

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

DAVID FARRAR,

Petitioner,

vs.

BARACK OBAMA

Respondent

Civil Action File Number

2012 CV 211398

Brief in Support of Respondent's Motion to Dismiss

The appeal from the Secretary of State's decision finding that President Obama is qualified to appear on the Presidential Preference Primary ballot is one in a long line of persistent challenges filed across the country since 2008. Not a single challenge has ever been upheld.¹

¹ See, Georgia cases: *Rhodes v. MacDonald*, 670 F. Supp.2d 1363 (M.D. Ga. 2009), *aff'd*, 2010 WL 892848 (11th Cir. March 15, 2010) *cert. denied*, 129 S. Ct. 2830 (2009); *Terry v. Handel*, 08cv158774S (Superior Court Fulton County, 2008), appeal dismissed, No. S09D0284 (Ga. Supreme Court), reconsideration denied, No. S09A1373; *Cook v. Good et al*, 4:2009cv00082, 2009 WL 2163535 (M.D.Ga. July 16, 2008).

Federal cases: *Allen v. Soetoro*, 4:09-cv-00373, 2011 WL 2130589, (D. Ariz. May, 2010); *In re: American Grand Jury*, 3:09mc00215(USDC Tenn., 2009); *Keyes v. Obama*, 8:09-cv-00082, 2009 WL 3861788, (U.S.D.C.D. Cal. Oct. 29, 2009), *appeal pending*, No. 10-55084 (9th Cir., 2011); *Berg v. Obama et al*, 574 F.Supp.2d 509 (E.D.Pa. 2008), *aff'd*, 586 F.3rd 234 (3rd Cir. 2009), *Cert. denied*, 129 S. Ct. 1030 (2009); *Berg v. Obama*, 656 F. Supp.2d. 107 (D.D.C. Cir. 2009); *Beverly v. Federal Elections Commission*, 09-15562 (E.D. Cal., 2008), *aff'd* 09-15562 (9th Cir., 2009), *cert. denied*, 130 S. Ct. 1732 (2010); *Bowhall v. Obama*, 2:10cv00609, 2010 WL 4932747, (M.D. Ala. November 30, 2010); *The Church of Jesus Christ Christian/Aryan Nations of Missouri et al v. Obama et al*, 6:08cv03405, 2011 WL 4916569 (W.D. Mo. Oct. 17, 2011); *Cohen v. Obama*, 1:08cv02150, 2008 WL 5191864 (D.D.C., Dec. 11, 2008), *aff'd*, 2009 WL 2870668 (D.C. Cir. 2008); *Cook v. Good et al*, 4:2009cv00082, 2009 WL 2163535, (M.D. Ga. July 16, 2008); *Cook v. Simtech*, 8:2009cv01382 (M.D. Fla., 2009); *Craig v.*

