

Dr. Orly Taitz, ESQ  
29839 Santa Margarita ste 100  
Rancho Santa Margarita CA 92688  
Ph 949-683-5411 fax949-766-7603  
Orly.Taitz@gmail.com

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

2012 JAN -6 PM 2:52

B. TERAKA  
CLERK

**CIRCUIT COURT FOR THE FIRST CIRCUIT HONOLULU, HAWAII**

|                                           |   |                                                    |
|-------------------------------------------|---|----------------------------------------------------|
| DR. ORLY TAITZ, ESQ                       | ) | PETITION FOR A WRIT OF MANDAMUS                    |
| PLAINTIFF                                 | ) | REQUEST FOR INSPECTION OF RECORDS                  |
|                                           | ) | UNDER UNIFIED INFORMATION PRACTICES ACT            |
| V                                         | ) | STATUTE 92F, STATE OF HAWAII                       |
|                                           | ) | CIVIL 11-1-1731-08                                 |
| LORETTA FUDDY IN HER OFFICIAL CAPACITY AS | ) | HON. RHONDA NISHIMURA PRESIDING                    |
| DIRECTOR OF THE DEPARTMENT OF HEALTH      | ) | FILED AUGUST 10, 2011                              |
| STATE OF HAWAII,                          | ) | AGENCY APPEAL                                      |
| DR. ALVIN T. ONAKA,                       | ) | DATE OF HEARING:                                   |
|                                           | ) | January 6 2012 9am <b>EX PARTE AMENDED</b>         |
| IN HIS OFFICIAL CAPACITY AS               | ) | <b>Motion Reciprocal Subpoena Enforcement</b>      |
| THE REGISTRAR, DEPARTMENT OF HEALTH       | ) |                                                    |
| STATE OF HAWAII                           | ) | <b>Request for judicial notice of order</b>        |
|                                           |   | <b>Denying motion to dismiss by defendant</b>      |
|                                           |   | <b>Obama in ballot challenge by attorney Taitz</b> |

COMES NOW Plaintiff Dr. Orly Taitz, ESQ. ("Taitz") and hereby seeks EX-Parte  
Emergency Reciprocal Subpoena enforcement.

**Under Rule 7.2 F, 7.2-G3 of the rules of the Circuit courts of HI. Plaintiff files  
this emergency ex parte motion**

**(3) EX PARTE MOTIONS.**

(A) *Cases Assigned to a Judge.* An *ex parte* motion accompanied by a proposed order shall be dated and stamped "lodged" or "received" by the Legal Documents Branch/Section clerk, listed on the docket, and transmitted to the assigned judge. Upon the judge's action on the motion, it shall be transmitted to the Legal Documents Branch/Section for filing, as well as for the designation of a hearing/return date and time pursuant to subsection (g)(1)(A)(i)(b), if applicable.

(2) be supported by an affidavit or declaration stating the reason(s) for filing the motion *ex parte*, the efforts made to notify parties, and, if the motion is to shorten time or advance a hearing pursuant to subsection (g)(5) of this rule, the efforts made to obtain a stipulation or response from the other parties in the case or the reason(s) why no attempt was made;

(3) be accompanied by a proposed order; and

(4) be served in the most expeditious manner available.

**This motion is supported by an attached sworn declaration and proposed order.**

### **Rule 7.2 G 5 Motion to shorten time**

(5) MOTION TO SHORTEN TIME FOR, ADVANCE, OR RESCHEDULE HEARING.

(A) A motion to shorten time for hearing or motion to advance hearing shall be presented to the judge assigned the case. Upon presentation, the motion shall be date stamped, indicating date of receipt. The motion shall cite the authority and state the reason(s) and factual or other basis for the request. The motion shall be accompanied by a proposed order granting the motion and including an appropriate space for the date and time of the hearing. **The assigned judge may grant or deny the motion, and such grant or denial shall not be subject to review or reconsideration. If granted, the date and time for the hearing shall be indicated on the order.** The motion and order shall be transmitted to the Legal Documents Branch/Section for filing.

