IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

CIVIL DIVISION

MICHAEL VOELTZ Plaintiff,	)	
vs.	)	CASE NO. 15-022044 (02)
SENATOR TED CRUZ, et al. Defendants	)	

SENATOR MARCO RUBIO'S MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT THEREOF

COMES NOW Defendant, Senator Marco Rubio, by and through its undersigned counsel, and pursuant to Fla. R. Civ. P. 1.140(b), hereby moves this Court to dismiss the Complaint filed by Plaintiff for failure to state a cause of action and a lack of jurisdiction over the subject matter. Senator Rubio is a natural born citizen of the United States and is qualified to appear on the Republican Party's 2016 Presidential Preference Primary Ballot for nomination to that office.

INTRODUCTION

Senator Marco Rubio is a natural born citizen of the United States. It is undisputed that Senator Rubio was born in the United States. This fact, or the Plaintiff's lack of standing, should end the matter and this Court should grant Senator Rubio's Motion to Dismiss.

The Plaintiff, Mr. Voeltz, argues that the term "natural born citizen," a constitutional term of art with a lengthy history, refers only to those persons born in the United States to parents who are both U.S. citizens. This argument has no basis in the common law of England, the common law of England as adopted in the United States, or the subsequent constitutional law

of the United States. To adopt Mr. Voeltz's view would mean that at least six Presidents of the United States were not natural born citizens and were therefore ineligible for that office.

In fact, this is now Mr. Voeltz's second attempt to bring this theory before the Florida courts. In 2012, Mr. Voeltz brought nearly the same challenge to President Obama's status as a natural born citizen in a case alleging that President Obama, although born in the United States, was not a 'natural born citizen' because his parents are not *both* U.S. citizens. Judge Terry Lewis granted President Obama's motion to dismiss on both procedural and substantive grounds. *See Voeltz v. Obama et al.,* No. 2012-CA-00467 slip op. at 3, 6-7 (Fla. Cir. Ct. June 29, 2012) (holding as a matter of law that Mr. Voeltz's claim was legally deficient because the Natural-Born Citizen Clause is satisfied by birth within the territories of the United States and concluding that Voeltz lacked standing for a declaratory judgment action). Judge Lewis was affirmed on appeal, without opinion. *See Voeltz v. Obama,* 134 So. 3d 1049 (Fla. Dist. Ct. App. 1st Dist. 2013) (dismissing appeal as moot); *Voeltz v. Obama*, 126 So. 3d 1059 (Fla. 2013) (denying requested mandamus relief because Mr Voeltz "[f]ailed to show a clear legal right to the relief requested."). This Court should similarly dismiss Mr. Voeltz's same theory brought now for the second time.

More fundamentally, Mr. Voeltz does not possess standing to bring his claim. His alleged "harms" are, at best, derivative harms that are not cognizable injuries and have previously been found to be insufficient to confer standing on a litigant. Furthermore, Mr. Voeltz's claims are procedurally defective as the sole forum for the consideration of these claims is through the federal political process (that is, the question of presidential candidate eligibility is a nonjusticiable political question. In the alternative, Florida law precludes Mr. Voeltz from challenging the qualifications or nomination of a presidential candidate.

For the reasons that follow, this Court should grant Senator Rubio's Motion to Dismiss.

THE COMPLAINT'S PROCEDURAL DEFECTS

I. MR. VOELTZ LACKS STANDING TO BRING THIS COMPLAINT.

Plaintiff does not specify a theory for establishing standing, or even address the subject, but we attempt to address his claimed injuries below. "For a court of law operating as one of the three branches of government under the doctrine of the separation of powers, standing is a threshold issue which must be resolved before reaching the merits of a case. Before a court can consider whether an action is illegal, the court must be presented with a justiciable case or controversy between parties who have standing." *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. Dist. Ct. App. 3d Dist. 2015). "[S]tanding is a preliminary issue that is to be decided by the court." *Chuck v. City of Homestead Police Dep't*, 888 So. 2d 736, 745 (Fla. Dist. Ct. App. 3d Dist. 2004). "A party's standing is distinct from the merits of the case and should be considered separately." *Fannie Mae v. Legacy Parc Condo. Ass'n*, 177 So. 3d 92, 94 (Fla. Dist. Ct. App. 5th Dist. 2015).

A. The Standard For Establishing Standing.

"A party has standing when he or she has a sufficient stake in a justiciable controversy." *Peregood v. Cosmides*, 663 So. 2d 665, 668 (Fla. Dist. Ct. App. 5th Dist. 1995). The Supreme Court of Florida explained that:

> Generally, standing "requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly." *Hayes v. Guardianship of Thompson*, 952 So. 2d 498, 505 (Fla. 2006); *see generally Brown v. Firestone*, 382 So. 2d 654, 662 (Fla. 1980) ("[T]his Court has long been committed to the rule that a party does not possess standing to sue unless he or she can demonstrate a direct and articulable stake in the outcome of a controversy."); *Weiss v. Johansen*, 898 So. 2d 1009, 1011 (Fla. 4th DCA 2005) ("Standing depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected

> by the outcome of the litigation."). Thus, standing to bring or participate in a particular legal proceeding often depends on the nature of the interest asserted.

Johnson v. State, 78 So. 3d 1305, 1314 (Fla. 2012). "Standing depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest that would be affected by the outcome of the litigation." *Centerstate Bank Cent. Fla., N.A. v. Krause*, 87 So. 3d 25, 28 (Fla. Dist. Ct. App. 5th Dist. 2012); *see also Zelman v. Zelman*, 175 So. 3d 871, 877 (Fla. Dist. Ct. App. 4th Dist. 2015) (*quoting Brown v. Firestone*, 382 So. 2d 654, 662 (Fla. 1980)) ("The Supreme Court has characterized standing to sue as a 'direct and articulable stake in the outcome of a controversy.'"); *Nedeau v. Gallagher*, 851 So. 2d 214, 215 (Fla. Dist. Ct. App. 1st Dist. 2003) ("Standing depends on whether a party has a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of the litigation."); *Provence v. Palm Beach Taverns*, 676 So. 2d 1022, 1024 (Fla. Dist. Ct. App. 4th Dist. 1996) ("Generally, one has standing to sue when he or she has a sufficient interest at stake in the controversy which will be affected by the outcome of the litigation.").

This "direct and articulable stake" standard requires the Plaintiff to show that he has suffered a legally cognizable "special injury." "[T]he Florida Supreme Court has repeatedly held that citizens and taxpayers lack standing to challenge a governmental action unless they demonstrate either *a special injury, different from the injuries to other citizens and taxpayers*, or unless the claim is based on the violation of a provision of the Constitution that governs the taxing and spending powers." *Solares*, 166 So. 3d at 888 (emphasis added); *see also Smith v. City of Fort Myers*, 944 So. 2d 1092, 1094 (Fla. Dist. Ct. App. 2d Dist. 2006) ("Generally, a private citizen is precluded from filing a taxpayer complaint to challenge government action unless the private citizen alleges and proves a 'special injury,' which is an injury that is different from that of the general public."); *Alachua County v. Scharps*, 855 So. 2d 195, 198 (Fla. Dist. Ct.

