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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
INFORMAL BRIEF

No. 12-1124, Charles Tisdale v. Barack Obama
3:12-cv-00036-JAG

1. **Jurisdiction (for appellants/petitioners only)**

A. Name of court or agency from which review is sought:

United States District Court for the Eastern District of Virginia-Richmond
Before The Honorable John A. Gibney, Jr.

B. Date(s) of order or orders for which review is sought:

January 23, 2012

2. **Timeliness of notice of appeal or petition for review (for prisoners only).**
Exact date on which notice of appeal or petition for review was placed in Institution's internal mailing system for mailing to court:

N/A

3. **Issues for Review**
Use the following spaces to set forth the facts and Argument In support of the issues You wish the Court of Appeals to consider. The parties may cite case law, but Citations are not required.

Issue 1. **DISTRICT COURT ABUSED ITS DESCRETION BY**

MISSTATEMENT OF THE FACTS IN PLAINTIFF'S CASE

Supporting Facts and Argument.

1. Review of the District Court's Order of Dismissal at page 2, paragraph 3, the court stating as follows;

2. **....Thus, Mr. Tisdale's contention that President Obama, Governor Romney, and Congressman Paul are not eligible to be President due to their nationalities is without merit.....**

3. Respectfully, appellant disagrees with the District Court. The complaint never sets out issues regarding "nationalities", only that the candidates were not "natural born citizens" pursuant to Article Two, Section I of the United States Constitution.

4. Appellant carefully crafted out specific language throughout the complaint (See complaint at page 4, averment 15, page 11 averment 43) alleging the **"PARENTS" of** the candidates, not the candidates themselves, but the "Parents" were not American Citizens as defined by The United States Supreme Court in two cases, (1) ***Minor v. Happersett,*** **88 U.S. 162 (1875),** and (2) ***United States v. Wong Kim Ark,*** **169 U.S. 649 (1898),** wherein Minor stated and Ark restated the following;

5. .....it was never doubted that all children born in a country of parents who were its citizens also, these were native or natural born citizens, as distinguished from aliens of foreigners....

6. Here, the Supreme Court is addressing the issue of "parents" of those born in the United States. It is here, where the parents must also be citizens of the country which their children are born in order to establish the children as "natural born citizens", and thus eligible for the presidency.

7. The guidance of English common law helped establish the law of the soil (jus soli) here in America. English law allowed aliens to become citizens and hold every office which British natives were allowed, but America as a young nation was free to do otherwise.

8. America chose the same as England, however, the framers wanted one specific office to be free of foreign influence as the young nation progressed and that was the "Office of the President", the "Commander In Chief". The framers after much debate wrote Article II, Section I. of the Constitution;

9. .... No person except a natural born citizen or a citizen of the United States at the time of adoption of the Constitution, shall be eligible to the office of president....

10. The Constitution itself distinguishes the United States into three classes of citizens;

(a) natural born citizen -Art. II, Sect I.
(b) Citizen of the United States at the time of adoption of the Constitution- Art. II Sect I
(c) naturalized citizen-XIV Amend. Sect V (Art. I-Sect.8)

11. Thus, the framer intent was to establish "natural born citizens" as persons born in the United States of citizens, and thus eligible for the presidency, their children if born in the United States would also be natural born citizens eligible for the presidency.

12. "Citizens" would be those born in the United States (jus soli) to non-citizen parents ineligible for the presidency, however, their children if born in the United States would be natural born citizens eligible for the presidency.

13. Naturalized persons were not born at all in the United States and thus ineligible for the presidency, however, were free to have children if born in the United States, their children would be natural born citizens eligible for the presidency.

14. The pride of immigrants naturalized in the United States knew they themselves could be citizens but never President of the United States, but that their children, if born in the United States, could be both citizens and president.

15. These immigrant parents knew if they took the one step to swear an oath of allegiance to the United States through citizenship, their children if born in America would have all the rights of every American, including the right to be President of the United States., a right they did not have themselves.

16. Well the framers provided them a way, and no one has a right to deny them, but the first step on the road to the presidency, is that the parents must take action to become themselves citizens of the United States. It is only through citizenship of the parents who are ***naturalized*** pursuant to the Fourteenth Amendment and thereafter the birth of a child in the United States, can one be a natural born citizen eligible for the presidency.

17. ***Minor v.Happersett***, a United States Supreme Court precedent which has not been overruled established "precedent to the meaning of natural born citizen". Respectfully, Judge Gibney failed to take "judicial notice" of ***Minor v. Happersett (citations omitted)***, although clearly mentioned in the complaint (see page 4- averment 13, page 6- averment 20, page 11-averment 42, and also clearly mentioned in the memorandum of law in support of plaintiff's motion for an injunction (see memorandum at page 5-subsection III).

18. Virginia Minor was a natural born citizen with citizen parents, thus she did not need the Fourteenth Amendment to declare her a citizen, her "citizenship" was automatic through her birth on the soil and further that her class of citizenship was "natural born" due to her "citizen parents". Minor, although a voting rights case establishing equality of the vote between men and women, did establish the distinction between the "children of aliens" and the "children of citizens, within the meaning of "natural born citizen".

