

Case No. 1120465

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IN THE SUPREME COURT OF ALABAMA

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HUGH MCINNISH, et al.,

Appellants,

v.

BETH CHAPMAN, in her capacity as Secretary of State,

Appellee.

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ON APPEAL FROM THE CIRCUIT COURT OF MONTGOMERY COUNTY,  
ALABAMA

CV 2013-1053

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Appellants' Reply to Appellee's Brief

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## SUMMARY OF THE ARGUMENT

Chapman's brief falls naturally into two categories: First, she argues that this Court lacks jurisdiction to hear the case and, second, she presents arguments disclaiming any responsibility whatsoever for interdicting the names of potential candidates who may be unqualified for the office sought, even where there is probable cause to suspect fraud. In the latter category she avers that only Congress can act to bar an unqualified candidate, and, further, that since the ballots are already printed it is too late for correction even if an error is manifest.

Since these arguments have already been addressed in appellants' original brief, and not wishing to burden the Court with needless redundancies, McInnish and Goode will address each in summary and terse form.

## ARGUMENT

### **I. In her brief Chapman first argues that this case is moot.**

But this case is not moot. McInnish and Goode have carefully explained the doctrine of nonmootness in their original brief, showing that there are three exceptions to the mootness doctrine, any one of which is sufficient to render a case nonmoot, and showing, further, that this case meets, not just the requirement of one exception, but meets each of the three. *Coady v. Pennsylvania Board of Probation and Parole*, Commonwealth Court of Pennsylvania No. 598 M. D. 2001; (See Appellants' Brief (AB), 12).

### **II. Chapman next propounds several other reasons why the Appellants' claims should fail.**

A. She contends that This Court lacks jurisdiction under the "jurisdiction stripping statute," Ala. Code § 17-16-44. But as we have already explained, this statute is relevant to the conduct of elections, and the election in question has already been conducted. We are, on the contrary, asking Chapman to take the extraordinarily simple step, of demanding birth

certificates from each of the presidential candidates, especially in the case of Barack Obama, to determine the eligibility of each to be a bone fide presidential candidate. Hence § 17-16-44 is inapplicable. (AB, 21).

B. The secretary attempts to escape her duty to certify only qualified candidates by declaring that she has no duty to do so. As explained earlier in Appellants' original brief, the statute lists those whose names should go on the ballot, but adds the caveat "provided they are otherwise qualified for the office they seek." Ala. Code § 17-9-3. The implication is clear: The lawmakers anticipated that there would be those who were not qualified for the office sought and these should be excluded. (AB, 30.) In the present case there is plentiful evidence that at least one of the presidential candidates was unqualified. Chapman knew this before the election and she looked aside from her duty and certified him without so much as a superficial inquiry. The Secretary of State had gained knowledge from an official source that there is probable cause to

believe that President Obama has not met a certifying qualification. Specifically, Joseph M. Arpaio, Sheriff of Maricopa County Arizona (and indisputably, an official empowered by the law of the state), concluded, as stated in his affidavit, "...that forgery and fraud was likely committed in key identity documents including President Obama's long-form birth certificate, his Selective Service Registration card, and his Social Security number." (AB, Appendix D) Sheriff Arpaio is undoubtedly an official source. In addition, the Full Faith and Credit Clause of the U.S. Constitution, Article IV, Section 1, provides that "Full Faith and Credit shall be given in each state to the public Acts, Records, and judicial proceedings of every other state." The fact that Sheriff Arpaio is in Arizona, and not in Alabama, is irrelevant. Sheriff Arpaio, as a public official, was acting on behalf of the public in investigating the qualifications of President Obama and his eligibility to be President of the United States, and, full faith and credit should and must be given to his public acts and subsequent findings. Fortunately for justice it is not too late

to correct this egregious error, and this Court has ready at hand the means to set in motion what is needed to do so.