App. 1st Dist. 2003) ("Generally, in order to have standing to bring an action the plaintiff must allege that he has suffered or will suffer a special injury."). The "special injury" rule derives from the Florida Supreme Court's decision in *Rickman v. Whitehurst*, 73 Fla. 152 (Fla. 1917), in which the court explained:

> In a case where a public official is about to commit an unlawful act, the public by its authorized public officers must institute the proceeding to prevent the wrongful act, *unless a private person is threatened with or suffers some public or special damage to his individual interests, distinct from that of every other inhabitant*, in which case he may maintain his bill.

Rickman v. Whitehurst, 73 Fla. 152, 158 (Fla. 1917) (emphasis added); *see also Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 121 (Fla. Dist. Ct. App. 1st Dist. 2010) ("[I]n *Rickman v. Whitehurst* … the Florida Supreme Court construed the right of citizen-taxpayers to sue the state by requiring that, when challenging government policy or actions, a taxpayer must allege a 'special injury" which differs in kind and degree from that sustained by other members of the community at large.").[1]

Florida's "special injury" rule corresponds with the concepts of "injury in fact," as opposed to a "generally available grievance," routinely used in federal court decisions. As the U.S. Supreme Court explained, a Plaintiff lacks standing where he "rais[es] only a generally

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[1] The present matter does not implicate the Supreme Court of Florida's exception to the "special injury" rule announced in *Department of Administration v. Horne*, 269 So. 2d 659 (Fla. 1972), where the Court held that "where there is an attack upon *constitutional* grounds based directly upon the Legislature's *taxing and spending* power, there is standing to sue without the *Rickman* requirement of special injury, which will still obtain in other cases." *Department of Administration v. Horne*, 269 So. 2d 659, 663 (Fla. 1972) (emphasis in original). The Supreme Court of Florida subsequently "has refused to depart from the special injury rule or expand our exception established in *Horne*." *N. Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154, 156 (Fla. 1985); *Martin v. City of Gainesville*, 800 So. 2d 687, 688 (Fla. Dist. Ct. App. 1st Dist. 2001) ("The exception to the special injury requirement he invokes is only available if a taxpayer can show that an expenditure violates specific constitutional limitations on the taxing and spending power."). The Plaintiff here does not challenge, in any way, the legislature's taxing and spending power.

available grievance about government -- claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573-574 (1992); *see also Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("[W]hen the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction.").

In addition to requiring a "special injury," a claim must be brought by the "real party in interest." *See Weiss v. Johansen*, 898 So. 2d 1009, 1011 (Fla. Dist. Ct. App. 4th Dist. 2005) ("[T]he claim should be brought by, or on behalf of, the real party in interest. . . . Standing encompasses not only this 'sufficient stake' definition, but also the requirement that the claim be brought by or on behalf of one who is recognized in the law as a 'real party in interest,' that is the person in whom rests, by substantive law, the claim sought to be enforced."); *Nedeau v. Gallagher*, 851 So. 2d 214, 215 (Fla. Dist. Ct. App. 1st Dist. 2003) ("Furthermore, the claim should be brought by, or on behalf of, the real party in interest.").

The Supreme Court of Florida has adopted the United States Supreme Court's three basic requirements for establishing standing:

> There are three requirements that constitute the "irreducible constitutional minimum" for standing. *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771, 146 L. Ed. 2d 836, 120 S. Ct. 1858 (2000). First, a plaintiff must demonstrate an "injury in fact," which is "concrete," "distinct and palpable," and "actual or imminent." *Whitmore v. Arkansas*, 495 U.S. 149, 155, 109 L. Ed. 2d 135, 110 S. Ct. 1717 (1990). Second, a plaintiff must establish "a causal connection between the injury and the conduct complained of." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992). Third, a plaintiff must show "a 'substantial likelihood' that the requested relief will remedy the alleged injury in fact." *Stevens*, 529 U.S. at 771.

State v. J.P., 907 So. 2d 1101, 1113 n.4 (Fla. 2004). Florida courts have expressly employed this terminology on occasion, and it is not inconsistent with other formulations of standing rules

found in Florida case law. *See*, *e.g.*, *Pandya v. Israel*, 761 So. 2d 454, 456-457 (Fla. Dist. Ct. App. 4th Dist. 2000) ("To establish standing a party must have an injury in fact for which relief is likely to redress and, in non-constitutional cases, the interest must fall within a statutory or constitutional guarantee (i.e. the zone of interest)."); *Peregood v. Cosmides*, 663 So. 2d 665, 668 (Fla. Dist. Ct. App. 5th Dist. 1995) ("To establish standing it must be shown that the party suffered injury in fact (economic or otherwise) for which relief is likely to be redressed and, in non-constitutional situations, that the interest sought to be protected falls within a statutory or constitutional guarantee (i.e., the zone of interest…) . . . . The injury must be distinct and palpable. . . . It may not be abstract, conjectural or hypothetical.").

We have not found any Florida case that specifically addresses a voter's standing to challenge a candidate's eligibility for office, or an election-related determination or act relating to such eligibility. We have also found no case which suggests that the courts permit any relaxation of the "special injury" requirement in the present circumstances. In the special case of ballot referenda, it has been held that "[a] voter has standing to challenge ballot language on a claim that the language fails to comply with subsection 101.161(1), Florida Statutes," which requires a ballot summary to be printed in "clear and unambiguous language." *City of Hialeah v. Delgado*, 963 So. 2d 754, 756 (Fla. Dist. Ct. App. 3d Dist. 2007). Outside of this ballot referenda scenario, however, voter standing remains contingent on the identification of a "special injury" caused to the "real party in interest." *See*, *e.g.*, *Boardman v. Esteva*, 323 So. 2d 259, 269 (Fla. 1975) ("Being personal to the voter, the right of secrecy may be waived by the voter and it would appear that the voter himself is the only party who has standing to protest a violation of the right to vote in secret."); *Alachua County v. Scharps*, 855 So. 2d 195 (Fla. Dist. Ct. App. 1st Dist. 2003) (holding a taxpayer with no "special injury" lacked standing to challenge a resolution

passed by a county which directed that a referendum be placed on a general election ballot because no exception to the "special injury" rule applied).

B. Voters Challenging Qualifications of Presidential Candidates Lack Standing.

Litigants have brought a series of substantially similar cases in both federal and state courts challenging the eligibility of Senator John McCain and Senator and President Barack Obama to serve as President of the United States under the Natural Born Citizen Clause of the United States Constitution. U.S. Const., art. II, § 1, cl. 4. The federal courts have consistently held that these litigants lack standing because they have suffered no "injury in fact." *See*, *e.g.*, *Drake v. Obama*, 664 F.3d 774 (9th Cir. 2011); *Kerchner v. Obama*, 612 F.3d 204 (3d Cir. 2010); *Sibley v. Obama*, 866 F. Supp. 2d 17 (D.D.C. 2012); *Berg v. Obama*, 574 F. Supp. 2d 509 (E.D. Pa. 2008); *Robinson v. Bowen*, 567 F. Supp. 2d 1144 (N.D. Cal. 2008); *Hollander v. McCain*, 566 F. Supp. 2d 63 (D.N.H. 2008); Stamper v. United States, 2008 U.S. Dist. LEXIS 92938 (N.D. Ohio Nov. 4, 2008).

