Case No. _____

==========

IN THE MARYLAND COURT OF APPEALS

==========

TRACY A. FAIR and MARY C. MILTENBERGER, on behalf of themselves.

Petitioners,

v.

ROBERT WALKER, Chairman of The Maryland State Board of Elections, et al.

Respondents,

==========

APPELLANT'S PETITION FOR WRIT OF CERTIORARI

On Appeal from the Maryland Court of Special Appeals

The Honorable Judge Douglas Nazarian ~ Case No. 1287 - Term 2012

==========

Counsel for Appellees/Defendants

Jeffrey Darsie

Assistant Attorneys General

Office of the Attorney General

200 St. Paul Place

Baltimore, Maryland, 21202

(410) 576-6356

Appellants on behalf of themselves

Tracy A. Fair

19 W Obrecht Road

Sykesville, MD 21784

410-552-5907

Mary C. Miltenberger

514 Valentine Ave.

Cumberland, Md. 21502

301-724-9110

Appellees/Defendants:

Robert L. Walker, Chairman of the Maryland State Board of Elections;

Linda H. Lamone, State Administrator;

Jared DeMarinis, Director of the Candidacy and Campaign Finance Division; Maryland State Board of Elections

151 West Street, Suite 200, Annapolis, MD 21401

John P. McDonough, Maryland Secretary of State,

Office of the Secretary of State

16 Francis Street, Annapolis, MD 21401

Barack Hussein Obama

1600 Pennsylvania Ave. NW, Washington, DC 20500

I. QUESTIONS PRESENTED:

1. Do the Electoral Laws and processes of Maryland allow ineligible candidates to run for, be certified and attain any state and/or government office, including that of the President of the United States? (Fatal Flaw)

2. Is the absence of determined federal eligibility standards a fatal flaw in the State elections process?

3. How is laches to be measured when determining "unreasonable/inexcusable" delay in claiming a right? What document controls the "clock," the certification of a candidate's name known to be under eligibility challenge per media sources, or a letter denying a request for action by a holder of voter franchise?

4. The Maryland State Board of Elections demands, by process, certificate of candidacy applications for access by state candidates to the State Primary ballots, but not from Presidential Candidates resulting in a huge loophole (fatal flaw) by which this category of candidate is placed on the ballot without any form of swearing to federal employment qualifications and thus no ability to hold the candidate responsible for misrepresentation of said qualifications. This condition is a massive breach of trust for the holders of voter franchises and a severe blow to credibility for both the State Board of Elections and the Secretary of State, who as oversight entities, are supposed to, by duty of law; prevent such an occurrence from happening in the first place.

5. Dismissal in Error leaves a fatal flaw in Maryland Electoral Process unaddressed and thus at continued risk for massive voter fraud on the part of ineligible candidates, rogue political parties, oblivious State Board of Elections and State Secretary of State who continue to protect a fatally flawed process which renders all votes cast in any election with a potential

ineligible candidate present, subject to criminal action (theft of vote by false pretext) or as a commission of a criminal action (misprision of felony (perjury)).

6. Judicial review stipulates a 10 day timely filing period pursuant to EL 12-202 which the plaintiff has met (See Statement of facts) (c) Timing of Lawsuit during election cycle with respect to laches) and is a counter argument to the defense of laches. How is it that the Court can ignore evidence of compliance with EL12-202 in the form of a letter written by defendant Mr. Jared DeMarinis, the head of campaign finance for the SBE, dated March 9, 2012 which acknowledges that the SBE officially dismissed the initial challenge to Mr.Obama's eligibility on this date, well after his name was certified under active eligibility challenge in January.

It is the considered opinion of the plaintiffs that the judgment on *Fair v Obama* written by Judge Thomas Stansfield of the Circuit Court of Carroll County on August 27, 2012, isn't merely in error, it is flat out wrong considering the magnitude of the issue at the heart of the matter which is Presidential eligibility and the Presidential-qualifications clause[5] and how this impacts State electoral processes and certifications.

All that stands between justice and further catastrophic failure of the Presidential electoral process in Maryland is a definition. That definition is natural-born citizen which no state elections official, Judge, political party, congressional entity, political lackey, professor, lawyer or candidate has jurisdiction to define. Keep in mind, Black's Law Dictionary has no authority to define natural-born citizen. There is an interpretation of what it might mean in this Constitutional Republic contained in that reference, but it is only an interpretation and should not be relied upon as a source any more than the fatally flawed opinion out of Indiana, Ankeny v. Governor of Indiana *Ankeny v. Governor 916 N.E.2d 678 2009 Ind.,* To do so would be to commit judicial malpractice on an order not seen since *Dred Scott* was the law of the land.

II. PARTIES TO THE PROCEEDING:

The Petitioners (Appellants below) are eligible Maryland voters, Tracy A. Fair (Pro Se) of 19 W. Obrecht Road, Sykesville, MD. 21784 and Mary C. Miltenberger (*Pro Se) of* 514 Valentine Ave., Cumberland, Md. 21502

The Respondents (Appellees below) are Robert L. Walker, Chairman of the Maryland State Board of Elections, Linda H. Lamone, State Administrator of Maryland and Jared DeMarinis, Director of the Candidacy and Campaign Finance Division of the Maryland State Board of Elections located at 151 West Street, Suite 200, Annapolis, MD 21401; John P. McDonough, Maryland Secretary of State from the Office of the Secretary of State located at 16 Francis Street, Annapolis, MD 21401 and Barry Soetoro aka Barack Hussein Obama of 1600 Pennsylvania Ave. NW, Washington, DC 20500.

II. TABLE OF AUTHORITIES

Table of US Supreme Court Cases

Table of Maryland Court Cases

Table of other State Court Cases

Statutes

Constitutional Provisions

IV. TABLE OF CONTENTS

V. PETITION FOR WRIT OF CERTIORARI

Comes now the petitioner, Tracy Fair, et al, *pro se*, to respectfully petition this Honorable Court for a writ of certiorari to review the decision of the Circuit Court of Carroll County, Maryland (hereinafter MD), Case No: 06-C-2012-060692, and the opinion of a three judge panel in the Court of Special Appeals, dismissing the case of *Fair v Walker (Obama),* Case No. 1287, Term 2012. The original (amended) request for judicial review is found in the record extract, page E6. A copy of said decision by Judge T. Stansfield of the Circuit Court of Carroll County is attached and incorporated fully herein as Appendix B on page 4. Further, the plaintiff's motion in opposition to dismissal is also incorporated herein at page E-38 of the Record Extract extract.Exhibit C is the mandate and opinion of the three judge review panel in the Court of Special Appeals, written by Judge Nazarian.

Review is warranted in this matter to resolve an issue regarding the constitutional eligibility of a candidate for federal office, the Presidency of the United States, and its place in/impact on MD Election law and process, and by defect, the plaintiff.

The issue which has been ignored by previous courts and the defendants is the exposure of a fatally flawed elections process that in its current form has no means by which ineligible/nonqualified Presidential candidates are identified, investigated and purged from the MD electoral process. This appeal centers around the Presidential-qualifications clause and the Supremacy Clause and their impact on Sec. 8-502 of the MD Election Laws and the certifications issued by the MD Secretary of State (hereinafter SOS) and the State Board of Elections (hereinafter SBE). This Honorable Court must review the decisions made by the Circuit Court and others in that said decisions incorrectly interpret federal law, state law, Supreme Court statute and a constitutional term of art based on the reliance on a out of state judicial opinion so flawed it should be considered an example of judicial malpractice, *Ankeny v Governor of Indiana (2008).*

Should the Circuit Court and the Court of Special Appeal's decision's holding and decision be left standing, the state of MD will be seen as condoning perjury and election

nullification during the conduct of an election and will have rendered the largest incidence of voter fraud in the history of the United States by rendering every vote cast in both 2008 and 2012 either criminal actions of misprision of perjury or as theft of government document by false pretext in order to secure the highest office in the land by an identified potential usurper[1]. Until the constitutional term of art, natural-born citizen, is explicitly addressed by the Supreme Court of the United States, a loophole in the state and federal electoral process will continue to undermine the very foundation of leader selection in this country and serve to disenfranchise not only Mrs. Fair and Mrs. Miltenberger from representation in a Constitutional Republic, but, in addition, every active holder of a voter franchise in the state of MD which is specific damage apart from that of the general public resulting in a catastrophic failure of the entire electoral system. Active holders of voter franchises are set apart from the general public, whereas inactive holders of voter franchises are not.

VI. STATEMENT OF THE CASE

This motion for a writ of certiorari for *Fair, et al v Walker, et al*, raises objection to the many errors in judgment on the part of the SBE, the MD SOS and the rulings and opinions by Judge Thomas F Stansfield and Judge J. Nazarian which resulted in the assessment of court costs to the plaintiffs, Mrs. Tracy Fair and Mrs. Mary Miltenberger. The case Judge Stansfield dismissed is based on grounds he has no authority to claim and used a defective source to justify the dismissal. Judge J. Nazarian followed up with an opinion which concentrated on forcing a finding of laches on the challenge which is still challenged by the plaintiff on its merits as being an incorrect application of the defense rendered for the sole purpose short circuiting a legitimate challenge to a suspected ineligible candidate thus allowing that potential usurper to nullify a Presidential election by massive voter fraud[2] initiated by candidate fraud.

