Docket No.: CV-24-1509

To Be Argued By:
Montgomery Blair Sibley
Time Requested: 15 Minutes

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

Montgomery Blair Sibley,

Appellant,

v.

Kristen Zebrowski Stavisky solely in her official capacity as Co-Executive Director of the New York Board of Elections and New York's Chief Election Official,

Appellee.

INITIAL BRIEF OF APPELLANT

MONTGOMERY BLAIR SIBLEY
Appellant
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Schuyler County Clerk's Index No: 24-24

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INTRODUCTION

This appeal prays that this Court recognize and enforce the Supreme Law of the United States which guarantees to its Citizens that every candidate for President and every President be a "natural born Citizen".

STATEMENT OF THE FACTS

1. On **August 5, 2024**, Appellant Montgomery Blair Sibley ("Sibley") filed his Complaint in Schuyler County Supreme Court. (ROA p. 7). That Complaint sought a declaration pursuant to the Ku Klux Klan Act of 1871 that: Sibley's right, privileges, or immunities secured by the Constitution of the United States to vote for and be governed by a "natural born Citizen" President would be violated by the Appellee Kristen Zebrowski Stavisky, New York's Chief Election Official ("Chief Election Official") if she permits Kamala Iyer Harris to be included on the New York ballot for the Presidential election scheduled for **November 5, 2024**. The Complaint made the following allegations:

A. The New York Board of Elections is the agency vested with the responsibility for the administration and enforcement of all laws relating to elections in New York State. As such, the Chief Election Official oversees the placement of names of candidates on New York election ballots and is responsible for the delivery of those ballots to the Schuyler County, New York Board of Elections. (ROA p. 8).

B. On **August 2, 2024**, Democratic National Committee Chair Jamie Harrison announced that Kamala Harris had secured enough votes

from Democratic delegates to officially be the Democratic party's nominee for President of the United States. (ROA p. 9).

C. Kamala Harris was born on **Oct. 20, 1964**, in Oakland, California and as such is a citizen of the United States. However, neither Kamala Harris' mother, Gopalan Shyamala, nor her father, Donald Jasper Harris were Citizens of the United States at the time of Kamala Harris' birth. At the time of Kamala Harris' birth both her parents were in the United States on temporary student visas, with the express condition that both were "non-immigrant students". (ROA p. 9)

Contemporaneously with the filing of the Complaint, Sibley filed his "Motion to Expedite". (ROA p. 16).

2. On **August 12, 2024**, the Summons, Complaint and Motion to Expedite was served on the Chief Election Official. Sibley filed with the Clerk his "Notice of Service" on **August 14, 2024.**

3. Ignoring the Motion to Expedite for six (6) days, Justice Baker on **August 20, 2024** – without allowing Sibley to be heard – *sua sponte* dismissed Sibley's Complaint. (ROA p. 2). On **August 22, 2024**, Sibley filed his Motion to Vacate the **August 20, 2024**, Order of Dismissal citing the denial of due process. (ROA p. 19).

4. Seven (7) days later, Justice Baker held a hearing on Sibley's Motion to Vacate. At the conclusion of the oral arguments, Justice Baker entered his Order of **August 29, 2024**, denying Sibley's Motion to Vacate. (ROA p. 8).

5. Sibley timely filed his Notice of Appeal on **September 3, 2024.** (ROA p. 28).

Questions Presented

1. Whether Sibley's right, privileges, or immunities secured by the Constitution of the United States to: (i) only vote for and (ii) be governed by a "natural born Citizen" President would be violated by the Chief Election Official if she permits Kamala Iyer Harris to be included on the New York ballot for the Presidential election schedule for November 5, 2024?

2. Whether Justice Baker's *sua sponte* dismissal of the Complaint violated Sibley's Due Process rights and thus deserves notice and admonishment by this Court?