19. The Court found Minor a "natural born citizen" being a person born in the United States to citizens of the United States, the Minor Court ruling at 88 U.S. 162 (1875).

20. **……it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives or natural born citizens….**

21. Therefore, Minor stands for having citizen parents and birth on the soil in order to be a "natural born citizen".

22. The Fourteenth Amendment did not re-define Minor, it mooted The Supreme Court's ***Dread Scott v. Sandford*** (1857) decision, and provided citizenship to former slaves and all persons born or naturalized in the United States. This amendment did not do away with the two distinct classes of citizens found in Article II, Section I of the United States Constitution; establishing;

23. ...."No person except a natural born citizen or a Citizen of the United States at the time of adoption of the Constitution shall be eligible to the office of President".....

24. The Fourteenth Amendment would come later but would not re-define Article II, Section I. because no where in the language of the Fourteenth Amendment addresses "natural born citizen". Section I. (Citizenship Clause) of the Fourteenth Amendment applied to those born or naturalized in the United States to become "citizens", and citizens only, not natural born citizens, and did not add any new rights or privileges

25. .....The amendment did not add to the privileges and immunities of a "citizen", *Minor v. Happersett*, 88 U.S. 162, 171....

26. Respectfully, Judge Gibney reading ***United States v. Wong Kim Ark*** as mentioned in the District Court's Order of Dismissal at page 2, Paragraph 3, should have taken judicial notice the Justices in Ark adopted ***Minor v. Happersett*** as part of their affirmation that Minor was on point with the definition of "natural born citizen" being a person born in the country with "parents who are citizens of the country".

27. "Judge Gibney and every court that has considered ***United States v. Wong Kim Ark*** in the light Ark was a citizen by birth born on the soil.... and thus eligible for the presidency as a natural born citizen, is in error!".

28. The Justices in ***Ark*** reached through the Fourteenth Amendment and gave clear confirmation that Wong Kim Ark was indeed a "citizen " of the United States being born on the soil.

29. In Ark,, the Court was faced with the specific federal question " Could Wong Kim Ark, born in the United States to Chinese Immigrants become a citizen in light of the ***Chinese Exclusion Act (s)*** as passed by Congress" which deemed Chinese immigrants ineligible for citizenship.

30. Ark was up against the Chinese Exclusion Act, not the presidency!

31. The Court in its wisdom ruled no act of Congress such as the Chinese Exclusion Act trumps the United States Constitution. Where the Fourteenth Amendment says all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. Ark was declared a citizen by birth on the soil of the

United States, "not a natural born citizen", overruling the ***Chinese Exclusion Act***, not Article II, Section I.

32. Here, President Obama with evidence through a copy of his official birth record (long form) established his father was respectfully a citizen of Kenya, Africa (British Subject), thereby President Obama unlike Wong Kim Ark is a "citizen" and only a "citizen", not a "natural born citizen". (See complaint at page 5, averment 17, clearly stating "Candidate Obama is not a natural born citizen of the United States whose father was a citizen of Kenya, Africa"). Judge Gibney once again has ignored the precedent established in both ***Minor and Ark.***

33. It is clear the complaint never alleges any nationality issues with President Obama nor President Obama's parents, but rather that President Obama's father was not a U.S. citizen and therefore could not have been the parent qualified in **Minor (citations omitted)** or **Ark (citations omitted)** to provide natural born citizenship status to President and now candidate Obama. The District Court, respectfully, misconstrued the issue of nationalities in its DISMISSAL ORDER. Plaintiff never raised any nationality issues.

34. Minor And Ark Are Binding Precedent As To The Constitutional Definition of a Natural Born Citizen.

35. The various case laws which Judge Gibney rests his dismissal order upon, follow Minor as expressed above, not in the context which the District Court Sua Sponte dismissed the pro se complaint. Those cases cited by the District Court such as ***Hollander v. McCain,*** **566 F.Supp. 2d 63, 66 (D.N.H. 2008).** Hollander resolved the issue of whether Senator John McCain running for the Presidency, was eligible as a natural born citizen (See ***Exhibit 1.***) which is a copy of the District Court Order in Hollander.

36. Here, Judge Gibney in citing ***Hollander*** at page 2, paragraph 3, as follows;

37. ....Moreover, "those born in the United States, and subject to the jurisdiction thereof,....have been considered American citizens under American law in effect since the time of the founding....and thus eligible for the presidency." *Hollander v. McCain*, 566 F. Supp. 2d 63, 66 (D.N.H. 2008).

38. Judge Gibney and every court which has applied Hollander in this light, is in error. The framers definition of "American citizens" as "citizens of the United States at the time of adoption of the Constitution" in Article II, Section I, distinguishing them from "natural born citizen" within the same language of Article II, Section I., as follows;

39. **.....No Person except a natural born Citizen, OR A CITIZEN OF THE UNITED STATES, AT THE TIME OF THE ADOPTION OF THIS CONSTITUTION, shall be eligible for the office of president.**

40. The framers grandfathered in the ability of citizens who were not natural born citizens because they did not have citizen parents upon adoption of the Constitution to be eligible for the presidency, but grandfathered eligibility only for them. Thereafter, their children if born in the United States would automatically become citizens with citizen parents and thus eligible for the presidency.