The initial petition for action was filed in *Fair v Obama, Complaint for Declaratory Judgment and Injunctive Relief,* on January 26, 2012 seeking relief to remove defendant

Barack Hussein Obama, II from the MD ballot for the 2012 Presidential election citing ineligibility per Article II, Section 1 Clause 5 and natural-born citizen. The initial action was then decided upon on August 17, 2012. On March 9, 2012 Mrs. Fair sought, and obtained a letter from the representative of the State Board of Election, implicitly stating that the SBE had no intention of removing Mr. Obama's name from the ballot[3]. This was followed by another complaint (*Amended Complaint for Declaratory Judgment and Injunctive Relief*) on March 19, 2012 and an additional Plaintiff was added, as well as additional State officers as parties Defendant relative to this issue *Fair, et al v Walker, et al (April, 2014*). A Motion to Dismiss, together with supporting Memorandum was filed on April 27, 2012 by the State. An opposition of motion to dismiss was filed on May 15, 2012. Final Judgment on *Fair v Obama* was rendered by Judge Thomas Stansfield of the Circuit Court of Carroll County on August 27, 2012. It is the considered opinion of the appellants that this opinion isn't merely in error, it is flat out wrong considering the issue at the heart of the matter which is Presidential eligibility and the Presidential-qualifications clause.

This brief is exhaustive in presenting the case for a specific definition of natural-born citizen that the Courts are determined to reject without jurisdiction to do so. There is no need to go over the Supreme Court rulings again as the case has been made that Mrs. Fair, and a great many other challengers (See exhibit D of Appendix page 23) to the presence of Mr. Obama in the office of the Presidency, hold a firm and reasoned opinion that the definition of Natural-Born Citizen is a person born within the boundaries and jurisdiction of the United States to United States citizen parents and that this holding is found in several US Supreme Court cases[4]. The Court has no cause or jurisdiction to reject or affirm this interpretation any more than it has cause to reject or confirm the alternative interpretation of one of the other eight definitions currently in use for natural-born citizen, which holds that this term of art is equivalent to US citizen with no other degrees of restriction. This brief was filed in May 2013. It was sufficient to secure a private hearing with a three judge panel in September of 2013. A decision was rendered on this brief by the COSA and it was

denied on April 7, 2014 by Judges Wright, Nazarian and Arrie W. Davis (Retired, specially assigned), the opinion is rendered by Judge J. Nazarian. The opinion centers on the claim of laches and all other arguments were ignored. This argument is built on the second amended complaint served March 27, 2012, not the first filing in January of 2012 which formally alerted the SBE to the suspected presence of an ineligible Presidential candidate in the election, where all previous attempts to alert these Elections Officers were in person. Appellant's Motion for Reconsideration was filed with conjunction with request for Judicial Notice filed May 7, 2014. Motion of Request for Judicial Notice and Motion for Reconsideration denied, May 14, 2014.

VII. STATEMENT OF FACTS

a. The Challenge of Obama

From the beginning of the plaintiff's efforts to force the MD SOS an MD SBE to acknowledge that the electoral process, as it is currently constructed and as the election laws are written, is fatally flawed and blind to ineligible candidates for the Office of the Presidency, Mrs. Fair and Mrs. Miltenberger have been actively stonewalled by the very state actors who are tasked with keeping ineligible/unqualified candidates off the ballots and out of the electoral system in the first place. Mrs. Fair began her efforts on Dec. 7, 2011 and was met with overt hostility by state government officials who did not want to hear that their system was flawed or that a candidate they held political bias for was ineligible. Mrs. Fair repeatedly stated an eligibility standard that if applied to Mr. Obama and other Presidential candidates would have resulted in their disqualification per Maryland election law and removal of their names from the Primary Ballot. Mrs. Fair was told repeatedly that the MD SOS was only required to certify the name of the Presidential candidates, via media sources per EL Sec. 8-502. She was also told that by Maryland Election Law no Presidential Candidate was required to file a certificate of candidacy with the SBE.

"An individual may become a candidate for a public…office only if the individual satisfies the qualifications for that office established by law …"

It is clear that the election laws of Maryland address the condition of Presidential disqualification/ineligibility as the terms pertain to generic candidates. EL Title 5, subtitle 6 Sec. 5-601 states that

"The name of a candidate shall remain on the ballot and be submitted to the voters at a primary election if: …(ii) (the candidate) has not…become *disqualified*, and that fact is known to the applicable board by the deadline prescribed in Sec. 5-504 (b) of this title." (Emphasis mine)

The process of determining whether or not a Presidential candidate is qualified or not is unclear. However, several other laws under the Election Law Article also state that a candidate must be qualified including, 5-705, 5-1203, 6-206, 6-208, 16-401, 8-502 and 9-210 (A6-9). Additionally, under EL Sec. 5-303 (a) the candidate must contact either the SBE or the MD SOS to indicate that he/she wishes for his/her name to be placed on the Primary Ballot no later than 70 days before the Primary election, which was held on April 3, 2012. By EL Sec. 5-502, if a candidate wishes to withdraw he/she must do so within 10 days after the filing date established by EL Sec. 5-303. The last date of filing via a certificate of candidacy is Jan. 24, 2012 and the last date for a certificate of withdrawal is Feb. 2, 2012 or 60 days before the Primary election. It is never stated in the Motion to Dismiss filed by the MD SBE when the name of the Presidential candidate, Mr. Obama, was certified on. However, per the website for the Secretary of State, it is shown that Mr. Obama filed "Regular-01/10/12."[i]

Mrs. Fair began her challenge on Dec. 7, 2011, by contacting the SBE and the MD SOS regarding Obama's ineligibility. Both the MD SOS and the SBE knew that Mr. Obama was under a controversy and certified his name under EL Sec. 8-502 on Jan. 10, 2012. His eligibility controversy was well documented by this time[ii] by CNN, Huffington Post and The Washington Post, to name a few. That these sites dismissed the controversy is irrelevant, they all acknowledged that it existed. For the purposes of Sec. 8-502, had Mr. Obama been convicted of burglary or any other felony, his name would have been in the

media and thus he would have qualified for placement on the Maryland Primary Ballot under the sole discretion of the Secretary of State. Moreover, media around the world has been calling Obama Kenyan-Born for over a decade now (Exhibits A1-11 A11-21)

Further, she wanted to know the process by which a Presidential candidate had his/her name placed on the ballot and by which documents this placement was managed. Her questions were answered with a continuous reiteration of the wording of EL Sec. 8-502. Mrs. Fair began her demand for action with a lawsuit on Jan. 26, 2012, which falls within the window for a candidate to withdraw from the race for the office he/she seeks. It is irrelevant if this action was not followed through, it was filed and the date is pertinent to show due diligence. Per the Motion to Dismiss the SBE was well aware of this filing[iii]. However, since the Presidential candidates are not required to file a certificate of candidacy, they are also denied a certificate of withdrawal under EL Sec. 5-502.

The election law that both the MD SOS and SBE cite as justification for ignoring the full federal employment criteria found in the Constitution is EL Sec. 8-502 (c) (2),

"The Secretary of State shall certify the name of a presidential candidate on the ballot when the Secretary has determined, in the Secretary's sole discretion **and consistent with party rules**, that the candidate's candidacy is generally advocated or recognized in the news media throughout the United States or in Maryland…"

In the plaintiffs' request for action lawsuit, they charge that reliance on this section of Maryland election law is invalid and further requested a change in the election process by which a separate form, not a certificate of candidacy, be implemented to address the full Presidential-qualifications Clause governed by the Supremacy Clause. This demand was rejected in a formal letter on March 9, 2012 by a representative of the Maryland State Board of Elections, Mr. Jared DeMarinis. Mrs. Fair responded within the ten day window mandated by the judicial review process EL Sec. 12-202 and filed her amended demand for action on March 19, 2012. Despite being under active challenge by the plaintiffs, Mr. Obama was allowed to continue through the election process without question by the oversight entities and was allowed access to the General Election ballot on Nov. 6, 2012.

