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Complaint for Declaratory Judgment and Injunction

Michael Voeltz, registered Republican Party voter of Broward County Florida

v.

Senator Ted Cruz, of Texas

Senator Marco Rubio, of Florida

Secretary of State of Florida, Ken Detzner

Republican Party of Florida Executive Committee

Parties

Michael Voeltz is a registered Republican Party voter residing in Broward County Florida.

Ted Cruz is a Republican Senator of the state of Texas, and has been placed on the 2016 Republican Presidential Preference Primary ballot in the state of Florida by Ken Detzner, Secretary of State of Florida.

Marco Rubio is a Republican Senator of the state of Florida, and has been placed on the 2016 Republican Presidential Preference Primary ballot in the state of Florida by Ken Detzner, Secretary of State of Florida.

Ken Detzner is the Secretary of State of Florida, and the chief elections officer within the state.

The Republican Party Executive Committee is the body that leads and conducts the business of the Republican Party of Florida.

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Statement of the Case

1) This is an action in equity, pursuant to the Chapter 86 Declaratory Judgment statutes of Florida, 86.011-86.111, seeking a judgment regarding the eligibility for the federal office of President of the United States of Senator Ted Cruz, and Senator Marco Rubio, who have been placed on the March 15, 2016 Republican Presidential Preference Primary ballot by Secretary of State of Florida Ken Detzner (Fl. SS. 103.101(2); "The Secretary of State shall prepare and publish a list of the names of the presidential candidates submitted not later than on the first Tuesday after the first Monday in December of the year preceding the presidential preference primary"), and for an injunction on their candidacy in the Republican Presidential Primary in the state of Florida. Plaintiff asserts that these two candidates are naturalized US citizens, or at the very least, simply fail to comply with the common law Supreme Court established definition of natural born citizen, and fail to comport with the mandatory-prohibitory self-executing federal provision that "no person, except a natural born Citizen, or a citizen of the United States, at the time of the ratification of this Constitution, shall be eligible for the office of President." (*Art. 2 s. 1 c. 5*). Eligible means, "As applied to a candidate for an elective office, this term means capable of being chosen; the subject of selection or choice; and also implies competency to hold the office if chosen." (Black's Law Dictionary, free online, 2nd ed.).

By performing the ministerial duty of placing Mr. Cruz and Mr. Rubio on the primary ballot, at the behest of the Republican party of Florida, the Secretary has made them "eligible", and capable of being elected, in violation of Article 2 of the U.S. Constitution. Plaintiff seeks declaratory judgment based on that ministerial duty.

2) This action is made necessary because the Legislature of Florida has abandoned the eligibility requirements for the office of President and has, with laser precision, divested the Secretary of State of any and all meaningful ministerial duty with respect to the eligibility requirements for the highest office in the land. As such the Legislature and the Secretary have violated the Supremacy clause of the US Constitution, and have failed to uphold their oath of office, to support the Constitution of the United States.

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Apparently eligibility for the highest office in the land is of no concern, as the Legislature has willfully neutered the Federal Candidate Oath (Fl. SS. 99.021 (2)) with respect to presidential candidates on any Florida ballot (Fl SS. 99.021(2)(c)(3), that "this section does not apply to those candidates who qualify through section 103.101.") The Legislature has also abolished the Presidential Primary Selection Committee (PPSC), which had a provision for all members of a political party on the PPSC to scratch a candidate that may have been ineligible from the ballot (103.101(2)(a), 2010 Florida statutes). All of the divestiture of any ministerial duty was accomplished buried within sweeping legislation that overhauled the Florida election code (Ch. 2011-40, SS. 45, Laws of Florida (2011) in May of 2011.

As a result, the Legislature's unreasonable, irrational and invalid enactment, as followed by the Secretary, has invited fraud on the voters of Florida, and a transfer of the people's political power and privilege of the appointment of electors of an "eligible" candidate, to the political parties. Now all that is required for a candidate to be capable of being chosen (eligible) is for the political parties to make a list and give that list to the Secretary, and viola they are placed on the ballot (Fl. SS. 103.101(2)(3)(4))

Plaintiff's right to vote will be diluted, debased and desecrated by the presence of Mr. Cruz and Mr. Rubio on the Florida ballot. The Republican Presidential Primary will feature these two ineligible candidates, placed on the ballot by the Secretary, which will dilute the vote by 20-30%, according to current national polls, by siphoning votes from the legal candidates. The constitutional eligibility of Senator Ted Cruz and Senator Marco Rubio must be adjudicated as soon as possible to prevent this Constitutional travesty. A possible disenfranchisement of the voters of Florida looms if one of these candidates were to win and be challenged by either another candidate or an elector eligible to vote in the closed primary (Fl. SS. 102.168). "A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution when such impairment resulted from dilution by a false tally." *United States v. Classic, 313 U. S. 299, Baker v. Carr, 369 U.S. 186, 208 (1962)*, and see also, It must be remembered that "the right

of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims, 377 U.S. 533, 555(1964).*