41. Hollander could only stand for if you are a person born in the United States under Section I of the Fourteenth Amendment, you are an American "citizen" by birth, however, not "natural born", and if your parents are citizens of the United States. then you are a "natural born American citizen". In Minor there was citizen parents, In Ark there were citizen parents.

42. Neither Minor or Ark presented an issue of eligibility for the presidency under Article II, Section I, however, the definition of natural born citizen was clearly defined as the children of citizens, not persons born on the soil pursuant to the Fourteenth Amendment as "American citizens"..

43. The District Court erroneously opinioned in ***Tisdale v. Obama*** see page 2, paragraph 3, the court citing Hollander stating as follows;

44.....Moreover, "those born in the United States, and subject to the jurisdiction thereof,....have been considered American citizens under American law in effect since the founding....and thus eligible for the presidency."...

45. Here, the District Court departs from the intent of the framers who assigned eligibility for the presidency to natural born citizen under Article II, Section I rather than Section I of the Fourteenth Amendment.

46. The District Court again addressing and respectfully misapplies ***United States v. Ark,* 169 U.S. 649, 702 (1898)** by inferring as follows; page 2, paragraph 3.

47. **..."It is well settled that those born in the United States are considered natural born citizens".....**

48. The Congressional record regarding the debate of the Fourteenth Amendment lends some guidance as to the intent of the XIV Amendment-Section I, quoting Congressman John A. Bingham -1866 (R-Ohio) the architect of Section 1 of the XIV Amendment;

49. .....that every human being born within the jurisdiction of the United States of parents not owing allegiance to any foreign sovereignty is, in the language of your Constitution itself, a natural born citizen;.....

50. Thus, it is where the parents only owe allegiance to the United States through citizenship at birth or through naturalization, and owing to no other foreign sovereignty, can such persons have children born in the United States as natural born citizens.

51. Congress under Section V of the XIV Amendment is authorized by appropriate legislation to enforce the provisions of naturalization, as follows;

52. .....Article 1, Section 8 enumerated the powers Congress has, "To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;".....

53. Congress then acted to make the freed slaves citizens through naturalization and to apply the Citizenship Clause of Section I to the offspring of these new citizens. , Congress never intended nor took any action to make every person born within the jurisdiction of the United States under the Fourteenth Amendment, a natural born citizen.

54. Congress later did take action as authorized under Art.I, Sect. 8 of the Fourteenth Amendment to redress issues of who would continue be eligible to be a "citizen" and the various changes Congress has made throughout the years under the Naturalization Act, but none of those actions were at all relevant to "natural born citizens" under Article II, Section I.

55. However, respectfully, Judge Gibney's reliance in part, upon a strict reading of ***Hollander*** that once born in the United States...."Thus one is eligible for the Presidency"..., is in error on the merits and the law of the case. Judge Laplante in ***Hollander*** cites ***United States v. Wong Kim Ark*** in support of the above, followed by Judge Gibney adopting the words of Judge Laplante "Those born in the United States and subject to the jurisdiction thereof,... Thus are eligible for the Presidency",

56. As previously noted Wong Kim Ark was not deemed a "natural born citizen" although born in the United States, he was considered only a "citizen" in the eyes of the Supreme Court. Given the Supreme Court *Slaughterhouse Cases* which said;

57. .....it is only necessary that a {man} should be born or naturalized in the United States to be a citizen of the Union....

58. Thus Wong Kim Ark being born in the United States was deemed a "citizen" of the United States, however, not a natural born citizen.

59. The Ark Court did not need to reach Article II, Section I because Wong Kim Ark was not seeking to qualify as a natural born citizen eligible for the presidency, only his rights as a citizen born in America which are the same rights enjoyed by a naturalized citizen, except one, and that is the office of the presidency.

60. Thus the eligibility for the office of President as proffered by Judge Laplante in Hollander and Judge Gibney in Tisdale, on the basis of jus soli, is misplaced.

61. The Hollander court may have said it, but only could have said so in the context of the federal question pleaded by Plaintiff Hollander,

62. ...Hollander Claims that McCain.., Is not a "Natural Born Citizen"....

63. The answer was yes because he (McCain) although not born on soil of the United States or naturalized in the United States was born subject to the jurisdiction of the United States within the Panama Canal Zone under American law, thereby satisfying Section I of the Citizenship Clause of the Fourteenth Amendment, and having at birth U.S. citizen "parents" establishing him as a "natural born citizen" under Article II, Section I of the United States Constitution pursuant to ***Minor and Ark.***

64. ....Those Born "In The United States, And Subject To The Jurisdiction Thereof, " U.S. Const., Amend. XIV, Have Been Considered American Citizens Under American Law In Effect Since The Time Of The Founding, *United States v. Wong Kim Ark*, 169 U.S. 649, 674-75 (1898).....

65. Senator McCain's father being an American citizen and an officer in the United States Navy serving abroad upon Senator McCain's birth, further, Senator McCain's mother being an American citizen upon Senator McCain's birth abroad is the constitutional basis for McCain's eligibility for the Presidency, McCain had both the jurisdiction of the United States of the Fourteenth Amendment, and citizen parents.