The state courts have similarly rejected these challenges, often on standing grounds as well. *See*, *e.g.*, *McInnish v. Bennett*, 150 So. 3d 1045 (Ala. 2014) (per curiam) (rejecting plaintiffs' claim with no opinion); *Lamb v. Obama*, No. S-15155, 2014 WL 1016308, 2014 Alas. LEXIS 31 (Alaska Mar. 12, 2014) (finding plaintiff lacked standing and lacked legally cognizable claim); *Keyes v. Bowen*, 189 Cal. App. 4th 647 (Cal. App. 3d Dist. 2010) (holding that the state had no duty to investigate qualifications); *Wrotnowski v. Bysiewicz*, 289 Conn. 522, 958 A.2d 709 (Conn. 2008) (finding no statutory standing); *Ankeny v. Governor of Ind.*, 916 N.E.2d 678 (Ind. Ct. App. 2009) (finding Mr. Obama is a "natural-born citizen" born within the borders of the United States); *see also Strunk v New York State Bd. of Elections*, No. 6500/11 2012 N.Y. Misc. LEXIS 1635 (N.Y. Sup. Ct. 2012) (finding plaintiff lacked standing, plaintiff

failed to state a claim, and the court lacked subject matter jurisdiction); *Paige v. State*, 2013 Vt. 105, 88 A.3d 1182 (Vt. 2013) (finding plaintiff's claim moot).

The same result was reached in *Jones v. Bush* in which the Plaintiffs attempted to bring suit under the Twelfth Amendment to the United States Constitution to enjoin members of the Electoral College from Texas from voting for both George W. Bush and Richard B. Cheney, on the grounds that they were "inhabitants" of the same state. *Jones v. Bush*, 122 F. Supp. 2d 713, 715 (N.D. Tex. 2000). The court held that Plaintiffs lacked standing because their "assertion that a violation of the Twelfth Amendment will harm them by infringing their right to cast a meaningful vote also fails to satisfy the Article III requirement of a 'distinct and palpable injury.'" *Jones*, 122 F. Supp. 2d at 717 (citation omitted). The court explained, "[a] general interest in seeing that the government abides by the Constitution is not sufficiently individuated or palpable to constitute such an injury." *Id*; *see also Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 220 (1974) ("standing to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share"); *Ex parte Levitt*, 302 U.S. 633, 633 (1937) ("It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public.").

In *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 (1974), the United State Supreme Court held that plaintiffs lacked standing to pursue claims alleging that certain members of Congress where ineligible for office under the U.S. Constitution's Incompatibility Clause. *Schlesinger*, 418 U.S. at 220. The Court explained that "standing to sue may not be

predicated upon an interest … which is held in common by all members of the public," and that the standing requirement carries "particular[]" weight in cases "seek[ing] an interpretation of a constitutional provision which has never been construed by the federal courts." *Id.* at 220, 221.

C. Plaintiff's Claimed Injury Is Not A Cognizable Injury In Fact.

Plaintiff in this matter alleges a variety of "injuries" in his Complaint that are supposedly caused by a variety of parties.[2] All of the "injuries" alleged have been rejected by courts in the past as inadequate to confer standing. As we read the Complaint, Plaintiff's primary asserted injury is that his "right to vote will be diluted, debased and desecrated by the presence of Mr. Cruz and Mr. Rubio on the Florida ballot" due to Plaintiff's belief that these individuals are not "natural born citizens," and therefore are not eligible to serve as President of the United States. Compl. at 7. Plaintiff claims that an unknown "distribution of the vote" will be "siphoned by ineligible candidates" that should have "been kept off the ballot." *Id.* at 8. Plaintiff's asserted "injury" has been rejected by courts in the past as insufficient to confer standing.

For instance, the United States District Court for the Eastern District of Pennsylvania succinctly held that "a candidate's ineligibility under the Natural Born Citizen Clause does not

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[2] Defendant Marco Rubio does not respond to Plaintiff's asserted injuries at the hand of Defendant Secretary of State Ken Detzner, or the non-party Florida Legislature. If any such injury occurred, that injury was self-evidently not caused by Senator Rubio, and cannot be redressed by Senator Rubio. We note, however, that the United States Court of Appeals for the Third Circuit rejected substantially similar claims in 2009, writing: "The essence of Berg's complaint is that the defendants, the states, presidential candidates other than Obama, political parties, a majority of American voters, and Congress -- a list that includes some who could have challenged, or could still challenge, Obama's eligibility through various means -- have not been persuaded by his claim. That grievance, too, is not one 'appropriately resolved through the judicial process.' *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990)." *Berg v. Obama*, 586 F.3d 234, 240 (3d Cir. 2009).

result in an injury in fact to voters." *Berg v. Obama*, 574 F. Supp. 2d 509, 520 *aff'd* 586 F.3d 234 (3d Cir. 2009). The United States District Court for the District of New Hampshire held that "voters have no standing to complain about the participation of an ineligible candidate in an election, even if it results in the siphoning of votes away from an eligible candidate they prefer." *Hollander*, 566 F. Supp. 2d at 69. Courts that have considered challenges brought under the Natural Born Citizen Clause have concluded that plaintiffs present only generalized grievances, as opposed to particularized injuries in fact. *Berg v. Obama*, 574 F. Supp. 2d 509, 519 *aff'd* 586 F.3d 234 (3d Cir. 2009) ("Plaintiff's stake is no greater and his status no more differentiated than that of millions of other voters."). The Court of Appeals for the Third Circuit explained,

> Even if we assume that the placement of an ineligible candidate on the presidential ballot harmed [Plaintiff], that injury, including any frustration [Plaintiff] felt because others refused to act on his view of the law, was too general for the purposes of Article III: [Plaintiff] shared both his "interest in proper application of the Constitution and laws," and the objective uncertainty of Obama's possible removal, *pari passu* with all voters; and the relief he sought would have "no more directly and tangibly benefit[ed] him than . . . the public at large." *Lujan*, 504 U.S. at 573-74.

Berg, 586 F.3d at 240.

While there may exist parties that could have standing to bring such claims, such as competing candidates, a voter cannot assert claims on behalf of those competing candidates. *See Berg v. Obama*, 586 F.3d 234, 240 (3d Cir. 2009) (Plaintiff's "angst that the presence on the ballot of an ineligible candidate might lessen the chances that an eligible candidate might win was a non-cognizable derivative harm."); *see also Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997) ("An interest shared generally with the public at large in the proper application of the Constitution and laws will not do."); *Crist v. Comm'n on Presidential Debates*, 262 F.3d 193, 194 (2d Cir. 2001) ("[A] voter fails to present an injury-in-fact when the alleged harm is abstract and widely shared or is only derivative of a harm experienced by a candidate.");

Weiss v. Johansen, 898 So. 2d 1009, 1011 (Fla. Dist. Ct. App. 4th Dist. 2005) ("[T]he claim should be brought by, or on behalf of, the real party in interest.").

D. Causation and Redressability

With no identifiable injury in fact, there can be no "causal connection between the injury and the conduct complained of," and there can be no showing of "a 'substantial likelihood' that the requested relief will remedy the alleged injury in fact." *State v. J.P.*, 907 So. 2d 1101, 1113 n.4 (Fla. 2004) (citations omitted).