Contest of election

3) A remedy exists if one of the ineligible candidates actually wins the nomination of the Florida Republican delegates to the Republican National Convention ("primary election" as defined by Fl. SS. 97.021 (23)). The people, through the Legislature, have enacted a contest of election based on eligibility of "any person nominated or elected" (Fl. SS. 102.168 (1)(3)(b)). That challenge is available to any elector (voter) eligible to vote in an election, which would include Republican Party voters in a closed Republican Presidential Preference Primary. This provision is available in Presidential elections. "By providing for the popular election of presidential electors, Florida's Legislature has also placed that election under Florida's general statutory election scheme. Hence, there is essentially only one statutory election scheme for all elections whether the elections be for local and state officials or for presidential electors. The Legislature has not chosen to have a separate set of election laws for elections for presidential electors". *Palm Beach County Canvassing Board, Petitioner, vs. Katherine Harris, etc., et al., Respondents. Nos. SC00-2346, SC00-2348 & SC00-2349, December 11, 2000, corrected opinion, @ 31.* And see also, "In sum, Florida's statutory scheme simply makes no provision for applying its rules one way for presidential elector elections and another way for all other elections". *Id. @ 32.*

But the violation of plaintiff's right to vote will have already occurred whether an ineligible candidate wins or not. Who can know what the distribution of the vote would have been of the 20-30% (or more) of the vote siphoned by ineligible candidates had they been kept off the ballot by meaningful ministerial duty? Twenty percent of the votes extrapolated from the 2012 Republican Primary of 1,663,698 votes equals some 332,740 votes cast for candidates not capable of being elected, in a state where a one percent margin of victory could trigger a recount.

Declaratory Judgment

4) The Declaratory Judgment statutes of Florida justify this action as a judgment on the existence of the right and power to contest a presidential candidate in the Florida Republican Primary, based on whether that candidate is eligible for the office he or she seeks (Fl. SS. 86.011(1), 86.011(2)); whether that power is affected by a statute made under statutory authority (Fl. SS. 86.021); before the event of the Republican Primary has occurred (Fl. SS. 86.051); and despite the existence of the contest of elections statutes of Fl. SS. 102.168 (Fl. SS.86.111). The circuit "court has the power to give as full and complete relief as it would have if such proceeding had been instituted as an action in chancery." (Fl. Ss. 86.111).

Chancery is clearly required here, as the Florida Legislature, the Republican political party and the Secretary of State, Ken Detzner, have violated the right to vote of the citizens of Florida in a valid election free from fraud. There is no other remedy available prior to the event of the election to assure that no person who is not a natural born citizen is made capable of being elected President other than declaratory judgment and injunction.

That no person but a natural born Citizen is eligible for President is self-executing

5) Article 2 Section 1 Clause 5, is a self-executing constitutional provision directed to the state of Florida, and requires no statutory provision to enforce it. There is a presumption that constitutional provisions are self-operating. *Gray v. Bryant, 125 So.2d 846, 850 (Fla. 1960)*. "The basic guide, or test, in determining whether a constitutional provision should be construed to be self-executing, or not self-executing, is whether or not the provision lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment". "[I]n the absence of such presumption the legislature would have the power to nullify the will of the people expressed in their constitution, the most sacrosanct of all expressions of the people." (*Id. at 851*)In this case the Legislature and Secretary

have certainly nullified the will of the people that only a natural born Citizen (a creature of their own according to Federalist 68) be capable of election. Article 2 Section 1 Clause 5 is mandatory and prohibitory ("no person shall…") and contains no qualifying phrase or legislative enabling phrase.

The demand that only a natural born citizen be eligible is directed to "each state" (Article 2 S. 1 C. 2). The states appoint electors as directed by the legislature, who have delegated that appointment to the people by way of the voting franchise (Fl. SS. 103.011; "Votes cast for the actual candidates for President and Vice President shall be counted as votes for the presidential electors supporting such candidates.")The demand is also self-executing in the 25th Amendment's statutory provisions for the line of Presidential succession, where the federal officers (heads of the cabinet departments) activate that succession in the case of the inability, disability, resignation, removal from office or death of the President, but must skip over those who are not natural born Citizens, 35 years of age and 14 years resident. "Subsections (a), (b), and (d) of this section shall apply only to such officers as are eligible to the office of President under the Constitution". (3 US Code S. 19 (e))