66. Thus Senator McCain did not qualify for the presidency by birth alone under Section I of the XIV Amendment regardless of the Hollander court's ruling, but met the exceptions of the children of military, diplomats, or those employed in the service of the United States abroad. Accompanied by citizen parents.

67. If one is born under the jurisdiction of the United States, citizenship is not automatic as one born in the United States, the jurisdiction means subject to American law as adopted by Congress, but there is no doubt as to one born on the soil, their citizenship under Section I of the XIV Amendment, is automatic, they are just not "natural born citizens" without citizen parents.

68. It is unimpeachable that every United States Supreme Court decision effecting citizenship at ***Elk v. Wilkins, United States v. Wong Kim Ark, Afroyim v. Rusk, Vance v. Terrazas, Plyer v. Doe, Minor v. Happersett (citations omitted)*** gave meaning that the framers who wrote Article II, Section I. knew exactly what they were doing, their distinctive use of "natural born citizen" and "citizen" goes to the clear constitutional meaning within the Civil Rights Act of 1866, adopting the following;

69. **…..that every human being born within the jurisdiction of the United States of "parents" not owing allegiance to any foreign sovereignty is, in the language of the Constitution itself, a "natural born citizen" (See Congressional Globe, 39th Edition, 1st Session.).**

70. The same would apply to other candidates and potential candidates who have announced an interest for the presidency., although these official and unofficial candidates are American citizens pursuant to the 14th Amendment, born in the United States and subject to the jurisdiction thereof, however, **their parents are not United States citizens in allegiance to the United States** permitting natural born citizen status to their children to be eligible for the presidency under Article Two, Section I of the United States Constitution.

71. The framers never intended for aliens and foreigners owing allegiance to a foreign sovereignty to have children in America eligible for the presidency, that right is reserved for naturalized citizens. The Fourteenth Amendment makes clear aliens and foreigners are free to have children in this country and that those children be considered "American citizens", however, these children are not to be considered "natural born citizens" eligible for the exclusive Constitutional office of president.

72. President Obama's father although a foreign student in the United States, having children in the United States with a United States citizen, never chose to acquire American citizenship which would have provided his children born in the United States the status of "natural born citizens".

73. Respectfully, while President Obama'a mother was a United States citizen when President Obama was born in the United States, the birth on the soil is sufficient to deem President Obama an "American citizen", however he lacks citizen parents in order to qualify as a "natural born citizen" eligible for the presidency.

74. Presidential candidate Rick Santorum is in the very shoes of President Obama. Mr. Santorum father was not a United States citizen at the time of Mr. Santorum's birth in the United States. Again, the birth on the soil provides Mr. Santorum with "American citizenship", however, he (Santorum) does not have citizen parents to qualify as a "natural born citizen"

75. Presidential candidate Mitt Romney is also in the very shoes of President Obama and candidate Rick Santorum. Mr. Romney's father was born in Mexico to American parents from Utah.

76. Congress at the time had enacted laws requiring at least one parent of a child born abroad to United States citizen parents, to have lived at least one year in the United States prior to the birth of that child abroad in order for that child to be an American citizen, not a natural born citizen.. (This does not apply to children of those employed in the service of the United States abroad).

77. There is no record Mitt Romney's father's parents complied with the law, thus the father was not born within the jurisdiction of the United States under American law, unless one or both parents from Utah had lived in the United States at least one year before the birth of George Romney abroad in Mexico to grant him citizenship.

78. George Romney if not a citizen within the jurisdiction of the United States was free to naturalize and have children born in the United States (Mitt Romney) who would be either "American citizens", or "natural born citizens", depending upon if he naturalized prior to the birth of his son (Mitt Romney). Thus, Mitt Romney unless he is able to rebut the above facts, is not a "natural born citizen" eligible for the presidency.

79. The office of President is reserved under the expressed meaning of Article II., Section One, Clause Five of the United States Constitution for "natural born citizen" to those born in America to citizen parents of every denomination and nationality (Whites, Blacks, Italian, Irish, Christians, Catholics, Muslims, Jews, Asians, Africans, Chinese, Indian, Hispanics, Arabs, etc).

80. The burden is not on the candidates to comply with Article II, Section I, which Hollander tried to enforce against McCain and The Republican National Committee, and was subject to dismissal for lack of standing without reaching the merits of his argument that McCain was not a natural born citizen.

81. In ***Tisdale v. Obama***, it is properly the Virginia State Board of Elections, and its officials named as parties which must not certify ineligible persons to the ballot for the Office of President or be enjoined from doing so, as the Tisdale suits seeks to do.

82. Under ***Tisdale v. Obama,*** there is sought no review under voting rights but only under the constitutional violation of Article II, Section I, which is to the federal court's jurisdiction under Article III of the United States Constitution. This is the actual case and controversy required as an injury-in-fact under Article III.

83. When an ineligible person assumes the office of President as is the case and controversy with President Obama, thus unlawfully overcoming the clear constitutional prohibition to the voter's will which elected him, that is an actual case and controversy which the federal courts, not Congress, must address.

84. Article II, Section I of the Constitution is a direct and mandamus prohibition to the Virginia State Board of Elections and its officials not to certify ineligible candidates for the office of president.