The State Government of Maryland issues additional certificates with a candidate under active challenge by the holder of a voter franchise with concern for special damage done to her vote and the election process. Mr.Obama was allowed to certify his Presidential Electors for the Electoral College Process, without question, which occurred mid-November through Dec. 17, 2012. By Dec. 11, 2012 all states must make final decisions in any controversies over the appointment of their electors at least six days before the meeting of the Electors on Dec. 17, 2012. No action was taken to make sure that an identified ineligible candidate, under active challenge by Mrs. Fair and Mrs. Miltenberger, was prevented from access to the Electoral College process. These Presidential Electors then generated a Certificate of Ascertainment and a Certificate of Vote and sent these documents and their votes to the US Congress for count. On Dec. 26, 2012 all votes from the Electoral Colleges of all the States are to be received by the President of the Senate. Again, this was allowed to happen by the state actors of Maryland, knowing full well that Mr. Obama was under active challenge by the plaintiffs. On Jan. 6, 2013, Congress and the Senate both meet in a joint session to count the Electoral College votes, presided over by the Vice-President, Joe Biden, as President of the Senate. Votes are tallied and the re-election of Mr. Obama is confirmed, all while under active challenge by the plaintiffs. On Jan. 20, 2013, Mr. Obama is sworn in by Chief Justice Roberts to the Office of the President, while under active challenge by the plaintiffs and nothing is said to prevent it[iv].

b. <u>TIMING OF THE LAWSUIT</u>

Mrs. Fair asserts subject matter jurisdiction pursuant to Maryland Code section 12-202 of the Election Law Article, which provides, in relevant part:

> "a) if no other timely and adequate remedy is provided by this article, a registered voter may seek judicial relief from any act *or omission* relating to an election, **whether or not the election has been held,** on the grounds that the act or omission: (1) is inconsistent with this article *or other law applicable* to the elections process; and "(2) may change or has changed the outcome of *the election*[v]."" (*Emphasis mine*)

In 2011, the plaintiffs began their efforts to alert the SOS and the SBE to the presence of a candidate she considered ineligible/un-entitled for placement on the Primary ballot of 2012. Mr. Obama was certified on Jan. 10, 2012[vi].

They stated a clear standard by which eligibility was to be judged and presented her documentary evidence to the Elections Officers of Maryland with jurisdiction over the electoral process. She demanded that the candidate's name be prohibited from placement on the ballot and that the election process be altered to fix a fatal flaw. The plaintiffs spent a considerable amount of time protesting the potential certification and then actual certification of Mr. Barack Obama's name, a Presidential candidate in 2012, for placement on the primary ballot. She demanded a letter detailing why the SBE would not keep the name of a candidate, she considered ineligible, off the ballot and was given a letter by Mr. Jared DeMarinis, which she considers an official dismissal of her request for action on March 9, 2012.

Per EL Sec. 12-202 (b) (1), the plaintiffs were given 10 days to answer the rejection for the request for action and on March 19, 2012, the plaintiffs filed their amended lawsuit. Mrs. Fair and Mrs. Miltenberger could have chosen the alternative route provided by EL Sec. 12-202 (b) (2) and filed immediately after the election results were certified, but that would have meant that to avoid making their vote an act of misprision of perjury, both plaintiffs would have had to voluntarily purged their votes and not voted. Clearly, a classic case of catch 22.

EL Sec. 12-202 stipulates that an omission "inconsistent … with other law" must occur to trigger the judicial review. In fact, two triggers were engaged for Sec. 12-202 (a): 1) the omission of the federal employment criteria found in Article II, Section 1, Clause 5 and 2) the omission of a certificate of candidacy which mandates that the State Board establish that the Presidential candidates were qualified for access to the Primary ballot by law (Presidential-qualifications clause and Supremacy Clause). El Sec. 8-502 was altered in 1969 and was formerly known as Article 33, Sec. 12-2(a) (1)[vii].

The SBE refused to do their job with respect to federal candidates as did the Secretary of State, by only certifying the name of the Presidential candidates by media sources, even though there was a candidate under challenge and with controversy concerning his name which also was established by media sources[viii]. (Exhibit B, A22)

The other component of EL Section 12-202 (a)(2) involves the outcome of the election had the Presidential-qualifications Clause been applied to the candidate under challenge, Mr. Obama. This section does not specify a particular election. In a state/federal election there are three elections which cover the entire election-cycle. Had the defendants done their job and addressed the fatal flaw in the electoral process by investigating the Presidential qualifications Clause as it pertained to Mr. Obama, it is unlikely that the Primary Election would have changed because the votes cast would have been legal[ix] and specific for Mr. Obama, though not legitimate[x]. It is unlikely that the General Election would have changed because again the votes for this candidate had the SOS and the SBE insisted on placing his name on the ballot under challenge would have been legal and specific, but also would have been illegitimate by the criminal actions involved. The election that would have changed was the Electoral College vote. A candidate of questionable eligibility by the Presidential qualifications Clause could not certify any Presidential elector to cast votes in that process on his behalf upon the completion of the final canvass of popular votes in the General Election. That certification would be illegitimate and would render every vote in the Electoral College illegitimate at best, or a criminal act of misprision of perjury had the loophole been exposed by that time. Thus, this election would have changed had the omission of the Presidential-qualifications not occurred.

c. <u>SBE Procedures for Candidate Filings for access to Primary Ballot</u>

The SBE relies heavily on the certification of name by the MD SOS in their own certification of candidate to the local boards. If an ineligible candidate gets past the MD SOS, he/she will be unchallenged for the rest of the election by the oversight state actors.

The SBE states the following qualifications for filing candidacy for President and Vice-President on their website: “natural-born citizen and 14 years a resident within the United States.[xi]” Again per the SBE website it is stated that the Presidential and Vice-Presidential candidates must file with the state[xii], but do not offer any document or form by which the filing is accomplished. It is clear that the SBE desires a smooth and efficient procedure for accepting candidacy filings in order to accommodate election timelines imposed by statute. It is not unexpected that the SBE would avoid any sort of vetting process if they could help it. However, by not requiring a certificate of candidacy and thus dispensing with Maryland Election law associated with qualifications which are mandated if a certificate of candidacy is filed, the SBE has opened up a loophole by which eligible and ineligible/unqualified candidates may enter the election process without challenge and under stealth conditions. The timelines for filing in a Primary and General election are both governed by EL Sec. 5-303 (a) (1) and EL Sec. 5-502. These deadlines are unalterable[xiii] for the purpose of filing, but are not applicable for the purpose of challenging a candidate’s eligibility. After the deadline for withdrawal has passed the SBE is tasked with ballot preparation and this is also governed by statute EL Sec.9-202 (a) requires that the SBE “certify the content and arrangement” of the ballots.

Unfortunately, if the certification is based on false data, the certification itself becomes a false token in fraud, and if the SBE knows that the candidate placed on the ballot is under active challenge, the placement of that potentially ineligible candidate is no longer done under official immunity, but is now conducted under the personal discretion of the SBE and is outside their jurisdiction. Under EL Sec. 9-207 (a) (1) the certification must be completed 50 days before a primary election, or on Feb. 13, 2012. Once again, the plaintiffs first demanded that action be taken to prevent the placement of Mr. Obama’s name on the Primary ballot on Dec. 7, 2011. The SBE knew there was a challenge and a controversy and still put Mr. Obama’s name without investigation as to the Presidential-qualifications Clause as demanded by the plaintiffs, under their own personal

discretion and outside of official immunity. Under EL Sec. 9-207 (c), no later than 48 hours of the certification, or Feb. 15, 2012 the tainted/defective ballots were required to be delivered to each local board without their knowledge of the controversy, omission of the Presidential-qualifications Clause or the knowledge that even the name of Mr. Obama was being challenged and had been certified by media sources, per EL Sec. 8-502, under challenge by the plaintiffs and the MD SOS had no proof that Mr. Obama's name was as claimed. The existence of a birth certificate was irrelevant, because like the use of media sources to verify a candidate's name, a birth certificate is not sanctioned by the US Supreme Court as suitable documents/sources to affirm eligibility. Neither the SBE nor the MD SOS have authority/jurisdiction to say what shall be the extent of certification with respect to the Presidential-qualifications clause or what documents/sources shall be appropriate for determination of those qualifications.

Every deadline was met per statute, and every certification was false per the challenge lodged on Dec. 7, 2011 and continued until the letter of refusal to take action was issued on March 9, 2011 thereby engaging judicial review under the authority of EL Sec. 12-202.

It is not without some appreciation for the burden that the SBE carries with respect to ballot preparation and distribution, however, this was a debacle of their own making because they refused to honor the full qualifications under Article II, Section 1 Clause 5, the Supremacy Clause and the challenge lodged by an active holder of a voter franchise with special concern for particular damage to her vote and the electoral process. The SBE and SOS are at liberty to assume full compliance with the federal employment criteria by any candidate only until a challenge to eligibility is lodged by either a voter with special concern, or a rival candidate, or both. It is in the state's interest to deny all ineligible candidates any placement on the three ballots involved in a Presidential election, Primary, General, and Electoral College.

In the case of Mr. Obama, had the SBE and SOS realized that this candidate was claiming jurisdiction to define the Constitutional term of art known as natural-born citizen without

authority to do so, and that they themselves held significant political bias to allow him a pass through to the system via an insistence that EL Sec. 8-502 held precedent over the Supremacy Clause, they would have likely changed both the General and the Electoral College elections because by that time the nation would have come to understand that no one knows what natural-born citizen is, and no one can say which sources of information or documents are needed to affirm eligibility, including, but not limited the candidate's name. The election would have been halted to determine the standard for NBC and depending on the standard determined by SCOTUS a different politician would now be occupying the White House[xiv]. As such, Maryland and its fatally flawed and blind electoral process, its biased oversight entities and all other states of the like, have cooperated informally, to place a potential usurper in office who has actively ruined the lives and careers of military officers, has placed this nation in considerable danger for economic implosion and has actively violated the separation of powers by abuse of executive order to manipulate laws or to effectively nullify laws for political gain. When a usurper is put in office the direct damage to the plaintiffs comes with every law he/she illegally signs into law, every treaty falsely negotiated and every war he/she decides to put this country at risk for in terms of treasure and the blood of citizens both military and as a consequence of terrorism.
In light of this, the inconvenience of a document review before a Primary election would seem trivial. That is if the SBE and SOS knew what standards of eligibility to apply and what documents to review. Right now, they do not, and have no jurisdiction to claim otherwise.