(B) Requests to reschedule hearings shall be made by motion or stipulation. The stipulation shall state the reason for rescheduling the hearing and shall be presented for approval to the judge assigned the case at least 48 hours before the scheduled hearing. Upon the judge's approval or denial of the stipulation, it shall be presented to the Legal Documents Branch/Section for filing.

(6) COPIES FOR JUDGE.

(A) *First Circuit*. A party filing a motion, response to a motion, or other document pertaining to a motion, shall deliver 2 file-stamped copies of the motion, response, or document to the chambers of the assigned judge on the filing date.

Taitz is an attorney for Plaintiffs in case Farrar, Lax, Judy, MacLeran, Roth v Obama, Brian Kemp-Secretary of State of GA and Democrat Party of GA OSAH-1215136-60Malihi. Subpoena signed by Deputy Chief Administrative judge of the state of GA was issued ordering Director of Health of the state of Hawaii, Loretta Fuddy, (defendant in this case) to appear at trial and produce documents requested, as well as appear for pretrial deposition and inspection of documents. Exhibits 1. Subpoena sought under rule HAW RCP 45(a) and HAW RCP 45 (d)(1), HRS-624-24.5, HRS 624-27 as well as under HRS 338-18(9).

Due to the fact, that trial is set of January 26, 2012 and time is of the essence, Plaintiff respectfully asks this Honorable court to hear this emergency motion on January 6, 2012 in conjunction with the scheduled motion in this case. Additionally, this matter is integrally related to the scheduled motion, as the subpoena at hand represents grounds to grant Motion for Reconsideration under HRS 338-18(9). Plaintiff respectfully requests to stay final ruling on motion for reconsideration pending decision on this motion.

Under rule 7.2 G5 this court has power to shorten the time and expedite hearing.

Under rule 7.2 F and 7.2 G3 the court can hear this motion ex-parte.

This motion is related to upcoming trial and seeks reciprocal enforcement of a subpoena for Defendant Director of Health Fuddy to appear at trial and for pretrial deposition and provide for inspection original birth certificate for Barack Hussein Obama, allegedly maintained on file.

This court advised the Plaintiff today, that it scheduled the motion for reciprocal subpoena Enforcement for January 26, 2012. This date is absolutely incompatible with the case, from which subpoena is issued, as the trial is scheduled for January 26, same date. Plaintiff needs to depose the defendant, fly experts, have the experts ready with their reports for trial on January 26.

This is a matter of national importance, as it is related to the examination of the original birth certificate of the President of the United States and in light of the

fact, that according to experts, a copy, that he placed on line, represents a forgery.  
Importance of the matter and proximity of trial warrant expedient processing.  
Enforcement of an out of state subpoena, which is an **order from a court of competent jurisdiction** is merely a ministerial function, which is typically amounts to nothing more, than a local judge co-signing an out of state subpoena.  
This is warranted under 338-18(9).

### **REQUEST FOR JUDICIAL NOTICE**

Plaintiff submits herein for judicial notice 01.03.2012 order by the Deputy Chief Judge Michael Malihi, denying Motion to Dismiss by defendant Barack Obama in the 2012 Presidential ballot challenge filed by attorney Orly Taitz on behalf of a voter and 4 presidential candidates in Farrar et al v Obama et al 1215136-60 Malihi. The case is scheduled for trial on January 26, in Atlanta, Ga, which reinforces the need for Reciprocal subpoena enforcement, as well as reinforces the argument to grant motion for reconsideration.

Respectfully submitted,



/s/ Dr. Orly Taitz ESQ

Conclusion

Emergency ex-parte reciprocal enforcement of the subpoena, affixed herein from the court in GA should be granted.

