

No: _____

In the Supreme Court of the United States

Montgomery Blair Sibley,

Petitioner,

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,

Respondent.

On Petition for Writ of Certiorari to the
New York Supreme Court, Appellate Division
Third Department

PETITION FOR WRIT OF CERTIORARI

Montgomery Blair Sibley

Petitioner

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QUESTIONS PRESENTED FOR REVIEW

WHETHER, Congress is Constitutionally-authorized to deny jurisdiction in this Court to state court litigants who seek the right to petition before a state court appellate court judgment while allowing to federal litigants – pursuant 28 U.S. Code §1254 and §2101(e) – that right?

WHETHER given that the Democratic candidate for President of the United States, born of two non-U.S. Citizens, is arguable expressly excluded from the Presidency by Article II, this Court will recognize this extraordinary constitutional moment and promptly answer the question of who is a “natural born Citizen”?

RULE 29.6 STATEMENT

Neither Petitioner nor Respondent are corporate entities.

STATEMENT OF RELATED PROCEEDINGS

There are no related proceedings.

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**PETITION FOR WRIT OF CERTIORARI TO THE NEW YORK
SUPREME COURT APPELLATE DIVISION, THIRD DEPARTMENT**

Petitioner, Montgomery Blair Sibley (hereinafter “Sibley”), prays that a writ of certiorari issue to review the judgments and opinions of the Supreme Court, Schuyler County, New York entered on **August 20 and 29, 2024** which are now pending in the New York Supreme Court, Appellate Division, Third Department.

Review is mandated because of the public importance of the issues presented and the pressing need for the prompt resolution of those issues.

OPINIONS BELOW

The **August 20, 2024**, opinion of the Supreme Court, Schuyler County, New York is reprinted in the appendix hereto, Appendix-2.

The **August 29, 2024**, opinion of the Supreme Court, Schuyler County, New York is reprinted in the appendix hereto, Appendix-5

JURISDICTION

Jurisdiction in the Supreme Court, Schuyler County, New York was invoked pursuant to New York Constitution, Article VI - Judiciary, Section 7, CPLR §3001 and the Ku Klux Klan Act of 1871. The date the judgments sought to be reviewed are **August 20, 2024** and **August 29, 2024**. On **September 2, 2024**, Sibley his Notice of Appeal to the New York Supreme Court, Appellate Division, Third Department thus vesting jurisdiction in that court.

This Court has jurisdiction to review on a writ of certiorari the judgments or orders in question under: (i) Article III of United States Constitution, (ii) 28 U.S. Code §1257(a), 28 U.S. Code §1254 and (iii) this Court's Rule 11.

**CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES,
ORDINANCES AND REGULATIONS INVOLVED**

Article II, Section 1, Clause 5

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.

Article VI, Clause 2

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.

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)(hereinafter "Ku Klux Klan Act of 1871").

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.

28 U.S. Code § 1257 - State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S. Code § 1254 - Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S. Code § 2101(e) - Supreme Court; time for appeal or certiorari; docketing; stay

An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

Rule 11. Certiorari to a United States Court of Appeals Before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. §2101(e).

STATEMENT OF THE CASE

The facts material to consideration of the questions presented are these:

On **August 3, 2024**, Sibley, proceeding *pro se*, filed suit against Respondent, 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 (hereinafter “Chief Election Official”).

The suit sought relief solely under the Ku Klux Klan Act of 1871 that Sibley's “rights, privileges, or immunities secured by the Constitution” under Article II, Section 1,

Clause 5's "natural born Citizen" requirement to be President would be violated by the Chief Election Official, acting under color of state law, if the Chief Election Official included Vice President Kamala Harris on the New York ballot for President.

The factual underpinnings of this claim were based upon allegations that:

- (i) 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.
- (ii) 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.
- (iii) 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".

This federal question regarding Sibley's right to vote for

and be governed by a President who is a “natural born Citizen” was raised in the Complaint filed on **August 3, 2024** and again in the Motion to Vacate filed **August 22, 2024**.

After service of the summons and complaint on the Chief Election Official on **August 14, 2024**, on **August 20, 2024**, Judge Christopher P. Baker of the New York Supreme Court *sua sponte* dismissed Sibley's complaint without a notice to or an opportunity to be heard from Sibley. In that **August 20, 2024**, order of dismissal, Judge Baker held:

Here, plaintiff failed to comply with Election Law 16-116, proceeding by way of a summons and complaint rather than by commencing a special proceeding with a verified petition and notice of petition or order to show cause. 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 defendant, the Court lacks jurisdiction over this matter. Plaintiff's complaint must be dismissed accordingly.

(Appendix-1)

On **August 22, 2024**, Sibley filed his “Motion to Vacate” the **August 20, 2024**, order of dismissal citing Judge Baker's failure to accord Sibley an “opportunity to be heard”. On **August 29, 2024**, Judge Baker permitted Sibley to be heard at oral argument. At the conclusion of that hearing, Judge Baker entered his order stating:

The parties appeared for oral argument on August 29, 2024, with plaintiff contending that the Court's Order should be vacated because, among other

reasons, he asserts federal law claims which somehow exempt him from compliance with New York procedural law in a New York State Supreme Court action. . . .ORDERED, that plaintiff's motion to vacate the Court's August 20 ,2024 Order, is hereby denied, as is his motion for expedited consideration of his Complaint.

