No. 10-

IN THE

Supreme Court of the United States

ALAN KEYES, Ph.D. Ambassador,
DR. WILEY S. DRAKE and MARKHAM ROBINSON,

Petitioners,

v.

BOWEN, OBAMA, BIDEN, HUGUENIN, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Secretary of State, as the Chief Elections Officer of the State of California, be required to verify that candidates for the Office of President of the United States are indeed eligible for the office before placing the candidates on the California ballot?

LIST OF PARTIES

1) AMBASSADOR DR. ALAN KEYES, Plaintiff-Appellant;

2) DR. WILEY DRAKE, Plaintiff-Appellant;

3) MARKHAM ROBINSON, Plaintiff-Appellant;

4) DEBRA BOWEN, California Secretary of State, Defendant-Respondent;

5) BARACK HUSSEIN OBAMA, President of the United States, Defendant-Respondent;

6) JOE BIDEN, Vice-President of the United States, Defendant-Respondent;

7) ALEITZ HUGUENIN, California Democratic Party Elector, Defendant-Respondent;

8) LOU PAULSON, California Democratic Party Elector, Defendant-Respondent;

9) IAN BLUE, California Democratic Party Elector, Defendant-Respondent;

10) MARK CIBULA, California Democratic Party Elector, Defendant-Respondent;

11) RICHARD HUNDRIESER, California Democratic Party Elector, Defendant-Respondent;

12) LAWRENCE DUBOIS, California Democratic Party Elector, Defendant-Respondent;

13) MARK FRIEDMAN, California Democratic Party Elector, Defendant-Respondent;

14) MARY HUBERT, California Democratic Party Elector, Defendant-Respondent;

15) FRED JACKSON, California Democratic Party Elector, Defendant-Respondent;

16) LEROY KING, California Democratic Party Elector, Defendant-Respondent;

17) ROBERTA BROOKS, California Democratic Party Elector, Defendant-Respondent;

18) AUDREY GORDON, California Democratic Party Elector, Defendant-Respondent;

19) MICHAEL NCNERNEY, California Democratic Party Elector, Defendant-Respondent;

20) NANCY PARRISH, California Democratic Party Elector, Defendant-Respondent;

21) JAMES FARLEY, California Democratic Party Elector, Defendant-Respondent;

22) JOHN FRIEDENRICH, California Democratic Party Elector, Defendant-Respondent;

23) JERMEY NISHIHARA, California Democratic Party Elector, Defendant-Respondent;

24) JAIME ALVARADO, California Democratic Party Elector, Defendant-Respondent;

25) VINZ KOLLER, California Democratic Party Elector, Defendant-Respondent;

26) GREGORY OLZACK, California Democratic Party Elector, Defendant-Respondent;

27) David Sanchez, California Democratic Party Elector, Defendant-Respondent;

28) LARRY SHEINGOLD, California Democratic Party Elector, Defendant-Respondent;

29) STEPHEN SMITH, California Democratic Party Elector, Defendant-Respondent;

30) MARK MACARRO, California Democratic Party Elector, Defendant-Respondent;

31) NATHAN BROSTROM, California Democratic Party Elector, Defendant-Respondent;

32) ROBERT "BOB" HANDY, California Democratic Party Elector, Defendant-Respondent;

33) ROBERT CONAWAY, California Democratic Party Elector, Defendant-Respondent;

34) GREG WARNER, California Democratic Party Elector, Defendant-Respondent;

35) LANE SHERMAN, California Democratic Party Elector, Defendant-Respondent;

36) ILENE HUBER, California Democratic Party Elector, Defendant-Respondent;

37) KENNETH SULZER, California Democratic Party Elector, Defendant-Respondent;

38) SANFORD WEINER, California Democratic Party Elector, Defendant-Respondent;

39) ANA DELGADO MASCARENAS, California Democratic Party Elector, Defendant-Respondent;

40) JOE PEREZ, California Democratic Party Elector, Defendant-Respondent;

41) GWEN MOORE, California Democratic Party Elector, Defendant-Respondent;

42) ANTHONY RENDON, California Democratic Party Elector, Defendant-Respondent;

43) KAREWN WATERS, California Democratic Party Elector, Defendant-Respondent;

