

THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

U.S. DISTRICT COURT
DISTRICT OF N.H.
FILED

2008 APR -2 P 12: 38

Fred Hollander,
Plaintiff,

vs.

Senator John McCain
&
Republican National Committee
Defendants.

CIVIL ACTION NO. 1:08-cv-99-JL

First Amended Complaint

Plaintiff, Fred Hollander (“Hollander”) brings this action against defendants, Senator John McCain (“McCain”) and the Republican National Committee (“RNC”), on behalf of himself and alleges upon information and belief, except as to his own actions, and the facts that are a matter of public record, as follows:

OVERVIEW

1. Plaintiff brings this action: (1) to remedy his disenfranchisement during the New Hampshire primary election for the Republican nomination of their candidate for president in the 2008 election; and (2) to prevent the disenfranchisement of him and an estimated 100 million additional voters who may otherwise cast their vote in the 2008 national election for a candidate who may later be declared ineligible to the Office of President.

2. As alleged more fully below, McCain is not a natural born citizen and therefore not eligible to the Office of President as prescribed by Article II, Section 1 of the United States Constitution.

3. Plaintiff seeks orders from this Court: (1) for McCain withdraw his candidacy for the nomination of the Republican Party for the Office of President; and (2) for the RNC to nominate a candidate other than McCain for the Office of President in the 2008 national election.

THE PARTIES

4. Plaintiff Fred Hollander is a citizen of the State of New Hampshire who resides in Nashua, Hillsborough County, New Hampshire. He is a registered voter with Republican Party and plans to vote in the 2008 national election for the Office of President.

5. Defendant Senator John McCain, 241 Russell Senate Office Building, Washington, D.C. 20510, is the presumptive nominee of the Republican Party. As a person born outside the United States, McCain is not a natural born citizen as required to be eligible to the Office of President under the terms of Article 2, Section 1 of the United States Constitution. McCain campaigned in the State of New Hampshire and participated in the Republican primary in New Hampshire which helped him to win the Republican nomination for the Office of President.

6. Defendant Republican National Committee, 310 First Street, Washington, D.C. 20003, is the organization that will, by its own party rules, nominate Senator John McCain as the Republican Party candidate for the Office of President in the 2008 national election. The RNC held its first primary for the presidential nomination in the State of New Hampshire.

JURISDICTION AND VENUE

7. This Court has jurisdiction as vested under Article III of the Constitution of the United States for all cases, in Law and Equity, arising under this Constitution, to interpret the meaning of "natural born citizen" as it applies to the eligibility of the Office of President. Plaintiff's standing is: (1) as a voter who voted in the New Hampshire primary election for the Republican nomination of their candidate for president in the 2008 election; (2) as a voter who plans to vote in the 2008 election for the Office of President; and (3) as a voter registered with the Republican Party.

8. This is the proper venue because the plaintiff is a citizen of the State of New Hampshire and both defendants have availed themselves of the resources of the State of New Hampshire.

SUMMARY OF ARGUMENT

9. Senator John McCain, having won many Republican Party primary elections and caucuses, has been allocated a majority of delegates who have pledged to nominate him as the Republican Party candidate for the 2008 election to the Office of President. As the presumptive nominee of the Republican Party, it is likely, or at least very possible, that the plaintiff and 100 million additional voters would cast their vote for Senator John McCain in the 2008 election for

the President of the United States. Should he win the election to the Office of President and later be declared ineligible for this office by a subsequent challenge to this Court, the plaintiff and 100 million additional voters would be disenfranchised.

10. In this scenario, this Court would then be in the daunting position of deciding who would sit in the Office of President in place of Senator John McCain; perhaps the Republican candidate for the Office of Vice President or the Democratic candidate for the Office of President.

11. In a second possible scenario, an unknown number of voters, possibly large enough to affect the outcome of the 2008 election to the Office of President, may choose not to vote for Senator John McCain simply because they fear their votes will be wasted on a candidate who may later be disqualified.

ARGUMENT

12. The plaintiff, hundreds of thousands of voters in New Hampshire and millions of voters nationally were disenfranchised during the primary election for the Republican nomination of their candidate for president in the 2008 election (“Republican Primary”). By nominating a candidate who is not eligible to the Office of President, the plaintiff and all other voters who voted in the Republican Primary were disenfranchised.

13. The allocation of votes, and subsequently delegates at the nominating convention of the Republican National Committee, to a candidate who is not eligible to the Office of President is a violation of Section 1 of the Fourteenth Amendment. As Senator John McCain will not be able to serve in the Office of President, the votes of those who participated in the Republican Primary, will count less than those who voted in other parties’ primary elections.

14. Senator John McCain, for all intents and purposes, has won the Republican nomination as its candidate for the Office of President in the 2008 election this November. He has been allocated a majority of the available delegates needed to nominate him at the Republican National Convention. He is the presumptive nominee, yet due to the nature of his citizenship, his eligibility for the Office of President is in question.