Plaintiff has not alleged a particularized, palpable injury personal to him caused by Senator Marco Rubio, or by Senator Marco Rubio's appearance on Florida's presidential primary ballot.

F. No Constitutional or Statutory Provision Confers Standing to the Plaintiff

To the extent that Plaintiff asserts or implies a grant of standing from a constitutional or statutory provision, those assertions or implications are unavailing. First, "the Natural Born Citizen Clause does not confer an individual right on citizens or voters[]" for a claimed loss of a constitutional right under 42 U.S.C. § 1983. *See Berg*, 574 F. Supp. 2d at 522-523; *aff'd* 586 F.3d 234. Mr. Voeltz, therefore, does not have an individual right at issue in this case and he therefore cannot bring a declaratory judgment action. *See* Fl. Stat. § 86.011 (declaratory judgment action available only to those seeking confirm the existence or nonexistence of a right).

II. PLAINTIFF'S CHALLENGE PRESENTS A NON-JUSTICIABLE POLITICAL QUESTION.

In *Berg v. Obama*, the United States Court of Appeals for the Third Circuit indicated that the question of President Obama's qualifications under the Natural Born Citizen Clause "seemed to present a non-justiciable political question." *Berg*, 586 F.3d at 238. Indeed, in 2008, the United States Senate approved a resolution recognizing "That John Sidney McCain, III, is a

'natural born Citizen' under Article II, Section 1, of the Constitution of the United States." S. Res. 141, 110th Cong. (2008) (enacted). This resolution was introduced by six Senators, including Senator Barack Obama and Senator Hillary Clinton.

A New York court recently reached the same conclusion. In that matter, the court explained that "Plaintiff's complaint essentially challenges the qualifications of both President Obama and Senator McCain to hold the office of President. This is a non-justiciable political question." *see also Strunk v New York State Bd. of Elections*, No. 6500/11 2012 N.Y. Misc. LEXIS 1635 (N.Y. Sup. Ct. 2012). The court held that "the exclusive means to resolve objections to the electors' selection of a President or a Vice President" is by the raising of objections "by members of the Senate and House of Representatives" at the "meeting of the joint session of Congress" held to count Electoral College votes. *Id.* The New York court continued:

> If a state court were to involve itself in the eligibility of a candidate to hold the office of President, a determination reserved for the Electoral College and Congress, it may involve itself in national political matters for which it is institutionally ill-suited and interfere with the constitutional authority of the Electoral College and Congress. Accordingly, the political question doctrine instructs this Court and other courts to refrain from superseding the judgments of the nation's voters and those federal government entities the Constitution designates as the proper forums to determine the eligibility of presidential candidates.
>
> *Id.*

In addition to the role of the Electoral College, and the aforementioned joint session of Congress, the U.S. Constitution contains two other provisions that reinforce the role of the Legislative Branch in determining the eligibility of the President and Vice President. If no candidate receives a majority of electoral votes, the Twelfth Amendment vests the House of Representatives with the authority to select the President, which necessarily involves an evaluation of qualifications. U.S. Const., amend. XXII. Furthermore, the Twentieth

Amendment authorizes Congress to "provide by law 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. Const., amend. XX, § 3. In short, the U.S. Constitution provides multiple avenues for the consideration of a presidential candidate's qualifications; none of those avenues involve the courts.

III. MR. VOELTZ'S COMPLAINT IS PROCEDURALLY DEFECTIVE UNDER FLORIDA LAW.

Plaintiff's Complaint is procedurally defective and fails to identify a legal basis under which this action could be viable, while ignoring the statutorily prescribed election procedures set forth in the Florida Statutes.

Plaintiff's Complaint ignores the pre-established election procedures as mandated by Florida law. Fla. Stat. § 103.101 sets forth clear election procedures that must be strictly followed by the Florida Secretary of State. In order for an individual to appear on a presidential preference primary ballot, each political party must submit to the Secretary of State a list of presidential candidates to be placed on the presidential primary ballot. Fla. Stat. § 103.101(2). The Secretary of State has no discretion on whether to accept or reject the names submitted by the political parties. On the contrary, the Florida Statutes order the Secretary of State to prepare and publish a list containing the names of the presidential candidates submitted, and to notify each presidential candidate listed therein. *Id.* In other words, the Secretary of State has a statutory obligation, that is not subject to judicial review. Rather, the Secretary of State's authority is limited to performing the ministerial functions that are specifically prescribed in Title IX of the Florida Statutes. There is no avenue contemplated in the Florida Statutes that

permits a court to review the Secretary of State's actions to place candidates on the presidential primary ballot.

Furthermore, Plaintiff's Complaint fails to consider governing Florida law with regard to proper procedures for contesting an individual's eligibility for office. Fla. Stat. § 102.168 provides the sole route for contesting an individual's nomination for office or for contesting an election. Fla. Stat. § 102.168 permits an elector, qualified to vote in the election related to such candidacy, to contest the certification of the election or nomination of any person to office within ten days after the results of the election have been certified. Fla. Stat. § 102.168(1)-(2); *see also Burns v. Tondreau*, 139 So. 3d 481(Fla. 3d DCA 2014); *Norman v. Ambler*, 46 So. 3d 178 (Fla. 1st DCA 2010).

Any action under Fla. Stat. § 102.168 is ripe for review only after the Canvassing Board has officially certified the results of an election. Explicitly, the statutory right of intervention under Fla. Stat. § 201.168 is limited to contesting the certification of an election. *McPherson v. Flynn*, 397 So. 2d 665 (Fla. 1981). Contesting any candidate's eligibility at this juncture is not permitted, as no election has yet taken place as required by Fla. State. § 102.168.

The Florida Supreme Court in *McPherson v. Flynn* clarified that generally, Florida courts have no inherent power to determine election contests, and because there is no common law right to contest elections, any challenge must be made under the statutory grant of Fla. Stat. § 201.168 as explicitly provided. *Id.* at 668; *see also Smith v. Tynes*, 412 So. 2d 925 (Fla.1st DCA 1982); *Pearson v. Taylor*, 32 So. 2d 826 (Fla. 1947). Moreover, when dealing with a statutory action for an election contest, the statutory provisions must be strictly followed. *Bailey v. Davis*, 273 So. 2d 422 (Fla.1st DCA 1973).

Even if all conditions precedent to challenging a candidate's eligibility had been met here, the Complaint still fails to allege other substantive elements required under Fla. Stat. § 102.168(3). For instance, Fla. Stat. § 102.168 (3) requires the elector to specifically set forth the grounds that allegedly establish the basis for challenging an individual's nomination to office or setting aside election results. *Id*. Here, the Plaintiff has failed to identify any statutory grounds as required by Fla. Sta. 102.168(3).