44) KELLY WILLIS, California Democratic Party Elector, Defendant-Respondent;

45) SILISSA URIARTE-SMITH, California Democratic Party Elector, Defendant-Respondent;

46) NORMA TORRES, California Democratic Party Elector, Defendant-Respondent;

47) ALMA MARQUEZ, California Democratic Party Elector, Defendant-Respondent;

48) RAY CORDOVA, California Democratic Party Elector, Defendant-Respondent;

49) PATRICK KAHLER, California Democratic Party Elector, Defendant-Respondent;

50) AARUNI THANKUR, California Democratic Party Elector, Defendant-Respondent;

51) JOE BACA, JR., California Democratic Party Elector, Defendant-Respondent;

52) JUADINA STALLINGS, California Democratic Party Elector, Defendant-Respondent;

53) BETTY MCMILLION, California Democratic Party Elector, Defendant-Respondent;

54) WILLIAM AYER, California Democratic Party Elector, Defendant-Respondent;

55) GREGORY WILLENBORG, California Democratic Party Elector, Defendant-Respondent;

56) JAMES YEDOR, California Democratic Party Elector, Defendant-Respondent;

57) BOBBY GLASER, California Democratic Party Elector, Defendant-Respondent;

58) MARY KEADLE, California Democratic Party Elector, Defendant-Respondent;

59) FRANK SALAZAR, California Democratic Party Elector, Defendant-Respondent;

60) CHRISTINE YOUNG, California Democratic Party Elector, Defendant-Respondent; and

61) SID VOORAKKARA, California Democratic Party Elector, Defendant-Respondent.

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Respondent Debra Bowen (hereinafter referred to as "BOWEN") filed a demurrer to the Petition on February 23, 2009, on the ground that the Petition failed to state facts sufficient to constitute a cause of action against her, that the petition was moot, and that there is no judiciable controversy, as it relates to the 2008 General Election, and that the controversy was not ripe as it relates to future elections (CT 720). BOWEN argued that the California Secretary of State (hereinafter referred to as "SOS") has no "ministerial duty" to demand detailed proof of citizenship from Presidential Candidates (CT 1089). The Trial Court agreed and sustained BOWEN'S demurrers (CT 1106). The Court stated that a writ of mandate can only issue if the respondent has a clear, present, and beneficial interest in the performance of that duty (CT 1106). The Trial Court stated that APPELLANTS failed to identify authority requiring the SOS to make an inquiry into, or demand for, detailed proof of citizenship from Presidential candidates (CT 1101). The trial court also stated that APPELLANTS' First Amended Petition (hereinafter referred to as "FAP") is moot insofar as it relates to the 2008 general election (CT 1101). The Court stated that the FAP failed to frame the issues with sufficient concreteness and immediacy to allow the Court to render a conclusive and definitive judgment, rather than an advisory opinion based on hypothetical facts or speculative future events (CT 1102).

Respondent Barack Obama (hereinafter referred to as "OBAMA"), and Respondent Joseph Biden (hereinafter referred to as "BIDEN"), and the California Electors also filed a demurrer to the Petition on February 23,

2009, on the grounds that the Petition did not state facts sufficient to constitute a cause of action against any of RESPONDENTS, that the Trial Court had no jurisdiction over the subject of the action as alleged in FAP, and that FAP suffered from a defect or misjoinder of parties (CT 728). The Trial Court sustained the demurrer on the ground that FAP did not state facts sufficient to constitute a cause of action against the named RESPONDENTS, because the pleading did not seek any relief as to either OBAMA or BIDEN (CT 1102). The Trial Court also stated that FAP does not prove that California Electors have a duty to review their candidate's eligibility (CT 1103). The court sustained RESPONDENTS' demurrer on the ground that FAP suffered from a defect or misjoinder of parties because it contained allegations concerning future elections and, since the future Electors are indispensable parties to such a claim, the Electors must be before the court (CT 1103). The trial court also sustained the demurrer on the ground the Court has no jurisdiction over the subject of the action (CT 1103). The Court stated that the exclusive remedy for challenging the qualifications of the President is an action before the United States Congress pursuant to the 12th Amendment of the United States Constitution and 3 United States Code (hereinafter referred to as "U.S.C.") § 15 (CT 1103). Lastly, the Court stated that the case was moot because the Secretary of State had already placed the candidates' names on the ballot, the election had already taken place, and the President and Vice President had already been inaugurated and had engaged in the duties of their offices (CT 1103).