U.S., 5:09-cv-00343 (W.D. Okla., 2009), *cert. denied*, 130 S. Ct. 141 (2009); *Craig v. U.S.*, 5:09-cv-01345-c (W.D. Okla., 2010); *Dawson v. Obama*, 2:08cv02754, 2009 WL 532617 (E.D. Cal. March 2, 2009); *Ealey v. Sarah Obama*, 4:08-mc-00504 (S.D. Tex., 2008); *Essek v. Obama*, 08-379-GFVT (E.D. Ky., 2008); *Hamblin v. Obama*, 2:09cv00410, 2009 WL 2513986 (D. Ariz. Aug. 14, 2009); *Hamrick v. Fukino*, 1:08-cv-00544, 2009 WL 1404535 (Haw., May 20, 2009); *Herbert v. Obama*, 3:08-cv-01164-HES-TEM (M.D. Fla., 2008), *cert. denied*, 130 S. Ct. 562 (2009); *Herbert v. US*, 3:08-cv-00634-TJC-MCR (M.D. Fla., 2008); *Herbert v. US*, 3:08cv01201, 2009 WL 129585, (S.D. Cal., Jan. 15, 2009); *Hollander v. McCain*, 566 F. Supp.2d 63 (D.N.H. 2008); *Hollister v. Soetoro*, 601 F. Supp.2d 179 (D.D.C. Cir. 2009), *cert. denied*, 131 S. Ct. 1017 (2011); *Hunter v. U.S. Supreme Court*, 2:08cv00232, 2009 WL 111683, (N.D. Tex., Jan. 16, 2009), *appeal dismissed*, No. 09-10246, No. 10-10009, No. 10-100064 (5th Cir., 2009); *Jones v. Obama*, 2:10-cv-01075 (C.D. Cal., 2010); *Judy v. McCain*, 2:08cv01162 (USDC Nev., 2008); *Kerchner v. Obama*, 612 F.3d 204 (D.N.J. 2010), *cert. denied*, 131 S. Ct. 663 (2010); *Liberty Legal Foundation v. DNC*, CH-11-1757 (D Ariz., 2011); *Mackay v. Obama*, 2:11-cv-05458-JP (E.D. Pa., 2011), *voluntarily dismissed*, No. 11-3862 (USDC Pa., 2011); *McLanahan v. Obama*, 2:11-cv-00374-EFS (D. Was., 2011); *Morrow v. Barak Humane Obama*, 1:08-cv-22345 (S.D. Fla., 2008); *Neely v. Obama*, 2:08-cv-15243 (E.D. MI., 2008); *Patriot's Heart Network v. Soetoro*, 1:09-mc-00442-RCL (D.D.C., 2009); *In Re Paul Andrew Mitchell*, 2:08-cv-04083 (E.D. PA, 2008), *aff'd* 304 Fed. Appx 113, 2008 WL 5381436 (3rd Cir., 2008), *mandamus denied*, No. 08-4443 (3^d Cir., 2008); *Purpura v. Sebelius*, 3:10-cv-04814, 2011 WL 1547768, (D.N.J. Apr. 21, 2011); *Rhodes v. Gates*, 5:09-cv-00703-XR (W.D. Tex., 2009); *Rhodes v. MacDonald*, 670 F. Supp.2d 1363 (M.D. Ga. 2009), *aff'd*, 2010 WL 892848 (11th Cir. March 15, 2010) *cert. denied*, 129 S. Ct. 2830 (2009); *Robinson v. Bowen*, 567 F. Supp.2d 1144 (N.D. Cal. 2008); *Roy v. Fed. Election*, 2:08cv01519, 2008 WL 4921263, (W.D. Wa. Nov. 14, 2008); *Stamper v. US*, 1:08 CV 2593, 2008 WL 4838073 (N.D. OH. 2008); *Strunk v. Patterson*, 1:08cv04289 (E.D. N.Y., 2008), *appeal dismissed* No. 08-5422 (2^d Cir. Nov. 14, 2008); *Strunk v. U.S. Dept. of State*, 693 F. Supp.2d 112 (D.D.C. Cir. 2010), *mandamus denied*, No. 09-5322 (D.D.C., 2009), *appeal dismissed*, No. 10-5092, (DC Cir., 2010); *Super American Grand Jury*, 1:09-mc-00346-RCL (D.D.C., 2009); *Taitz v. Obama*, 707 F. Supp.2d 1 (D.D.C. Cir. 2010), *appeal pending*, No. 11-5304 (DC Cir., Oct. 31, 2011); *Taitz v. Astrue*, 1:11-cv-00402, 2011 WL 3805741, (D.D.C. Aug. 30, 2011); *Taitz v. Astrue*, 1:11-mc-00158 (D. Haw., 2011); *Taitz v. Ruemmier*, 1:11-cv-01421 (D.D.C., 2011); *Thomas v. Hosemann*, 1:08mc00280 (D. Haw., 2008); *Thomas v. Hosemann*, 2:08-cv-00241-KS-MTP (SD Miss., 2008).