15. John Sidney McCain III was born on August 29, 1936 to John S. McCain, Jr. and Roberta Wright at the Coco Solo Naval Air Station in Panama. By the Fourteenth Amendment, to have been granted citizenship *jus soli* at birth, he would have had to be born on land of United States jurisdiction, yet by no authority was the Coco Solo Naval Air Station within

United States jurisdiction at the time of his birth in 1936. The Fourteenth Amendment only provides two methods of citizenship: (1) born in the United States; or (2) naturalized in the United States. Since Senator John McCain was not born in the United States, or even any land within U.S. jurisdiction, he was therefore naturalized. This is further supported by the U.S. State Department, where it is written in 7 FAM 1116.1-4(c)¹ that the Coco Solo Naval Air Station was not part of the United States within the meaning of the Fourteenth Amendment. This regulation also concludes that he did not acquire U.S. citizenship by reason of birth. He only acquired citizenship by *jus sanguinis* due that both of his parents were U.S. citizens.

16. The United States never intended, and certainly never declared, the Canal Zone as a U.S. territory. The State Department was not the only authority to declare that the Coco Solo Naval Air Station was not part of the United States. In fact, the Hay-Bunau-Varilla Treaty,² ratified by the U.S. Senate on February 23, 1904 and by President Theodore Roosevelt on February 25, 1904, maintains the Canal Zone as sovereign to the Republic of Panama. The language approved in this treaty makes it very clear the sovereignty of the Canal Zone was to remain with the Republic of Panama:

...which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

17. Along with the Senate's and the President's authority to maintain sovereignty of the Canal Zone with the Republic of Panama, the Supreme Court concurred that the United States did not have sovereignty over the Canal Zone.³ *Vermilya-Brown Co. v. Connell*, 335 U.S. 377 (1948) The Supreme Court again referenced *Vermilya-Brown* when it found that no transfer of

¹ 7 FAM 1116.1-4(c) Despite widespread popular belief, U.S. military installations abroad and U.S. diplomatic or consular facilities are not part of the United States within the meaning of the 14th Amendment. A child born on the premises of such a facility is not subject to the jurisdiction of the United States and does not acquire U.S. citizenship by reason of birth.

² Hay-Bunau-Varilla Treaty, Article III The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

³ Vermilya-Brown Co. v. Connell So the Administrator of the Wage-Hour Division has issued a statement of general policy or interpretation that directs all officers and agencies of his division to apply this Act to the Canal Zone, admittedly territory over which we do not have sovereignty.

sovereignty occurred with respect to military bases on land leased by a foreign country.⁴ *United States v. Spelar*, 338 U.S. 217 (1949)

18. By the conclusions above that the place of birth of Senator John McCain was sovereign to the Republic of Panama, and not within the jurisdiction of the United States, his citizenship, by authority of the Fourteenth Amendment, was by naturalization, not by birth.

19. Federal law further indicates that Senator John McCain is indeed a naturalized citizen; not a natural born citizen. It has been established above that the Canal Zone, which encompassed the Coco Solo Naval Air Station, was not within the jurisdiction of the United States. Federal law which applies in general to persons born outside the United States, 8 U.S.C. 1401(c),⁵ declares those born of parents who are U.S. citizens, as citizens. By the nature of this statute, which applies to those born outside the United States, it must refer, at least in part, to citizenship by naturalization. This statute would not grant him “natural” citizenship, even it were applicable to his birth in the Canal Zone. In any case, a statute that is directly applicable to the birth of Senator John McCain, 8 U.S.C. 1403(a),⁶ “declares” him a citizen due that his birth in the Canal Zone does not qualify him as a natural born citizen. Clearly, federal law declares Senator John McCain a “naturalized” citizen. The Supreme Court recognized the difference between a “native born” citizen and a “naturalized” citizen in the matter of eligibility to be President.⁷ *Schneider v. Rusk*, 377 U.S. 163 (1964)

20. Additional support for this argument can be found back in the laws of the First Congress. Although 1 Stat. 103⁸ granted “natural” citizenship to children of citizens of the United States who were born out of the limits of the United States, this statute was soon

⁴ *United States v. Spelar* To the extent that *Vermilya-Brown Co., Inc., v. Connell* has any application to the case at bar, it stands as authority for our result here, for it postulates that the executive agreement and leases effected no transfer of sovereignty [338 U.S. 217, 222] with respect to the military bases concerned.

⁵ 8 U.S.C. 1401(c) A person born outside the United States and its outlying possessions of parents both of who are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

⁶ 8 U.S.C. 1403(a) Any person born in the Canal Zone on or after February 26, 1904, and whether before or after the effective date of this chapter, whose father or mother or both at the time of the birth of such person was or is a citizen of the United States, is declared to be a citizen of the United States.

