

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

THE HONORABLE PAUL DAVIS RYAN,
SOLELY IN HIS CAPACITY AS SPEAKER
OF THE HOUSE OF REPRESENTATIVES,

APPELLANT,

VS.

MONTGOMERY BLAIR SIBLEY,

APPELLEE,

AND

THE HONORABLE MITCH McCONNELL,
SOLELY IN HIS CAPACITY AS MAJORITY
LEADER OF THE SENATE,

APPELLEE.

_____ /

Case No. 15-5295

**APPELLEE SIBLEY'S MOTIONS FOR
SUMMARY AFFIRMANCE AND ORAL
ARGUMENT**

Appellee, Montgomery Blair Sibley (“Sibley”), moves for: (i) Summary Affirmance of the Order of Remand and (ii) for Oral Argument and states as follows:

I. SUMMARY AFFIRMANCE

Summary affirmance of the Order of Remand is mandated as this appeal is plainly without merit and present no issue worthy of a published decision. *See: Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987)(*per*

curiam); *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir. 1980) (*per curiam*); *Sibley v. Sibley*, D.C. Circuit Court Case No.: 11-7051, (“Contrary to appellant’s assertions, the court’s summary affirmance procedure, which is based on court precedent, *see i.d.*, does not run afoul of Fed. R. App. P. 47(a)(1) or the Rules Enabling Act, 28 U.S.C. § 2072.”), *Montgomery Sibley v. Barack Obama, et al*, D.C. Circuit Court Case No.: 12-5198, (“Nor has appellant shown that this court’s summary affirmance procedure deprives him of adequate notice or a meaningful opportunity to be heard, *James Madison Ltd. ex rel. Hecht v. Ludwig*, 82 F.3d 1085, 1099 (D.C. Cir. 1996), or violates Fed. R. App. P. 47 or the Rules Enabling Act, *Sibley v. Sibley*, No. 11-7051 (D.C. Cir. Sept. 27, 2011)”).

A. BACKGROUND

In D.C. Superior Court Sibley sued – solely in their official capacities – Appellant Boehner¹ and Appellee McConnell seeking a declaratory decree that the obligation of Congress to “call” a convention to propose amendments under Article V had been triggered. Appellee McConnell timely removed the case to D.C. District Court.

¹ The Honorable Paul Davis Ryan is substituted for The Honorable John A. Boehner pursuant to F.R.App.P., Rule 43 – “Substitution of Parties(c)(2) Automatic Substitution of Officeholder” given the October 31, 2015, resignation of Mr. Boehner from Congress.

Sibley timely moved to remand the case back to D.C. Superior Court claiming that he lacked Article III “standing” in D.C. District Court and consequently the District Court lacked subject matter jurisdiction. Notably both McConnell and Boehner also claimed that Sibley lacked Article III “standing”. Accordingly, Sibley argued that the District Court was obligated to remand the matter back to D.C. Superior Court pursuant to 28 U.S.C. §1447(c)(“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”)(Emphasis added).

After full briefing, Judge Boasberg entered his order remanding the case back to the D.C. Superior Court. (Copy attached). In the Order of Remand, Judge Boasberg held in pertinent part:

It is the unusual case in which a plaintiff concedes that the Court lacks subject-matter jurisdiction to adjudicate his claims. And yet, even before Defendants filed their Motions to Dismiss, Sibley offered just such a concession. *See* First Remand Mot. at 4 (“This Court lacks subject-matter jurisdiction as Sibley does not have ‘standing’ in an Article III court to pursue his claims.”); *id.* at 5 (“Sibley has not suffered an injury-in-fact which is concrete and particularized Sibley’s claim to ‘injury in fact’ is no different than any other United States Citizen thus it is not ‘concrete and particularized.’”). **The Court concurs. . . . A contemporaneous Order to that effect will issue this day, which Order will also remand the matter to Superior Court.** (Emphasis added).

This timely appeal followed.

B. APPELLANT’S MERITLESS POSITION IS SO CLEAR THAT EXPEDITED ACTION IS JUSTIFIED AND FURTHER BRIEFING UNNECESSARY

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994)(citations omitted, emphasis added). Here, the conclusion of the relevant syllogism is inescapable:

- ◆ 28 U.S.C. §1447(c) requires remand when an Article III court lacks subject matter jurisdiction;
- ◆ All parties and the District Court concur that Sibley lacks Article III “standing”;
- ◆ Lack of Article III “standing” is a defect in the court’s subject matter jurisdiction. *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986);
- ❖ Ergo, the District Court did not have subject matter jurisdiction and thus properly remanded the matter as required by 28 U.S.C. §1447(c).

Any other result would violate the clear injunction of *Kokkonen v. Guardian Life* against expanding an Article III court’s subject matter jurisdiction by “judicial decree” beyond that authorized by the Constitution and statute.

C. CONCLUSION

Here, “the merits of the parties’ positions are so clear that expedited action is justified and further briefing unnecessary.” *Taxpayers Watchdog, Inc. v. Stanley*, at 297-98. Accordingly, summary affirmance of the Remand Order is mandated.

II. MOTION FOR ORAL ARGUMENT

Sibley respectfully demands that to which he is entitled: his inalienable right under the Fifth Amendment of the United States Constitution – to a “hearing” which in this case requires oral argument given the seminal issue this case presents. *See: 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 some situations that such argument is essential to a fair hearing.”); *Federal Communications Commission v. WJR, The Goodwill Station, Inc.*, 337 U.S. 265, 276 (1949)(“Without in any sense discounting the value of oral argument wherever it may be appropriate or, by virtue of the particular circumstances, constitutionally required . . .” (Footnote omitted).)

Accordingly, oral argument is now “constitutionally required” and Sibley respectfully demands it.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via as requested by Email on: (i) Peter R. Maier, Special Assistant United States Attorney, Counsel for Defendant, The Honorable Mitch McConnell, (Peter.maier2@usdoj.gov) and (ii) William Pittard, Deputy General Counsel, Counsel for The Honorable Paul Davis Ryan, Office of General Counsel, United States House of Representatives, (William.Pittard@mail.house.gov) this November 2, 2015..

ORAL ARGUMENT REQUESTED

MONTGOMERY BLAIR SIBLEY

Appellee

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202-643-7232

montybsibley@gmail.com

By: _____
Montgomery Blair Sibley

ADDENDUM

Pursuant to Circuit Rule 35(c), Appellee Sibley states as follows:

PARTIES, INTERVENORS AND AMICI

Trial Judge: Honorable James E. Boasberg

Attorneys: Peter R. Maier, Special Assistant United States Attorney, Counsel for Defendant, The Honorable Mitch McConnell
William Pittard, Deputy General Counsel, Counsel for The Honorable Paul Davis Ryan

Parties: Montgomery Blair Sibley, The Honorable Paul Davis Ryan (substituted for The Honorable John A. Boehner pursuant to F.R.App.P., Rule 43 – “Substitution of Parties(c)(2) Automatic Substitution of Officeholder” given the October 31, 2015, resignation of Mr. Boehner from Congress.)

RULINGS UNDER REVIEW

The October 13, 2015, Order of Remand.

RELATED CASES

There are no related cases.

There is no corporation, association, joint venture, partnership, syndicate, or other similar entity which must make the disclosure required by Circuit Rule 26.1.