The determination as to Presidential candidate eligibility is judicial

6) The Constitution vests Congress with the power to "judge the elections, returns, and qualifications of its own members." (*Art. 1 S. 5, U.S. Const.*). There is no demonstrable textual assignment within the Constitution of the task of vetting eligibility of presidential candidates solely to a branch of government. Some may say that the 20th Amendment vests that task in the joint session that counts the electoral votes when "if the President elect shall have failed to qualify, then the Vice President shall act as President until a President shall have qualified." This section supersedes the 12th Amendment, describing a failure to receive the mandatory majority of electoral votes, and the constitutional discretionary actions of the Joint Session thereafter. It does not describe any eligibility vetting duty on the part of the Joint Session, which performs a duty to "open all the certificates and the votes shall then be counted."(*Amendment 12, U.S. Const.*).

The passage is written in future perfect tense ("if… shall have"), describing the duty of Congress if the electoral count provides no majority.

The very purpose of the Electoral Count Act 1887 was to invite the states, by operation of any law enacted prior to the election, to judicially determine any election disputes regarding the appointment of presidential electors by 6 days prior to the meeting of electors (3 US Code S. 5), thereby rendering that appointment within the state conclusive, and rendering the counting of the electoral votes as a mere ministerial duty. (See, "The ECA's sponsors hoped that "[i]f the disputes touching the constitution of the Electoral Colleges in the States could be disposed of in advance of their action, the counting of the electoral votes at the seat of government . . . would usually be little more than a formal ceremony." Steven Seigel, The Conscientious Congressman's Guide To The Electoral Count Act, Florida Law Review, Vol. 56, No. 3, p. 541, @ 585, 2004;) and also, "Congress adopted a law 'framed upon the proposition that the power to adjudge and to decide upon the validity of the appointment of electors resides in the States, and may be completely and finally exercised through tribunals created by State laws and regulated in their procedure by State laws'. (ID. @ 587)

Some may also claim that 3 US Code S. 15, the congressional statutory provisions for casting electoral votes, and making "objections", is evidence of constitutional assignment of presidential candidate vetting to the Electoral College or to the Joint Session of Congress. It is true that the "safe harbor" provision of the ECA section 2 is only to the ascertainment of electors, and does not constitute "lawful title to office". In case a state ascertains, under section 2, a constitutionally ineligible candidate, Congress may reject that Electoral vote ("Constitutional infirmities may be said to be the second implied limitation to Congress's section 2 commitment". Id. @ 596) But nothing in the ECA says that the state cannot make the judicial determination that a winning candidate of the general election is not constitutionally eligible. Although it may be possible that an "objection" within 3 US Code S. 15 may be based on the eligibility of a winning candidate, it would be hard to believe that this discovery would have to necessarily wait by law until a month after the election occurred, disenfranchising millions of voters. It is highly unlikely that electors, who now legally take an oath to vote in the Electoral College for the

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candidate they represent on the state ballot (See *Ray v. Blair, 343 U.S. 214 (1952)*, and see also Fl. SS 103.021(1); "Each such elector shall be a qualified elector of the party he or she represents who has taken an oath that he or she will vote for the candidates of the party that he or she is nominated to represent."), would then object to that candidate's eligibility at the Electoral College, obviating the need for judicial review of the choice of electors by the states and within the states, and perhaps before the election of electors.

The passage of the Electoral Count Act is proof that the question of presidential candidate constitutional eligibility is not a political question, as Congress has invited the states to judicially make that determination. This action does not involve an "election contest" according to the election code. It is a request for judicial declaratory judgment on the constitutional validity of the Secretary's ministerial duty. The Secretary performs a ministerial duty of placing the names of the candidates on the Florida ballot, and the characterization of the duty as ministerial necessarily means that the placement of a candidate's name on the ballot is judicially reviewable. The electoral chaos which may ensue if major party candidates are declared constitutionally ineligible is caused by the political party that promoted those candidates, not the voter who's right to vote is being diluted and debased by the presence of the ineligible candidates on the ballot, especially in light of the fact that the State Department of the United States already has doubts as at least one candidate's eligibility (Ted Cruz).

Further, the text of the Constitution makes it clear that "no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector" (*Art. 2 S. 1 C. 2*). As Federalist 68 explains; "They have not made the appointment of the President to depend on any preexisting bodies of men, who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment. And they have excluded from eligibility to this trust, all those who from situation might be suspected of too great devotion to the President in office". (Alexander Hamilton, Federalist 68, March 12, 1788.)