VIII. STATEMENT OF STANDARD OF REVIEW

The allegations of the complaint are to be taken as true, and the court is to determine whether, under any theory, the allegations are sufficient to state a cause of action in accordance with state and federal statute.

The appropriate standard of review over a Maryland Court of Special Appeals dismissal of a complaint filed in good faith with the circuit courts is *de novo*.

IX. ARGUMENT

a. EL Sec. 8-502 does not hold precedent over Article II, Section 1, Clause 5 in a Presidential Election

As gatekeepers to the Maryland election process, both the Maryland SOS and the SBE are responsible for who has access to the Primary ballot and the eligibility of Presidential candidates is absolutely their duty to determine when challenged under law as elections officials. That other states employ the same method of ballot access is irrelevant, we are only concerned with Maryland and whether or not its method of ballot access catastrophically fails to keep ineligible candidates off the ballot and out of the election due to already mentioned defects[xv].

There is no explicit exemption from federal law (Article II, Section 1, Clause 5, also known as the Presidential-qualifications Clause) found in Maryland election law. These federal employment criteria include name, age, parentage, birth location and US citizenship as well as parental citizenship[xvi]. They are law and are non-negotiable by the Supremacy Clause. Neither the MD SOS, nor the SBE have any professional discretion to ignore them.

Free v Bland, 369 US 663 (1962) provides the following guidance in this matter:

"The relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail."

In a Presidential election cycle, the employment criteria are known but are undetermined. This in no way implies "flexibility" on the part of the election officers charged with oversight and management of the election cycle in Maryland. The election law Sec. 8-502 only deals with the name of the candidate. Neither the SOS, nor the SBE can prove the name of Mr. Obama and have thus certified him by their own personal discretion per that section and thus *ultra vires*. Based on their Motion to Dismiss and subsequent actions, both the SBE and the SOS have acted to conceal the fact that a Presidential

candidate under challenge was allowed access to the Primary, General and Electoral College ballots without question and thus they are both guilty of misprision of perjury because they have withheld material facts from all Maryland holders of voter franchises.

Thus the certification of the name of the candidate to the local boards, the certification of election or final canvass of the General Election, the certification of Ascertainment and the certification of Vote, along with any other certification particular to the electoral process as it is under Maryland state law, are false and this triggers several election laws. Under EL Sec. 9-204 the uniformity of the ballot is effected as ineligible candidates are not equivalent to eligible candidates. Under EL 16-201 (a) (7) a person may not engage in conduct that results in the "abridgment of the right of any citizen of the United States to vote…" This subsection of the EL Sec. 16-201 lists race, color or disability, but implies for any reason including deception, the undermining of the vote's legitimacy, and the corruption and/or nullification of the election due to the presence of an ineligible candidate. EL Sec. 8-502, as it is written for Presidential candidates, contains no filter by which to stop ineligible candidates from having their names certified per the sole discretion of the Secretary of State who actively picks and chooses what media sources to pay attention to and which to ignore as politically inconvenient. Natural-born citizen is obviously held by both the SBE and the SOS as equivalent to US Citizen. As such, they cannot keep a naturalized citizen from having his/her name certified per media sources not sanctioned by SCOTUS and running for President without challenge by the certifying authorities.

Since the candidate's name is certified without investigation or affirming documentation, the presence of an unchallenged ineligible candidate triggers EL Sec. 16-501 (a)(b) & (c) which has a penalty for perjury with respect to an oath or affirmation and the tacit affirmation that the SOS claims under EL Sec. 8-502 is certainly false if he cannot prove it via documentation or media sources. This in turn makes the certification by the SBE to the local boards another false certification. With the discontinued use of the certificate for

candidacy only EL Sec. 16-501 (a) is circumvented by the candidate for President and Vice-President, the rest stands and is applicable to the certification of name. Under EL Sec. 16-601(a)(1)(2) and (b) are all applicable in giving a false report by "other election official" willfully and knowingly, which under the current circumstances happened in the election 2012. Under EL Sec. 16-901 (a) (2*)* there can be argued a reciprocal law and thus "a person may not falsely or fraudulently file or suppress a certification of nomination that has been fraudulently filed." In the case of an ineligible candidate the certification of nomination isn't worth the paper it's printed on.

Storer v Brown, 415 US 724, 415 US 730 (1974), asserts

"…as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process."

Candidate eligibility cannot be ignored with respect to Article II, Section 1 Clause 5. The corruption and nullification of the election of 2012 is fully revealed if the standard for natural-born citizen is held to be jus soli and jus sanguinis instead of equivalent to US Citizen. So are the fatal flaws in the process and management of the 2012 election.

As stated in *McInnish v Bennett (2014)*

"…between the November General Election and the casting of electoral votes in mid-December, a state, if it chooses, is at liberty to resolve any "controversy or contest" in regard to the selection of its electors, if done at least six days before the electors "meet and give their votes." 3 USC Sections 5 & 7. Thus, under federal law, the states are empowered to resolve challenges to the validity of electors, and by implication the candidates to whom they are pledged…"

Mr. Obama was legitimately challenged on Dec. 7, 2011 and was thereafter continually challenged by deed as well as lawsuit by the plaintiffs.

Per *Anderson v Celebrezze, 460 US 780 (1983)****[xvii]*** the balance of interests must be considered for all parties involved[xviii]. The Supreme Court has long recognized that,

"the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters."[xix]

And,

"…in the context of a Presidential election, state-imposed restrictions implicate a uniquely important national interest. For the President and the Vice-President of the United States are the only elected officials who represent all the voters in the Nation. Moreover, the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States. Thus, in a Presidential election, a State's enforcement of more stringent ballot access requirements, including filing deadlines, has an impact beyond its own borders. Similarly, the State has a less important interest in regulating Presidential elections than state-wide or local elections, because the outcome of the former will be largely determined by voters beyond the State's boundaries. This Court, striking down a state statute unduly restricting the choices made by a major party's Presidential nominating convention, observed that such conventions served 'the pervasive national interest in the selection of candidates for national office, and this national interest is greater than any interest of an individual State."[xx]

In this case the state regulation is so permissive as written, rather than more restrictive as indicated in the above SCOTUS ruling, that when combined with the loophole for the federal employment criteria, results in absolutely no restrictions at all over who may apply and run for Presidential office, including foreign diplomats and aliens[xxi] as long as their names are mentioned in the media. If you don't know what standard of eligibility to use and are only interested in verifying a candidate's name via media sources, then anyone with an article in hand can apply for inclusion on the Maryland Primary Ballot and run for President. No other restrictions, including party affiliation is important under Section 8-502, other than the name of the candidate and the SOS is effectively shut down as any sort of mitigating authority and if he has to certify the name of all applicants to the process regardless of eligibility, then so too does the SBE[xxii]. The mention of Party rules and bylaws is superfluous. It means nothing when it is understood that the Major Parties do not vet their Presidential candidates.

Finally, *Williams v Rhodes, 393 Us 23, 393 US 30-31*, in which the high Court explains the interwoven strands of "liberty" by restrictions placed on ballot access:

"in the present situation, the state laws place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms."

The holders of a voter franchise have a special concern for the effectiveness of their vote. A vote cannot be said to be cast with informed consent if the voter is being lied to by the state actors managing the electoral process, the state political party and the candidate him/herself. Deceit with respect to qualifications is particularly egregious. Then again political lying is undoubtedly protected as free speech[xxiii].

