

**OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

DAVID FARRAR

Plaintiff,

v.

BARACK OBAMA,

Defendant.

Docket Number: OSAH-SECSTATE-CE-
1215136-60-MALIHI

MOTION TO QUASH SUBPOENAS

I. Introduction.

President Barack Obama, a candidate seeking the Democratic nomination for re-election, moves for an order quashing a subpoena which, if enforced, requires him to interrupt duties as President of the United States for an administrative hearing in Fulton County, Georgia, starting on January 26 and continuing through the pendency of the hearing. Such a subpoena is, on its face, unreasonable. The documents sought by plaintiffs have received an extraordinary degree of publication and availability.

President Obama released documents provided to him by the State of Hawaii evidencing his birth. Numerous individuals, including plaintiff's attorney, petitioned Hawaii to obtain exemplars of the birth record provided by the State. The President made the documents available to the general public by placing it on his website. Although the document has been generally available for years, the President took the extraordinary step of acquiring a copy of the record of birth, informally known as the "long form," making it available to anyone who cares to check the website. The general availability of

the document to various plaintiffs in these actions is demonstrated by inclusion of the document in several filings with OSAH. The extensive, although patently unfounded, criticisms of the documents by plaintiff's attorney evidence possession. The remaining documents sought by plaintiffs are irrelevant and immaterial as the birth certificates made available to the public prove citizenship. Plaintiff's attorney not only seeks documents that she has already seen and that she has been using, but continues to ask for them to further her political agenda. She has been sanctioned previously by a federal court in Georgia for pursuing this strategy by filing frivolous pleadings. See, *Rhodes v. McDonald*, 670 F. Supp. 2d 1363 (MD Ga. 2009).

Pursuant to the scheme established in the Constitution of the United States (Article II, Section 1) voters selected presidential electors on November 4, 2008. Presidential electors voted for president on December 15 pursuant to 3 U.S.C. § 7. A joint session of the United States Congress counted and certified the votes of presidential electors on January 8, 2009. Vice President Dick Cheney announced that the presidential electors selected Barack Obama as president with 365 presidential elector votes, exceeding the absolute majority of 270 votes required. President Obama took office on January 20, 2009. Presidential electors and Congress, not the State of Georgia, hold the Constitutional responsibility for determining the qualifications of presidential candidates. The election of President Obama by the presidential electors, confirmed by Congress, makes the documents and testimony sought by plaintiff irrelevant.

II. Argument.

A. Standard

The testimony and documents sought are neither relevant nor material, nor are they necessary for the presentation of plaintiff's case as outlined in the pretrial order. A subpoena "may be quashed by the Administrative Law Judge if it appears that the subpoena is unreasonable or oppressive, or that the testimony, documents, or objects sought are irrelevant, immaterial, or cumulative and unnecessary to a party's preparation or presentation at the hearing, or that basic fairness dictates that the subpoena should not be enforced." Ga. Comp. R. & Regs. r. 616-1-2-.19(5).

The sovereignty of the State of Georgia does not extend beyond the limits of the State. O.C.G.A. § 50-2-20. Since the sovereignty of the State does not extend beyond its territorial limits, an administrative subpoena has no effect. Thus, OSAH rules specify that subpoenas must be served within the State of Georgia. Ga. Comp. R. & Regs. r. 616-1-2-.19(5) ("A subpoena may be served at any place within Georgia....").

Plaintiff attempts to use the subpoenas to conduct discovery even though they may only be used within the borders of Georgia to compel attendance and production of documents at hearings or at depositions, if depositions are allowed in a case. Ga. Comp. R. & Regs. r. 616-1-2-.19(1) ("Subpoenas may be issued which require the attendance and testimony of witnesses and the production of objects or documents at depositions or hearings....")

B. The subpoenas serve no permissible function.

A large number of baseless legal actions, ignoring the determination by the presidential electors and by Congress that President Barack Obama meets all Constitutional requirements for the office of the President, have been filed, many of which have been initiated by Plaintiff's attorney in this case. OSAH has been previously

supplied with citations to the sixty-eight cases that have been concluded. Challengers have not succeeded a single instance, and they have been sanctioned many times. The present challenge before the Secretary of State is not even the most recent example, as several have been subsequently filed in other states.

The case under consideration here re-litigates issues that plaintiff's attorney lost in New Hampshire- as evidenced by the voluminous filings bearing New Hampshire filenames and markings – among other jurisdictions. Plaintiff's "amended complaint" evidenced a complete disregard for orderly proceedings and the rule of law: it included new parties that do not meet eligibility requirements specified by the legislature; it sought criminal and injunctive relief beyond the power of either OSAH or the Secretary of State to grant; it raised issues beyond the one in the Secretary of State reference to OSAH. Plaintiff's counsel continues to file documents and make requests ignoring rules requiring the filing of motions, despite admonishment by OSAH staff.