It is hard to imagine that members of Congress, who individually are barred from choosing the President, would be

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singularly charged with vetting the eligibility of the person chosen by the people. Equally implausible is the thought that the vetting duty would be so cryptically assigned to Congress for the highest office in the land, when it is explicitly given to Congress with respect to its own members in Article 1. The concept of separation of powers inherent in the Constitution would prohibit the vetting power for both the Legislative and the Executive departments to be exclusively in the hands of the Legislative body. That is not to say that Congress may discretionally reject the electoral vote ascertained by a state of a constitutionally ineligible candidate, as the eligibility requirements operate *ex proprio vigore*, and are self-executing. The Joint session did reject the electoral ascertainment of Horace Greely by Georgia in the 1872 election due to the fact that Greeley had died. By the text of the constitution and by the Electoral Count Act it is apparent that the task of vetting constitutional eligibility of presidential candidates is held by the judicial branch and by the Legislative branch as a last resort. The idea that Electors would make the choice best for the people is long past. They are not members of the government, but are wholly corrupted by the political parties.

The US State Department, the State Department of Florida, and the Florida Supreme Court all agree that the determination of eligibility of presidential candidates is a judicial function;

"It has never been determined definitively by a court whether a person who acquired U.S. citizenship by birth abroad to U.S. citizens is a natural-born citizen within the meaning of Article II of the Constitution and, therefore, eligible for the Presidency". (7 FAM 1131.6-2 Eligibility for Presidency (TL: CON-68; 04-01-1998 (a));

And see, "the ministerial placing of one's name on the ballot does not preclude litigation to have the name removed from the ballot for not satisfying the eligibility requirements of the office." (Advisory Opinion, DE 11-03; Presidential Elections; Candidates Ballot, access. SS. 103.021, Florida Statutes, July 27, 2011.)

And see also, "Once the candidate states his compliance, under oath, the Secretary's ministerial determination of eligibility

for the office is at an end. Any challenge to the correctness of the candidate's statement of compliance is for appropriate judicial determination upon any challenge properly made." *Shevin v. Stone, 279 So. 2d 17, 22 (Fla. 1972)*

By operation of the Tenth Amendment, the lack of demonstrable textual assignment of the exclusive duty to vet presidential candidates for constitutional eligibility to Congress reserves that duty to the state of Florida. The Legislature of Florida has chosen to abdicate all ministerial duty assigned to the Secretary of the vetting task, and have delegated the duty of the appointment of electors to the people. Therefore the vetting duty is reserved to the people, who make the choice of electors, adjudicated as to constitutional eligibility by the judiciary.

Senator Ted Cruz and Senator Marco Rubio are naturalized US Citizens

7) Even the United States State Dept. has doubts as to the eligibility of any foreign born person (like Ted Cruz), or that any person that is deemed a natural born Citizen "pursuant to statute" is a natural born citizen "for constitutional purposes". *Wong Kim Ark, 169 US 649 (1898)*, supports the proposition that those born outside of the United States (like Ted Cruz) must be naturalized, stipulating that the 14th Amendment "has not touched the acquisition of citizenship by being born abroad of American parents, and has left that subject to be regulated, as it had always been, by Congress in the exercise of the power conferred by the Constitution to establish an uniform rule of naturalization". (*Id. @ 688*)

It must also be noted that while the State Department deems Ted Cruz' eligibility in doubt, it has never been held in a court of law that one born in the United States to two non US Citizen parents (like Sen. Marco Rubio) is a natural born Citizen, eligible to be President, either. That question is ripe for adjudication now. The only "Constitutional purpose" of the term natural born Citizen is in regard to eligibility for the Presidency. Whether one calls those who benefit from 8 US Code 1401 "natural born Citizens" does not mean that those persons conform to the definition established by Original Common Law and the Supreme Court of the United States, and the State Department

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has stated that those persons who are "natural born citizens pursuant to a statute" may not be eligible for the Presidency. (7 FAM 1131.6-2 Eligibility for Presidency (TL: CON-68; 04-01-1998 (d)).

8) Plaintiff contends that Ted Cruz, born in Alberta Canada, of a US citizen mother and a Cuban citizen father, is naturalized by 8 US Code S. 1401(g). Even though the State Department has doubts about Ted Cruz' eligibility for the office of President, and those doubts are well known, the state of Florida nevertheless has put him on the Primary ballot. Prior to 1934, Ted Cruz, if born under the same circumstances, would not have been considered even a US citizen. ("Not until 1934 would that person have had any conceivable claim to United States citizenship". *Rogers v. Bellei, 401 US 815, 826 (1971))*. If Ted Cruz would not have been considered a US citizen at birth in 1933, if born under the same circumstance, he certainly cannot be a natural born citizen today. Rev. Stat. 1993, as amended by the Act of May 24, 1934, 1, 48 Stat. 797, allowed US citizen mothers to pass US citizenship to their offspring who are born abroad if the mother was married to a non US citizen father (previously only US citizen fathers could pass citizenship abroad). Mr. Bellei was also foreign born of a US citizen mother, so the above statement applies to Mr. Cruz.