The voters assume, by the use of the word *certify*, that the candidate is fully qualified to run for the office they seek and hold it. EL Sec. 8-502 is "invalid" in that regard and does nothing to maintain the integrity of the process or provide security against ineligible candidates, as has been demonstrated in full by the presence of ineligible candidates on the ballot: Mr. Obama, Mr. Romney and Mr. Santorum[xxiv].

b. <u>Cause for Action under EL Sec. 12-202</u>

Federal Statute 16-3501 of the District of Columbia, presents the underlying legal argument[xxv] that no person may usurp a public office of the United States. *Newman v United States ex Rel. Frizzell, 238 US 537 (1915)* expanded this to include all public officers[xxvi]. *Rhodes v MacDonald, 670 F. Supp. 2d 1363, 1377 (M.D. Ga. 2009)* notes that,

"…if the President were elected to the office by knowingly and fraudulently concealing evidence of his constitutional disqualifications, then [the] mechanism [of impeachment][xxvii] exists for removing him from office…"

and is absolutely <u>wrong</u>. Impeachment does not exist for a usurper. Quite simply federal law was not interpreted or followed with respect to the United States Code and the "omission" of the Presidential-qualifications clause and the subsequent dereliction of duty to

determine the standards of natural-born citizen and the documents that are suitable for affirmation of the claims of eligibility result in the following violations at the federal level by the certifying authorities and the presidential candidate misrepresenting his eligibility.
18 USC Chapter 47 Fraud and False Statements is engaged. Section 1001 Statements or entries generally fully apply to Mr. Obama during his re-election in 2012 as a member of the executive branch of Government who "…knowingly and willfully: 1) falsifies, conceals, or covers up by any trick, scheme or device a material fact…" In this case, the fact is that he cannot claim the traditional standard of natural-born citizen status and he has no document by which to support such a claim. There is a fine and jail time, of not more than 5 years under this title. The trick in this instance is the posting of a birth certificate to the national media and on a Government website, and not to any Elections Official, in an effort to use a false token to support his claim of name, age, birth location, parentage and US citizenship without having the authority to do so. A birth certificate is not recognized by SCOTUS as a document relevant to the partial establishment of the Presidential-qualifications Clause and no one, below SCOTUS, has the jurisdiction or authority to say that it does as this is a Constitutional matter. To claim jurisdiction/authority to dictate the definition of natural-born citizen, the Presidential-qualifications Clause and/or the documentation needed to substantiate the claims to eligibility, is to commit a significant usurptation of unique judicial power from SCOTUS.
18 USC Chapter 47, US Code Section 1002 Possession of false papers to defraud the United States[xxviii] provides a federal crime committed directly by both the SOS and the certifying authorities in the SBE. The false certification of the name of a suspected ineligible candidate under active challenge of qualifications per the Presidential-qualifications Clause is accompanied by a fine and no more than five years in jail or both.
18 USC Chapter 47, US Code Section 1018 Official certificates or writings specifically addresses false certifications by a "public officer or other person authorized by any law

(Maryland Election Law) of the United States to make or give a certificate or other writing…"[xxix] The condition of laches was not created by the plaintiffs but by the refusal of the SBE and the SOS to do their jobs in a federal election and instead chose, by their personal discretions, to delay the investigation of a suspected ineligible candidate well before he was certified. The holder of a voter franchise with special damage[xxx] or threat of special damage, should not have to bring a lawsuit against the very public officers who are tasked with, under EL section 1-101, Subtitle 2 (7)-(8), *the prevention of fraud and corruption and prosecuting of any offenses which may be identified or occur*, including, but not limited to, perjury, misprision of perjury and government document/vote theft by false pretext and deception[xxxi]. EL Sec. 16-301 (a) stipulates that an election official may not willfully neglect official duties or engage in corrupt or fraudulent acts in the performance of his/her duties with respect to EL Sec. 1-101, EL Sec. 16-302 (tampering with election records by forcing the name of an ineligible candidate under challenge to be placed on the ballot), EL Sec. 16-601 (false reports) and other election and criminal law. By the wording of EL Sec. 8-502[xxxii], the Maryland SOS assumes personal responsibility for the injection of unqualified candidates into the electoral process in violation of Maryland criminal law in which he/she is now a party to abetting theft of government documents (vote/ballot) by an ineligible candidate with intent to defraud not only the voters of the State of Maryland, but the entire State of Maryland. (Sec. 1-401. Proof of Intent-Fraud, Theft and related Crimes[xxxiii]).

It is the presence of a challenge to the eligibility of the candidate, whether verbal or written, that absolutely changes the ground rules for the election.

c. Right of Challenge as derivative of both Free Speech and Right to Vote

The status quo[xxxiv] of Sec. 8-502 must not be seen to be supporting the criminal activity of perjury, and the false certification[xxxv] of a candidate under challenge may be considered a criminal activity under both federal and Maryland criminal law. The extent of the severity of false certification is not for the plaintiffs to determine. That is left to the MD Attorney General.

United States v Carolene Products Co., 304 US 144 (1938): "…***the right to participate in the political process***" is preservative of all other rights, liberties and opportunities. The opinion of Justice William Douglas, in *Beauharnais v Illinois, 342 US 250, 287 (1952*)[xxxvi] supports the concept of political challenge as a component of liberty,

"The framers of the Constitution knew human nature as well as we do. They too had lived in dangerous days; they too knew the suffocating influence of orthodoxy and standardized thought. They weighed the compulsions for restrained speech and thought against the abuses of liberty. They chose liberty."

Every holder of a voter franchise with concern for damage particular to themselves, whether it be shared by all other voters or the general public, has standing to challenge ineligible candidates during a state managed election as a right equal to the right to vote and free speech, which cannot be disenfranchised. Active holders of voter franchises are set apart from the general public, whereas inactive holders of voter franchises are not.

If political lies are considered free speech for politicians, and their supporters and proxies, then the only defense a voter has is *challenge* as a form of policing false statements made by candidates about themselves or their rivals[xxxvii]. The vote, as free speech, is an expression of the choice or preference of the holder of a voter franchise for a candidate or principle presented to them in an election. The right to vote for an eligible/legitimate candidate is a right aggressively guarded by the people, but as a reciprocal or derivative function, the right to vote becomes the right to challenge in the presence of political lies and candidate fraud. Voters have the right to deny unsuitable, paranoid, criminal and psychotic candidates access to the ballot on the grounds of common sense and self-preservation. That denial comes in the form of a vote, or a challenge. By EL Sec. 9-204 (c) in a primary election

> "the voting system shall be configured…to permit the voter to vote only for the candidates for which the voter is entitled to vote."

Voters are not entitled to vote for criminal perjurers as Presidential candidates. Not knowing if the candidate is eligible and by what standard injects instability into the system

and serves to nullify the vote along with criminalizing it. To deny a voter the right to challenge is to disenfranchise free speech and to abrogate the informed consent of others by placing a suspected ineligible candidate on a ballot with eligible candidates. The concept of uniformity, recognized in Maryland Election laws for ballots, applies to the eligibility of candidates. Defective ballots are addressed and remedied by the oversight authorities as a function of mitigating chaos and confusion. Same set of concerns with a defective candidate. An eligible candidate is not equivalent to an ineligible candidate. Does not matter how many choices are available per party for the voter to choose between. That one ineligible candidate, like that one bad apple, spoils the batch. Nor is an ineligible candidate made somehow legitimate by the electoral process simply because he/she has managed to skirt by the gatekeepers, secure placement on the ballot and then gather votes needed to win the Primary without anyone being the wiser of that candidate's misrepresentation of their qualifications (Election of 2008).

d. <u>Doctrine of Laches is not applicable to hide the ineligibility of a candidate</u>

By her efforts over the course of a year, it is plain that the charge of "fusty" or "stale" as found in *Liddy v Lamone, 398 Md. 233, 243-44 (2007*)[xxxviii] are unwarranted and spurious. The challenge to Mr. Obama's placement began long before Mr. Obama was certified as a candidate and was on-going and active. It was by the sole personal discretion of the SOS, John P. McDonough[xxxix], that the name of a challenged candidate was placed on the ballot knowing that the plaintiffs strenuously objected to his access to the Primary ballot and presented documentation to back up assertions that Mr. Obama should not be certified in name to the SBE and should be denied placement on the Primary Ballot. Her challenge was backed up by media sources that should have caused the MD SOS to initiate an investigation if for no other reason than to provide evidence that his certification of Mr. Obama's name was legitimate. Furthermore, not only did the plaintiffs challenge the name of Mr. Obama as certified by the MD SOS, she challenged his eligibility under the federal employment qualifications of Article II, Section 1, Clause 5 which are to be taken as a

whole and overrides EL Sec. 8-502 in a Presidential Election because of the Supremacy Clause.

The Maryland SOS and SBE cannot claim the defense of laches on the behalf of a candidate they knew by media sources[xl] was under challenge with respect to his name and his eligibility to run for and hold the Office of the Presidency. Their personal beliefs as to his eligibility are irrelevant. They are officers of the Maryland electoral law and must follow the law as it is written and not as they interpret it. So too must the Court. They have failed, by Sec. 8-502, to protect the electoral process and the holders of voter franchises from corruption and massive voter fraud driven by candidate fraud (perjury).

The Court has said that "[i]n its application, '[t]here is no inflexible rule as to what constitutes, or what does not constitute, laches; hence its existence must be determined by the facts and circumstances of each case.'"[xli] Accordingly, the Court will only invoke laches and bar a claim as untimely if, under the unique facts of a case, "there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party." *Id.* (quoting *Frederick Road Ltd. P'ship v. Brown & Sturm,* 360 Md. 76, 117, 756 A.2d 963, 985 (2000)).

In *Buxton v Buxton, 363 Md. 634, 770 A. 2d 152 (2001*) the elements of laches are considered,

"[t]he passage of time, alone, does not constitute laches but is simply 'one of many circumstances from which a determination of what constitutes an unreasonable and unjustifiable delay may be made.'"