State cases: *Ankeny v. Daniels*, 916 N.E.2d 678 (Ind. Ct. App. 2009) *Aff'd*, No. 49A02-0904-CV-353 (Ind. App. Court); *Brockhausen v. Andrade*, No. 08-1001-C365 (Tex. State Court); *Broe v. Reed*, 82473-8 (Was. State Supreme Court); *Connerat v. Browning*, 999 So. 2d 644 (Fla. Dist. Ct. App. 2008); *Connerat v. Obama*, No. 09003103SC (Fla. State Court); *Connerat v. Obama*, No. 09005522SC (Fla. State Court); *Constitution Party v. Lingle*, No. 29743, 2008 WL 5125984 (Haw. Dec. 5, 2008); *Corbett v. Bowen*, No. 30-2008-00114112-CU-FR_CJC, (Cal. Superior Court, 2008); *Craig v. Oklahoma*, MA-109808 (Okla. Supreme Court); *Donofrio v. Wells*, No. AN-1053-08T2 (NJ. Nov. 03, 2008), *Cert. denied*, 129 S. Ct. 752 (2008); *Fitzpatrick v.*

An effort to harass the President continues with qualification challenges filed across the country and in Georgia. Challengers ignore procedural and evidentiary requirements because their claims are without merit, based on fantasy, and offered in pursuit of a political agenda. See, for example, *Rhodes v. MacDonald*, 670 F. Supp.2d 1363, 1364 (M.D. Ga. 2009), *aff'd*, 2010 WL 892848 (11th Cir. March 15, 2010) *cert. denied*, 129 S. Ct. 2830 (2009) (“When a lawyer uses the courts as a platform for political agenda disconnected from any legitimate legal cause of action, that lawyer abuses her privilege to practice law.”)

Obama, no docket number (NC State Court); *Greenberg v. Brunner*, No. 2008cv1024 (Ohio State Court, 2008); *In re John McCain's Ineligibility to be on Presidential Primary Ballot in Pa*, 944 A.2d 75 (Pa. 2008); *Justice v. Fuddy*, 253 P.3d 665 (Haw. 2011); *Keyes v. Bowen*, 189 Cal. App. 4th 647 (Cal. Ct. App. 2010) *Cert. denied*, 132 S. Ct. 99 (2011); *US v. LTC Terrence L. Lakin*, MCAT-JA-SC; *Liberty Legal Foundation v. DNC*, CH-11-1757 (Tenn. State Court); *Lightfoot v. Bowen*, No. 168690 (Cal. Supreme Court, 2008), *Cert. denied*, 555 U.S. 1151 (2009); *Marquis v. Reed*, No. 08-2-34955-1 (Was. State Court, 2008); *Martin v. Lingle*, No. 29414, 2008 WL 4684786, (Haw. Oct. 22, 2008); *Martin v. Lingle*, No. ICC08-1-002147, 2009 WL 1669050, (Haw. Jun. 9, 2009), *Appeal Dismissed*, 2009 WL 2372096 (Haw. Aug. 3, 2009); *Martin v. Bennett*, No. 1CC10-1-000969 (Haw. State Court); *Meroni et al v. McHenry County Grand Jury Foreman et al*, No. 09mr399 (Ill. State Court, 2009); *Neal v. Brunner*, No. 2008cv72726 (Ohio State Court, 2008); *Patriot's Heart Media Network v. Illinois Board of Elections*, No. 10H000605 (Ill. State Court); *Schneller v. Cortes*, 199 MM 2008 (Pa. Supreme Court, 2009), *cert. denied*, 129 S. Ct. 2830 (2009); *Sorsensen v. Riley*, cv-2008-1906 (Ala. State Court, 2008); *Spuck v. Sec. of State*, 2008 cv1116 (Ohio State Court, 2008); *Stumpo v. Granholm*, No. 08-140-MM (Mich. Dist. Ct. (30th) Mar. 31, 2009), *appeal dismissed*, No. 291681, (Mich. App. Ct., Jun. 3, 2009); *Stunk v. Patterson*, 029641/2008 (N.Y. State Court, 2008); *Strunk v. Patterson*, 029642/2008 (N.Y. State Court, 2008); *Sullivan v. Sec. of State*, 08cv1076 (N.C. State Court, 2008); *Sullivan v. Marshall*, 08cvs-021393 (N.C. State Court, 2008); *Taitz v. Fuddy*, 1cc11-1-001731 (Haw. State Court); *Terry v. Handel*, 08cv158774S (Superior Court Fulton County, 2008), *appeal dismissed*, No. S09D0284 (Ga. Supreme Court), *reconsideration denied*, No. S09A1373; *Wrotnowski v. Bysiewicz*, SC 18264 (Conn. Supreme Court, 2008).