Rogers v. Bellei, 401 US 815 (1971),recognized that citizens born to one foreign parent, or in a foreign country, create "entanglements" citing *Kawakita v. United States, 343 US 717, 723-736 (1952)* that "[o]ne who has a dual nationality will be subject to claims from both nations, claims which at times may be competing or conflicting." It cannot be possible that the framers would have considered those with "foreign entanglements" as eligible for the Presidency. Ted Cruz made an overt gesture to renounce his Canadian citizenship, due to birth in Alberta, Canada, only recently (See "Ted Cruz Renounces Newly Discovered Canadian Citizenship"; Time Magazine online, Nolan Freeney, June 10, 2014). It is impossible to think that Ted Cruz could be a natural born Citizen, when the purpose of the requirement is "prevention of foreign influence" and he had Canadian citizenship well into adulthood.

9) The "Citizens and Nationals at birth" (8 US Code S. 1401) federal statutes emanated from The Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (hereinafter INS 1952), a naturalization statute enacted under Congress'

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necessary and proper power to enact uniform immigration and naturalization law (Art. 1 S. 8 C. 4). Congress certainly knew the term "natural born Citizen" in 1952, yet it did not use that term in INS 1952. "[W]e assume that Congress used two terms because it intended each term to have a particular, non-superfluous meaning." *Bailey v. United States, 516 U.S. 137, 146 (1995)*, and see also, *Morissette v. United States, 342 U.S. 246, 263 (1952)*. And also, *Miles v. Apex Marine Corp., 498 U.S. 19, 32 (1990);* ("We assume that Congress is aware of existing law when it passes legislation"). Any attempt to equate "citizen at birth" with "natural born Citizen", or that Congress could define or redefine the organic law term "natural born Citizen" through its naturalization power constitutes an illegal usurpation of the amendment process, which must be conducted according to the Constitution (*Art. 5 US Const.*), and approved by three fourths of the state legislatures. If "citizen at birth" were the definition of natural born Citizen, then Congress could continually redefine who is eligible to be President by redefining or making additions to who is a "citizen at birth."

10) INS 1952(23) defines "naturalization" as "the conferring of nationality of a state upon a person after birth." This definition is used by the State Dept. to this day, and is used by the regulation 7 FAM 1131.6-3 as the justification that even though citizens at birth must meet "statutory transmission requirements", that they are "not considered citizens by naturalization." This regulation was oddly added only recently by the Obama administration (7 FAM 1131.6-3 Not Citizens by "Naturalization" (CT: CON-474; 08-19-2013), reiterating that "'naturalization' means 'the conferring of nationality of a state upon a person *after birth*, by any means whatsoever.'" (quoting INS 1952)(emphasis added)

The State Department believes that since naturalization occurs "after birth" that "citizens at birth" are not naturalized? Logic would stipulate that these children are conferred US citizenship by the Congressional statutes themselves ("by any means whatsoever"), and that ALL naturalization, whether by oath, or passively by statute, occurs after a child is born, not in the uterus or in the birth canal. To say that "citizens at birth" are "not naturalized" because naturalization necessarily must occur "after birth" is a laughable and desperate conclusion. Of course naturalization

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always happens "after birth", not before birth. "At birth" means "after birth". It doesn't mean "before birth" or "during birth".

11) The Supreme Court has held, in *Afronym v. Rusk, 387 US 253 (1967)*, that in the case of *Wong Kim Ark, 169 US 649 (1898)*, that Wong Kim Ark, born in the US of legal resident alien parents was naturalized or "conferred citizenship" in the same way as "naturalization" is defined by INS 1952. According to that court's holding, that Congress has the power to confer citizenship, but not take it away, the 14th Amendment was held to be the "means" by which children of legal resident aliens were naturalized. The Wong Kim Ark case itself held that Wong Kim Ark was a citizen, not due to simple birth within the United States, but because he was born "subject to the jurisdiction of the United States" within the meaning of that amendment, due to the legal permanent residence of the parents and the resulting allegiance to the host country, and that children born in that situation are "as much a citizen as the *natural born child of a citizen*," (*Id @ 693, quoting Binney, Alienigenae*)(emphasis added) denoting the difference expressed by the court between the two terms. Marco Rubio was born in that same situation, as the child of legal permanent resident alien parents, and would be considered naturalized by the holding of *Afronym v. Rusk*.