In the alternative, if the Court finds that Fla. Stat. § 102.168 does not apply in this instance as the subject of eligibility pertains to a presidential election, Plaintiff's Complaint still fails to assert a proper legal basis for his claim. To be sure, the Second Judicial Circuit Court of Florida has found that the Office of the President of the United States is treated differently under Florida law and is guided by an analysis under Fla. Stat. 103.021. *Voeltz v. Obam*a, 2012-CA-00467, Order Granting Motion to Dismiss (Fla. 2d DCA, June 29, 2102). In the instant case, while a nominee has not yet been declared for the upcoming presidential elections, Fla. Stat. § 103.021 nevertheless provides the mechanism for such nomination. Plainly, Fla. Stat. § 103.021 provides that presidential electors are designated by their respective political parties before September 1 of the presidential election year and nominated by the Governor. This process is guided by the political parties' rules regarding nominations at a national convention. However, Plaintiff has no recourse under Fla. Stat. § 103.021 as it has already been declared that under Florida law, there is no method to contest the qualifying or certification of nomination of a presidential candidate. *Voeltz v. Obam*a, 2012-CA-00467, Order Granting Motion to Dismiss (Fla. 2d DCA, June 29, 2102).

Altogether, the Complaint is defective as it fails to assert a proper legal basis under which to challenge an individual's nomination to the presidential primary.

ARGUMENT

Senator Marco Rubio is a natural-born United States citizen, 44 years of age, who has resided in the United States far in excess of the Constitutionally-required fourteen years. Senator Rubio satisfies all of the eligibility requirements set forth at Article II, §, 1, cl. 5, of the United States Constitution, and is eligible to be the President of the United States.

Under the common law of England at the time of the American founding, U.S. Supreme Court precedent, and U.S. historical practice, anyone born in the United States, regardless of ancestry and immigration status of the parents, is a "natural born citizen" under the Constitution. It is undisputed that Senator Rubio was born in the United States to immigrant parents. Under the United States Constitution, Senator Rubio is a natural born citizen who is eligible to serve as President of the United States.

I. CENTURIES OF PRECEDENT DEMONSTRATE THAT SENATOR MARCO RUBIO IS A NATURAL-BORN CITIZEN AND IS ELEGIBLE TO BE PRESIDENT.

The Constitution declares that "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." U.S. Const. art. II, § 1. The term "natural-born citizen" is not defined in the Constitution. *See United States v. Wong Kim Ark*, 169 U.S. 649, 654 (1898). Therefore, to interpret the meaning of the phrase, courts routinely look to English common-law at the time of the founding. *See Smith v. Alabama*, 124 U.S. 465, 478 (1888) ("The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history."); *see also Ex parte Grossman*, 267 U.S. 87, 108-09 (1925) ("The language of the Constitution cannot be interpreted safely except by reference to the common law and to British

institutions as they were when the instrument was framed and adopted."). As is widely-recognized, "[t]he statesmen and lawyers of the Convention who submitted it to the ratification of the Conventions of the thirteen States, were born and brought up in the atmosphere of the common law, *and thought and spoke in its vocabulary*." *Ex parte Grossman*, 267 U.S. at 109 (emphasis added).

A. The Common Law Of England Interpreted Natural-Born Subject To Mean All Persons Born In England Regardless Of Their Parents' Citizenship.

The great British legal scholar, William Blackstone, divided subjects of the British crown into two categories, those who were natural-born subjects and those who were aliens. Natural-born subjects were all of those persons "born within the dominions of the Crown of England." 1 William Blackstone, *Commentaries* 354 (1765). As Blackstone explains, all persons born within the dominions of the Crown have "natural allegiance" to the Crown and that allegiance is established at birth because the infant cannot protect himself and requires the protection of the Crown. *Id.* "Natural allegiance is therefore a debt of gratitude; which cannot be forfeited, cancelled, or altered, by any change of time, place, or circumstance, nor by any thing but the united concurrence of the legislature." *Id*.

This 'debt of gratitude' owed to the Crown by every natural-born subject cannot be forfeited, even if the subject moves outside the dominion of the Crown. Blackstone explains that a natural-born subject may move outside the dominion of the Crown, and swear allegiance to another king, but this "entanglement" does not and cannot "[u]nloose those bands, by which he is connected to his natural prince." The allegiance of a natural-born subject is perpetual. *See id*. at 357. Blackstone, in no unequivocal terms, explains the English common law of the time: "The children of aliens, born here in England, are, generally speaking, natural-born subjects, and entitled to all the privileges of such." *Id*. at 361.

By contrast, a foreign-born alien only became an English subject through "naturalization," which required an "act of parliament." *Id*. at 362. This process gives the person all of the rights of citizenship the same as a natural-born subject, except that only a natural-born subject can serve in parliament or on the privy council. *Id*. at 362.

The U.S. Supreme Court has recognized that English common law understood a natural-born subject to include "[e]very person born within the dominions of the Crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning, in the country...." *See Wong Kim Ark,* 169 U.S. at 657; *see also id*. ("[A]ny person who (whatever the nationality of his parents) is born within the British dominions is a natural-born British subject."); *id*. at 658 ("[T]herefore every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign State, or of an alien enemy in hostile occupation of the place where the child was born.").

The sole exceptions to the natural-born subject rule of English common law apply to children born to foreign diplomats or enemy parents during an occupation of British lands. *Id*. Thus the term "natural-born subject" at British common law meant a "British subject who has become a British subject at the moment of his birth." *Id*.

Thus, it is indisputable that the British common law, a subject with which founders of the United States were intimately familiar, understood a "natural-born subject" to be a person who is born within the British dominions, regardless of the parents' citizenship, and subject only to the two exceptions noted above. *See* Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1, 6 (1968).

B. The Constitutional Convention Added This Section To Protect Against Ambitious Foreigners.

While participating in the constitutional convention, John Jay wrote a letter to George Washington stating the following:

> Permit me to hint, whether it would be wise and seasonable to provide a strong check to the admission of Foreigners into the administration of our national Government; and to declare expressly that the Command in Chief of the American army shall not be given to nor devolve on, any but a natural born citizen.

Christina S. Lohman, *Presidential Eligibility: the Meaning of the Natural-Born Citizen Clause*, 36 Gonz. L. Rev. 349, 352 (2000). John Jay's motivation for this letter seems to stem from a suspicion that the Convention was considering Baron Von Steuben for President or that the Convention was considering to establish a monarchy with a foreign ruler. *Id*. There is no mention that the clause was meant to prevent the children of immigrants, born in the United States, from becoming President. The natural-born citizen clause was adopted, in its original formulation without debate. *Id*. at 353.

Later, Justice Story confirmed the understanding that the purpose of the natural-born citizen requirement was to prevent ambitious foreigners from vying for the office of the President as well as preventing foreign governments from interfering with U.S presidential elections. Neal Katyal & Paul Clement *On the Meaning of "Natural Born Citizen"* 128 Harv. L. Rev. F. 161, 163 (2015) (citing 3 Joseph Story, Commentaries on the Constitution of the United States § 1473, at 333 (1833)). Justice Story never suggested that the clause prevented the children of immigrants born in the United States from becoming President.[3]

[3] In fact, at the time Justice Story wrote his Commentaries on the Constitution, Andrew Jackson – the son of Irish immigrants to the United States – was serving as President of the United States.

C. The U.S. Supreme Court Adopted The British Common Law View That All Persons Born In The United States Are Natural-Born Citizens.