There was no delay, only the inevitable fall out due to lack of cooperation by the election officials. This does not imply negligence on the part of the plaintiffs who fought with these elections officers for four months to get them to act on relevant information with respect to the candidate's ineligibility due to a controversial standard of natural-born citizen and were stonewalled. What the SBE, the MD SOS and the courts fail to understand is that there is no professional discretion with respect to candidate eligibility once a challenge to that

eligibility has been made by a rival candidate and/or an active holder of a voter franchise with special concern for damage, both real and threatened, to her vote.

Per the following found on page 7 of the MD Attorney General's "Defendant Motion to Dismiss…"

"The existence of a 'justicable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action" *SABEL v Talbor County*, 316 Md 332,339 (1988). As an aspect of justiciability, the issue of standing is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy" as to justify a judicial remedy. Kay v Austin, 494 F. Supp. 554, 560-61 (D. Mich. 1980)(quoting Warth v Seldin, 422 US 490, 498-499 (9175)."

The disenfranchisement of the plaintiffs' right to challenge, the refusal of a request for action per the Chief Elections Officer to protect the electoral process from a suspected ineligible candidate and finally the vote dilution and suppression of vote efficacy by over one million illegitimate votes cast for an ineligible candidate over those cast for an eligible candidate are such personal stakes that guarantee standing for the plaintiffs. If that isn't sufficient, then the act of voting for the plaintiffs knowing of the presence of an ineligible candidate and then actively concealing the information by not reporting the infraction becomes misprision of felony. The very act of voting becomes a criminal action when the active holder of a voter franchise remains silent in the presence of an ineligible candidate. What recourse is left to the plaintiffs actively asserting her right to challenge a candidate she suspects is ineligible by a defined standard of eligibility, which is itself a controversy, and with such documentation to raise reasonable suspicion of a degree of ineligibility significant enough to warrant investigation by the elections officers, and she cannot move the elections officers to take action[xlii]. When they, in fact, delay in formally dismissing her challenge until *she demands from them* a letter to that effect? How is this negligence on the part of the plaintiff? Is there prejudice against the party asserting the defense of laches, the SBE? No. Is there lawful bias against the challenged candidate, Mr. Obama? Only with respect to his suspected ineligibility per the traditional standard of natural-born citizen

and it is not done with malice, but rather a demand that laws mean something and be applied without bias. The challenge to an ineligible candidate always involves prejudice with respect to criminal activity.

X. REMEDY BY LAW

a. Nature of Injury

This request for a writ of certiorari has spent a significant amount of space clarifying the case for damage done to the plaintiff by the MD SBE and the MD SOS in their insistence that Sec. 8-502 is the controlling elections law regarding placement of a candidate on the Primary Ballot during a Presidential Election. There is substantial damage done to the plaintiff by an ineligible candidate present in the process.

1) Uniformity is violated. An eligible candidate is not equivalent to an ineligible candidate, any more than a Democratic candidate should be equivalent to a Republican candidate. Deception on the part of the candidate negates informed consent of the voter. It is as if the voter never voted.

2) Holder of a voter franchise has Fifth Amendment rights violated with respect to property. The property in the case is the vote itself, which is owned by the State Government but is given over for use to the voter by the mechanism of registration with the state as a franchise holder. The Fifth Amendment does not simply protect a person from self incrimination during interrogation or a trial, it also protects the voter against the taking of their vote without due process of law. When a candidate lies about his/her qualifications, and, via ignorance, money and smarm[47], convinces a voter to hand over title of his/her vote for use by the candidate in securing power, that is a violation of the voter's Fifth Amendment. Further, no voter should be coerced to trade representation for the criminal act of misprision of perjury. To vote knowingly for a suspected ineligible candidate without alerting the Chief Elections Officer is voter fraud. This violates 42 USC Section 1973 I (c) "false information in registering or voting; whoever knowingly or willfully gives false information as to his name, address or period of residency…" or one would assume

eligibility to run for the office that person seeks. Political candidates are first voters and thus are bound by the same prohibitions on lying or providing false information as voters are. Another provision of this code that applies to candidate fraud and lying is 42 USC 1973 I (d) "falsification or concealment of material facts or giving of false statements…"

3) Holder of a voter franchise has her right to challenge violated and thus both free speech and right to vote are violated (First Amendment and Fourteenth amendment) along with due process and equal treatment under the law. In order to participate in the election the voter is given a choice of committing a criminal act, subjecting his her vote to a criminal act or not voting[48] which acts as a form of voter purge indirectly driven by both the MD SBE and the candidate, because the SBE certified the candidate to the local boards while hiding material facts.

4) The presence of an ineligible candidate in the elections process drives massive voter fraud in the form of theft of vote by misrepresentation and the vote itself as an act of misprision of perjury. This renders otherwise legal votes as illegitimate via being rendered a criminal act or being subject to a criminal act. These illegitimate votes serve to dilute the legitimate votes cast for an eligible candidate. Vote dilution as a result of flooding the election with illegitimate votes renders the election illegitimate and thus results in election nullification. Both the elections of 2008 and 2012 were rendered illegitimate and thus nullified by millions of illegitimate votes for more than one ineligible candidate during those elections. Those candidates who were eligible to run for and hold the Office of the Presidency were shut out by massive voter fraud on the part of the candidate and his/her political party and membership.

5) Installation of a potential usurper in office under an undetermined standard of natural-born citizen, places the usurper outside the law and makes him/her impervious to impeachment, mandamus and quo warranto.

b. <u>Claim of Relief</u>

The plaintiff recognizes that the demand to keep the candidate's name, Mr. Obama, off the Primary Ballot is rendered moot by the conclusion of the 2012 election, however secondary considerations remain active and actionable by the court[49]. The plaintiff therefore seeks reasonable relief in the following:

1) Recognition that the March 9, 2012 letter from the MD SBE is a dismissal of the request for action by the plaintiff to bar the name of Mr. Obama until he could prove his claims of eligibility, and that under Sec. 12-202, the plaintiff had 10 days to assert her rights to judicial review.

2) If 12-202 is upheld then all court costs should be revoked.

3) Recognition that Sec. 8-502, as it is written, does nothing to secure the MD electoral process from the presence of ineligible candidates and naturalized citizens running for the office of the Presidency.

4) Affirm that it is the duty of the MD SOS, as the gatekeeper to the Primary ballot and as a duty by election law to be responsible for certifying not only the name of the Presidential candidate, but the candidate's claims to eligibility per Article II, Section 1, Clause 5 in full[50].

5) Recognition that the Presidential-qualification clause criterion of natural-born citizen is a Constitutional term of art and no state court or actor has jurisdiction to define federal employment criteria and apply them to candidates.

6) Affirm the implicit demand by the MD Election Laws that unqualified candidates are to be identified and denied access to placement of their names on all state election documents including, but not limited to, certifications[51] and ballots.

7) Recognize the derivative of the right to vote and free speech, <u>the right to challenge</u> by the plaintiff as a necessary component of state and federal checks and balances and entails the same consideration of standing as held by rival candidates to challenge ineligible candidates.

8) Once the standard for natural-born citizen is determined, recognize that this federal employment criterion must be certified along with the Presidential candidate's name and other federal employment criteria and have Sec. 8-502 amended accordingly to address and remedy the fatal flaw in the MD electoral process.

XI. CONCLUSION AND PRAYER FOR RELIEF

The act of voting is ultimately one of political trust. It cannot be abused for the political expediency of ambition of the political class. Article 1, SEC. 7 of the MD Constitution states: "The General Assembly shall pass Laws necessary for the preservation of the purity of Elections", therefore, the Constitution must be upheld and supported and the denial of the rights of voters to challenge ineligible candidates must be recognized as a usurpation of power from the holders of voter franchises who are an integral and vigilant part of the checks and balances of the electoral system. One day, someone will formulate the correct argument and compile the strongest cases, statutes and holding in the correct order and the political cancer that has seeped into our Presidential elections will be incised exposing the corruption. Like cancer, the longer it is allowed to fester, the worse it becomes and the more heroic the effort needed to excise it. The Court needs to determine which side of the arguments presented in this request are on the right side of history. Like *Dred Scott v Sandford, 60 US 393 (1857)* there is a popular mainstream position and there is a higher position to take which goes against the current political grain. The Court must take this into consideration and rule accordingly.

I pray that this Honorable Court will grant the writ of certiorari, finally recognizing the fatal flaws in the MD electoral process and move to have them addressed by the state entities tasked with assuring the integrity of the voting process. If not, the plaintiff and others will continue to file lawsuits to preserve their rights, until the fatal flaws are recognized and resolved. The current condition of MD's electoral process cannot be condoned nor tolerated in a Constitutional Republic.

In accordance with MD Rule 8-112, I hereby certify that the typeface utilized for this petition was Times New Roman, that the type-size is 13 point, and that the petition otherwise complies with the requirements of Rule 8-112.

