NEW YORK STATE
COURT OF APPEALS

Montgomery Blair Sibley,

Plaintiff,

vs.

Kristen Zebrowski Stavisky solely in her official capacity as New York's Chief Election Official,

Defendant.
_____/

MOTION NO.: 2024-754

SCHUYLER COUNTY CLERK'S INDEX NO: 24-2

NOTICE OF MOTION FOR REARGUMENT OF APPEAL

Motion By: Plaintiff/Appellant Montgomery Blair Sibley

Date, Time & Place of Hearing: April 28, 2025 at 9:00 a.m., New York State Court of Appeals, 20 Eagle Street, Albany, New York 12207.

Relief Requested: Pursuant to N.Y. Comp. Codes R. & Regs. Tit. 22 § 500.24, an Order granting this Motion for Reargument of Appeal.

Grounds for Relief: This appeal: (i) raises important legal issues of novel and/or of public importance, (ii) construes relevant law which is not settled, (iii) involves questions of State-wide implication of statutes in developing areas of law which have not been sufficiently developed by lower courts, (iv) properly raises issues which require re-evaluation of outmoded precedent, (v) obligates this Court to correct error below involving incorrect statements of law in a writing by Appellate

Division and, finally (vi) obligates this Court to correct errors below of substantial injustice. As such, this appeal deserves a hearing.

No previous application has been made for the relief requested herein.

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By: _____
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Summary of Argument

The point Sibley claims to have been overlooked by this Court is the applicability of the federal and New York State "capable of repetition, yet evading review" doctrine which, when applied here, negates the Court's finding of "mootness".

Statement in Support of Motion

I. Procedural History of the Case

On **April 10, 2025**, this Court entered its Order stating: "On the Court's own motion, appeal dismissed, without costs, upon the ground that the issues presented have become moot. Motion for leave to appeal dismissed upon the ground that the issues presented have become moot."

Accordingly, the instant Motion for Reargument of Appeal is timely and this Court has subject matter jurisdiction to hear this matter.[1]

II. The "natural born Citizen" Issue Is Not Moot As It Is "Capable Of Repetition, Yet Evading Review"

The instant motion seeks to reargue the unaddressed issue of whether the "mootness" doctrine can be applied to this matter as the facts of this case fall squarely into the "capable of repetition, yet evading review" doctrine.

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[1] While the Defendant raised for the first time the "mootness" argument in her Opposition, Section 500.22 of the New York Court of Appeals Rules did not allow Sibley to file a Response to that Opposition. Hence, Sibley is addressing that argument for the first time here.

Federally, that doctrine was clearly defined in *Roe v Wade*, 410 U.S. 113, 125 (1973) which held that pregnancy – just like the quadrennial United States Presidential election cycle – "provides a classic justification for a conclusion of nonmootness. It truly could be 'capable of repetition, yet evading review. *Southern Pacific Terminal Co. v. ICC*, 219 U. S. 498, 515 (1911). *See Moore v. Ogilvie*, 394 U. S. 814, 816 (1969); *Carroll v. Princess Anne*, 393 U. S. 175, 178-179 (1968); *United States v. W. T. Grant Co*., 345 U. S. 629, 632-633 (1953)."

In New York, this Court in *Hearst Corp. v. Clyne*, 50 NY 2d 707 (1980) summarized that doctrine as follows: "However, examination of the cases in which our court has found an exception to the [mootness] doctrine discloses three common factors: (1) a likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, *i.e*., substantial and novel issues." Here, Sibley meets all three (3) of this Court's *Hearst Corp.* elements in order to invoke the "capable of repetition, yet evading review" doctrine.

First, there is "a likelihood of repetition, either between the parties or among other members of the public". Clearly, Kamala Harris has once again announced

here desire to run for President in 2028[2]. As detailed in Sibley's prior Motion to the Court, the parental circumstances of Ms. Harris' birth reasonably raise the "natural born Citizen" eligibility question.