President Obama was a United States citizen from the moment of his birth in Hawaii. Since he held citizenship from birth, all Constitutional qualifications have been met. *Ankeny v. Governor of State of Indiana*, 916 N.E.2d 678 (Ind. App., 2009); see, *United States v. Marguet-Pillado*, 648 F.3d 1001, 1006 (9th Cir., 2011). There is no basis to question the President's citizenship or qualifications to hold office.

Specially appearing before this Court, respondent show that petitioner's actions should be dismissed as they have been in numerous cases for lack of jurisdiction over the subject matter, failure of service of process, and failure to state a claim upon which relief can be granted. O.C.G.A. § 9-11-12(b)(1), (5), and (6).

I. LACK OF SUBJECT MATTER JURISDICTION

A. THE STATE OF GEORGIA MAY NOT EXERCISE JURISDICTION OVER A POLITICAL PARTY'S CHOICE OF NAMES TO INCLUDE IN THE PRESIDENTIAL PREFERENCE PRIMARY.

The Democratic Party of Georgia, a political party as defined by O.C.G.A. § 21-2-2(25), participates in the Georgia Presidential Preference Primary "so that electors may express their preference for one person to be the candidate for nomination ... for the office of President of the United States." O.C.G.A. § 21-2-191. No one is elected to any office, nor is anyone nominated to run for any office, as a result of the Presidential Preference Primary. Nomination of a candidate for the office of President will occur at the national convention in Charlotte, NC during the week of September 3, 2012.

The Democratic Party of Georgia determines names to include on its Presidential Preference Primary ballot at its sole discretion. O.C.G.A. § 21-2-193. A state political party "enjoys a constitutionally protected freedom which includes the right to identify the people who constitute this association that was formed for the purpose of advancing

shared beliefs and to limit the association to those people only.” See *Democratic Party of U.S. v. Wisconsin*, 50 U.S. 107, 101 S.Ct. 1010, 1019, 67 L.Ed.2d 82 (1981). *Duke v. Cleland*, 954 F.2d 1526, 1530-1 (11th Cir. 1992). First amendment associational rights of a political party are most often litigated in the context of a party refusing to allow a name to appear on a primary ballot (such as in *Democratic Party of U.S. v. Wisconsin* or *Duke v. Cleland*) but the reverse is also true: a political party enjoys the exclusive right to dictate names on its primary ballot. The right to associate not only contemplates the ability to exclude but, necessarily, who to include.

Apportionment of delegates as a result of preference primary results constitutes an internal party matter. The State of Georgia may not interfere with “the traditionally recognized autonomy of the political party’s internal decision-making.” *Belluso v. Poythress*, 485 F.Supp. 904, 912 (N.D. Ga., 1980); *Duke v. Cleland*, 954 F.2d 1526 (11th Cir., 1992).

B. THE QUALIFICATIONS CHALLENGE STATUTE DOES NOT APPLY TO THE PRESIDENTIAL PREFERENCE PRIMARY.

O.C.G.A. § 21-2-5 does not apply to the Presidential Preference Primary. The preference primary is not an election: by its terms, the preference primary is simply an opportunity for electors “to express their preference for one person to be a candidate for nomination.” O.C.G.A. § 21-2-191. The election code defines “election” as “any general or special election and shall not include a primary or special primary unless the context in which the term is used clearly requires clearly requires that a primary or special primary is included.” O.C.G.A. § 21-2-2(5). Neither the preference statute nor the definition reference the Presidential Preference Primary. Nothing in the context of O.C.G.A. § 21-2-5 “clearly requires” applicability to the preference primary.”