Respectfully submitted this 29th day of May, 2014,

_____

Tracy Fair

_____

Mary Miltenberger

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2014, a copy of the Petition for Writ of Certiorari, in the above captioned case was served, by Certified Mail, postage prepaid, on the following: Assistant Attorney General, Jeffrey Darcie (Attorney for Defendants) at the Office of the Attorney General, 200 St. Paul Place, Baltimore, Maryland, 21202 and on Attorney General Eric Holder at the US Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

_____

Tracy Fair *Pro Se* Appellant
19 W. Obrecht Road
Sykesville, Maryland, 21784
410-552-5907

[1] By the traditional standard of natural-born citizen as a person who is born within the boundaries and jurisdiction of the United States to US Citizen parents, Mr. Obama, Mr. Romney and Mr. Santorum were all ineligible to run for and hold the office of the President and had any of these other candidates achieved the Office they would have been considered potential usurpers as well. Mr. Mitt Romney is included because no document can be secured to show that his father, Mr. George Romney born in Mexico, was ever recognized as a US Citizen. Unfortunately, due to the nature of the loophole, a document review would have been circumvented because no one knows what documents are suitable for affirming the candidate's claim to eligibility.

[2] The population of Maryland in 2013 was estimated to be 5.9 million individuals. In 2012, 1.5 million registered Democratic Party voters cast their votes and 9 hundred thousand Republican voters cast their votes. The count of people as members of the general public is 300 million. As can be seen, active holders of voter franchises in Maryland are distinguished from the general public. Furthermore, the Plaintiffs voted other than Democratic Party in Carroll County, Maryland and thus is included in a pool of voters numbering 54 thousand franchise holders, of that only one attempted to alert the SBE and SOS to the presence of an ineligible candidate and was thus overtly disenfranchised of her *right to challenge* as a derivative right of right of free speech and right to vote.

[3] State certificates and ballots.

[4] With the assertion that the MDSBE and MDSOS were just doing their jobs and the state electoral law sec. 8-502, was the dominating statute in a Presidential Election and over rode the Presidential-qualifications clause. As state election officers in a Presidential election they were not compelled to vet the candidates for anything other than name. This may be true in an election where the candidates are uncontested, however, when challenge is raised as a matter of the electoral process of checks and balances, the interested authorities, SBE and SOS, no longer have discretion to ignore the federal employee qualifications.

[5] The signed letter states "The Maryland SBE (SEB) complied with all laws regarding the placement of Presidential candidates on the 2008 and 2012 Presidential Primary and General Elections. The procedures followed by SBE are for both principle political parties and their Presidential candidates." This statement was made in response to the direct demand that the SBE take Mr. Obama's name off the Primary Ballot because he was an ineligible candidate with respect to the traditional standard of natural-born citizen as jus soli and jus sanguinis. In light of the defense of laches it is the date on this letter that begins the clock running, not the certification of the candidate on Jan. 10, 2012.

[6] To date the plaintiffs have assumed that the parties involved, being experts in the law, understood without having to be told, the impact a usurper has on an election. The plaintiffs no longer hold that assumption and will state explicitly, the damage done to the plaintiffs, the electoral process and the credibility of the courts and the Chief Elections Officials of Maryland.

[7] Article II, Section 1, Clause 5 of the US Constitution which amount to federal employment qualifications which cannot be altered or ignored by any state elections officer once under challenge by either a rival candidate and/or an active holder of a voter franchise suffering special damage because of the unaddressed presence of an ineligible candidate on the ballot.

[8] http://www.elections.state.md.us/elections/2012/primary_candidates/StateCandidatesList_office_001.html

[9] "Barack Obama citizenship conspiracy theories," http://en.wikipedia.org/wiki/Birther; "Bringing Birthers into the fold," Huffingtonpost.com 07/03/2011; "McCainChallenger: Birther Questions are Legit in Days of Identity Theft," Huffingtonpost.com, Same Stein, 05/25/2011; "Gibbs: Obama will never satisfy the 'Birther'," Huffingtonpost.com, Sam Stein, Posted 05/25/2011; "Obama's Birther Day," The Washington Post, Dana Milbank, Published 04/27/2011. "CNN Investigation: Obama born in US," CNN, Gary Tuchman, 04/25/2011.

[10] *Fair, et al v Walker, et al,* (Case no. 00-C-12-060692) (April 27, 2012), Defendants Motion to Dismiss, or in the Alternate, to Transfer. Page 9.

[11] Dates supplied by the Archivist of the United States, http://www.archives.gov/federal-register/electoral-college/key-dates.html

[12] *SBE v Snyder Snyder, No. 122 (*2007, decided 2013, remanded), Pg 16 footnote 8

[13] http://www.elections.state.md.us/elections/2012/primary_candidates/StateCandidatesList_office_001.html

[14] The efforts to revise Article 33 were attempts to address and remove ambiguities and unfortunately only work if all candidates are assumed uniform with respect to eligibility. When a candidate lies about his/her qualifications with respect to a Federal employment criterion, Sec. 8-502 fails catastrophically.

[15] Barry Soetoro, cited in "Trump Uncovers Truth: 'Obama not his Real Name,' The Conservative Papers, alpineski, posted 04/14/2011; "Barack Obama's New Full Name," The Washington Times Communities citing The TYGRRR Express, Eric Golub, 10/18/2011.

[16] Definition found in Bush v Gore (2000)

[17] A legitimate vote is one cast in accordance with established rules, principles, or standards and not subject to criminal taint either by willful action or as subject to criminal action such as theft and voter fraud.

[18] http://www.elections.state.md.us/candidacy/qualifications.html, "Federal Offices."

[19] http://www.elections.state.md.us/candidacy/requirements.html, "Requirments."

[20] *McGinnis v Board of Supervisors of Elections, 244 Md. 65, 68 (1966).*

[21] It is not probable that the definition of 'natural-born citizen is equivalent to US Citizen' will be selected by SCOTUS as this serves to nullify the dictate by the Founding Fathers that naturalized citizens cannot run for or hold the office of the Presidency. If you start to add degrees of restriction such as US citizen born within the borders and

jurisdiction of the US, then it is nothing to go one more step and require that both parents be US Citizens at the time of the candidate's birth per Minor v Happersett (1874),

[22] Lack of a certificate of candidacy as an accountability document.

[23] Under the standard of natural-born citizen found in Minor v Happersett (1874).

[24] "In resolving constitutional challenges to a State's election laws, a court must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiffs seeks to vindicate. It must then identify and evaluate the interests asserted by the State to justify the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of these interests, it must also consider the extent to which those interests make it necessary to burden the plaintiffs's rights. Only after weighing all these factors, is the court in a position to decide whether the challenged provision is unconstitutional," or presumably if the challenged candidate is ineligible and by what standard.

[25] In resolving constitutional challenges to a State's election laws, a court must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiffs seeks to vindicate. It must then identify and evaluate the interests asserted by the State to justify the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of these interests, it must also consider the extent to which those interests make it necessary to burden the plaintiffs's rights. Only after weighing all these factors is the court in a position to decide whether the challenged provision is unconstitutional. (pg. 460 US 786-790.)

[26] Bullock v Carter, 405 US 134, 405 US 143 (1972)

[27] Citing Cousins v Wigoda, 419 US 477, 419 US 490 (1975).

[28] Who may define natural-born citizen as they see fit, to allow their names to be placed on a Primary and General ballot.

[29] That should make Roger Calero, and Abdul Hassan very pleased. Roger Colero is a Nicaraguan born, lawful permanent resident of the US and a member of the Socialist Workers Party who ran for president in 2008. http://www.whoislog.info/profile/roger-calero.html. Abdul Hassan http://abdulhassanforpresident.com/ ran for President in 2012. Also see http://www.fec.gov/law/litigation/hassan.shtml

[30] As currently being decided before SCOTUS *Susan B. Anthony List v Driehaus, 525 Fed. App'x. 415, 416 (6th Cir. 2013)*.

[31] None of these 2012 Presidential election candidates are eligible/qualified to run in the election and should have been denied placement on the ballot. Mr. Obama does not have two US citizen parents, Mr. Romney cannot prove that his father George Romney was ever recognized as a US citizen via documentation, and Mr. Santorum's father did not become naturalized until after his son's birth.

[32] "...that no person in the United States may usurp, intrude into, or unlawfully hold or exercise, a franchise conferred by the United States or a public office of the United States, civil or military. The proceedings shall be deemed a civil action."

[33] "The Revised Statutes declare that the District of Columbia shall be the seat of government, and "all offices attached to the seat of government shall be exercised in the District of Columbia." The Code…provides that the …court shall have jurisdiction to grant quo warranto "against a person who unlawfully holds or exercises within the district a…public office, civil or military." It was probably because of this fact that national officers might be involved that the Attorney General of the United States was given power to institute such proceedings……the District Code, in proper cases, instituted by proper officers or persons, may be enforceable against *national officers* of the United States. The sections are therefore to be treated as general laws of the United States, not as mere local laws of the District. Being a law of general operation, it can be reviewed on writ of error from this Court". *American Co. v Commissioners of the District, 224 US 491; McGowan v Parish, 228 US 317.*

[34] Actually, the mechanism of Impeachment is reserved for legitimate Presidents who commit political malfeasance/malpractice against the nation, law, national security, economic stability, etc. Impeachment is not used for ineligible politicians occupying the Office of the President illegally. Quo Warranto is the mechanism by which to deal with a criminal in the Oval Office as it covers both illegitimacy and/or criminal acts. Unfortunately, until the PFEC are determined anyone seeking a writ of Quo Warranto will be found to lack standing as in the case of *Sibley v Obama (2013), No. 12-CV-1 (DDC June 6, 2012)* where the request was dismissed because "courts have repeatedly rejected, for lack of standing, attempts by individual citizens to seek a declaration that Barack Obama is constitutional ineligible to serve as President of the United States."

