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SUPREME COURT  
STATE OF WASHINGTON

2008 DEC 15 A 11:06

BY RONALD R. CARPENTER

CLERK

**SUPREME COURT  
STATE OF WASHINGTON**

JAMES E. BROE, KENNETH R. SEAL,	)	
ROBERT BAKER, MARK SUSSMAN,	)	Cause No. 8-2-473-8
STAN WALTER, BILL WISE, ANDY	)	
STEVENS, ED CRAWFORD,	)	MOTION
JASON LAGEN, LOUISE WORKMAN,	)	FOR EXPEDITED
JOCELYN MURCELLI, MIKE	)	DISCOVERY AND
MURCELLI, and KEVIN MCDOWELL,	)	FOR AUTHORITY TO
American Citizens, Washington Residents	)	ISSUE SUBPOENAS
and Registered Voters in the State	)	
of Washington,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
SAMUEL S. REED, Secretary of State	)	
for the State of Washington,	)	
	)	
Defendant.	)	
	)	

**Names and Designation of Persons Filing Motion**

COMES NOW, James E. Broe, Kenneth R. Seal, Robert Baker, Mark Sussman, Stan Walter, Bill Wise, Andy Stevens, Ed Crawford, Jason Lagen, Louise Workman, Jocelyn Murcelli, Mike Murcelli and Kevin McDowell, by and through counsel of record Stephen Pidgeon, pursuant to RAP 17.3(a), the Rules of Discovery, CR 26-37, and CR 45 governing the issuance of subpoenas, and Move this Honorable Court for an order allowing the issuance of two subpoenas for the purpose of obtaining admissible evidence in this case, and expediting discovery pursuant to the proposed schedule.

**Relief Requested**

Plaintiffs seek an Order allowing plaintiffs expedited discovery by means of two subpoenas, one to be served on the Secretary of State of the State of Washington, to discover the following items: 1) the Declaration of Candidacy of Barack Obama as filed in the State of Washington; 2) all records concerning the candidacy and disallowance of Socialist Worker's Party candidate Frank Colero within the Secretary of State's office; and one to be served upon the Director of the Department of Health in the State of Hawaii, to discover the following items: 3) the Birth Certificate of Barack Obama in Hawaii, and 4) all supporting documentation regarding the registration of the birth of Barack Obama in Hawaii.

Plaintiffs seek an order which establishes the following schedule.

1. Plaintiffs are to serve the Secretary of State of the State of Washington with a Subpoena in the form attached hereto as approved by the Court no later than the close of business on Friday, December 19, 2008, and responses shall be served upon Plaintiffs' counsel Stephen Pidgeon no later than the close of business on December 28, 2008.

2. Plaintiffs are to serve the State of Hawaii Department of Health with a Subpoena in the form attached hereto as approved by the Court no later than the close of business on Monday, December 22, 2008, and responses shall be served upon Plaintiffs' counsel no later than the close of business on December 28, 2008.

#### **Grounds for Relief**

Broadly, "plaintiffs may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." CR26(b)(1). Further, "it is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." CR26(b)(1).

Plaintiffs seek additional evidence demonstrating that Senator Obama made representations to the State of Washington that he was eligible to assume the office if elected, and that the Secretary of State has made inquiry in the past as to the eligibility of an Presidential candidate, most notably, 2008 Socialist Workers Party Candidate Róger Calero.

Plaintiffs seek a Certified Copy of the actual birth certificate on file in the State of Hawaii. Plaintiffs can only obtain this birth certificate by means of court order pursuant to Hawaiian statutes. The actual birth certificate of Senator Obama will be dispositive in this case, whether it shows that Senator Obama was born in Hawaii, or born elsewhere. In addition, Plaintiffs believe that a registration of birth was accompanied by sworn or affirmed statements from Senator Obama's mother, and that such a statement is also be on file. This evidence would also establish the eligibility of Senator Obama to assume the office of President of the United States.