C. Chapman alleges that only Congress has the authority to judge the qualifications of presidential candidates after an election. It is true that Congress does indeed have the authority to judge the qualifications of the candidates, but it is not true that it has the *exclusive* authority to do so. As a sovereign state surely Alabama has the authority to exclude from its ballot those who are ineligible for office. The California Secretary of State denied ballot access for presidential candidates in 1968 and again in 2012. The California Secretary of State determined that those candidates did not meet the constitutional qualifications and would not allow those names on the ballots. (AB, 19.)

D. Finally, Chapman pleads, once again, that she was powerless to correct any error in certification since the ballots had already been printed. Although this addresses an issue that is passé, there are two points that are interesting to note: First, as has been done



in other jurisdictions, it is simple to correct, not the printed ballot, but the effect of an erroneously-printed ballot, e.g., posting signs at the voting sites stating that votes for the bogus candidate would not be counted. Second, this chronological picture strongly reinforces, in a stark example here in this present case, one of the rules for a judgment of nonmootness, namely the case which is capable of repetition but evading review.

**III. Chapman's brief speaks most loudly in its silence.**

A. No word is offered in arguing that the birth certificates submitted by Obama are genuine. All her arguments are aimed at suppressing the truth by avoiding a judicial mandate to do her duty and discover it.

B. Chapman's silence regarding the two California situations where the Secretaries of State would not allow unqualified presidential candidates on the ballots. In 1968 Eldridge Cleaver was refused ballot access and in 2012, Peta Lindsey was likewise refused ballot access. (AB, 19.) The Secretary of State in

Alabama has the same authority and responsibility that the Secretary of State in California has.

### Conclusion

The question of the legitimacy of Obama's birth certificate has been a controversy that has existed for several years. All those involved have been examining the controversy up close in great detail.

It may be helpful at this point to step back, take a deep breath, and look at the overall scene from a distance, to look at the forest, unobscured by close-up trees and undergrowth, to look at the full picture, not at the individual pixels. And when we do here is what we see:

We see a bizarre and vicious fight being waged over the smallest triviality. We see literally millions of dollars being expended by one side defending its position, when a ten-dollar document would resolve the issue.<sup>1</sup> We see a torrent of

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<sup>1</sup> See: [http://hawaii.gov/health/vital-records/vital-records/vital\\_records.html](http://hawaii.gov/health/vital-records/vital-records/vital_records.html) for a form to obtain a birth certificate from the Hawaii Department of Health. The form

invective being hurled indiscriminately at opponents.

We see abounding inaccuracies and prevarications in the media.

And what is at the core of the issue? It is a birth certificate. A birth certificate, just like a teenager needs to obtain a learner's permit and just like a man needs to join the army.

Yes, it is, or it ought to be, trivial -- except for the circumstances of the one whose birth certificate is sought, namely that of Barack Obama. He happens to be President of the United States, but that in itself does not change the simplicity at base.

Obama, for reasons unstated, refuses to produce his true birth certificate, and has used his power, influence, and money to avoid doing so. When this scenario is seen clearly it forms an embarrassingly nonsensical picture, a caricature of the great cacophony and confusion surrounding this issue. Were an

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shows a required fee of \$10.00. The DoH explains that vital documents will be issued only to persons who "have a direct and tangible interest in the record." In listing examples of those whom they consider to have the requisite interest, the first listed is "the registrant (the person whom the record is concerned with.)" In this case the latter is Barack Obama.

economist asked to conduct a benefits-cost-analysis, his charge would be to determine whether the benefits outweigh the cost and by how much. One can imagine his astonishment. "Prima facie," he might say, "the answer is visible. The benefits are monumental, and the costs are infinitesimal. The benefits-cost ratio, therefore, soars upward toward infinity. There is nothing here for me to do."

This Court has both the right and the power to summarily end this untoward controversy. By requiring the Secretary of State to demand a bona fide birth certificate from Obama and all other presidential candidates, the issue, insofar as Alabama is concerned, can be settled.

McInnish and Goode pray the Court to do so.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14 day of May 2013, I electronically filed the foregoing with the Clerk of the Supreme Court of Alabama using the ACIS filing system, which will send notification of such filing to the following:

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