"The Court first held that within the terms of the Fourteenth Amendment, Wong Kim Ark was a citizen of the United States, and then pointed out that though he might 'renounce this citizenship, and become a citizen of . . . any other country,' he had never done so. *[Wong Kim Ark] at 704-705*. The Court then held that Congress could not do anything to abridge or affect *his citizenship conferred by the Fourteenth Amendment*. Quoting Chief Justice Marshall's well-considered and oft-repeated dictum in Osborn to the effect that Congress under the power of naturalization has 'a power to confer citizenship, not a power to take it away,' - *Afroyim v. Rusk, (387 U.S. 253, 266)(emphasis added)* And see also, "But the Civil Rights Act of 1866, 14 Stat. 27, had already attempted to *confer citizenship* on all persons born or naturalized in the United States. Nevertheless, when the Fourteenth Amendment passed the House without containing any definition of citizenship, the sponsors of the Amendment in the Senate insisted on inserting a constitutional definition and *grant of citizenship*. They expressed fears that the citizenship so recently *conferred* on Negroes by the Civil Rights Act could be just as easily taken away from them by subsequent Congresses, and it was to provide

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an insuperable obstacle against every governmental effort to strip Negroes of their newly *acquired citizenship* that the first clause was added to the Fourteenth Amendment". *Id @263 (emphasis added)*

Afronym v. Rusk held that the 14th Amendment "confers citizenship" (naturalizes), either by oath or by the amendment itself, and also uses the words "grant" and "acquired" in describing the way the beneficiaries of the 14th Amendment have been given citizenship, describing the act of the naturalization power of Congress. It held that Wong Kim Ark was naturalized by the 14th Amendment, but that the citizenship conferred could not be taken away, and it touched both methods of naturalization, born or naturalized, and subject to the jurisdiction of the United States. The disparity between the State Department's view in 7 FAM 1131.6-3, that those that benefit from 8 US Code 1401, as "citizens at birth" are "not considered naturalized," even though 8 US Code S. 1401 was enacted under Congressional power to enact uniform immigration and naturalization statutes, and the *Afroyim v. Rusk* Supreme Court's view, that the children of legal resident alien parents, if born in the United States, are naturalized ("conferred citizenship") by the 14th Amendment itself, needs to be resolved immediately. It would not be the first time that the Constitution itself naturalized new citizens. The first, and only grant of citizenship in the organic constitution, was to the residents of the states at the time of the ratification of the Constitution. (*Art. 2 S. 1 C. 5*) "[O]r a citizen of the United States, at the time of the adoption of this Constitution…"

Marco Rubio, may not be considered "naturalized" by the Obama administration, but according to *Afroyim v. Rusk* he was conferred US citizenship by the 14th Amendment, as the 14th Amendment made the Civil Rights Act 1866, a statute that naturalized the former slaves, codified into the Constitution itself. The 14th Amendment did not make the former slaves "natural born Citizens", it "conferred citizenship". There are arguably now two naturalization Acts codified into the Constitution itself, Art. 2 S. 1 C. 5 in the Organic Constitution, naturalizing the residents of the states at the time of ratification, and the 14th Amendment in the amended Constitution, naturalizing those born or naturalized and "subject to the jurisdiction of the United States." While there has been much debate over the clause "subject to the jurisdiction", its meaning was apparently well known to the

framers of the Revised Statutes 1873, five years after the ratification of the 14th Amendment. There the definition of "citizens" is "[a]ll persons born in the United States and not subject to any foreign power," (Rev. Stat. 1873, pg. 351) just as the Civil Rights Act 1866, and the naturalization oath require.

Marco Rubio, like Wong Kim Ark, was conferred citizenship by birth to legal resident aliens residing in the United States, and viewed as "subject to the jurisdiction of the United States" within the meaning of the 14th Amendment. By natural law the parents of Marco Rubio had direct allegiance to the country they were legal residents of, however long that legal residence lasted, and so was Marco Rubio, who was naturalized at birth.

The early naturalization acts (1790, 1795 and 1802) would have all withheld a determination as to whether Mr. Rubio was a citizen, if born to aliens, until the naturalization of his parents, after a period of residence and "good behavior". The naturalization of Mr. Rubio's parents occurred when he was three years old. If Marco Rubio would not have been a citizen at the time of his birth by application of the Naturalization Act of 1802, then he cannot be a natural born Citizen today, as natural born Citizens are certainly citizens at the time they are born.