There is reason to believe that Senator Obama was actually born in Mombasa, Kenya. See accompanying Declaration of Stephen Pidgeon, and the exhibits attached thereto.

**a. The duties of the Secretary of State**

Article VI of the United States Constitution states as follows:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Article I, Section 2 of the Washington State Constitution declares as follows:

SECTION 2 SUPREME LAW OF THE LAND. The

Constitution of the United States is the supreme law of the land.

The Secretary of State has taken an oath of allegiance to support both the United States Constitution and the Washington State Constitution and is bound by that oath.

The Secretary of State is declared, under RCW 29A.04.230 to be “the chief election officer for all federal, state, county, city, town and district elections.” The Secretary of State is “required by law” to . . . coordinate those state election activities with federal law.

Article II, Section I of the United States Constitution provides:

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.

The Secretary of State has a duty to designate the presidential candidates ninety days prior to the primary election, pursuant to WAC 434-219-060.

The Secretary of State has a duty to certify the final list of candidates who will appear on the presidential primary ballot, pursuant to WAC 434-219-120.

The Secretary of State has a duty to certify the result of the presidential primary fifteen days following the primary, pursuant to WAC 434-219-290.

The Secretary of State has a duty to supervise election review staff employed by the Secretary of State for the purpose of conducting election reviews, including election policies and procedures and includes the review of any documentation of those procedures pursuant to WAC 434-260-020.

The Secretary of State has a duty to develop an “election review checklist” which is the basis for any election review or special review, pursuant to WAC 434-260-110.

The Secretary of State is the officer of the state delegated with the duty of presenting the election results to the state legislature under Article III, Section 4 of the Washington State Constitution.

The Secretary of State has these duties under the Washington Administrative Code pursuant to an express delegation by the Article III, Section 17 of the Washington State Constitution.

Consequently, the Secretary of State, as chief elections officer, has a duty to determine with Senator Obama is eligible to assume the office of President of the United States, and this duty becomes a heightened duty when the Secretary has knowledge of the controversy prior to nomination of the candidate by the national party, the primary election, the general election, and the vote of Washington’s electors.

**(i) The Declaration of Candidacy of Barack Obama**

Pursuant to WAC 434-215-012, a declaration of candidacy is mandatory for offices subject to a primary. Under this declaration, the candidate is required to declare that the information given is, to the best of the candidate's knowledge, true. It also requires the candidate to swear that the candidate "will support the Constitution and laws of the United States and the Constitution and laws of the State of Washington."

In line 2 of the declaration, the candidate is required to assert that "at the time of filing this declaration, I am legally qualified to assume office if elected."

This document may be the only document upon which the Secretary of State relied to certify the candidacy of Barack Obama in the primary election of 2008, and it therefore both material and relevant, if it exists at all.

For these reasons, Plaintiffs seek to discover the same by means of a Subpoena for Production of Documentary Evidence pursuant to CR45(b) in the form attached hereto as Exhibit A.

**(ii) Information related to the exclusion of Socialist Worker's Party candidate Róger Calero, a Nicaraguan resident alien.**

Róger Calero was the Presidential candidate of the Socialist Workers Party in 2008, but did not appear on the Washington ballot, because his candidacy was not certified by the Secretary of State.

Plaintiffs have a right of discovery pursuant to CR 26(b)(1) to determine if the Secretary of State's office engaged in any discretionary acts to disqualify Róger Calero, including any factual determinations, any proceedings which may have rendered a determination concerning his eligibility, and any documents or correspondence which instructed Mr. Calero that he would not be appearing on Washington ballots.

Róger Calero was born in Nicaragua in 1969. He and his family fled to Los Angeles, California in 1985. He is now a permanent resident alien, holding a green card since 1990. Róger Calero is disqualified for the office of the Presidency because he is not a "natural born citizen."