The Supreme Court in *Wong Kim Ark* conducted an extensive and thorough review of the common law of England and U.S. case law to determine the meaning of the term "natural-born citizen." Although *Wong Kim Ark* was decided on Fourteenth Amendment grounds, the Supreme Court "[e]xhaustively examine[s] the British common law, the source by which the constitutional Framers apparently derived the 'natural-born' terminology." *See* Christina S. Lohman, *Presidential Eligibility: the Meaning of the Natural-Born Citizen Clause*, 36 Gonz. L. Rev. 349, 357 (2000). The Court analyzed English common law to ascertain whether Wong Kim Ark, a man born in the United States to Chinese immigrant parents, was a U.S. citizen by birth. *Id*. at 360.

a. The Term Natural Born Citizen And Its Meaning During The Colonial Period Through The Founding Period.

As noted in *Wong Kim Ark*, Justice Marshall's 1804 opinion in the *Charming Betsey,* 2 Cranch, 64, 119, assumed that citizenship could be obtained by birth or naturalization, and that all persons born in the United States were United States citizens. *See Wong Kim Ark*, 169 U.S. at 658-59. Subsequently, in *Inglis v. Sailors' Snug Harbor*, (1830) 3 Pet. 99, the Supreme Court addressed the citizenship of a man born in New York City around 1776. *Wong Kim Ark*, 169 U.S. at 659. The Court recognized that it was universally acknowledged that all persons born in the Colonies of the United States, while under the rule of the British Crown, were considered natural-born subjects of the Great Britain. *Wong Kim Ark*, 169 U.S. at 659. The Court also noted that Justice Story, in his *Inglis* opinion, held that "[n]othing is better settled at the common law than the doctrine that the children, even of aliens, born in a country, while the parents are resident there under the protection of the government, and owing a temporary allegiance thereto,

are subjects by birth." *Wong Kim Ark*, 169 U.S. at 660 (quoting *Inglis v. Sailors' Snug Harbor,* (1830) 3 Pet. 164)).

Thus, through the mid-nineteenth century, there was no question that persons born in the United States to foreign parents (who were not diplomats or hostile, occupying enemies) were citizens of the United States by virtue of their birth. *See Wong Kim Ark*, 169 U.S. at 664 (citing *Lynch v. Clarke*, 1844 N.Y. Misc. LEXIS 1 *43 (N.Y. Ch. 1844) a case in which the Supreme Court ruled that a woman born in the United States to British parents temporarily visiting the United States was a citizen at birth.). The *Lynch* court said:

> And the constitution itself contains a direct recognition of the subsisting common law principle, in the section which defines the qualification of the President. "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," The only standard which then existed, of a natural born citizen, was the rule of the common law, and no different standard has been adopted since. Suppose a person should be elected President who was native born, but of alien parents, could there be any reasonable doubt that he was eligible under the constitution? I think not. The position would be decisive in his favor that by the role of the common law, in force when the constitution was adopted, he is a citizen.

Lynch, 1844 N.Y. Misc. LEXIS 1 *43.

b. <u>The Meaning Of The Term Natural Born Citizen And Its Meaning During The Middle Of The Nineteenth Century.</u>

In the infamous case of *Dred Scott v. Sanford*, Justice Curtis, who dissented from the Court's judgment, interpreted the Natural-Born Citizen clause to mean that citizenship is acquired at birth, a concept with which the founding fathers were intimately familiar. *See Wong Kim Ark*, 169 U.S. at 660 (quoting *Scott v. Sandford*, 60 U.S. 393, 576 (1857) (Curtis, J., dissenting)).

Nine years later, Justice Swayne similarly concluded that all persons born in the United States are natural born citizens. *Wong Kim Ark*, 169 U.S. at 662. Justice Swayne explained that

this view was the common law of England as well as the common law of the United States. *See id*.

The Fourteenth Amendment's guarantee of citizenship to all persons born in the United States was not intended to create a new rule; rather, it was intended to remove any doubt that *all* persons born in the United States, regardless of race, ancestry, previous servitude, etc., were citizens of the United States. *See id*. at 676.

The common law view of "natural born citizen," as reflected in the Fourteenth Amendment, was codified by statute in 1866. The Supreme Court later noted that this "first statutory recognition and concomitant formal definition of the citizenship status of the native born" read: "All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States." *Rogers v. Bellei*, 401 U.S. 815, 829 (1971). During the debate surrounding the Civil Rights Act of 1866, Senators Trumbull and Cowan engaged in a colloquy over the meaning of 'All persons born in the United States'. *See id*. at 697. This discussion centered on whether the children of German or Chinese citizens born in the United States satisfied the statutory definition. Senator Trumbull's response was "Undoubtedly." *See Wong Kim Ark*, 169 U.S. at 697. Senator Johnson understood the amendment to mean that "[a]ll persons born in the United States, and not subject to a foreign power, shall, *by virtue of birth*, be citizens." *See id*. This legislative history confirms that the English common law, including the historic limitations of *jus soli*,[4] namely that those persons born in England but who were foreign diplomats or foreign enemies were not citizens, was now

[4] The term *jus soli* is Latin for 'right of the soil' is the doctrine of citizenship that says "[a] child's citizenship is determined by the place of birth. This is the U.S. rule as affirmed by the Fourteenth Amendment." Black's Law Dictionary 880 (8th ed. 2004). By contrast, *jus sanguinis*, is Latin for 'right of blood' and is the doctrine of citizenship where a "[c]hild's citizenship is determined by the parent's citizenship. Most nations follow this rule." *Id*.

codified in federal law. Thus, the Court explained that "[t]he fundamental rule of citizenship by birth within the dominion of the United States, *notwithstanding alienage of parents*, has been affirmed, in well considered opinions of the executive departments of the Government, since the adoption of the Fourteenth Amendment of the Constitution." *Id.* at 688 (emphasis added). The phrase "not subject to any foreign power" was not intended to deny, for the first time in American history, citizenship to those children born in the United States to foreign parents but rather to simply reflect the well-known exceptions to the *jus soli* doctrine. *See id.* at 688.

This extensive background informed the Supreme Court in *Wong Kim Ark.* In 1873, Wong Kim Ark was born in San Francisco, California to Chinese citizens who were domiciled in San Francisco. *United States v. Wong Kim Ark*, 169 U.S. at 652. Seventeen years later, Wong Kim Ark and his family departed for China. *See id.* at 653 During this visit, Wong Kim Ark intended to return to the United States. *See id.* He visited China again in 1894 and, upon his return to the United States, the customs officer denied him entry stating that Wong Kim Ark was not a citizen of the United States. *See id.* The question presented to the Court was "[w]hether a child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, *becomes at the time of his birth a citizen of the United States...*" *Id* (emphasis added). The Court answered the question in the affirmative. The Court concluded that Wong Kim Ark was a U.S. citizen by birth in the United States. *See id.* at 704.

The Court further affirmed that "[t]he fundamental rule of citizenship by birth within the dominion of the United States, *notwithstanding alienage of parents*, has been affirmed, in well considered opinions of the executive departments of the Government, since the adoption of the

Fourteenth Amendment of the Constitution." *Id*. at 688 (emphasis added). The Supreme Court held that all persons born in the United States, even to foreign parents, are natural born citizens of the United States. *Id*. at 674-75. In very clear language, the Court explained:

> To hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children, born in the United States, of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German or other European parentage, who have always been considered and treated as citizens of the United States.