On June 10, 2009, after sustaining, without leave to amend, RESPONDENTS' demurrers to FAP, the trial court entered its judgment dismissing FAP (CT 1158).

The Court of Appeal Third Appellate District heard oral arguments on this matter on October 20, 2010. On October 25, 2010, the Appellate Court filed its decision affirming the judgment of the Superior Court on the grounds that "plaintiffs have not established that the Secretary of State has a ministerial duty to investigate and determine whether a presidential candidate is constitutionally eligible to run for office."

The California Court of Appeal, Third Appellate District, incorrectly stated in its decision that for any question of presidential eligibility, mechanisms exist to resolve said questions under the 20th Amendment to the United States Constitution, and 3 U.S.C. § 15 for when the Electoral votes are counted, and the 12th Amendment to the United States Constitution when a candidate is not eligible. The Appellate Court relied on *Robinson v. Bowen* to show that issues of Presidential qualifications are best resolved in Congress. (Decision of the Third Appellate Court, page 17, citing *Robinson v. Bowen* (N.D.Cal. 2008) 567 F.Supp.2d 1144, 1147).

On February 2, 2011, the California Supreme Court denied APPELLANTS' Petition of Review.

JURISDICTION

The jurisdiction of this Court to review the Judgment of the California Supreme Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

The United States Constitution Article II, § 1, Clause 5

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; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

STATEMENT OF THE CASE

A. Facts Giving Rise To This Case

Petitioner-Appellant Dr. Alan Keyes (hereinafter referred to as "KEYES") was the Presidential candidate for the American Independent Party in the 2008 election on the California State Ballot (CT 671). Petitioner-Appellant Dr. Wiley Drake (hereinafter referred to as "DRAKE") was a Certified California Elector of the American Independent Party and was the Vice Presidential candidate of the American Independent Party in the 2008 election on the California State Ballot (CT 671). Petitioner-Appellant Markham Robinson (hereinafter referred to as "ROBINSON") was a Certified California Elector of the American Independent Party, Chairman of the American Independent Party (California), which nominated KEYES and DRAKE for President and Vice President, respectively, and Vice Chairman of America's Independent Party, of Fenton, Michigan, which nominated KEYES for President (CT 671).

BOWEN is the Secretary of State of California (CT 671). OBAMA was a former U.S. Senator from Illinois, and he was the Presidential Candidate of the Democratic Party on the California State Ballot in the 2008 election (CT 671). BIDEN is a former U.S. Senator from Delaware, and he assumed office as Vice President of the United States on January 20, 2009 (CT 671).

Following the November 8, 2008 election, on December 1, 2008, BOWEN certified to the Governor of the State of California the names of the California Democratic Electors and transmitted to each presidential Elector a Certificate of Election (CT 265).

On January 20, 2009, OBAMA was inaugurated and assumed office as President of the United States, and BIDEN assumed office as Vice President.

B. The Trial Court Proceedings

On November 13, 2008, APPELLANTS filed a Petition for Writ of Mandate, naming BOWEN, OBAMA, BIDEN, and the California Democratic Party Electors as RESPONDENTS (CT 1). FAP was filed February 23, 2009 (CT 670). FAP sought to have the court bar BOWEN from both certifying to the Governor the names of the California Electors, and from transmitting to each Presidential Elector a Certificate of Election, until documentary proof of OBAMA'S, and all future candidate's, eligibility to serve as President was provided to the California Secretary of State in office at that time, in all future Presidential elections (CT 686).

BOWEN filed a demurrer to the Petition on February 23, 2009, on the ground that the Petition failed to state facts sufficient to constitute a cause of action against her, that the petition was moot, and that there is no judicable controversy, as it relates to the 2008 General Election, and that the controversy was not ripe as it relates to future elections (CT 720). BOWEN argued that the Secretary of State has no "ministerial duty" to demand detailed proof of citizenship from Presidential Candidates (CT 1089). The Trial Court agreed and sustained BOWEN'S demurrers (CT 1106). The Court stated that a writ of mandate can only issue if the respondent has a clear, present, and beneficial interest in the performance of that duty (CT 1106). The Trial Court stated that APPELLANTS failed to identify authority requiring the Secretary of State to make an inquiry into, or demand for, detailed proof of citizenship from Presidential candidates (CT 1101). The trial court also stated that FAP was moot insofar as it relates to the 2008 general election (CT 1101). The Court stated that the FAP failed to frame the issues with sufficient concreteness and immediacy to allow the Court to render a conclusive and definitive judgment, rather than an advisory opinion based on hypothetical facts or speculative future events (CT 1102).