85. It is the "allegiance" which the framers were concerned, they wanted to remove to the fullest extent any possible foreign influence in the office of president. If one who is president with alien parents, would the parents who raise this child cause their child to choose between his or hers required absolute loyalty to the United States or to the loyalty of the alien nation.

86. Thus the term "natural born citizen" was distinctly applied to Article II, Section One, Clause Five of the United States Constitution apart from "citizen of the United States" contained also in Article II, Section I.

CONCLUSION

87. In defining "American citizen" in the light most favorable to Section I of the Fourteenth Amendment as birth on the soil and subject to the jurisdiction thereof, does not confer "natural born citizen" status upon those born on the soil.

88. This class of citizen as set out in Article II, Section I under "Citizen of the United States at the time of adoption of the Constitution was grandfathered in to include persons who would not qualify as natural born citizens having citizen parents, these common law citizens even if born on the soil, had no Section I.- Fourteenth Amendment protection because the Fourteenth Amendment had not yet been in effect upon adoption of the Constitution.

89. There was only the Bill of Rights (Amendments One Through Ten), Therefore, these citizens of the United States would be excused from having citizen parents to be eligible for the presidency, it was for them, and them only, their children did not need it because the children if born in the United States would in any event be natural born citizens under Article II, Section I.

90. These citizens could not obviously go through the process now established by the framers to qualify as natural born citizens, they could not be born again with citizen parents, there was no time machines.

Issue II. DISTRICT COURT ERRED IN DISMISSING PLAINTIFF'S CASE FOR FAILURE TO STATE A CLAIM

91. Where the plaintiff is pro se , his claim may "be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief" ***Estelle v. Gamble*, 429 U.S. 97, 106 (1976).** quoting ***Haines v. Kerner*, 404 U.S. 519-521 (1972).** The District Court in its Order of Dismissal at page 1, paragraph 2, states as follows;

92. **.....The Court rules that the complaint does not state a claim upon which relief may be granted. The eligibility requirements to be President of the United States are such that the individual must be a "natural born citizen" of the United States and at least thirty-five years of age. U.S. Const. Art II, Sect I. It is well settled that those born in the United States are considered natural born citizens. See e.g.** ***United States v. Ark*, 169 U.S. 649, 702 (1898)....**

93. For the reasons articulated in Issue I, and II and hereby incorporated, respectfully, the District Court is in error. There is no basis in law or fact to support the court's finding "It is well settled that those born in the United States are considered natural born citizens" under ***Wong Kim Ark.***

94. Further, a complaint must be dismissed if it does not allege "enough facts to state a claim to relief that is plausible on its face" ***Ruttenburg v. Jones,*** **283 Fed Appx. 121, 128 (4th Cir. 2008) (quoting *Twombly*, 550 U.S. at 570, 127 S. Ct. at 1974).**

95. Here, Judge Gibney in his sua sponte order to dismiss clearly understood the factual allegations which were sufficient to state a claim for relief, the District Court's Order at page 2, paragraph 2, which states;

96. **…."Mr. Tisdale seeks an injunction enjoining the Virginia State Board of Elections from certifying any candidate who lacks standing as a "natural born citizen" from appearing on the ballot for the upcoming presidential general election on November 6, 2012. Specifically, Mr. Tisdale cites Barack Obama, Mitt Romney, and Ron Paul as ineligible to appear on the ballot, on the grounds that each had at least one parent who was not a citizen of the United States"…..**

97. Thus, the court knew exactly the claim for relief which was sought in the complaint, the court knew or should have known that Plaintiff has plead a cause of action upon which relief may be granted under ***42 U.S.C. 1983.*** **(See Complaint, page 10, Count I, and Plaintiff's Memorandum of Law, page 3, averment 9-10)**

98. Further, the court knew Plaintiff had shown that a person acting "under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or the District of Columbia" has caused a "deprivation of any rights, privileges, or immunities secured by the Constitution and laws",, that person being Defendant Don Palmer as the Secretary of the Virginia State Board of Elections.

99. The Supreme Court has identified two elements that Plaintiff must allege: (1) a deprivation of a federal right and (2) that the person who deprived the Plaintiff of that right acted under color of state law. ***West v. Atkins,*** **487 U.S. 42, 48 (1988); *Hagg Bros v. Brooks* , 436 U.S. 149, 155 (1978).** Plaintiff has clearly shown both elements in alleging a deprivation of a federal right under the Constitution wherein ineligible persons seeking and are certified for the Office of President (Violation of Article II, Section I,), and that The Secretary of the Virginia State Board of Elections has deprived that right under color of Virginia Election Laws.

CONCLUSION

100. Unlike in ***Hollander v. McCain*** where the dismissal was based upon failure to state a claim for relief because Hollander lacked standing, failing to sue state actors and

could not maintain any constitutional claim against Senator John McCain and the Republican National Committee, however, here in ***Tisdale v. Obama*** it is just the opposite.

101. The Virginia State Board of Elections and its Secretary Don Palmer are sued, they are state actors and Plaintiff has a federal right under federal law pursuant to **42 U.S.C. 1983,**. as an aggrieved person to maintain a constitutional claim against them. Not as a voting issue claim, but a claim under the XIV Amendment, as follows;

102. ....No State Shall Make or Enforce Any Law Which Shall Abridge The Privilege Or Immunities of Citizens Of the United States....