Id. at 694.

c. Modern Jurisprudence Concerning The Natural Born Citizen Clause.

First, The U.S Supreme Court has adopted Blackstone's dichotomy of citizenship, namely, citizenship is obtained either by birth or by naturalization. For those who are born in the United States, they are, at once, citizens of the United States and do not require naturalization. *See Miller v Albright* 523 U.S. 420, 423-424 (1998); *see also Wong Kim Ark*, 169 U.S. at 702 ("[T]wo sources of citizenship and two only: birth and naturalization.").

Second, courts throughout the United States have recently considered challenges to Barack Obama's eligibility to serve as President of the United States. Courts that have addressed the merits of these cases have routinely rejected these challenges and granted Motions to Dismiss. *See, e.g., Tisdale v. Obama*, No. 12-036, 2012 U.S. Dist. LEXIS 181036 *2-3 (E.D. Va. Jan. 20, 2012) (granting motion to dismiss claim that presidential candidates Barack Obama, Mitt Romney, and Ron Paul were ineligible to appear on the ballot because each candidate had one parent who was not a U.S. citizen and holding that "It is well settled that those born in the United States are considered natural born citizens." (citing *Wong Kim Ark*, 169 U.S. at 702 ("Every person born in the United States and subject to the jurisdiction thereof, becomes at once a citizen of the United States."); *Hollander v. McCain*, 566 F. Supp. 2d 63, 66 (D.N.H. 2008) ("Those

born 'in the United States, and subject to the jurisdiction thereof,' U.S. Const., amend. XIV, have been considered American citizens under American law in effect since the time of the founding.") (citing *Wong Kim Ark*, 169 U.S. at 674-75); *see also Strunk v New York State Bd. of Elections*, No. 6500/11 2012 N.Y. Misc. LEXIS 1635 (N.Y. Sup. Ct. 2012).

Mr. Voeltz has previously joined this chorus of persons who unsuccessfully claimed that President Obama was not eligible to serve as President by claiming that President Obama is not a natural born citizen. Judge Terry Lewis in Tallahassee, granted President Obama's motion to dismiss on both procedural and substantive grounds. *See Voeltz v. Obama et al.*, No. 2012-CA-00467 slip op. (Fla. Cir. Ct. June 29, 2012). On the substantive side, Mr. Voeltz presented the same argument there as he does here, that even if President Obama was born in the United States, he is not a natural born citizen because only one of his parents was a U.S. citizen. *Voeltz*, No. 2012-CA-00467 slip op. at 5. In rejecting this argument and granting President Obama's motion to dismiss, Judge Lewis upheld the proposition that birth in the United States qualifies one as a natural born citizen of the United States. *Id.* at 6. This Court should similarly reject Mr. Voeltz's argument here. Mr. Voeltz concedes that Senator Rubio was born in the United States. That fact should end the matter. *Id*.

D. Historical Practice In The United States Confirms This View Because Six Presidents Were Born In The United States To At Least One Parent Who Was Not A Citizen.

Finally, Senator Rubio's status as a candidate for President who is a natural born child of immigrant parents is not unusual. Both parents of President Andrew Jackson were Irish immigrants. The fathers of Presidents James Buchanan and Chester Arthur were Irish immigrants. The mothers of Presidents Woodrow Wilson and Herbert Hoover were immigrants from England and Canada respectively. President Obama, a man born in the United States to an

American mother and a father from Kenya, is also a natural-born citizen. *See, e.g., Strunk v New York State Bd. of Elections*, No. 6500/11 2012 N.Y. Misc. LEXIS 1635 *41 (N.Y. Sup. Ct. 2012). Mr. Voeltz now joins this list of persons seeking to reverse centuries of precedent.

Mr. Voeltz's contention that both parents must be citizens of the United States in order for their children, born in the United States, to be "natural-born citizens" is wrong as a matter of historical practice. (Compl. at 19, 20 and 22) (claiming that—without citation—the Supreme Court's and the common law's definition of natural born citizen refers only to those born in the United States to U.S. citizen). If Mr. Voeltz is correct, then at least six of our Presidents have been ineligible for that office.

The argument that Senator Rubio was naturalized at birth is as incongruous as it is wrong. (Compl. at 19). One is either a citizen at birth or one is a naturalized citizen. There is no third option of naturalization at birth. *See Miller*, 523 U.S. at 423-424; *see also Wong Kim Ark*, 169 U.S. at 702 ("[T]wo sources of citizenship and two only: birth and naturalization.").

Finally, Senator Rubio was in fact born in the United States, as Mr. Voeltz concedes. (Comp. at 19). This concession should end this matter as Senator Rubio is, by longstanding understanding, law and practice, a natural born citizen of the United States.

II. VOELTZ WISHES TO RETURN TO THE BRITISH COMMON LAW AND THE CONSTITUTIONAL CONVENTION AND REDEFINE NATURAL-BORN CITIZEN IN A MANNER THAT WOULD HAVE EXCLUDED AT LEAST SIX PRESIDENTS OF THE UNITED STATES.

Under the centuries old common-law understanding, a natural-born citizen is one who is born in the United States regardless of their parents' ancestry. Mr. Voeltz wishes to displace this view and substitute his own conclusion that a person born in the United States to non-citizen parents is not a natural born citizen. He supports his conclusion with a series of premises, all of which are wrong.

First, Mr. Voeltz contends that persons born to foreign parents have "entanglements" due to dual nationalities. "It cannot be possible that the framers would have considered those with 'foreign entanglements' as eligible for the Presidency." (Comp. at 15). "Natural law," according Mr. Voeltz, dictates that Senator Rubio's parents, and apparently Senator Rubio, still owe allegiance to Cuba (Compl. at 19), even after immigrating to the United States in search of the American Dream for themselves.

As the Supreme Court ruled, allegiance and birth are equated, but allegiance and the blood of one's ancestors are not. *Wong Kim Ark*, 169 U.S at 662 ("Birth and allegiance go together. Such is the rule of the common law, and it is common law of this country, as well as of England."). Additionally, Mr. Voeltz's reliance on *Rogers v. Bellei* is inapposite as the 'entanglements' that concerned the Court there involved a far different situation such as where the child's father is a citizen of another country and chooses to raise his child in that foreign country. *See Rogers*, 401 U.S. at 831-832. *In that situation*, the Court said, the child was raised with divided loyalty. *Id*. at 832. That situation has no bearing on the present matter.

Second, Mr. Voeltz contends that there is a difference between the Fourteenth Amendment's clause stating that all persons born in the United States and subject to its jurisdiction are citizens of the United States and the Natural-Born Citizens Clause which, according to Mr. Voeltz, applies only to persons born in the United States to U.S. citizen parents. (Compl. at 17-22). Under this logic, Mr. Voeltz contends that Senator Rubio was conferred citizenship by the Fourteenth Amendment (Compl. at 18-19) and is a naturalized citizen like Mr. Afroyim in *Afroyim v. Rusk*. (Compl. at 18).