OBAMA, BIDEN, and the California Electors also filed a demurrer to the Petition on February 23, 2009, on the grounds that the Petition did not state facts sufficient to constitute a cause of action against any of RESPONDENTS, that the Trial Court had no jurisdiction over the subject of the action as alleged in FAP, and that FAP suffered from a defect or misjoinder of parties (CT 728). The Trial Court sustained the demurrer on the ground that FAP did not state facts sufficient to constitute

a cause of action against the named RESPONDENTS, because the pleading did not seek any relief as to either OBAMA or BIDEN (CT 1102). The Trial Court also stated that FAP does not prove that California Electors have a duty to review their candidate's eligibility (CT 1103). The court sustained RESPONDENTS' demurrer on the ground that FAP suffered from a defect or misjoinder of parties because it contained allegations concerning future elections and, since the future Electors are indispensable parties to such a claim, the Electors must be before the court (CT 1103). The trial court also sustained the demurrer on the ground that the Court has no jurisdiction over the subject of the action (CT 1103). The Court stated that the exclusive remedy for challenging the qualifications of the President is an action before the United States Congress pursuant to the 12th Amendment of the United States Constitution and 3 U.S.C. § 15 (CT 1103). Lastly, the Court stated that the case is moot because the Secretary of State had already placed the candidates' names on the ballot, the election had already taken place, and the President and Vice President had already been inaugurated and had engaged in the duties of their offices (CT 1103).

On June 10, 2009, after sustaining, without leave to amend, RESPONDENTS' demurrers to FAP, the trial court entered its judgment dismissing FAP (CT 1158).

C. The Appellate Court Proceedings

Following the Trial Court's judgment, APPELLANTS timely filed their Notice of Appeal on June 19, 2009 (CT 1181). The Court of Appeal Third Appellate District heard oral arguments on this matter on October 20, 2010. On October 25, 2010, the Appellate Court filed its decision

affirming the judgment of the Superior Court on the grounds that "plaintiffs have not established that the Secretary of State has a ministerial duty to investigate and determine whether a presidential candidate is constitutionally eligible to run for office."

D. The California Supreme Court Proceedings

APPELLANTS timely filed their Petition for Review with the California State Supreme Court on December 6, 2010. On February 2, 2011, the California State Supreme Court denied APPELLANTS' Petition of Review.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

There Is No Effective Federal Mechanism To Challenge Candidate Eligibility

The California Court of Appeal, Third Appellate District, incorrectly stated in its decision that for any question of presidential eligibility, mechanisms exist to resolve said questions under the 20th Amendment to the United States Constitution, and 3 U.S.C. 15 for when the Electoral votes are counted, and the 12th Amendment to the United States Constitution when a candidate is not eligible. The Appellate Court relied on Robinson v. Bowen to show that issues of Presidential qualifications are best resolved in Congress. (Decision of the Third Appellate Court, page 17, citing *Robinson v. Bowen* (N.D.Cal. 2008) 567 F.Supp.2d 1144, 1147).

The 12th Amendment simply directs the Electors to cast their votes and send the votes in a sealed envelope to the United States Congress for counting. Once the votes are sent to Congress, the process for objections under 3 U.S.C. 15 is very limited. The objections must be in writing, signed by at least one Senator and one Member of the House, and clearly state, without argument, the ground of the objection. Each house of Congress then takes the objections and votes only on whether the procedures for selecting the Electors were followed, and if they were followed, the Electoral votes may not be rejected: "no electoral vote or votes from any State which shall have been regularly given by electors whose appointment has been lawfully certified to according to section 6 of this title from which but one return has been received shall be rejected". (3 U.S.C. 15). This statute does not allow for general objections to be brought, and, even if such objections were allowed, the Electoral votes may not be rejected by Congress if the Elector was selected in accordance with the rules of the Elector's state. Since this remedy is so limited in its scope, the question of whether a candidate for President is eligible for the office cannot be effectively addressed, much less resolved, under current constitutional or statutory law.