103. This was a prohibition to the states from passing any laws denying the protection of citizenship from any citizen. The protection which the Constitution embodies under Article II, Section I to the Plaintiff, is that, only a natural born citizen such as Plaintiff with citizen parents, shall be eligible for the presidency,. " not a "citizen" such as President Obama., Governor Romney, Rick Santorum, etc., with non-citizen parents.

104. Thus, the President would have the required absolute loyalty to the Constitution, which the framers intended, and free of foreign influence in the Office of President.

105. The influence which the framers considered was not that aliens or foreigners would occupy the oval office through their American citizen children, but that they had not taken an oath of allegiance to the United States through citizenship and owing to no other sovereignty to bear natural born citizens eligible for the presidency.

106. Virginia Law through its State Board of Elections cannot certify any person who is not qualified for the office of President of the United States under Article II, Section I.

107. The will of the voter cannot alter the United States Constitution where it clearly establishes the qualifications of President of the United States "shall" be a "natural born citizen", at least thirty-five years of age, and a resident of the United States for at least fourteen years.

108. Hollander's claim that to have an ineligible candidate on the ballot would violate his rights as a voter, and properly lost standing for failure to state a claim for relief. Plaintiff here in the instant case at bar, claims the Virginia State Board of Elections and its officials may not stand in open violation of the United States Constitution Article II, Section I

109. The voter has no statutory right or inherent constitutional right to elect an ineligible person to the Office of President. If change is to come to the Constitution, it must be through the constitutional amendment process, not through the ballot!.

110. Virginia and every State in the Union must follow the Federal Constitution, and any Virginia resident who is a natural born United States citizen has standing to maintain a suit in equity against the Commonwealth of Virginia.

111. To enjoin the Commonwealth from denying Plaintiff his constitutional right that his eligibility for president, whenever he chooses to exercise, will not be abridged by the Virginia State Board of elections certifying ineligible candidates to the office of president at any time, in violation of Article II, Section I.

112. The Virginia State Board of Elections only has authority over candidates in the certification process, therefore, President Obama was independently sued from the Board of Elections in both his individual and official capacities as President.

113. The Board cannot enforce a violation of Article II, Section I against a sitting president as opposed to candidate Obama who unlawfully again seeks the office of President. The Constitution assigns the right to remedy such violations of this nature to Article III federal courts through **42 U.S.C. 1983.**

114. The Board failed in 2008 to properly certify only eligible persons for the office of president and thus we have this constitutional crisis where President Obama is sitting unqualified in the oval office without the allegiance from his parents which the framers intended such office holder to possess, The absence of United States citizen parents to one who holds the office of President is a violation of the Constitution, not election law.

115. This is the actual case and controversy which sets forth a set of facts which Plaintiff Tisdale is entitled under Article III of the United States Constitution, which the federal courts have jurisdiction to decide under the Constitution. This case is not legal conclusions, conjecture, or hyperthectical because there is actually a person ineligible for the office of President actually serving in the office of president.

116. As a United States citizen born on the soil of the United States to citizen parents, I acquired certain birthrights different from those who are also born on the soil or naturalized, but without citizen parents. We all would be entitled to the same right, privileges, immunities as equals except one, and that is the office President. .

INJURY-IN-FACT ARTICLE III CLAIM

117. Appellant's membership in a class of natural born citizens born on the soil with citizen parents and thus eligible for the office of president, should I choose to exercise, is an injury-in-fact Article III claim different from those in a membership class who are citizens born on the soil without citizen parents, thus, ineligible for the presidency, but are unlawfully allowed by the Virginia State Board of Elections and its officials to be certified as eligible.

118. At the moment those ineligible are President Obama, Rick Santorum, and Mitt Romney, who certainly do not possess "natural born citizen" status. Each had at least one parent who was not a United States citizen when the candidates were born in the United States.

119. Unannounced candidates such as Governor Chris Christy, Governor Bobby Jendal, Senator Marc Rubio, and others equally fall into the same shoes as President Obama, that is, they, while born in the United States as American "citizens", do not have citizen parents to qualify as "natural born" "citizens" eligible for the Presidency or Vice-President.

120. This case presents an actual case and controversy wherein The Virginia State Board of Elections should be enjoined from certifying persons on the November 6, 2012 ballot who are not "natural born citizens" of the United States under Article II, Section I. as that term is defined by United States Supreme Court precedent in ***Minor v. Happersett and, United States v. Ark.***

Issue III- DISTRICT COURT'S FAILURE TO ADDRESS DEFENDANT(S)

VIRGINIA STATE BOARD OF ELECTIONS, UNITED STATES ATTORNEY

NEIL H. MACBRIDE, AND THE FEDERAL ELECTION COMMISSION

121. The district court in its order failed to address Plaintiff's merits to other indispensable parties or declared such parties 'mooted".

122. These parties represent the injury-in-fact Article III claims purported by the Plaintiff because of the following;

123. The Virginia State Board of Elections and its officials are sued because of certifying ineligible candidates for the Office of President in violation of Article II, Section I (See complaint at pages 5-9).