Because Róger Calero was the Socialist Workers Party candidate in 2008, and because his name did not appear on Washington ballots, the record of disqualification of Calero's candidacy at the Secretary of State's office is both material and relevant.

For these reasons, Plaintiffs seek to discover the same by means of a Subpoena for Production of Documentary Evidence pursuant to CR45(b) in the form attached hereto as Exhibit B.

**(iii) the Birth Certificate of Barack Obama in Hawaii**

On October 31, 2008, Dr. Chiyome Fukino, the Director of Hawaii's Department of Health issued the following statement:

"There have been numerous requests for Sen. Barack Hussein Obama's official birth certificate. State law (Hawaii's Revised Statutes §338-18) prohibits the release of a certified birth

certificate to persons who do not have a tangible interest in the vital record.

“Therefore, I as Director of Health for the State of Hawai‘i, along with the Registrar of Vital Statistics who has statutory authority to oversee and maintain these type of vital records, have personally seen and verified that the Hawai‘i State Department of Health has Sen. Obama's original birth certificate on record in accordance with state policies and procedures.

“No state official, including Governor Linda Lingle, has ever instructed that this vital record be handled in a manner different from any other vital record in the possession of the State of Hawai‘i.”

Hawaiian Revised Statute HRS 338.18<sup>1</sup> provides in operative part that “it shall be unlawful for any person to permit inspection of, or to

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<sup>1</sup> §338-18 Disclosure of records. (a) To protect the integrity of vital statistics records, to ensure their proper use, and to ensure the efficient and proper administration of the vital statistics system, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital statistics records, or to copy or issue a copy of all or part of any such record, except as authorized by this part or by rules adopted by the department of health.

(b) The department shall not permit inspection of public health statistics records, or issue a certified copy of any such record or part thereof, unless it is satisfied that the applicant has a direct and tangible interest in the record. The following persons shall be considered to have a direct and tangible interest in a public health statistics record:

- (1) The registrant;
- (2) The spouse of the registrant;
- (3) A parent of the registrant;

- 
- (4) A descendant of the registrant;
  - (5) A person having a common ancestor with the registrant;
  - (6) A legal guardian of the registrant;
  - (7) A person or agency acting on behalf of the registrant;
  - (8) A personal representative of the registrant's estate;
  - (9) **A person whose right to inspect or obtain a certified copy of the record is established by an order of a court of competent jurisdiction;**
  - (10) Adoptive parents who have filed a petition for adoption and who need to determine the death of one or more of the prospective adopted child's natural or legal parents;
  - (11) A person who needs to determine the marital status of a former spouse in order to determine the payment of alimony;
  - (12) A person who needs to determine the death of a nonrelated co-owner of property purchased under a joint tenancy agreement; and
  - (13) A person who needs a death certificate for the determination of payments under a credit insurance policy.

(c) The department may permit the use [of] the data contained in public health statistical records for research purposes only, but no identifying use thereof shall be made.

(d) Index data consisting of name and sex of the registrant, type of vital event, and such other data as the director may authorize shall be made available to the public.

(e) The department may permit persons working on genealogy projects access to microfilm or other copies of vital records of events that occurred more than seventy-five years prior to the current year.

(f) Subject to this section, the department may direct its local agents to make a return upon filing of birth, death, and fetal death certificates with them, of certain data shown to federal, state, territorial, county, or municipal agencies. Payment by these agencies for these services may be made as the department shall direct.

(g) The department shall not issue a verification in lieu of a certified copy of any such record, or any part thereof, unless it is satisfied that the applicant requesting a verification is:

- (1) A person who has a direct and tangible interest in the record but requests a verification in lieu of a certified copy;
- (2) A governmental agency or organization who for a legitimate government purpose maintains and needs to update official lists of persons in the ordinary course of the agency's or organization's activities;
- (3) A governmental, private, social, or educational agency or organization who seeks confirmation of a certified copy of

disclose information contained in vital statistics records, or to copy or issue a copy of all or part of any such record, except as authorized by this part or by rules adopted by the department of health.” HRS 338-18(a).