(Appendix-7).

REASONS FOR GRANTING THE WRIT

I. CONGRESS IS WITHOUT AUTHORITY TO DENY JURISDICTION TO THIS COURT FOR PETITIONS BEFORE APPELLATE JUDGMENT BY STATE COURT LITIGANTS

Clearly, Congress has not afforded to state court litigants the same access to this Court on an expedited basis that it has given to federal court litigants. No analog to 28 U.S. Code §1254 and §2101(e) exists for state court litigants to seek access to this Court pursuant to the Court's Rule 11.

“Notions of federalism” prohibit Congress from making such a distinction between federal and state litigants. To allow such distinctions would create a system that would allow state court judges to dictate national policy and allow one state court to issue rulings that flatly contradicted the law of another state or this Court. Under the Supremacy Clause of Article VI, such a result would deprive this Court of proclaiming the “supreme Law of the Land” when necessitated by an “extraordinary constitutional moment”.

Accordingly, this Court must recognize that it has jurisdiction of a petition for certiorari by state court litigants before judgment in a state appellate case of “extraordinary constitutional moment.” Otherwise, chaos

results. Hence, this Court must grant Sibley's writ to address the Constitutionally-infirm “access to court” remedies which are different depending on whether a matter is brought in state or federal court.

II. THIS COURT MUST RESOLVE WHO IS A “NATURAL BORN CITIZEN”

In order to be eligible to be President of the United States, Article II, §1, of the U.S. Constitution requires: “No person except a natural born Citizen . . ., shall be eligible to the Office of President.”

In the looming Presidential election the question of whether Vice President Harris is a “natural born Citizen” figures large. This Court must resolve that issue before votes are cast in October in early-voting states. Failure of this Court to address this question will send a decisive message to the Citizens of the United States: The explicit legal-term-of-art – “natural born Citizen” – is “aspirational” and not imperative because large forces are at work.

Strong arguments exist that the phrase “natural born Citizen” encompasses only those born of parents who are Citizens of the United States. 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).

Likewise, legitimate counter-arguments state that the terms “citizen” and “natural born Citizen” can be conflated. *See: On the Meaning of Natural Born Citizen*, by Paul Clement and Neal Katyal, 128 Harv. L. Rev. F. 161, March 2015.

“The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that.” *United States v. Wong Kim Ark*, 169 U.S.

649, 655 (1898). Yet to date, this Court has not resolved this now-pressing question. This Court has not directly addressed the definition of “natural born Citizen”. As such, it is incumbent on this Court to do so and do so now. As Chief Justice Marshall so eloquently stated in *Cohens v. Virginia*, 19 U.S. 264, 6 Wheat. 264, 404 (1821): “With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us.”

The chaos that would occur if the Presidential election is allow to move forward with a candidate who is ineligible is hard to overstate. This is particularly true in a world beset with global conflicts. As such, it would be manifestly against the best interests of the public to deny this Petition.

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, 130 (1922).

Pursuant to that “right” this Court must act swiftly to review the case below and thereby: (i) determine its jurisdiction over petitions for certiorari before judgment arising from state court appellate proceedings and (ii) finally determine the seminal question of the definition of “natural born Citizen”.

Accordingly, upon the foregoing, this Court must issue a writ of certiorari to the New York Supreme Court, Appellate Division, Third Department.

Respectfully submitted,

Montgomery Blair Sibley

Contents of Appendix

Opinions Below

The **August 20, 2024**, opinion of the Supreme Court, Schuyler County, New York is reprinted in the appendix hereto, Appendix-2.

The **August 29, 2024**, opinion of the Supreme Court, Schuyler County, New York is reprinted in the appendix hereto, Appendix-5

Supreme Court of the State of New York
COUNTY OF SCHUYLER

Montgomery Blair Sibley,

Plaintiff,

vs.

Index No.: 24-24
Decision & Order

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,

Defendant.

_____ /

CHRISTOPHER P. BAKER, JSE

FINDINGS OF FACT

Plaintiff commenced this ballot eligibility challenge action by filing a summons and complaint on August 5, 2024. Therein, plaintiff seeks declaratory relief that Kamala Harris is ineligible to appear on the New York ballot for the November 5, 2024 United States Presidential election.

Plaintiff now moves, by "Notice of Hearing on Motion," for an Order shortening the time for the defendant to respond to the Complaint for Declaratory Relief and for an expedited scheduling Order for this action.