It should be noted that while there is no constitutional or statutory law dealing with who is to make determinations of eligibility, once a candidate for the Office of President is found to be ineligible, there are constitutional guidelines regarding presidential succession. The 20th Amendment states, "if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect

nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified." (U.S. Constitution, Amendment 20, Section 3). Having clear rules of Presidential succession, however, does not resolve the question of who would have the authority to determine eligibility. As is discussed above, the means available to Congress with regards to eligibility are limited to specific disputes over Electoral College Electors or, as authorized by the 20th Amendment, to choose a successor once the President elect is found to have failed to qualify. For this reason, there is no Congressional remedy available to resolve the question of whether OBAMA is, in fact, eligible to serve in the office of President of the United States.

II.

Neither Congress Nor The Electoral College Have The Authority To Make Determinations Of Presidential Eligibility

RESPONDENTS previously argued on appeal, concerning the issue of whether OBAMA is eligible to serve as President of the United States, that there exists no textually demonstrable constitutional commitment of the issue of verifying eligibility for serving in the office of President. I.e., they claim that there is no specified branch of government, political body, or other governmental entity tasked with determining whether a candidate is eligible for the office of President. The Electoral College is the body which elects the President, based on the popular vote of the Elector's respective states, and Congress has

the constitutional oversight to challenge and determine whether an Elector was properly elected or appointed, and whether an Elector properly cast a vote for President. However, neither Congress, nor the Electoral College, has the authority, as a result of either the U. S. Constitution, or a Federal Statute, to make determinations of eligibility, or to exclude a candidate who fails to meet the eligibility requirements, because eligibility requirements are not political in nature with regards to the duties of Congress and the Electoral College.

"The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch. The Judiciary is particularly ill suited to make such decisions, as 'courts are fundamentally under equipped to formulate national policies or develop standards for matters not legal in nature.'" *Japan Whaling Ass'n v. American Cetacean Soc.* (1986) 478 U.S. 221, 230.

There are issues which the Judiciary, as a whole, is ill equipped to determine, however, when an issue is one that does not "revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch," the Court then has the jurisdiction to make a determination of that issue. *Id.* The mere fact that issues of eligibility are related to elections, and may have political elements, does not preclude the Court from hearing such cases. The Court in Japan Whaling Ass'n v. American Cetacean Soc. also held, "[b]ut under the Constitution, one of the Judiciary's characteristic roles is to interpret

statutes, and we cannot shirk this responsibility merely because our decision may have significant political overtones." *Id.* at 230. The issue of whether OBAMA is eligible to serve as President of the United States is one that has "significant political overtones," given that it has a direct relation to the election of the most powerful political office in the United States, but it is, nonetheless, an issue which the Court can make a determination on, because the requirements for said office are clearly stated in Article II, Section 1, Clause 5, of the U.S. Constitution, and Courts routinely decide questions such as at issue in this case.

An argument has been made that the political question doctrine precludes action by the Court because such action would improperly arrogate to the Court jurisdiction over political questions as to the fitness and qualifications of the President, which the Constitution entrusts exclusively to the House and the Senate, and that issues related to a candidate's eligibility for the office of President rest, in the first instance, with the voters, and with the Electoral College. This assertion is incorrect in a number of ways. First, a provision of the Constitution may not be disregarded by means of a popular vote of the people, as there are specific guidelines for amending the Constitution of the United States. The United States Constitution requires a two-thirds vote of both Houses of Congress, and a ratification by three-fourths of all State legislatures in the United States to do so. (U.S. Constitution, Article V). Even if the people of the United States voted to elect as President a candidate who did not qualify for the position, that vote would not be sufficient to overcome the Constitutional requirements for the office and make that candidate eligible. (U.S. Constitution,

Article II, Section 1, Clause 5). Because voters can, and do, vote for candidates that are liked by the voters, even if those candidates may not be eligible for the position, the voters do not have the power, or the right, to determine the eligibility of a candidate.