Further, the statute provides that the “department shall not permit inspection of public health statistics records, or issue a certified copy of any such record or part thereof, unless it is satisfied that the applicant has a direct and tangible interest in the record.” HRS 338-18(b).

The statute then sets out with particularity those parties to whom the Department would issue a certified copy of a birth certificate, including in operative part section (9) thereof, to a “person whose right to inspect or obtain a certified copy of the record is established by an order of

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any such record submitted in support of or information provided about a vital event relating to any such record and contained in an official application made in the ordinary course of the agency’s or organization’s activities by an individual seeking employment with, entrance to, or the services or products of the agency or organization;

- (4) A private or government attorney who seeks to confirm information about a vital event relating to any such record which was acquired during the course of or for purposes of legal proceedings; or
- (5) An individual employed, endorsed, or sponsored by a governmental, private, social, or educational agency or organization who seeks to confirm information about a vital event relating to any such record in preparation of reports or publications by the agency or organization for research or educational purposes. [L 1949, c 327, §22; RL 1955, §57-21; am L Sp 1959 2d, c 1, §19; am L 1967, c 30, §2; HRS §338-18; am L 1977, c 118, §1; am L 1991, c 190, §1; am L 1997, c 305, §5; am L 2001, c 246, §2]

a court of competent jurisdiction;

The Director of the Department of Health has indicated that there she has “personally seen and verified that the Hawai'i State Department of Health has Sen. Obama's original birth certificate on record in accordance with state policies and procedures.”

As previously briefed before this Court, a foreign birth certificate would be “in accordance with state policies and procedures” because HRS 338-17.8 allows for the registration of persons born “without the Territory or State of Hawaii [to parents who] had declared the Territory or State of Hawaii as their legal residence for at least one year immediately preceding the birth or adoption of such child.” HRS 338-17.8.

Furthermore, Dr. Fukoni does not verify that the Birth Certificate she has seen is a Hawaiian birth certificate. She simply verifies that one exists and that it is in the hands of the Department of Health.

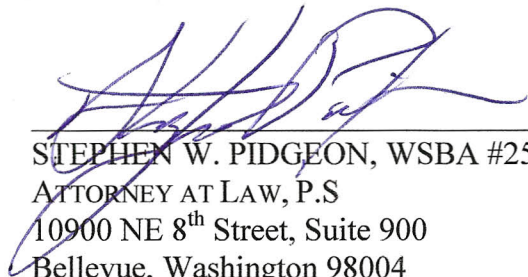
For these reasons, the discovery of this birth certificate is warranted, and Plaintiffs seek to discover the same by means of a Subpoena for Production of Documentary Evidence pursuant to CR45(b) in the form attached hereto as Exhibit B.

3. Plaintiffs rely on the Declaration of Stephen Pidgeon, together with the exhibits attached thereto.

4. The Forms of Subpoenas are attached as Exhibits A and B.

5. The Form of the Order [proposed] granting Plaintiffs' motion is attached.

Respectfully submitted this 15<sup>th</sup> day of December, 2008.



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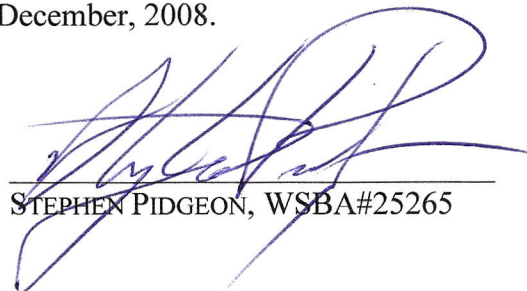
STEPHEN W. PIDGEON, WSBA #25265  
ATTORNEY AT LAW, P.S  
10900 NE 8<sup>th</sup> Street, Suite 900  
Bellevue, Washington 98004  
(425) 605-4774

**CERTIFICATE OF SERVICE**

II, Stephen Pidgeon, now certify that I cause a true copy of the foregoing  
to be served upon the following:

JEFFREY T. EVEN  
Deputy Solicitors General  
1125 Washington St  
P.O. Box 40100  
Olympia, Washington 98504-0100

by personal delivery this 15<sup>th</sup> day of December, 2008.