Likewise in the recent past, the parental circumstances of the births of declared Presidential candidates Senators Marco Rubio[3], Ted Cruz[4], and Governor Bobby Jindal[5] implicated whether or not they are in fact "natural born Citizens" eligible under Article II, §1 to be President. Marco Rubio and Bobby Jindal were born in the United States to parents neither of whom were United States citizens at the time of their respective births. Ted Cruz was born in Canada to parents only one of whom was a United States citizen. Indisputably, under the law existing at the time of their births each became a "citizen" of the United States. Marco Rubio and Bobby Jindal by action of the 14th Amendment, Ted Cruz by statute. But are

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[2] Retrieved from: https://abcnews.go.com/Politics/longtime-harris-supporters-torn-2028-presidential-run/story?id=119873026

[3] Retrieved from: https://ballotpedia.org/Sen._Marco_Rubio_announces_bid_for_presidency

[4] Retrieved from: https://www.texastribune.org/2023/11/07/ted-cruz-president-2024-woke-book/

[5] Retrieved from: https://ballotpedia.org/Gov._Bobby_Jindal_announces_bid_for_presidency

they "natural born Citizens" eligible to be President as their respective parents were not U.S. Citizens at the time of these politicians' respective births?

Accordingly, it is fair to conclude that there is: "a likelihood of repetition, either between the parties or among other members of the public" of the Article II, §1 "natural born Citizen" question in the future.

Second, as the instant case dispositively memorializes, Sibley's Article II, §1 claim will "typically evad[e] review" given the treacle-like speed the New York Court system processes claims such as was the case here.[6]

Third, the "natural born Citizen" question raises a "significant or important question[] not previously passed on, *i.e*., substantial and novel issues." Significantly, the phrase "natural born Citizen" appears just once in the Constitution while the phrase "citizen" appears twenty-one (21) times. Plainly, the Founders intended something more than just "citizenship" in order to be President of the United States. Yet, this question has never been directly and dispositively decided by any court.

Finally, dispositive of the instant motion, is *Moore v. Ogilvie*, 394 U. S. 814 (1969) in which the Supreme Court held:

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[6] While as noted in *Rove v. Wade* the gestation period for giving birth to a human infant is nine (9) months, Ms. Harris' campaign officially began gestation on **August 2, 2024** and ended on **November 5, 2024**; a short three (3) month period to run the gauntlet to the U.S. Supreme Court by way of New York's snail paced Supreme Court and Court of Appeals practice.

> Appellees urged in a motion to dismiss that since the November 5, 1968, election has been held, there is no possibility of granting any relief to appellants and that the appeal should be dismissed. **But while the 1968 election is over, the burden which *MacDougall v. Green*, *supra*, allowed to be placed on the nomination of candidates for statewide offices remains and controls future elections**, as long as Illinois maintains her present system as she has done since 1935. The problem is therefore "capable of repetition, yet evading review," *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498, 515. The need for its resolution thus reflects a **continuing controversy** in the federal-state area where our "one man, one vote" decisions have thrust. We turn then to the merits. (Emphasis added).

Id. at 816. Just so here: There will be a "continuing controversy" over who meets the "natural born Citizen" eligibility requirement found in Article II, §1[7] which, until the Constitution is amended, "**controls future [Presidential] elections**." As such, this Court must now "turn then to the merits" of Sibley's appeal.

III. Conclusion: The Court Should Grant This Motion

This Court should grant this Motion to Reargue for a simple reason. The "natural born Citizen" issue will either be raised:

- In the future in the heat of a presidential primary season where any decision confirming a candidate's Article II, §1 eligibility – or lack thereof – will appear to half the electorate as a court favoring one

[7] "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 . . . (Emphasis added).

candidate over other candidates directly or indirectly; leading at best to wide-spread civil unrest – at worst to insurrection; or

- Here and now, where the determination will not have an effect during a Presidential primary or election and can be scholarly and carefully determined under the tenets of *stare decisis* and constitutional construction rules.

Far better that this "natural born Citizen" issue be decided when it will not determine an up-coming election as opposed to a court removing a major party candidate from the ballot during Presidential Primary season or shortly before an election. Accordingly, Sibley moves this Court to accept this matter for review and allow a determination upon the merits.

Dated: April 14, 2025

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Affirmation of Service

On the 14th day of April, 2025, I served a true copy of this Notice of Motion for Reargument of Appeal by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to Beezly J. Kiernan, Assistant Solicitor General, New York State Office of the Attorney General, Division of Appeals & Opinions, The Capitol, Albany, NY 12224-0341.

I affirm this 14th day of April, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

By: _____
Montgomery Blair Sibley