124. Neil H MacBride as the United States Attorney EDVA is sued for "Intentional" discrimination against Plaintiff by failing to investigate the Virginia State Board of Elections and its officials in certifying ineligible candidates for the office of president (See complaint at page 9)

125. The Federal Election Commission is sued because of its advisory ruling in ***Abdul Hassan (Guyana Born) decided September 2011*** which allows a naturalized citizen to be an eligible candidate for the office of president (See complaint at pages 9-10).

126. Thus the district court omitting these defendants in its order of dismissal or failing to declare them "mooted" provided unfettered judicial cover to these defendants. Respectfully, Judge Gibney has a pre-disposed bias towards Plaintiff's claims in that

President Obama appointed Judge Gibney to the federal bench ***(See Exhibit 4)***, (A fact only known to Plaintiff after the decision, had plaintiff known before he filed, a recusal motion would have been filed before the district court.

127. Plaintiff would have certainly requested recusal as to Judge Gibney as he will with this Court in that President Obama has also appointed five (5) Circuit judges in the Fourth Circuit **(See Exhibit 2).**. Plaintiff knows to request an impartial panel.

128. Judge Gibney on his own should have recused himself from this case. Clearly, where President Obama is a named party defendant in a case before a judge appointed by President Obama, even the appearance of conflict is sufficient for recusal.

129. Prior to Plaintiff filing this matter in the district court, Plaintiff just days before had filed an amicus in the matter of ***Perry v. Judd,*** **USDC/EDVA Case No. 3:11 cv 86** which also Judge Gibney decided, on other grounds, with this Court upholding the decision.

130. In ***Perry v. Judd,*** Plaintiff claimed that the Virginia State Board of Elections where in violation of Article II, Section I. by allowing ineligible candidates such as Rick Santorum to seek ballot access in the March 6, 2012 republican primary and allowing others such as candidate Obama to be certified as eligible for the presidency.

131. Those ineligible candidates such as Rick Santorum had filed as intervenors . There Judge Gibney ruled from the bench that Plaintiff had claimed the candidates were not "American citizens" and dismissed Plaintiff's amicus claims.

132. A review of Plaintiff's amicus shows just the opposite. Plaintiff claims then as well as here went to the issue that the candidates although "American citizens" did not have citizen parents ***(See Exhibit 3)***, which is a copy of the amicus filing with the court in ***Perry v. Judd.***.

133. Plaintiff never averred any statements or allegations that the candidates were not "American citizens" as ruled by the district court. Plaintiff believes Judge Gibney carried the misstatement over into ***Tisdale v. Obama.***

134. Plaintiff realizes President Obama recently appointed Judge Gibney to the bench just over a year ago, uneventfully, Judge Gibney, is not impartial to this matter before him or those who assist him are misguiding the court.

135. Plaintiff, pro se, has had matters before just about every judge in the Richmond Eastern District, Judge Williams, Judge Payne, and Judge Dohnal. At no time did Plaintiff ever consider an appeal as each of those judges was extraordinarily fair. Plaintiff didn't get all he had prayed for, but it was at a minimum "fair", there were at least hearings.

136. Here, Judge Gibney's record dismissal time (received on January 15, 2012, filed on January 23, 2012, dismissed on January 23, 2012) in throwing Plaintiff out the door raises concerns whether Judge Gibney is committed to giving Plaintiff a fair opportunity in this matter.

137. Judge Gibney is pre-disposed he is not going to allow Plaintiff any meaningful fair opportunity to challenge the President which appointed him to the bench. There was no hearings, no service of the complaint to defendants, only a sua sponte immediate dismissal under unfounded "failure to state a claim for relief" assertions by the district court.

Issue IV- PLAINTIFF TISDALE HAS STANDING AS A NATURAL BORN CITIZEN ELIGIBLE FOR THE PRESIDENCYOF THE UNITED STATES IN THIS MATTER

138. The district court never addressed the issue of Plaintiff's standing in its Order of Dismissal although Plaintiff had in fact presented the issue to the district court (See Plaintiff's memorandum of law at page 3, averments 9-10)

139. Plaintiff's standing on the merits under Article III as an aggrieved person with individual membership in a class of citizens (natural born) which is unavailable to the population at large. Citizens who are born in the United States to alien parent(s) or those who are naturalized in the United States do not possess the eligibility requirements for the office of the President under Article II, Section I.

140. To allow the Virginia State Board of Elections and its officials the authority to do what the United States Constitution says it cannot do, in certifying ineligible persons to the office of president, is an actual case and controversy which triggers the application of a civil suit in equity under 42 U.S.C. 1983 providing standing to Plaintiff.

141. Further, Plaintiff's First Amendment rights of free speech and association is abridged by President Obama's and candidate(s) Mitt Romney, Rick Santorum ineligibility for the office of president which Obama now holds and the ineligible candidates now seek to hold, because that office is constitutionally reserved for members of the society such as Plaintiff as a natural born citizen and to no other.

142. In order for the President as well as candidates for the office of president to communicate and associate through the right of governance under the First Amendment, the President and such candidates must at first blush be eligible to the office of president they hold or seek..

