SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHUYLER

Montgomery Blair Sibley,

Plaintiff,

vs.

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

Defendant.

Index No.: 24-24

MOTION TO VACATE THIS COURT'S ORDER OF AUGUST 20, 2024

Plaintiff, Montgomery Blair Sibley ("Sibley"), pursuant to CPLR Rule 2221(a)(2) and the anomalous authority of this Court, moves for an order vacating this Court's Order of August 20, 2024, which was made without notice dismissing this matter, and for grounds in support thereof states:

I. THE *SUA SPONTE* DISMISSAL DENIED TO SIBLEY HIS DUE PROCESS RIGHT TO BE "HEARD"

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

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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, this Court's *sua sponte* dismissal of the complaint without notice to Sibley deprived Sibley of due process. As such, this Court is obligated to vacate its August 20, 2024, order and allow this matter to proceed on an expedited basis.

II. THE SUPREMACY CLAUSE VITIATES THE COURT'S CITATIONS TO NEW YORK LAW

Obviously, Article VI, Clause 2 of the U.S. Constitution states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and **the Judges in every State** shall be bound thereby, **any Thing in the Constitution or Laws of any State to the Contrary notwithstanding**." (Emphasis added). Here, as more fully detailed below, this matter proceeds under the "Laws of the United States", to wit, the Klu Klux Klan Act. As such, "notwithstanding" any New York statute or case law, the Klu Klux

Klan Act is the "supreme Law of the Land" and this Court is "bound thereby".

Therefore, this Court citations in its August 20, 2024, Order of Dismissal are inapposite to the questions Sibley presents. To hold otherwise, as this Court did, would invert Article VI, Clause 2 by making New York law superior to that which the United States Congress enacted in the Klu Klux Klan Act. Even a first year law student would understand that such a holding would turn our Federal system on its head.

Accordingly, this Court, bound by the explicit constraints of Article VI, Clause 2, is obligated to vacate its August 20, 2024, order of dismissal in acknowledgment of the Court's inferior-to-federal-law status in the legal structure of the United States.

III. The Klu Klux Klan Act Vitiates The Court's Citations To New York Law

In its Order of August 20, 2024, this Court 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."

Proceeding *sua sponte* without comprehending the subject matter jurisdiction resident in this Court has led to the Court's misunderstanding of its subject matter jurisdiction.

That subject matter jurisdiction arises not from any New York law or cases but instead from the terms of the Klu Klux Klan Act. As an initial matter, it may surprise this state court to learn that it has subject matter jurisdiction arising under the U.S. Congress-enacted Klu Klux Klan Act. 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).

Notably, much like the New York law and court cases cited by this Court in its August 20, 2024, Order of Dismissal, the Klu Klux Klan Act does not allow **state law, policies or judicial practices to frustrate** the remedy it provides. Congress passed the Klu Klux Klan Act to afford prompt relief when state officials "violate the provisions of the Constitution or the law of the United States." Cong. Globe, 42d Cong., 1st Sess. 501 (1871)(Sen. Frelinghuysen). In *Felder v. Casey*, 487 U.S. 131 (1988), the Court held:

> As we have seen, enforcement of the [Wisconsin] notice of claim statute in §1983 actions brought in state court so interferes with and frustrates the substantive right Congress created that, under the Supremacy Clause, it must yield to the federal interest. This interference, however, is not the only consequence of the statute that renders its application in §1983 cases invalid. In a State that demands compliance with such a statute before a §1983 action may be brought or maintained in its courts, the outcome of federal civil rights litigation will frequently and predictably depend on whether it is brought in state or federal court. Thus, the very notions of federalism upon which respondents rely dictate that the State's outcome-determinative law must give way when a party asserts a federal right in state court.

Simply stated, because states' authority to "prescribe the rules and procedures governing suits in their courts . . . . does not extend so far as to permit States to place conditions on the vindication of a federal right." *Felder*, 487 U.S. at 147. Hence, the existence of the New York law and cases cited by this Court in its August 20, 2024, Order of Dismissal, caused this Court to conclude that it did not have "jurisdiction" does not change things. The U.S. Supreme Court has repeatedly held: "The force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction,'" and even a state's "neutral procedural rules" are preempted when they clash with the vindication of federal claims under [the Klu Klux Klan Act].

Howlett v. Rose, 496 U.S. 356, 382-83, 372 (1990).

Indeed, for this Court to hold that Sibley must comply with New York procedural law regarding his Klu Klux Klan Act claim, would relegate Sibley – who has chosen to bring his claim in New York State court – to second-class status, subjecting him to New York's burdensome pleading requirements that would "produce different outcomes in [Klu Klux Klan Act] litigation based solely on whether the claim is asserted in state or federal court." *Felder*, 487 U.S. at 138. "States may not apply such an outcome-determinative law when entertaining substantive federal rights in their courts." *Id.* at 141.