⁷ *Schneider v. Rusk* We start from the premise that the rights of citizenship of the native born and of the naturalized person are of the same dignity, and are coextensive. The only difference drawn by the Constitution is that only the “natural born” citizen is eligible to be President. Art. II, § 1. [p166]

⁸ 1 Stat. 103 And the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens...

superseded by 1 Stat. 414 Chapter 20, Section 1 ¶ 4⁹ which conspicuously removed the critical term “natural.”

21. By statutes, current and past; by the authority of the President of the United States; and by the authority of the Supreme Court, Senator John McCain’s citizenship was not by birth, but by declaration. As a naturalized citizen, Senator John McCain does not meet the requirements for eligibility for the Office of President as prescribed in Article 1, Section 2¹⁰ of the United States Constitution.

22. While the plaintiff respects Senator John McCain’s lifetime of service to our country, it is nonetheless irrelevant to this issue now before this Court. Plaintiff also concedes the unfortunate irony that a person born outside of the United States, because his father was serving our country as a member of U.S. Navy, should be found ineligible for the Office of President. However, should an exception be made for persons born to parents serving in our armed forces, we would start down a dangerous and slippery slope. Would persons born to parents serving our country by means other than the armed forces deserve any less consideration? And what of persons whose parents are serving our country, but are not U.S. citizens? The United States Constitution does not make any such exceptions, nor does it make any qualifications based on the service of the person or his parents, and it is fair to assume that the lack of exceptions was intentional and by sound reason.

23. Senator John McCain, in spite of the circumstances that might otherwise contradict the plaintiff’s claim, is unequivocally ineligible to the Office of the President. The Republican National Committee should not be permitted to nominate a candidate who is not eligible to serve in the office for which he is nominated. This would lead to the disenfranchisement of the plaintiff and approximately 100 million additional voters. With plenty of time before the national convention of the Republican Party, the Republican National Committee still has the opportunity to nominate a different candidate; a candidate who is eligible to the Office of President.

⁹ 1 Stat. 414 Chapter 20, Section 1 ¶ 4 ...and the children of citizens of the United States, born out of the limits and jurisdiction of the United States, shall be considered as citizens of the United States...

¹⁰ U.S. Constitution, Article I, Section 2 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;

CONCLUSION

24. By the authority of the President of the United States and by the U.S. Senate, the Coco Solo Naval Air Station in 1936 remained sovereign to the Republic of Panama. This position was reinforced by the Supreme Court, as was the position that overseas military bases, in general, remained sovereign to the foreign country by which such land is leased. It was also stated clearly by the U.S. State Department that the Canal Zone was not under the jurisdiction of the United States and therefore, children born in the Canal Zone were not U.S. citizens by birth.

25. Federal statutes, both past and current, make it clear that persons born outside the United States, specifically those born in the Canal Zone, are declared citizens and are therefore, not natural born citizens. By the Fourteenth Amendment, not being born in the United States, Senator John McCain is a naturalized citizen.

26. The United States Constitution makes the very clear distinction; a distinction recognized by the Supreme Court, that only a natural born citizen shall be eligible to the Office of President. The presumptive nominee of the Republican Party for the Office of President, Senator John McCain, is unequivocally not eligible to the Office of President.

27. The fear of voter disenfranchisement has risen to a level of such awareness that voters have become highly sensitive at any sign that their vote may not be counted. The issue of eligibility of Senator John McCain has been receiving an increasing amount of exposure recently and will likely become a key issue for voters as the 2008 election for the Office of President draws near. The plaintiff prays this Honorable Court will allay voters' fears by ruling on the eligibility of Senator John McCain while painless remedies are still available.

28. The plaintiff and all voters who participated in the primary election for the Republican nomination of their candidate for president in the 2008 election should have their votes counted, and counted equally, by guaranteeing that only candidates who are eligible to the Office of President may be assigned delegates at the Republican National Convention.

PRAYER FOR RELIEF


WHEREFORE, for all of the above-stated reasons, plaintiff, on behalf of himself, prays this Honorable Court:

- A. Declare Senator John McCain ineligible to the Office of President;
- B. Order Senator John McCain to withdraw his candidacy for this nomination; and

C. Order the Republican National Committee to: (1) reassign any and all delegates currently assigned to Senator John McCain to other candidates who are eligible to the Office of President; and (2) nominate a candidate who is eligible to the Office of President.

Respectfully submitted,

Date: April 1, 2008



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Certificate of Service

I hereby certify that a copy of the foregoing pleading was served on the defendant pursuant to Fed.R.Civ.P 5 (b)(2)(E) by e-mailing the pleading to mail@nhlawoffice.com.



Fred Hollander, Pro Se