143. The court in Hollander addressed the issue of standing. The court properly ruled that Hollander's claim in allowing ineligible persons to seek the presidency impacts his

right to vote, was without merit!, citing ***Schlesinger v. Reservists Committee to Stop the War,*** **418 U.S. 208 (1974).**

144. In ***Hollander*** the district court citing ***Schlesinger*** held;

145. **.....that standing to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share", Id at 229.....**

146. In ***Hollander,*** the court essentially applied that the right to vote under the Nineteenth Amendment is shared by all citizens equally, men, women, natural born, citizens by birth, or naturalized.

147. However, In ***Tisdale v. Obama,***, the right to be "eligible" for the presidency is not shared by all citizens in general, only those like Plaintiff Tisdale who are natural born citizens can be eligible for this constitutional right.

148. Natural born citizens of the United States, be they whatever nationality, have a birth right granted by the framers of the Constitution apart and different from citizens born in the United States, to ensure the peace and tranquility of this nation is served by those qualified and eligible to be President and Commander In Chief, ill-respective of his or hers nationality!

149. That such person is born in the United States and subject to the jurisdiction thereof, of parents, whatever their nationality, who are themselves citizens of the United States., or if naturalized in the United States, that such persons oath of allegiance through citizenship renders their children born in the United States as natural born citizens eligible for the office of the presidency.

150. If born in the United States, the issue of parents (aliens or citizens) determines whether you are a citizen **eligible** for the presidency, or a natural born citizen **ineligible** for the presidency, if naturalized in the United States, one can only become a citizen ineligible for the presidency, however, one would be entitled to the opportunity of having children in the United States who would be either "citizens" ineligible for the presidency or "natural born citizens" eligible for the presidency, depending upon the citizen status of your mate.

151. As a naturalized citizen (not natural born, but naturalized, meaning alien or foreign swearing an oath of citizenship to the United States). If one bears a child with a non-citizen, then the child is a citizen ineligible for the presidency, if you bear a child with a citizen, then the child is a natural born citizen eligible for the presidency.

152. The harm of permitting ineligible persons either in the very office of president or seeking the office of president adversely affects the interests of natural born citizens such as Plaintiff Tisdale, thus there is standing under **42 U.S.C. 1983.** to maintain this action.

4. **RELIEF REQUESTED**

A. To Declare that American citizens born in the United States are distinguished from Natural Born Citizens pursuant to Article II, Section I of the United States Constitution, holding, only Natural Born Citizens meet the qualifications of President of the United States. Further, Natural Born Citizens are born to American citizen parents, and Citizens of the United States are born to alien parent(s).

B. Further, that the Virginia State Board of Elections and Don Palmer as Secretary of the Board, and to his successors, be and forever, enjoined, from certifying any person not a natural born citizen with citizen parents, as eligible for the Office of President of the United States subject to any appropriate amendments to the Constitution.

C. Respectfully, Plaintiff prays the Court of Appeals to reverse the lower court's Order of Dismissal and remand this matter to the Chief Judge of the Eastern District of Virginia for re-assignment before an impartial judge of the U.S. District Court in Richmond, as the Honorable John A. Gibney, Jr. was appointed to the bench by President Obama and poses a heightened conflict of interest.

D. That The Fourth Circuit Court of Appeals decide this matter on an expedited basis as the November 6, 2012 general elections draws near. Respectfully, Judge Gibney is in error on the law, one cannot say that "American citizens" are eligible for the presidency, and the Constitution says, "only" natural born citizens are eligible for the presidency.

E. That This appeal before the Fourth Circuit be adjudicated on an expedited basis before an impartial panel not made up of any number of five (5) Judges appointed to the bench by the Honorable Barack Obama during his tenure as President.

F. Such further relief as The Court of Appeals deems just and equitable

G. All costs against each defendant.

H. The District Court below should be admonished for usurping the case in the unprofessional manner it imposed. The federal courts are to be independent judiciaries, free of political interference. Here, there is a District Judge, and also a United States Attorney, both appointed by a President who is a co-party defendant with the United States Attorney. Judge Gibney at the least should have recused himself, as was initially told appellant by the clerk's office upon filing the complaint at the clerk's office.

5. Prior appeals

None

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Print Your Name Here

CERTIFICATE OF SERVICE

I, certify that on February 22, 2012 I served a copy of this Informal Brief on all parties addressed as shown below;

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*The District Court dismissed the verified complaint for an injunction sua sponte, without any service of the complaint or moving papers upon any of the defendants or counsel. The defendants were non-responsive because the District Court had not released the moving papers for service, opting instead to dismiss sua sponte, with no service of the court's order of dismissal served upon any defendant. Each party defendant and their counsel was served with a R. 65 F.R.C.P. "Notice" by Appellant prior to the complaint filed before the District Court. The R.65 Notice is part of the record below. Defendants never entered their appearance in the District Court.

Therefore, respectfully should this Honorable Court grant review, the complaint and moving papers should be re-filed and service made upon each defendant or counsel by the U.S. Marshals Service, as Plaintiff was granted In Forma Pauperis Status by the District Court.

Respectfully yours

Charles Tisdale

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DATED: February 22, 2012