Points of Arguments

I. Sibley Has The Right To A "natural born Citizen" President

Initially, it must be noted that the standard of review in this Court is *de novo*. *Accord*: *Consol. Rest. Operations, Inc. v. Westport Ins. Corp*., 205 A.D.3d 76 (N.Y. App. Div. 2022)("Since this is a pre-answer motion to dismiss under CPLR 3211(a)(1) and (7), our review is *de novo*, but different standards apply. With respect to defendant's motion to dismiss for failure to state a cause of action, we are required to accept as true the facts in the complaint and consider whether plaintiff can succeed upon any reasonable view of the facts stated.")

While as detailed in Section II, *infra*, there was no "motion to dismiss", the same standard of *de novo* review would apply in the instant appeal.

A. The Ku Klux Klan Act Secures Sibley's Cause-of-Action

Justice Baker would not be disabused of the notion that Sibley's Complaint was and must be subject to New York Election Law. "[T]he Court issued an Order denying the motion without a hearing and dismissing the complaint for failure to comply with procedural requirements for ballot access challenges under New York law-specifically, those requirements set forth in Election Law §16-116." (ROA p. 5).

Besides being a time wasting how-many-angels-are-on-the-head-of-a-pin argument, Justice Baker failed to understand that Sibley was not invoking New York Election Law, but rather, the federal Ku Klux Klan Act of 1871[1]. Improperly codified at 42 U.S.C. §1983[2], and known in the 21st Century as the "Civil action for

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[1] In response to this Southern lawlessness, the Reconstruction Congress enacted the Ku Klux Klan Act of 1871, now improperly codified at 42 U.S.C. §1983. The Ku Klux Klan Act guarantees "basic federal rights of individuals against incursions by state power." *Patsy v. Bd. of Regents of State of Fla*., 457 U.S. 496, 503 (1982).

[2] Curiously, an unknown government official omitted this bold-faced "notwithstanding" subordinate phrase from 42 U.S.C. §1983 when he published the first compilation of federal law in 1874. It remains omitted to this day. *See*: https://www.govinfo.gov/content/pkg/USCODE-2022-title42/html/USCODE-2022-title42-chap21-subchapI-sec1983.htm

deprivation of rights", the full and correct version of the Klu Klux Klan Act reads as follows:

> CHAP. XXII.- An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other Purposes. Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, ***any such law, statute, ordinance, regulation, custom or usage of the State to the contrary notwithstanding***, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April eighteen hundred and sixty-six, entitled "An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication", and the other remedial laws of the United States which are in their nature applicable in such cases. (Emphasis of the omitted text added).

Forty-Second Congress. Sess. I. CH. 22 1871.

As such, the Ku Klux Klan Act has four elements:

1. That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State;

2. Shall subject any person to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States;

3. Shall, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; and

4. Notwithstanding any such law, statute, ordinance, regulation, custom or usage of the State to the contrary.

Notably, the Ku Klux Klan Act "did not leave the protection of [federal] rights exclusively in the hands of the federal judiciary, and instead conferred concurrent jurisdiction on state courts as well." *Felder v. Casey*, 487 U.S. 13, 147 (1988). While federal courts are the "chief" venue "for enforcement of federal rights," they are not the "exclusive" one. *McNeese v. Bd. of Educ*., 373 U.S. 668, 672 (1963).

As to the first element, plainly the Chief Election Official is acting under the law and statutes of New York when exercising her authority to palace names on the election ballot.

As to the second element, which is the subject of the next subsection, Sibley maintains the Chief Election Official would be depriving Sible of his "rights, privileges, or immunities secured by the Constitution of the United States" to vote for only and have a "natural born Citizen" President if she allowed Vice President Harris on the New York Ballot for President. Accordingly, the Chief Election Official is properly liable to Sibley "in any action at law, suit in equity, or other proper proceeding for redress."

Last, and notably, Sibley's relief is secured through the Supremacy Clause, notwithstanding New York Election Law "to the contrary".

As such, Sibley properly is seeking the relief the Ku Klux Klan Act provides.

B. Vice President Harris Is Not A "natural born Citizen"

Article II, §1, of the U.S. Constitution states in pertinent part:

> No Person **except a natural born Citizen**, or a Citizen of the United States, at the time of the Adoption of this Constitution, **shall be eligible to the Office of President;** neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States. (Emphasis added).