"The children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the said States under the laws thereof, being under the age of twenty-one years at the time of their parents' being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States." Act of April 14, 1802, c. 28, § 4; 2 Stat. 155

It can be argued that any of those that do not fit the Supreme Court and common law definition of "natural born Citizen" (born in the United States of US citizen parentage), are naturalized by later acts of Congress. No other description of a "citizen" other than Art. 2 S. 1 C. 5 existed in the organic Constitution, the point in time of the beginning of the Constitutional Republic. Article 2 S. 1 C. 5 has never been amended, and did not include as citizens those born to resident alien parents in a post ratification state of the union, therefore that stipulation must have necessarily been made by

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Congress. Prior to the Wong Kim Ark case there were doubts as to the citizenship of those born in the US to alien parents; "Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts." *Minor v. Happersett, 88 US 162, 167, 168 (1874); and see also,* "But, in our opinion, it did not need this amendment to give them that position. Before its adoption the Constitution of the United States did not in terms prescribe who should be citizens of the United States or of the several States, yet there were necessarily such citizens without such provision." *Id. @ 165,* asserting that Ms. Minor did not need the 14th Amendment to claim citizenship. Justice Waite, in the case of Minor v. Happersett, juxtaposed the natural born Citizens (those born in the US of US citizen parentage, like Virginia Happersett, with "foreigners". Any situation of birth or naturalization in between would be conferred citizenship by Congressional power of naturalization, to relieve the "doubts". Id. @ 167

Whether one calls Marco Rubio a "born citizen of the 14th Amendment," or "naturalized by the 14th Amendment," in the view of *Afroyim v. Rusk,* is of no consequence. He does not fit the definition of natural born Citizen established by the Supreme Court of the United States. He is a "member of the nation" or a "citizen" *Id. @ 167* but not a member of the nation with the constitutional capacity of eligibility for the Presidency; a natural born Citizen.

9) It is also well held that the 14th Amendment did not "change" (amend) the Constitution, or the meaning of natural born Citizen, it reaffirmed the rights, privileges and immunities that US citizens already had and enforced them on the states for the benefit of the new former slave citizens.

"The object of the fourteenth amendment in respect of citizenship was to preserve equality of rights and to prevent discrimination as between citizens, but not to radically change the whole theory of the relations of the state and federal governments to each other, and of both governments to the people." *In re Kemmler, 136 U.S. 436, McPherson v. Blacker, 146 US 1, 39 (1892)*

The 14th Amendment did not "amend" the organic law term "natural born Citizen". Congress has no power to amend or define that term, as it is defined by part of the common law called

natural law (law of nations). ("At common-law, with the nomenclature of which the framers of the Constitution were familiar…" *Minor v. Happersett, 88 US 162, 167 (1874)*; and see also, "In Minor v. Happersett, Chief Justice Waite, when construing, in behalf of the court, the very provision of the Fourteenth Amendment now in question, said: 'The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that.' And he proceeded to resort to the common law as an aid in the construction of this provision." *Wong Kim Ark, 169 US 649 @ 655)* "Natural born Citizen" is a term of art that defies definition by breaking it down into its constituent words, and the adoption of that term into a legislative scheme adopts the entire body of law from which it came ("where a phrase in a statute appears to have become a term of art . . . , any attempt to break down the term into its constituent words is not apt to illuminate its meaning." *Sullivan v. Stroop, 496 U.S. 478, 483 (1990)* (interpreting the phrase "child support" as used in Title IV AFDC provisions of Social Security Act). The fact that Congress enacted an Amendment defining and granting citizenship does not change the meaning of the natural born Citizen clause of Article 2. "Later Amendments cannot bind the interpretation of Constitutional clauses". *Freytag v. Commissioner 501 U.S. 868, 887 (1991)*; stating that, for instance, the limitation on the term "Department" in the 25th Amendment does not limit the meaning of that term in the appointments clause.

Natural born citizen is defined by the law of nations, part of the Laws of the United States, and by the US Supreme Court

10) Law of nations, or natural law, is part of the Laws of the United States, see *Sosa v. Alvarez Machain, 542 U.S. 692, (2004)*; "'When the United States declared their independence, they were bound to receive the law of nations, in its modern state of purity and refinement.' *Ware v. Hylton, 3 Dall. 199, 281 (1796)* (Wilson, J.). In the years of the early Republic, this law of nations comprised two principal elements, the first covering the general norms governing the behavior of national states with each other: 'the science which teaches the rights subsisting between nations or states, and the obligations correspondent to those rights,' E. de Vattel, The Law of Nations, Preliminaries §3 (J. Chitty et al. transl. and ed. 1883) (hereinafter Vattel) (footnote omitted), or 'that code of public instruction which defines the rights and prescribes the duties of nations, in their intercourse with each other,' 1

James Kent Commentaries, 1. This aspect of the law of nations thus occupied the executive and legislative domains, not the judicial. See 4 W. Blackstone, Commentaries on the Laws of England 68 (1769) (hereinafter Commentaries) ('[O]ffenses against' the law of nations are 'principally incident to whole states or nations')". *Id. @ (3)(A)(1)*

The science of the relationship between nations certainly encompasses citizenship laws, a subject of treaties and friction between nations.