CONCLUSIONS OF LAW

The Court begins from the premise that the Third Department has "consistently held that the exclusive remedy for seeking to remove a candidate from the ballot is a proceeding pursuant to the Election Law." *Matter of Ferguson v. Cheeseman*, 138 A.D.2d 852,853-54 (3d Dept. 1988); *Scaringe v. Ackerman*, 119 A.D.2d 327 (3d Dept. 1986), *aff'd*, 68 N.Y.2d 885 (1986); see: *Savago v. Ulster County Bd. of Elections*, 220 A.D.2d 926,927 (3d Dept. 1995); see *Nowinski v. New York Bd. of Elections*, 164 A.D.3d 722 (2d Dept.2018)(although petitioners commenced an action pursuant to CPLR Article 78, the proceeding was governed by the requirements set forth in the Election Law, including the shortened statute of limitations).

Among other substantive and procedural requirements, Election Law section 16-116 provides that a "special proceeding under the foregoing provisions of this article shall be heard upon a verified petition...and upon such notice to such officers, persons or committees as the court or justice shall direct, and shall be summarily determined." "Notably, in election proceedings jurisdiction is not acquired unless the methods of service designated by the court are strictly complied with." *Matter of Millar v. Tolly*, 252 A.D.2d 872,873 (3d Dept. 1998)(also noting that, pursuant to CPLR 304, a special proceeding is commenced by the filing of a notice of petition or order to show cause and petition); see *Wallace v. Bujanow*, 176 A.D.3d 1307, 1309 (3d Dept. 2019) ("For Supreme Court to have acquired jurisdiction, petitioners were required to seek and obtain a directive from a justice or the court as to how respondents were to be notified of such proceeding."). Defendant's receipt of actual notice of the action "does not suffice to confer jurisdiction." *Id.* at n.2.

Here, plaintiff failed to comply with Election Law 16-116, proceeding by way of a summons and complaint rather

than by commencing a special proceeding with a verified petition and notice of petition or order to show cause.

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 defendant, the Court lacks jurisdiction over this matter. See, e.g., *Millar*, 252 AD.2d at 873; *Wallace*, 176 A.D.3d at 1309. Plaintiff's complaint must be dismissed accordingly.

It is therefore, ORDERED, that plaintiff's motion is hereby denied; and it is further ORDERED, that the Complaint is hereby dismissed. This shall constitute the Decision and Order of the Court.

ENTER

Dated: August 20, 2024.

/s/ Hon. Christopher P. Baker
Supreme Court Justice

At a Motion Term of The Supreme Court of the State of
New York held in and for the Sixth Judicial District in
the County of Schuyler, Watkins Glen. New York,
heard on the 29th day of August, 2024

PRESENT: HON. CHRISTOPHER P. BAKER
SUPREME COURT JUSTICE

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
Co-Executive Director of the New
York Board of Elections and
New York's Chief Election Official,

Defendant.

Index No.: 24-24
Decision & Order

_____/

CHRISTOPHER P. BAKER, JSE

Plaintiff herein commenced an action by summons and complaint, on August 5, 2024, seeking a declaration that presidential candidate Kamala Harris is ineligible to appear on the New York Ballot for the 2024 United States Presidential Election. Thereafter, before defendant answered the complaint (indeed, before her time to answer had expired), Plaintiff moved for an expedited scheduling

order which would have, inter alia, shortened the statutory time frame in which defendant was required to answer the complaint. On August 20, 2024, the 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.

On August 21, 2024, plaintiff moved to vacate the August 20, 2024 Order dismissing the complaint. The Court notes that plaintiff's motion is not a motion to renew or a motion to re-argue pursuant to CPLR §2221. Rather, the motion is apparently based upon the Court's inherent authority to vacate its own prior order upon a party's motion. See, e.g. *Woodson v. Mendon Leasing Corp.*, 100 N.Y.2d 62, 68 (2003) ("a court may vacate its own judgment for sufficient reason and in the interests of substantial justice."); *Dyno v. Lewis*, 300 A.D.2d 784 (3d Dept. 2002).

The parties appeared for oral argument on August 29, 2024, with plaintiff contending that the Court's Order should be vacated because, among other reasons, he asserts federal law claims which somehow exempt him from compliance with New York procedural law in a New York State Supreme Court action.

Because the Court finds that the plaintiff, who has chosen New York State Supreme Court as the venue for this action, must comply with New York procedural law, regardless of the fact that he bases his claims, at least in part, on federal law. The Court continues to adhere to its August 20, 2024 decision. The Court is particularly unpersuaded by plaintiff's claim, at page five of his brief, that requiring plaintiff to comply with New York procedural law would "relegate Sibley...to second-class

status, subjecting him to New York's burdensome pleading requirements that would 'produce different outcomes in [Ku Klux Klan Act] litigation based solely on whether the claim is asserted in state or federal court.'" Rather, the procedural rules the Court has referenced are designed to do the opposite, and, in fact, would have given plaintiff the very relief he sought in his original motion by setting this action on an expedited track with a statutory scheduling preference.

Plaintiff's motion to vacate the Order is denied accordingly.

It is therefore, ORDERED, that plaintiff's motion to vacate the Court's August 20 ,2024 Order, is hereby denied, as is his motion for expedited consideration of his Complaint.

This shall constitute the Decision and Order of The Court.

ENTER

Dated: August 29, 2024.

/s/ Hon. Christopher P. Baker
Supreme Court Justice