

**STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION, THIRD DEPARTMENT**

Montgomery Blair Sibley,

Index No.: CV-24-1509

Appellant,

v.

**EMERGENCY MOTION FOR CALENDAR
PREFERENCE AND TO EXPEDITE
CONSIDERATION OF THE APPEAL**

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.

_____ /

Appellant, Montgomery Blair Sibley (“Sibley”), moves for expedited consideration of the instant appeal because the issues raised are of imperative public importance so as to justify deviation from normal appellate practice and to require immediate determination in this Court.

I. A CALENDAR PREFERENCE IS WARRANTED GIVEN THE “EXTRAORDINARY CONSTITUTIONAL MOMENT” THIS CASE PRESENTS

This Appeal raises the important question of whether Vice President Kamala Harris is a “natural born Citizen” as that term is used in Article II, §1 and thus eligible to be President of the United States. Given the obvious pressing need for prompt resolution of the question presented, Sibley moves this Court to order

Appellee to file any opposition to this motion as soon feasible. Sibley further requests that a briefing schedule be set that would allow for oral argument as soon as possible.

II. BACKGROUND

In the Complaint below, Sibley sought a: “judgment declaring that pursuant to the protections of the Klu Klux Klan Act¹ that Sibley’s right, privileges, or

¹ Improperly codified at 42 U.S.C. §1983, 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).

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 [Defendant] 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.”

Prior to allowing Sibley to be heard, in its *sua sponte* Order of August 20, 2024, the court below concludes that: “Because plaintiff failed to proceed by notice of petition or order to show cause and, accordingly, to obtain the Court's directive as to the notice to be provided to the defendant, the Court lacks jurisdiction over this matter. See, e.g., *Miller*, 252 A.D.2d at 873; *Wallace*, 176 A.D.3d at 1309.”

While this motion is not the place to argue the merits of the ruling below, this Court must take notice that in the Complaint, Sibley was seeking to vindicate federal rights, not rights secured by New York State law. This, as will be shown, was plain error: Congress understood that plaintiffs would have the option of bringing Klu Klux Klan Act claims in state court. Congress knew that “state courts as well as federal courts [would be] entrusted with providing a forum for the vindication of federal rights.” *Haywood v. Drown*, 556 U.S. 729, 735 (2009).

Forty-Second Congress. Sess. I. CH. 22 1871. Curiously, an unknown government official omitted this “notwithstanding” subordinate phrase from 42 U.S.C. §1983 when he published the first compilation of federal law in 1874.

The Court's August 20, 2024, Order of Dismissal ignored this claim for relief basing its findings solely upon New York Election statutes and case law.

III. How WILL IT Look?

The gravity of the circumstances and the paramount importance of the question presented warrant this Court's urgent intervention. Clearly, when the public interest is at play, the ability of a court to act swiftly is certain and regularly exercised. *Cf. Walters v. Nat'l Ass'n of Radiation*, 473 U.S. 305, 351 (1985) ("This Court has not hesitated to exercise this power of swift intervention in cases of extraordinary constitutional moment and in cases demanding prompt resolution for other reasons."); *United States v. Nixon*, 418 U.S. 683, 686-687 (1974) ("We granted both the United States' petition for certiorari before judgment and also the President's cross-petition for certiorari because of the public importance of the issues presented and the need for their prompt resolution").

The consequence of not expediting this matter to a swift and legally-defensible conclusion can only be speculated. However, a reasonable speculation is that the United States moves closer to legal anarchy as the bedrock-principle of the rule-of-law upon which the Union was formed is being eroded by a deaf judicial system which has become just-a-system. Already, loud

voices proclaim: “The Threat of Civil Breakdown Is Real”²; “BU Historian Answers: Are We Headed for Another Civil War?”³ and “The Real Path to an American Civil War”⁴. Here, granting this Motion and expediting this Appeal will confirm to the Citizens of the United States that they are heard and the Constitution still is the Supreme law of the land.

The denial of this motion to expedite will justify the public’s conclusion that there is no law in this land to hold accountable the rich and powerful. Simply stated, Sibley’s federal “right” to a “natural born Citizen” President without a remedy to secure that “right” is no “right” at all. Is that the message this Court wants to send at this time in our history?

IV. CONCLUSION

For the reasons stated, Sibley respectfully requests that the Court expedite consideration of this Appeal by setting an expedited briefing and oral argument schedule that permits the Court to hear this case before the Presidential election.

² Retrieved from:
<https://www.politico.com/news/magazine/2023/04/21/political-violence-2024-magazine-00093028>

³ Retrieved from:
<https://www.bu.edu/articles/2019/are-we-headed-for-another-civil-war/>

⁴ Retrieved from:
<https://www.nytimes.com/2024/04/17/opinion/trump-civil-war.html>

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By: _____
MONTGOMERY BLAIR SIBLEY

AFFIRMATION OF SERVICE

A copy of above Motion For Calendar Preference And To Expedite Consideration Of The Appeal has been served by email this 9th day of September, 2024, on Brian Quail, Esq., New York Board of Elections, Attorney for Defendant, (brian.quail@elections.ny.gov). I affirm this 9th day of September, 2024, 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