[35] Whoever, knowingly and with intent to defraud the United States, or any agency thereof, possesses any false, altered, forged, or counterfeited writing or document for the purpose of enabling another to obtain from the United States, or from any agency, officer or agent thereof, any sum of money, shall be fined under this title or imprisoned not more than five years, or both. The wage of $400,000 a year as President would seem to fit the criterion of "any sum of money." At the minimum both the SOS and SBE have falsely certified the name of Mr. Obama without having vetted that name by proper document review and by using an unrealizable source such as the national media.

[36] "…knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year or both."

[37] "…in situations where the complainant is seeking to redress a public wrong, he (she) has no standing in court unless he(she) has also suffered some special damage from such wrong differing in character and from that suffered by the general public." *Wienberg v Kracke, 189 Md. 275, 280 (1947)* (citing cases) This will be specifically addressed in arguments for the granting of the writ.

[38] Which are all special concerns/damage to every active voter in any election, in any state, and thus serves to separate the active voter from the general public at large.

[39] "Section 8-502 (c) (1) directs the SOS to certify media-recognized candidates between eighty and ninety days before the primary election. The decision whether to certify a candidate in this manner lies within **the sole discretion** of the Secretary. EL at sec 8-502(c) (2). Pursuant to EL section 8-502 (f), the State Board **certifies to the local boards the names of any presidential candidates certified by the Secretary** under EL sec 8-502 (c), and the names are "printed on the ballots used for the primary election,..."

[40] "In a trial for...theft by the obtaining of property by false pretenses, it is sufficient to prove that the defendant did the act charged with and intent to defraud without proving an intent by the defendant to defraud a particular person." MD Code 1-401, Criminal Law. The vote is a document of value, the use of which is allowed to the holders of voter franchise by the State legislature via the process of registration for the purpose of determining not only Presidential electors but to secure and maintain their freedoms, liberties and rights. The voter has control over the use of the vote until he/she casts the vote in the act of registering his/her choice for political candidates during a state run election. The use or "title" to use the vote is then surrendered to the party when the voter casts a vote for a candidate in a General Election. That vote then is taken by the party and candidate for use to secure power in the form of the office they seek via the process of nomination. A second vote is cast by the holder of a voter franchise to turn over for use in the Electoral College process. The votes as documents are transferred from the General Election to the Electoral College election via the articles of transfer known as the certificate of election and the certificate of ascertainment which turns over a set number of votes to each Presidential Elector for use in the third election in the Electoral College process. Once that vote is taken, a Certificate of Vote is sent transferring the "title" of the votes to the joint session of the Congress and Senate for a final confirmation of the candidate in Washington DC. If the candidate is illegitimate by a determined standard, each of these certifications is rendered illegitimate and thus considered false tokens in electoral fraud.

[41] *City of Arlington v. City of Fort Worth, 873 SW rd 765-770 (1994)* at [873 SW 2d 769], holds that "the status quo cannot be a violation of the law." Citing *DeNoie v. Board of Regents, 609 SW 2d 601, 603 (Tex. Civ. App. -Austin 1980, no writ)* Rattkin Title Co. v. Grievance Committee of State Bar of Texas, 272 SW 2d. 948, 955 (Tex. Civ App. –Fort Worth 1954, No writ.)

[42] Maryland statutes and codes, Section 8-501 "Fraud" 1) the willful making of a false statement or a false representation..." Certification of a candidate's name while that candidate is under eligibility challenge which includes the candidate's would seem to adhere to the making of a false representation to the holders of voter franchises participating in the 2012 Presidential election.

[43] This case and *New York Times C. v Sullivan, 376 US 254 (1964)*, dealt with libel, malice and defamation. It carries with it a very high standard. In the case of political lying for the purpose of securing power, the "rights" of the ineligible candidate to expect placement on any state ballot unchallenged is anathema to a functioning Constitutional

Republic. There is no right to candidacy which over rides the right of a voter to challenge a candidate who does not, by other public record, meet the qualifications for the job.

[44] *Susan B. Anthony List v Driehaus, 525 Fed. App'x. 415, 416 (6th Cir. 2013)*. Argued before the SCOTUS on April 22, 2014, decision anticipated in June 2014. A lawsuit challenging the State of Ohio's law to ban knowingly false speech in political campaigns. If lying is found to be protected speech by the SCOTUS, then every holder of a voter franchise automatically has Article III standing due to the special concern for damage done to the effectiveness of their vote and destroyed informed consent. Lying like excessive campaign money is a deal breaker in politics. It means we have been moved from a Constitutional Republic to a Plutarchy. When winning an election becomes the only goal and not effective management for long term stability of the nation and its economy, we have lost the republic.

[45] Quoting *Ross v State Bd. Of Elections*, 387 Md. 649 668 (2005)

[46] As stated on the Maryland SOS Homepage, http://www.sos.state.md.us/, Our Purpose: The Office of the SOS monitors and enforces the standards of law in a variety of areas, including …certifications…" The standard of law the MDSOS has a duty to enforce include the Presidential-qualifications Clause and the certifications resulting from that Clause, in addition to the name of the Presidential candidate.

[47] Politifact.com, http://www.politifact.com/truth-o-meter/article/2009/jul/01/obamas-birth-certificate-final-chapter-time-we-mea/ (July 1st, 2009) which details the arguments concerning the controversy and their opinion on it. Politifact.com has no authority to determine a Constitutional term of art, nor does it have authority to declare what documents support that determination with the force of law. Only SCOTUS may do this with jurisdiction. New York Times: "*A Dispute Over Obama's Birth Lives on in the Media*," Brian Stelter, July 24, 2009. "Persistent 'Birthers' Fringe Disorients Strategists," Jeff Zeleny, August 4, 2009.

[48] *Parker, 230 Md. At 130, 186 A. 2d at 197 citing Brashears v Collison, 207 Md. 339, 352, 115 A. 2d 289, 295 (1955); Demuth, 85 Md. At 317-18, 37 A. at 268-69.*

[49] The defendants recognize this in their argument for laches

[50] This should be understood as a type of moral and ethical misdirection.

[51] If a voter, due to ethical concerns, is forced to not vote, that person is still guilty of misprision of perjury if they say nothing which is a form of consent by silence or active concealment, if that voter knows the candidates are not eligible. It is by no means an overstatement to claim that the failure in the system is catastrophic.

52 The plaintiffs voted for a candidate other than Mr. Obama knowing Mr. Obama was ineligible. It is the knowledge of the condition of ineligibility and the concealment of it by remaining silent while casting a vote that renders the act of voting for an ineligible candidate an act of misprision of felony (perjury). Does not matter which candidate is voted for, if the voter knows or suspects a candidate is ineligible and votes without challenge, that vote is a crime.

53 The investigation into the eligibility of Mr. Obama as a matter of fairness is not rendered moot as a consequence of the conclusion of the 2012 election in Maryland. The

condition of eligibility/ineligibility by a determined standard of natural-born citizen is capable of "repetition yet evading review" as it is applicable to candidates other than Mr. Obama who are seeking the Office of the Presidency. Three potential candidates for President in the election of 2016 are Mr. Rick Santorum, Mr. Ted Cruz and Mr. Marco Rubio. Let it be known that should any or all of these candidates run for the office of President, they will be challenged the moment they declare their intent to seek placement of their names on the Maryland Primary Ballot. This isn't going away. The exemption for mootness by the capable of repetition, yet evading review is found in *Southern Pacific Terminal Co. v ICC*, 219 US 498 (1911). Also, *Memphis Light, Gas & Water Div v Craft*, 436 US 1, 8-9 (1978), (holding that claims for damages save cases from mootness.) Damage done to the plaintiffs are in the form of court costs assessed in error, vote dilution by illegitimate votes in an election, potential misprision of felony/fraud assessed against the plaintiffs as voter fraud and election nullification, among other considerations.

[54] Or parent, as the case may be.

[55] As a matter of process, and in the absence of challenges issued against any candidate in an election, the professional discretion of the Maryland SOS may stand in that he/she is under no obligation to challenge the eligibility claims of candidates who are obviously entitled to/qualified for placement of their names on the Primary and General ballots. It is the presence of a challenge by a rival candidate and/or the holder of a voter franchise which is the trigger to a special electoral process demanding investigation and determination of eligibility.

[56] Certificate of entitlement to ballot access generated by MDSOS, certification to local boards for access to ballots by SBE, certification of election (final canvass), certificate of ascertainment, and certificate of Vote.