizen”. Obviously, the district court’s sua sponte dismissal foreclosed any meaningful opportunity for the defendants to receive process and respond to the suit.

Limited oral argument would at minimum provide a fair opportunity for the defendants to defend, an opportunity they missed at the district court level.

Suggestively, this Court should respectfully issue an Writ to each defendant to familiarize themselves in the manner the Federal Election Commission did (On The Internet), and prepare for a limited oral argument. Plaintiff requests two expert witnesses; (1) Mario Apuzzo, Esq, of Jamesburg, New Jersey on the issue of “natural born citizen”, and Suzzane Marveaux of CNN News on the issue of President Obama’s foreign influence received abroad.

I, hereby certify this Response Brief complies with the F.R.A.P. and the local rules of the Fourth Circuit Court of Appeals.

Respectfully submitted



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BARACK OBAMA, et al., **CERTIFICATE OF SERVICE**

Defendants-Appellees

CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2012, I served a copy of this Response Brief
On all parties, addressed as shown below, by first class mail:

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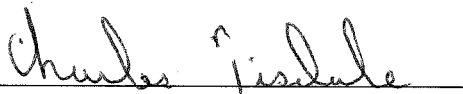
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