Subpoenas served around the country in this action by plaintiff's attorney seek material more consistent with the attorney's political and public relations goals than with resolution of issues here. In the last several days, plaintiff's attorney sent subpoenas seeking to force attendance by an office machine salesman in Seattle; seeking to force the United States Attorney to bring an unnamed "Custodian of Records Department of Homeland Security" to attend the hearing with immunization records for "Barack(Barry)(Bari)Hussein(A)Obama;" and another asking the same U.S. Attorney to bring the same records allegedly possessed by "Custodian of Records of U.S. Citizenship and Immigration Services." She served subpoenas attempting to compel the production of documents and the attendance of Susan Daniels and John Daniels, both apparently out of state witnesses, regarding Social Security records. Immigration, nationalization,

and Social Security records are not relevant to this proceeding because nothing in the Constitution makes familial immigration status nor participation in Social Security a prerequisite to serving as president.

Upon information and belief, based upon the plaintiff attorney's website, it appears that plaintiff is trying to force the Director of Health for the State of Hawaii to bring to Atlanta the "original typewritten 1961 birth certificate #10641 for Barack Obama, II, issued 08.08.1961 by Dr. David Sinclair...." Plaintiff's attorney attempts to misuse a Georgia OSAH subpoena to gain access to records that she knows she cannot access under Hawaii law. A Hawaii court dismissed with prejudice the last attempt to force release of confidential records on November 9, 2011. *Taitz v. Fuddy*, CA No. 11-1-1731-08 RAN.

Plaintiff's attorney violates two rules of practice with these subpoenas. First, they must be served within the State of Georgia. Ga. Comp. R. & Regs. r. 616-1-2-.19(5) ("A subpoena may be served at any place within Georgia...."). The sovereignty of the State of Georgia does not extend beyond the limits of the State. OCGA 50-2-20. The attempted use of these subpoenas to obtain documents from Hawaii and State of Washington is improper. Subpoenas issued by Georgia courts do not have extraterritorial power. *Hughes v. State*, 228 Ga. 593, 187 S.E.2d 135 (1972). Second, plaintiff's attorney improperly changes the terms of the subpoena by adding "and a certified copy to be forwarded within 5 days of service to the Plaintiff's attorney at Law Offices of Orly Taitz...." The rules governing the use of subpoenas do not contemplate obtaining certified copies before the hearing. The regulations state that subpoenas may be used to compel attendance and production of documents at hearings or at depositions, if depositions are allowed in a case. Ga. Comp. R. & Regs. r. 616-1-2-.19(1) ("Subpoenas

may be issued which require the attendance and testimony of witnesses and the production of objects or documents at depositions or hearings....”). The manipulation of the document evidences a conscious attempt to use the authority of this agency acquire documents that the attorney would otherwise be unable to obtain, especially since discovery is not allowed. Ga. Comp. R. & Regs. r. 616-1-2-.38 (“Discovery shall not be available in any proceeding....”).

C. Plaintiff's attorney has a history of abusing her privilege to practice law.

In *Rhodes v. McDonald*, 670 F. Supp. 2d 1363 (MD Ga. 2009), Judge Clay Land wrote of plaintiff's attorney, “When a lawyer files complaints and motions without a reasonable basis for believing that they are supported by existing law or a modification or extension of existing law, that lawyer abuses her privilege to practice law. 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.” (Rhodes order, p 2).

Judge Land found abuses of Court power in the handling of the case. “As a national leader in the so-called ‘birther movement,’ Plaintiff's counsel has attempted to use litigation to provide the ‘legal foundation’ for her political agenda. She seeks to use the Court's power to compel discovery in her efforts to force the President to produce a ‘birth certificate’ that is satisfactory to herself and her followers.” (Rhodes order, p. 4). Here, although there is no discovery allowed, plaintiff's attorney continues attempts to pursue a political agenda by causing to be issued broad-based, unfocused subpoenas in an attempt to obtain documents that have been previously denied to her by other courts. The requests, individually and taken together, are at best unreasonable and at worse

constitute an abuse.

III. Conclusion

Plaintiffs show no reason to compel the attendance of the President of the United States at an administrative hearing. The documents evidencing the birth of President Obama have been made available to the general public or are irrelevant to the proceeding. The plaintiffs obtained copies. Indeed, their filings with OSAH show that they have obtained copies.

Defendant respectfully requests that the subpoenas be quashed.

Respectfully submitted,

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LEAH LAX,
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CERTIFICATE OF SERVICE

Pursuant to the Order entered in this matter regarding electronic service, I certify that I have served the opposing party in this matter with a copy of the Motion to Quash Subpoena by sending a copy via email addressed to:

Orly Taitz <orly.taitz@gmail.com>

This 18th day of January, 2012.

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