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STEPHEN PIDGEON, WSBA#25265

EXHIBIT A

No. 8-2-473-8

**SUPREME COURT  
STATE OF WASHINGTON**

JAMES E. BROE, KENNETH R. SEAL,	)	
ROBERT BAKER, MARK SUSSMAN,	)	
STAN WALTER, BILL WISE, ANDY	)	
STEVENS, ED CRAWFORD,	)	SUBPOENA FOR
JASON LAGEN, LOUISE WORKMAN,	)	PRODUCTION OF
JOCELYN MURCELLI, MIKE	)	DOCUMENTARY
MURCELLI, and KEVIN MCDOWELL,	)	EVIDENCE DIRECTED
American Citizens, Washington Residents	)	TO SECRETARY OF
and Registered Voters in the State	)	STATE
of Washington,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
SAMUAL S. REED, Secretary of State	)	
for the State of Washington,	)	
	)	
Defendant.	)	
	)	

**EXHIBIT A**

THE STATE OF WASHINGTON SENDS GREETINGS TO:

Secretary of State Samuel Reed, Legislative Office Building, 416 Sid Snyder Avenue, Olympia, Washington 98504.

BY ORDER OF THE WASHINGTON SUPREME COURT, YOU ARE COMMANDED, pursuant to Civil Rule 45(b) to produce complete and accurate copies of the following documents:

1. The Declaration of Candidacy of Barack Obama as filed in the State of Washington;

2. All records concerning the candidacy and disallowance of Socialist Worker's Party candidate Frank Colero within the Secretary of State's office;

and to provide such documents to the office of Stephen Pidgeon, 10900 NE 8<sup>th</sup> Street, Suite 900, Bellevue, Washington 98004, on or before the close of business on December 28, 2008

Signed at Bellevue, Washington this \_\_\_\_ day of December, 2008.

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STEPHEN W. PIDGEON, WSBA #25265  
ATTORNEY AT LAW, P.S.  
10900 NE 8<sup>th</sup> Street, Suite 900  
Bellevue, Washington 98004  
(425)605-4774 telephone  
(425)818-5371 facsimile

**EXHIBIT B**

THE STATE OF WASHINGTON SENDS GREETINGS TO:

State of Hawaii Department of Health, 1250 Punchbowl St., Honolulu,  
Hawaii 96813.

BY ORDER OF THE WASHINGTON SUPREME COURT, AND  
IN ACCORD WITH HRS 338-18, YOU ARE COMMANDED, pursuant  
to Washington State Civil Rule 45(b) to produce complete and accurate  
copies of the following documents:

1. A certified copy of the original birth certificate of Sen. Barack  
Hussein Obama in Hawaii "on record in accordance with state policies and  
procedures, referenced in your statement of October 31, 2008; and
2. All supporting documentation and sworn statements regarding  
the registration of the birth of Barack Obama in Hawaii;  
and to provide such documents to the office of Stephen Pidgeon, 10900  
NE 8<sup>th</sup> Street, Suite 900, Bellevue, Washington 98004, on or before the  
close of business on December 29, 2008.

A certified check in the amount of Ten Dollars (\$10.00) in the  
payment of statutory fees for such certified copy accompanies this  
Subpoena.

Signed at Bellevue, Washington this \_\_\_\_ day of December, 2008.

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STEPHEN W. PIDGEON, WSBA #25265  
ATTORNEY AT LAW, P.S.  
10900 NE 8<sup>th</sup> Street, Suite 900  
Bellevue, Washington 98004  
(425)605-4774 telephone