Mr. Voeltz's contention that Senator Rubio is a naturalized citizen under the holding of *Afroyim v. Rusk*. (Compl. at 17-19) is incorrect. Mr. Voeltz's understanding of *Afroyim* is

altogether confused. That case involved a petitioner who was born in Poland, immigrated to the United States, and several years later, traveled to Israel and voted in Israeli elections. *Afroyim v. Rusk*, 387 U.S. 253, 254 (1967). When the petitioner applied to renew his U.S. Passport, his application was denied because, by statute, he lost his citizenship by voting in a foreign election. *Id*. The Court held that the statute stripping the petitioner of his U.S. citizenship was unconstitutional because under the Fourteenth Amendment, a person who is born or naturalized in the United States is a citizen of the United States. *Id*. at 266-268. *Afroyim* does not hold that a person born in the United States to non-citizen parents is a naturalized citizen as opposed to a citizen by birth.

Further, there is no support for the view that any distinction exists between those persons born in the United States for the purposes of the Fourteenth Amendment and those who are "natural-born citizens" for purposes of Article II, § 1 of the U.S. Constitution. As set forth above, *supra* at 18-25, the common law of England, and then of the United States, established that "natural-born subject" (and "natural-born citizen") referred to the *jus soli* doctrine of citizenship whereby a person born in the United States is a citizen of the United States regardless of the citizenship of the parents. *See, e.g., Wong Kim Ark*, 169 U.S. at 688. The Fourteenth Amendment crystalized the United States adoption of the *jus soli* doctrine of citizenship. *See* Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1, 17 (1968).

The Fourteenth Amendment's purpose was not to create a new method of obtaining citizenship. Rather, the Fourteenth Amendment's purpose was to protect and guarantee *existing* citizenship rights which had been wrongly denied in the *Dred Scott* decision. *See id*. at 14; *see also Wong Kim Ark*, 169 U.S. at 688 ("This sentence of the Fourteenth Amendment is

declaratory of existing rights, and affirmative of existing law…"). There is nothing in law, therefore, that distinguishes between a natural-born citizen for purposes of Article II of the Constitution, and a person born in the United States who is a "citizen" for purposes of the Fourteenth Amendment.

Third, Mr. Voeltz contends that the naturalization acts of 1790, 1795, and 1802, would have withheld citizenship from Senator Rubio until his parents became citizens. (Compl. at 19). This contention is also incorrect. The Naturalization Act of 1790 concerned three categories of naturalization none of which apply to Senator Rubio's circumstances of being born in the United States to immigrant parents. Instead, the Act concerned the naturalization of qualified immigrants; the derivative naturalization of minor children of those immigrants; and the children of U.S. citizens born abroad. *See* Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. at 8. The Naturalization Act of 1790 did *not* address persons born in the United States to immigrant parents. The common law already addressed that subject. *See, e.g., Wong Kim Ark*, 169 U.S. at 688. The amendments in 1795 and 1802 also were directed at the issue of the citizenship of children born abroad to U.S. citizens. *See* Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. at 11-13. There is simply nothing in these statutes that overrides the common law doctrine of *jus soli*, the doctrine the Fourteenth Amendment adopted to confirm existing rights of citizenship. *See id*. at 14 and 17; *Wong Kim Ark*, 169 U.S. at 688.

Fourth, Mr. Voeltz contends that the law of nations (*i.e.*, international law) is a part of the law of the United States and that the law of nations at the time of the founding seemed to say that citizenship was *jus sanguinis*, or that citizenship passed from the father to the child. (Compl. at 22). This view was, according to Mr. Voeltz, adopted by the Supreme Court. In fact, all

questions on international law aside, the Supreme Court rejected Mr. Voeltz's contention long ago. As Justice Story noted in *Inglis v. Saliors' Snug Harbor* "[e]ach government had a right to decide for itself who should be admitted or deemed citizens." *See Wong Kim Ark*, 169 U.S. at 661. The Supreme Court in *Wong Kim Ark* also stated that Justice Story "[c]ertainly did not mean to suggest that, independently of treaty, there was any principle of international law which could defeat the operation of the established rule of citizenship by birth within the United States." *Id*. at 660. Thus, any argument that international law held that citizenship passed from father to child is irrelevant.

Mr. Voeltz is not the first to rely on Vattel's treatise on the Law of Nations for the proposition that certain natural-born citizens are not, in fact, natural-born U.S. citizens. Justice Daniel quoted Vattel in his concurring opinion in *Scott v. Sanford*, 60 U.S. at 476-77, and wrote that because of Vattel's unexceptional views, a slave could not be a citizen, and the emancipation of a slave could not transform a slave into a citizen. *Id*. at 477. The dissent in *Wong Kim Ark* also relied on this passage from Vattel. In any event, Vattel himself acknowledged that the British common law rule of *jus soli* was a separate and distinct legal doctrine adopted by England as well as other countries. Vattel, *The Law of Nations*, § 214.[5] In short, Vattel's treatise on this point has never been adopted by the Supreme Court in past matters.

Finally, Mr. Voeltz's claims are premised on a view of citizenship known as *jus sanguinis*, that citizenship passes by blood from parents to child. Like England before it, the United States has clearly adopted the *jus soli* view of citizenship. Blackstone noted that *jus sanguinis* was the French view of citizenship, and contrasted it to the English view. 1 William

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[5] Available at http://www.loc.gov/rr/frd/Military_Law/Lieber_Collection/pdf/DeVattel_LawOfNations.pdf

Blackstone *Commentaries* 361 ("The children of aliens, born here in England, are, generally speaking, natural-born subjects, and entitled to all the privileges of such. In which the constitution of France differs from ours; for there, by their *jus albinatus,* if a child be born of foreign parents, it is an alien.") Without question, the United States has always adhered to the English common law of *jus soli* citizenship. Charles Gordon, *Who Can Be President of the United States: The Unresolved Enigma*, 28 Md. L. Rev. 1, 10, 16-17 (1968) (noting that the Fourteenth Amendment adopted the common law precept of *jus soli*). This Court cannot reverse centuries of precedent in a manner that would please only Mr. Voeltz and, in the process, declare at least six Presidents of the United States to have been ineligible to serve.

CONCLUSION

This Court should dismiss Mr. Voeltz's claims. Mr. Voeltz lacks standing to bring his claim; his claim is procedurally defective; Mr. Voeltz's contentions are incorrect as basic matters of law; and entertaining Mr. Voeltz's argument would jeopardize centuries of precedent and deem at least six former presidents ineligible for office. Senator Rubio is a natural born citizen of the United States and he is eligible to be President of the United States. Mr. Voeltz's complaint should be dismissed.

WHEREFORE, Defendant respectfully requests that this Court grant this Motion, Dismiss Plaintiff's Complaint and award Defendant costs and attorney's fees, pursuant to Fla. Stat. § 57.105.

Dated this 11th Day of January, 2016

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 11th day of January 2016, pursuant to Florida Rule of Judicial Administration 2.516(b) and Florida Rule of Judicial Administration 1.080(a), a true and correct copy of the foregoing has been furnished to Plaintiff via U.S. Mail at P.O. Box 450370, Ft. Lauderdale, FL 33345, and has been served upon all counsel of record via electronic filing with the Clerk of Court through the Florida Courts E-Filing Portal.

By: */s/ Gabriela M. Prado*