## **SWORN DECLARATION BY ATTORNEY ORLY TAITZ, ESQ**

- 1 I, Orly Taitz, am an attorney, representing voters and Presidential candidates on the ballot around the country, challenging eligibility for presidency of Barack Obama due to the fact, that according to E-Verify Social Security number Barack Obama is using, was never assigned to him, and an alleged copy of his birth certificate is deemed to be a forgery according to multiple experts as well as based on a number of other constitutional and factual reasons.
2. On January 26 a case Farrar, Lax, Judy, Roth v Obama is scheduled for trial in the administrative court in GA. I represent plaintiffs in this case.
3. This case cannot be postponed due to proximity to the primary election and need to print ballots.
4. A subpoena, signed by Deputy Chief Judge Michael Malihi, was scheduled for director of Health to appear at trial on January 26, 2012 and pretrial deposition and produce original birth certificate for examination.
5. Above referenced case hinges on above subpoena, as birth certificate in question represents proof of natural born status of Mr. Obama.
6. Mr. Obama has already released what he claims to be a copy of the document in question.
7. Examination of the original in light of the fact, that the copy is a deemed to be a forgery by experts, is necessary. The trial hinges on the document in question.

8. Due to proximity to trial and the fact that I reside on mainland, in the state of CA, I am asking this honorable court to hear my motion today, on Exparte basis and grant reciprocal subpoena enforcement of the subpoena from the state of Georgia, providing full faith and credit to the subpoena signed by a judge from a sister state.

9. I am also asking to stay final judgment in Taitz v Fuddy, pending resolution of this reciprocal subpoena enforcement, as the subpoena is integrally related to the case and presents justification for granting the right to inspect the documents in question based on HRS 338-18(9).

8. Defendant by and through her attorney already stated, that she will not comply with the attached subpoena from GA, therefore further attempts of negotiating this matter with the defendant are moot. There is no other way to achieve compliance, but by and through this emergency ex-parte subpoena enforcement by a local judge.

9. Defendant cannot be harmed by such an order, as this represents a routine enforcement of an out of state subpoena.

I declare this under penalty of perjury.

Declarant further says naught.

Signed



/s/ Orly Taitz, ESQ

Dated 01.06.2012

**PROPOSED ORDER**

Emergency ex parte motion for the defendant to comply with attached subpoena from Judge Malihi in Farrar, Lax, Judy McLeran, Roth v Obama is GRANTED.

Signed

Honorable Judge Nishimura

Dated 01.06.2012



# Exhibit 1



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

DAVID FARRAR, LEAH LAX, CODY  
JUDY, THOMAS MALAREN, LAURIE  
ROTH,

Plaintiffs,

v.

BARACK OBAMA,

Defendant.

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

Counsel for Plaintiffs: Orly Taitz

Counsel for Defendant: Michael Jablonski

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DAVID P. WELDEN,

Plaintiff,

v.

BARACK OBAMA,

Defendant.

Docket Number: OSAH-SECSTATE-CE-  
1215137-60-MALIHI

Counsel for Plaintiff: Van R. Irion

Counsel for Defendant: Michael Jablonski

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CARL SWENSSON,

Plaintiff,

v.

BARACK OBAMA,

Defendant.

Docket Number: OSAH-SECSTATE-CE-  
1216218-60-MALIHI

Counsel for Plaintiff: J. Mark Hatfield

Counsel for Defendant: Michael Jablonski

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KEVIN RICHARD POWELL,

Plaintiff,

v.

BARACK OBAMA,

Defendant.

Docket Number: OSAH-SECSTATE-CE-  
1216823-60-MALIHI

Counsel for Plaintiff: J. Mark Hatfield

Counsel for Defendant: Michael Jablonski

## ORDER ON MOTION TO DISMISS

On December 15, 2011, Defendant, President Barack Obama, moved for dismissal of Plaintiffs' challenge to his qualifications for office. The Court has jurisdiction to hear this contested case pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

For the reasons indicated below, Defendant's Motion to Dismiss is **DENIED**.<sup>1</sup>

### I. Discussion

1.

The Georgia Election Code (the "Code") mandates that "[e]very candidate for federal and state office who is certified by the state executive committee of a political party or who files a notice of candidacy shall meet the constitutional and statutory qualifications for holding the office being sought." O.C.G.A. § 21-2-5(a).