Furthermore, the process for determining whether a candidate has met any and all requirements for eligibility to run for the office of President is addressed nowhere in the United States Constitution, nor in any federal legislation, to date. This then begs the question of who controls this process? It would seem to be a clear violation of the "Separation of Powers" doctrine to place this ability in the executive branch, because, since the issue is whether OBAMA is ineligible for the office of President of the United States, it would be a conflict of interest for OBAMA, or for an executive officer under OBAMA'S control, or for his political party, to have the sole power to review OBAMA'S eligibility. To place this power in the legislature's hands would seem appropriate, since this is the branch that determines all of election law. However, the issue here is not one of determining new election law, but one of whether California was in line both with its own state constitution and the United States Constitution on this issue. This is ultimately an issue of judicial review, which has been a recognized power of the judiciary since 1803 in the case of *Marbury v. Madison* (1803) 1 Cranch 137 (1803) 177, 2 L.Ed. 60.

III.

The Statutory Duties Of The California Secretary Of State Are In Conflict With Regards To Verifying Eligibility Of National Presidential Candidates

California Law dictates the duties the Secretary of State, including the duty as chief elections officer of California, to ensure election laws are followed (California Government Code [hereinafter referred to as "CGC] § 12172), the duty to investigate election fraud (CGC § 12172), and the duty to advise candidates and local elections officials on the qualifications and requirements for running for office (CGC § 12172). In order to fulfill her duty to advise candidates, there are several documents on the California Secretary of State website informing all who are seeking elected office as to the qualifications and requirements for each elected position. Documents listing the qualifications and requirements are provided for the offices of Governor and Lieutenant Governor; Secretary of State, Controller and Treasurer; Attorney General; Insurance Commissioner; Member of the State Board of Equalization; State Senator and Member of Assembly; United States Senator; United States Representative in Congress; and President of the United States. The SOS currently verifies that every candidate for these positions, except for that of the office of President of the United States, meets the requirements for each respective office. Since the SOS does have a ministerial duty to verify the eligibility for nearly all of the candidates for office, it is not improper to infer that she also has a ministerial duty to verify the eligibility of those who are running for the office of President of the United States. However, California Elections Code (hereinafter referred to as "EC") § 6901

is at odds with remainder of the SOS's duties specified in California law, because this statute directs that the SOS **must** place on the ballot the names of the several political parties' candidates. (EC § 6901). The effect of this statute is that the SOS's duty to ensure compliance with election law is suspended in favor of some other entity. The Appellate court suggested that entities which have the authority to verify eligibility include political parties, the voters, the Electoral College, and Congress. (Decision of the Third Appellate Court, page 17). Congress and the Electoral College, as discussed above, both lack the constitutional or statutory authority necessary to determine eligibility. In addition, political parties, while seeming at first glance to be an ideal body to check whether their candidate is eligible, are not reliable for this task for a number of reasons. First, as private associations, political parties cannot be compelled to perform any task or duty with regards to the candidates that the parties chose as representatives. Second, political parties exist for the purpose of obtaining power by encouraging the election of candidates who associate with the party. This means that the parties have an interest in winning elections, whether or not their candidate is eligible, and if said party can win only by putting forward a popular, yet ineligible, candidate, what would prevent the parties' support of the ineligible candidate if there was a chance that the lack of eligibility would not be found out? Therefore, political parties are not a sufficient check of a candidates' eligibility.

Likewise the voters are not a proper entity to verify a candidates' eligibility. First, the voters may support a candidate whom they like, regardless of eligibility. In addition, even if the voters were to elect an ineligible candidate, such a vote would stand in clear violation of

constitutional requirements, and no vote of the people is sufficient to alter the U. S. Constitution in any way, because a popular vote is not a valid means of amending the Constitution.