O.C.G.A. § 21-2-5 applies when a candidate is “certified by the state executive committee of a political party or ... files a notice of candidacy.” O.C.G.A. § 21-2-5(a). Neither occurred here. (Certification of candidates by a party executive committee refers to the qualification procedure in O.C.G.A. § 21-2-154(a) and the payment of qualifying fees, neither of which apply to preference primaries.) No fees may be charged for listing a name on the preference ballot. O.C.G.A. § 21-2-198. There is no qualifying nor does a political party file a certification of its qualified candidates, as it would in an election. See, O.C.G.A. § 21-2-154. The state executive committee simply lists names that it wishes to have on the preference primary ballot. O.C.G.A. § 21-2-193.

II. SERVICE OF SUMMONS AND PETITION FOR REVIEW UPON AN ATTORNEY REPRESENTING A PARTY IS INSUFFICIENT

The return of service filed with the Court shows that service of the summons and complaint was made by mailing to respondent’s attorney. Petitioner did not seek a waiver of personal service as authorized by O.C.G.A. § 9-11-4(d) nor did it attempt personal service using the methods specified by O.C.G.A. § 9-11-4(e) or 4(f). “Where there is no process and no waiver of process, no valid suit arises.” *State Hwy. Dept. v. Noble*, 220 Ga. 410, 414, 139 S.E.2d 318 (1964).

III. THE PETITION FOR REVIEW DOES NOT STATE CLAIMS AGAINST THE PRESIDENT

The proper party respondent when challenging a qualification decision made by the Secretary of State is the Secretary of State. In order to grant the relief sought by the petitioner the Secretary of State needs to be before the court. He is not. See, for example, *Handel v. Powell*, 284 Ga. 550 (2008), in which the only parties in the appeal were the Secretary of State and the challenger of the Secretary’s decision.

The relief sought by the petitioner is relief from a decision of the Secretary of State. In paragraphs 13 and 15 of the review petition petitioner seeks to stay the action of the Secretary of State. The petition does not seek any relief against the President, but only against the Secretary. In order to grant relief, the Civil Practice Act requires the issuance of a summons signed by the clerk of court in order for the court to exercise power granting relief. The issuance of process signed by the clerk is a necessary part of acquisition of jurisdiction. OCGA § 9-11-8 (a) (2) (A); *Schafer v. Wachovia Bank of Georgia*, 248 Ga.App. 466, 546 S.E.2d 846 (2001). No summons commands appearance by the Secretary of State in this matter. The lack of personal jurisdiction over the Secretary of State deprives this Court of jurisdiction to grant relief. *Bonner v. Bonner*, 272 Ga.App. 545, 533 S.E.2d 72 (2000); *Wilkinson v. Udinsky*, 242 Ga.App. 464, 530 S.E.2d 215 (2000); *Guerrero v. Tellez*, 242 Ga.App. 354, 529 S.E.2d 639 (2000). Jurisdiction over the Secretary of State must be established before the court can enter any ruling binding a party such as the Secretary of State or the ruling is declared null and void. See *Estate of Marjorie C. Thurman v. Dodaro*, 169 Ga.App. 531, 532(1), 313 S.E.2d 722 (1984). Knowledge that the suit exists does not substitute for compliance with service of process statute. *Williamson v. Basenback*, 298 Ga.App. 567, 680 S.E.2d 577 (2009).

The relief sought by the petition is directed against the Secretary of State, not the President. The complaint does not state a claim against the President.

IV. CONCLUSION

Respondent specially appears in this Court to show that the petition for review should be dismissed.

Respectfully submitted,

This 27th day of February, 2012.

A handwritten signature in black ink that reads "Michael Jablonski". The signature is written in a cursive style with a large initial "M" and a long, sweeping underline.

MICHAEL JABLONSKI
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing pleading upon

Mr. David Farrar

by statutory electronic service pursuant to O.C.G.A. § 9-11-5(e) using the email address
david.is.farrar@gmail.com.

This 27th day of February, 2012.



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