The phrase "natural born Citizen" appears just once in the Constitution while the phrase "citizen" appears twenty-one (21) times. Plainly, the Framers of the Constitution intended something more than just "citizenship" in order to be President of the United States.

In 2022, the U.S. Supreme Court clarified how a legal-term-of-art – such as "natural born Citizen" – was to be defined. First, in *New York State Rifle and Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022) the Supreme Court held: "As the foregoing shows, *Heller*'s methodology centered on constitutional text and history. Whether it came to defining the character of the right (individual or militia dependent), suggesting the outer limits of the right, or assessing the constitutionality of a particular regulation, *Heller* relied on text and history. It did not invoke any means-end test such as strict or intermediate scrutiny."

Following, *Bruen*, the Supreme Court held in *Dobbs v. Jackson Women's*

Health Organization, 597 U.S. 215 (2022): "In deciding whether a right falls into either of these categories, the Court has long asked whether the right is "deeply rooted in [our] history and tradition" and whether it is essential to our Nation's 'scheme of ordered liberty.' And in conducting this inquiry, we have engaged in a careful analysis of the history of the right at issue." (Citations omitted).

These rulings replaced decades of precedent that applied in those two specific contexts with an all-purpose "history and tradition" test, which directs courts to determine the meaning of a Constitutional phrase by looking solely to "historical practices and understandings," without further guidance. Pre-June 2022, courts would have used context-specific analyses designed to weigh the ends, or the government's goals, against the means or methods it chose to accomplish them. No longer.

The "history and tradition" test – as it relates to the scope of people encompassed by the phrase "natural born Citizen" – is an instruction to the Justices to this Court to consider only 18th century "history and tradition" to determine what is meant by the "natural born Citizen" language in Article II, §1. Utilizing that Supreme Court mandated analysis to determine who the phrase "natural born Citizen" encompasses today, this Court must look to the "history and tradition" of the Article II, §1 phrase's meaning at the time it was employed in the U.S. Constitution, to wit, the year 1788.

The phrase "natural born Citizen" is an 18th Century legal term-of-art with a definite meaning well known to the Framers of the Constitution. At the time of the adoption of the Constitution, the phrase "natural born Citizen" was defined as: "The natives, or natural-born citizens, are those born in the country, of parents who are citizens." (*The Law of Nations*, Emerich de Vattel, 1758, Chapter 19, § 212). Notably, in 1788 there were two requirements to be a "natural born Citizen": born (i) in the United States and (ii) of two parents, both of whom must have been United States citizens at the time of the birth.

Significantly, on **July 25, 1787**, John Jay wrote to George Washington, the presiding officer of the Constitutional Convention, stating: "Permit me to hint, whether it would be wise and seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Commander in Chief of the American army shall not be given to nor devolve on, any but a natural born Citizen." (*Farrand's Records*, Volume 3, LXVIII. John Jay to George Washington).

Subsequently, on **August 22, 1787**, it was proposed at the Constitutional Convention that the presidential qualifications were to be a "citizen of the United States." (*Farrand's Records*, Journal, Wednesday August 22, 1787). It was referred back to a Committee, and the qualification clause was changed to read "natural born Citizen," and was so reported out of Committee on September 4,

1787, and thereafter adopted in the Constitution. (*Farrand's Records*, Journal, Tuesday September 4, 1787).

Significantly, Congress exercised its authority to expand the definition of "natural born Citizen" in the Naturalization Act of 1790, stating: "the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural-born citizens . . ." 1 Stat. §104.

Until the Naturalization Act of 1790 was replaced by subsequent statutes regarding citizenship, if both parents were U.S. citizens, then the place of birth was immaterial and the resulting offspring was a "natural born Citizen". Notably, Congress has removed the legal term-of-art "natural born Citizen" from all citizenship statutes post-1790 and now only confers "citizenship". See: 8 U.S.C. §1401 ("Nationals and citizens of the United States at birth: The following shall be nationals and citizens of the United States at birth . . . ").