This has been shown in similar situations even after a candidate had otherwise been duly elected. In *State ex rel. Sathre v. Moodie*, after Thomas H. Moodie was duly elected to the office of Governor of the State of North Dakota, it was discovered that Thomas H. Moodie was not eligible for the position of Governor, as he had not resided in the state for a requisite five years before running for office, and, because of that ineligibility, he was removed from office and replaced by the Lieutenant Governor. *State ex rel. Sathre v. Moodie* (N.D. 1935) 65 N.D. 340, 258 N.W. 558. The Court held:

> "The lack of residential qualifications on the part of the Governor is a legal disability. The [North Dakota] Constitution does not differentiate between a disability existing before election and one occurring after election in regard to the right of the Lieutenant Governor to assume the powers and duties of the office of Governor. The provision in the Constitution devolving these powers and duties upon him must be construed in the light of reason. The context must be considered. When the framers of the Constitution used the language which we are here considering, they intended to include legal as well as physical or mental disabilities, and did not exclude disabilities existing prior to election." *State ex rel. Sathre v. Moodie* (N.D. 1935) 65 N.D. 340, 258 N.W. 558.

Here, in like manner, APPELLANTS allege that OBAMA is legally disabled by his Citizenship status. Therefore, all votes cast in favor of the OBAMA/BIDEN joint and unseverable ticket by the California Electors should be deemed null and void, since the votes were cast for an individual ineligible to run for the office of President of the United States of America. APPELLANTS do not seek to judicially place a different political party in the White House, but, instead, only seek a determination as to whether OBAMA has met the Constitutional eligibility requirements, and, should OBAMA be discovered to be ineligible to serve as President of the United States of America, APPELLANTS seek a Court declaration that the votes cast by the California Electors in favor of the OBAMA/BIDEN ticket were of no legal force or effect. In addition, APPELLANTS seek a determination as to the duties of the California Secretary of State with regards to checking the eligibility of candidates so that these issues do not arise again in upcoming elections. Given that the Court has the power to review acts of the other branches of California government to ensure Constitutional compliance, and has the power to issue writs and declarations against officers within these branches, when the Court determines that they have not acted within the scope of the California Constitution, and given that the EC § 6906 requires Electors to vote in a particular manner subject to civil and criminal penalties, the Court has a remedy available in this action.

Finally, California Secretaries of State have historically exercised their due diligence by reviewing necessary background documents, verifying that the candidates that were submitted by the respective political parties as eligible for the ballot were, indeed, eligible. In

1968, the Peace and Freedom Party submitted the name of Eldridge Cleaver as a qualified candidate for President of the United States. The then SOS, Mr. Frank Jordan, found that, according to Mr. Cleaver's birth certificate, he was only 34 years old, one year shy of the 35 years of age needed to be on the ballot as a candidate for President. Using his administrative powers, Mr. Jordan removed Mr. Cleaver from the ballot. Mr. Cleaver, unsuccessfully, challenged this decision to the Supreme Court of the State of California, and, later, to the Supreme Court of the United States, which affirmed the actions of the SOS by denying review of Cleaver's removal from the ballot. *Cleaver v. Jordan* (1968) 393 U.S. 810, 89 S.Ct. 43. APPELLANTS cited to the Cleaver case as an example of the SOS fulfilling his duty by removing an ineligible candidate from the ballot at oral argument, but RESPONDENTS denied that this Cleaver case had any relevance to the underlying issue (RT p.18 ll. 5-17). Similarly, in 1984, the Peace and Freedom Party listed Mr. Larry Holmes as an eligible candidate in the Presidential primary. When the then SOS checked his eligibility, it was found that Mr. Holmes was, similarly, not eligible, and Mr. Holmes was removed from the ballot (CT 682). In this case, we have a similar situation in that the Democratic Party submitted the name of OBAMA as a candidate for President.

Since it is clear that none of the entities suggested by the Appellate court have the requisite authority to verify the eligibility of a Presidential candidate, the only other option would be for the Secretary of State to make such a determination, given that the office of California Secretary Of State has done so in the past. However, due to the apparent conflict of duties found in the California Statutes concerning this matter, there remains an

unresolved question of law for which APPELLANTS' respectfully request that the United States Supreme Court accept this petition.

CONCLUSION

For the reasons discussed above, APPELLANTS' have demonstrated that questions of eligibility are not properly before any entity other than the court or the chief elections officer of the State of California and that the matter below was improperly dismissed because APPELLANTS' have established that the Secretary of State has a ministerial duty to verify a candidates eligibility. However, since an actual conflict arises between this duty and the duty to simply place a national party candidate for President on the ballot, APPELLANTS' respectfully request that this court accept this Petition of Certiorari.

Respectfully Submitted,

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