Plainly, the Klu Klux Klan Act by its own terms eliminates the New York procedure for removing a candidate from the ballot. When Congress enacted the Ku Klux Klan Act, it "adopted explicit text that displaced common law defenses," making clear "that such a claim would be viable notwithstanding 'any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary." *An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for Other Purposes*, 17 Stat. 13 (1871). 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.[1] As such, the full version of the Klu Klux Klan Act erased any "any such law, statute, ordinance, regulation, custom or usage of the State to the contrary", such as the New York law and cases cited by this Court in its August 20, 2024, Order of Dismissal.

Simply stated, consistent with precedent, and the text and history of the Klu Klux Klan Act, this Court is obligated to ensure that Sibley, who alleges his federal rights have been violated by the Defendant state official, can have his day in court – and have it without delay.

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[1] 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. *See*: 1 U.S.C. § 204(a)("The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish *prima facie* the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.").

Notably, while Congress has enacted into positive law some of the Titles in the United States Code, it has not enacted Title 42, which contains Section 1983. Of the 54 titles, the following titles have been enacted into positive (statutory) law : 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 36, 37, 38, 39, 40, 41, 44, 46, 49, 51, and 54. Titles that have not been enacted into positive law are only prima facie evidence of the law. In that case, the Statutes at Large still govern." Retrieved from: https://www.govinfo.gov/help/uscode#:~:text=Of%20the%2054%20titles%2C%20the,legal%20evidence%20of%20the%20law.

Upon the foregoing, this Court must vacate its August 20, 2024, order of dismissal.

IV. The Court Ignored Sibley's Claimed Relief

In the Complaint, Sibley sought a: "judgment declaring that pursuant to the protections of the Klu 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 . . ." 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. Moreover, the *sua sponte* dismissal deprived Sibley of his right to amend the complaint pursuant to CPLR Rule 3025(b)[2] to address any such pleading deficiencies or omissions. *Accord*: "[M]otions for leave to amend pleadings should be freely granted . . . absent prejudice or surprise resulting therefrom . . . , unless the proposed amendment is palpably insufficient or patently devoid of merit.." *MBIA Ins. Corp. v Greystone & Co.*, 74 AD3d 499 (2nd Dept. 2010); *Miller v Cohen*, 93 AD3d 424, 425 (1st Dept. 2012)("On a motion for leave to amend a pleading, movant need not establish the merit of the proposed new allegations, but must simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit.")

V. Sibley Requests Oral Argument

The federal constitution peremptorily guarantees the right to oral argument in this instance. *Accord*: *Londoner v. Denver*, 210 U.S. 373 (1908)("On the contrary, due process of law has never been a term of fixed and invariable content. This is as true with reference to oral argument as with respect to other elements of procedural due process. For this Court has held in

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2 "Leave shall be freely given upon such terms as may be just including the granting of costs and continuances."

some situations that **such argument is essential to a fair hearing.**")(Emphasis added). The Constitutional due process obligation of this Court is plain: "The one who decides must hear." *Morgan v. United States*, 298 U.S. 468, 481 (1936). If oral argument is denied, how will Sibley know that this Court has "heard" Sibley? Upon such a federally-secured right, Sibley asserts his right to Oral Argument in this matter as the issues raised in this matter are both first impression and seminal to the significant question of the scope of Article II, Section 1 and the definition of "natural born Citizen". Accordingly, this Court far better serves its function by not only doing justice but showing justice is being done. It is a principle "deeply rooted in the common law, that justice must satisfy the appearance of justice." *Levine v. U.S.*, 362 U.S. 610, 616 (1960). Here, to deny oral argument raises the specter that this Court is burying the significant issues this matter raises because of their nationwide implication in the Presidential election.

WHEREFORE, Sibley respectfully requests that this Court: (i) vacate its August 20, 2024, Order of Dismissal, (ii) expeditiously take up Sibley's Motion to Expedite and (iii) grant his within prayer for Oral Argument.

MONTGOMERY BLAIR SIBLEY
Plaintiff
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(607) 301-0967
montybsibley@gmail.com

By: _____
MONTGOMERY BLAIR SIBLEY

Affirmation of Service

A copy of above Motion To Vacate This Court's Order Of August 20, 2024, has been served by email this 21th day of August, 2024, on Brian Quail, Esq., Attorney for Defendant (brian.quail@elections.ny.gov). I affirm this 21th day of August, 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