Therefore, the Article II, §1 "natural born Citizen" clause which only pertains to the requirement for holding the highest public office requires both parents to be U.S. Citizens at the time of birth. Thus, as a matter of law, Kamala Iyer Harris is ineligible to be President as neither of her parents were U.S. Citizens at the time of her birth. Accordingly, upon the law and facts, Kamala Iyer Harris is not a "natural born Citizen" and thus is ineligible to hold the office of President of the United States.

It is beyond argument that: "voting is of the most fundamental significance under our constitutional structure." *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). As such, Sibley has a right, secured by Article II, §1 of the Constitution of the United States, to vote for and be governed only by a President who is a "natural born Citizen."

Accordingly, the lower court committed error by refusing to address Sibley's Ku Klux Klan Act allegations and affording to him the relief he sought.

II. To Prevent Future Violations of Due Process, This Court Must Address Justice Baker Egregious Violation of Sibley's Due Process Rights

It is black letter law in all four Appellate Departments that: "A court's power to dismiss a complaint, *sua sponte*, is to be used sparingly and only when extraordinary circumstances exist to warrant dismissal." *HSBC Bank USA, N.A. v. Taher*, 104 A.D.3d 815, 817 (2nd Dept. 2013). Recently, in *Wells Fargo Bank, N.A. v. St. Louis*, 2024 NY Slip Op 02948 (2nd Dept. May 29, 2024), the court noted that the appeal presented no "novel legal question"; rather, it "presented us with an opportunity to **emphasize to trial courts the due process importance of not directing the dismissal of a complaint absent notice and an opportunity to be heard**, which has been occurring with unwarrantable frequency." (Emphasis added). The court in *Wells Fargo Bank* stressed that "[d]espite the multiple dozens of Appellate Division decisions that have repeatedly and collectively advised [trial

courts] **against such practice**," "our trial-level colleagues" continue to do so "without any brake applied": the terms "sparingly" and "extraordinary circumstances" "should not be taken lightly." *Id.* (Emphasis added).

Notably, in *Misicki v. Caradonna*, 12 NY3d 511, 519 (2009) the Court of Appeals has cautioned the judiciary that "[w]e are not in the business of blindsiding litigants, who expect us to decide [matters] on rationales advanced by the parties, not arguments their adversaries never made." *Accord*: *Jefferson Fourteenth Assoc. v. Wometco de Puerto Rico*, 695 F.2d 524, 525, 527 (11th Cir. 1983)(*sua sponte* dismissal of third-party claims "on the merits" deprived third-party plaintiff of due process).

Accordingly, Justice Baker's *sua sponte* dismissal of the Complaint without notice to or affording an opportunity to be heard to Sibley deprived Sibley of due process. As such, this Court is obligated to take notice of this grotesque violation and appropriately chastise Judge Baker accordingly.

CONCLUSION

Sibley has: "the right, possessed by every citizen, to require that the Government be administered according to law and that the public moneys be not wasted." *Fairchild v. Hughes*, 258 U.S. 126, 129 (1922). Just as clear: "With whatever doubts, with whatever difficulties, a case may be attended, we must

decide it, if it be brought before us." *Cohens v. Virginia*, 19 U.S. 264, 6 Wheat. 264, 404 (1821).

In sum, Sibley has the right to require the Chief Election Official to "administer" her office according to the Supreme law of these United States and insure that "No Person except a natural born Citizen" is on the New York Ballot for President. As such, this Court "must decide" the issues raised herein, then get on its horse and ride to an expedited conclusion that Sibley is entitled to:

1. A judgment declaring that pursuant to the protections of the Ku Klux Klan Act that Sibley's right, privileges, or immunities secured by the Constitution of the United States to vote for and be governed by a "natural born Citizen" President would be violated by the Chief Election Official if she permits Kamala Iyer Harris to be included on the New York ballot for the Presidential election schedule for **November 5, 2024**;

2. A judgment declaring that the Chief Election Official would violate both her duty and her oath of office if she allowed Kamala Iyer Harris to appear on the the Presidential election ballot scheduled for **November 5, 2024**; and

3. An appropriate condemnation of Justice Baker's *sua sponte* dismissal.

Dated: September 13, 2024 By: _____

MONTGOMERY BLAIR SIBLEY

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