11) Natural law, or law of nations, stipulates that, "The natives, or natural-born citizens, are those born in the country, of parents who are citizens. As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights. The society is supposed to desire this, in consequence of what it owes to its own preservation; and it is presumed, as matter of course, that each citizen, on entering into society, reserves to his children the right of becoming members of it. The country of the fathers is therefore that of the children; and these become true citizens merely by their tacit consent."(Emmerich de Vattel, Law of Nations or Principles of the Law of Nature, Bk. 1 Ch. 19, S. 212, (London 1797) (1st ed. Neuchatel 1758)

There is no need to "confer citizenship" by statute upon a natural born Citizen, they are naturally citizens by their birth on United States soil to US citizen parents. What else would they be? According to Vattel they are citizens by "tacit consent." Thus there is no statute that defines or "confers" natural born Citizenship. The Constitution merely states that they exist. They are naturally US citizens, or indigenous citizens, as defined by law of nations, part of the laws of the United States.

12) The multiple times that the Supreme Court has defined "natural born Citizen" mirrors the definition of law of nations. For instance;

"Vattel, who, though not very full to this point, is more explicit and more satisfactory on it than any other whose work has fallen into my hands, says 'The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its

advantages. The natives or indigenes are those born in the country of parents who are citizens. Society not being able to subsist and to perpetuate itself but by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights.'" *The Venus, 12 U.S. 253, 289 (1814)*(Marshall concurrence) And see, *Minor v. Happersett, 88 US 162, 167 (1874)*, "The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners." And see also, *Wong Kim Ark, 169 US 649, 680 (1898)*, quoting the "common law" definition in Minor. The definition of natural born Citizen in Minor was referenced twice in Wong Kim Ark (@ pg. 655, and 680) and was never disagreed with.

In 1874, and in 1898, years after the enactment of the 14th Amendment, the Supreme Court said that the 14th Amendment ("The Constitution does not, in words, say who shall be natural born Citizens.") does not describe who the natural born Citizens are, so therefore it is not 14th Amendment citizens.

13) The fact is that "born a US Citizen" was never meant to be the meaning of "natural born Citizen", as Alexander Hamilton had suggested that the requirement be "born a citizen" in an early draft of the Constitution; "No person shall be eligible to the office of President of the United States unless he be now a citizen of one of the states or hereafter be *born a citizen* of the United States" (emphasis added);(See Draft of a Constitution, 17 September 1787, Article 9 S. 1, Philadelphia, Alexander Hamilton; Source: The Papers of Alexander Hamilton, vol. 4, January 1787-May 1788, ed. Harold C. Syrett. New York: Columbia University Press, 1962, pp. 253-274.).

The term "born a citizen" was rejected in favor of "natural born Citizen" for the purpose of national security, and the exclusion of foreign influence into the office, according to Hamilton himself, the writer of Federalist 68.

"Nothing was more to be desired than that every practicable

obstacle should be opposed to cabal, intrigue, and corruption. These most deadly adversaries of republican government might naturally have been expected to make their approaches from more than one querter, but chiefly from the desire in foreign powers to gain an improper ascendant in our councils. How could they better gratify this, than by raising a creature of their own to the chief magistracy of the Union"? Alexander Hamilton, Federalist 68, March 12, 1788.

The idea was to raise a creature of the United States, born of its citizens and bathed in American mores and attitudes, isolated from foreign influence (a creature of our own), as a security measure for the important position of Commander In Chief of the Armed forces. Hamilton uses the perfect wording of "improper ascendant", meaning the improper influence of a foreign parent, as "ascendant" means:

1) Superiority, influence. 2) One of the degrees of kindred reckoned upwards. (Samuel Johnson's Dictionary of the English Language, digital edition, 1755, pg. 165).

If the stated purpose of the requirement that only a natural born Citizen shall be eligible for President, is "prevention of foreign influence," then it is impossible that the set of eligible persons included those born of foreign or non US citizen parentage, or in a foreign country, regardless of whether those persons are considered "citizens at birth" (members of the nation from birth) now by the acts of Congress. Marco Rubio was born of non citizen parents in the United States, and Ted Cruz was born in Alberta, Canada, of one citizen parent mother and one alien parent father. As such neither is capable of election to the Presidency (eligible).

Remedy

14) For the above stated reasons Plaintiff seeks an injunction on the Republican Party candidates for President, Senator Marco Rubio and Senator Ted Cruz, from appearing on the ballot of the Florida Republican Presidential Preference Primary, to be held on March 15, 2016, so that they cannot be considered "capable of being elected" by the force of Article 2 S. 1 C. 5 of the US Constitution and the Supremacy clause.

Respectfully submitted, Michael C. Voeltz, pro se