2.

Both the Secretary of State and the electors of Georgia are granted the authority under the Code to challenge the qualifications of a candidate. The challenge procedures are defined in Code Section 21-2-5(b), which authorizes any elector who is eligible to vote for a candidate to challenge the qualifications of the candidate by filing a written complaint with the Secretary of State within two weeks after the deadline for qualifying. O.C.G.A. § 21-2-5(b).

3.

The Georgia law governing presidential preference primaries mandates that "[o]n a date set by the Secretary of State . . . the state executive committee of each party which is to conduct a presidential preference primary shall submit to the Secretary of State a list of the names of the candidates of such party to appear on the presidential preference primary ballot." O.C.G.A. § 21-2-193. On October 6, 2011, Secretary Kemp issued a notice to the chairman of each political

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<sup>1</sup> Because Defendant's Motion to Dismiss is denied, in the interest of efficiency, the Court finds it unnecessary to wait for the Plaintiffs' responses before denying the motion.

party to notify them that the deadline for submitting the list of candidate names for the 2012 presidential preference primary was November 15, 2011. On November 1, 2011, the Executive Committee of the Democratic Party submitted President Barack Obama's name as the sole candidate for the Democratic Party. To be timely, complaints challenging a presidential candidate's qualifications in the presidential preference primary had to be filed no later than November 29, 2011. Plaintiffs, as electors eligible to vote for Defendant, timely filed challenges with the Secretary of State before the deadline of November 29, 2011.

4.

In the instant motion, Defendant contends that Georgia law does not give Plaintiffs authority to challenge a political party's nominee for president in a presidential preference primary because Code Section 21-2-5 does not apply to the presidential preference primary.

5.

Statutory provisions must be read as they are written, and this Court finds that the cases cited by Defendant are not controlling. When the Court construes a constitutional or statutory provision, the "first step . . . is to examine the plain statutory language." Morrison v. Claborn, 294 Ga. App. 508, 512 (2008). "Where the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden. In the absence of words of limitation, words in a statute should be given their ordinary and everyday meaning." Six Flags Over Ga. v. Kull, 276 Ga. 210, 211 (2003) (citations and quotation marks omitted). Because there is no other "natural and reasonable construction" of the statutory language, this Court is "not authorized either to read into or to read out that which would add to or change its meaning." Blum v. Schrader, 281 Ga. 238, 240 (2006) (quotation marks omitted).

6.

Code Section 21-2-5(a) states that "*every candidate for federal and state office*" must meet the qualifications for holding that particular office, and this Court has seen no case law limiting this provision, nor found any language that contains an exception for the office of president or stating that the provision does not apply to the presidential preference primary. O.C.G.A. 21-2-5(a) (emphasis added). Although the word "candidate" is not explicitly defined in the Code, Section 21-2-193 states that the political party for the presidential preference

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primary "shall submit to the Secretary of State a list of the names of the *candidates* of such party to appear on the presidential preference primary ballot." O.C.G.A. 21-2-193 (emphasis added). Accordingly, this Court finds that Defendant is a candidate for federal office.

7.

Code Sections 21-2-190 to 21-2-200 set out the procedures of the presidential preference primary and also provide no exception to the Section 21-2-5 qualification requirement. This Court finds no basis under Georgia law why the qualification requirements in Section 21-2-5 would not apply to a candidate for the office of the president in the presidential preference primary.

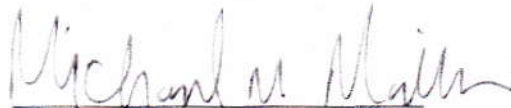
8.

Accordingly, this Court finds that Defendant is a candidate for federal office who has been certified by the state executive committee of a political party, and therefore must, under Code Section 21-2-5, meet the constitutional and statutory qualifications for holding the office being sought.

## II. Decision

Based on the foregoing, the motion to dismiss is **DENIED**.

**SO ORDERED**, this the 3<sup>rd</sup> day of January, 2012.

  
MICHAEL M. MALIHI, Judge