SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

LINDA JORDAN,

Plaintiff,

vs.

SECRETARY OF STATE SAM REED

Defendant.

NO. 12-2-01763-5

COURT'S OPINION AND DECISION

The birther movement has been a subplot on the fringe of the political spectrum in the U.S. for about five years. Recent history is not the first time it has been raised. In 1880 Chester Arthur, the son of a father of Irish citizenship and a mother of U.S. citizenship, was rumored to have been born not in Vermont where all credible evidence established his birthplace, but in Canada. This unfounded rumor did not receive much traction, perhaps because the internet had not been as fully developed then as it is now.

In the past five years all manner of court action has sought to entice courts to enter into the process of determining the qualifications of two persons who were nominated for president in 2008, and one who has served; a process reserved in the U.S. Constitution to the congress, not the courts. I mentioned two candidates. I was surprised to learn that candidate Senator McCain was challenged

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on at least two occasions, once for being a sitting senator and running for president, and the other for being born in the Panama Canal Zone.

The vast majority of these cases however involved President Obama. The first wave occurred during the presidential campaign of 2008, and involved issues similar or identical to those raised in this case. Plaintiff Linda Jordan cannot be unaware of those cases. None were successful. Most were dismissed on standing grounds; a question not directly at issue in this case because plaintiff purports to bring this case under RCW 29A.68.011, subparts 1 and 3, which confers standing on any elector. But others, including *Ankeny v. Governor of State of Indiana*, 916 N.E.2d 678 (2009) addressed the merits.

In the case brought by plaintiff Jordan, she alleges a number of ways in which the Secretary of State has failed his responsibilities and violated the law. The Secretary of State has answered by responding to the allegations and by contending that this court, or any state court for that matter, lacks subject matter jurisdiction to determine the eligibility of a candidate for president of the United States, and by contending that plaintiff has failed to join an indispensible party, President Obama, in this lawsuit.

I am persuaded by every defense raised by the Secretary of State.

1. An analysis of indispensible party under CR 19 leads only to the conclusion that this case must be dismissed because plaintiff has failed to join President Obama as a party. I find that President Obama meets the standards of a person described in CR 19(a)(2)(A); and having considered the four factors in CR 19(b) conclude that he is an indispensible party.

2. I conclude that this court lacks subject matter jurisdiction. The primacy of congress to resolve issues of a candidate's qualifications to serve as president is established in the U.S. Constitution, in the passages cited by the Secretary of State. Two reported appellate decisions make this clear. In *Robinson v Bowen*, 567 F.Supp.2d 1144 (2008), the U.S. District Court wrote, at page 1147:

> Therefore, this order holds that the challenge presented by plaintiff is committed under the Constitution to the electors and the legislative branch, at least in the first instance. Judicial review – if any – should occur only after the electoral and Congressional processes have run their course.

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In 2010, the California Court of Appeals, in *Keyes v Bowen*, 117 Cal.Rptr.3d 207, addressed this issue in a case remarkably similar in its facts to this case. There the court wrote, at page 215:

> In any event, the truly absurd result would be to require each state's election official to investigate and determine whether the proffered candidate met eligibility criteria of the United States Constitution, giving each the power to override a party's selection of a presidential candidate. The presidential nominating process is not subject to each of the 50 states' election officials independently deciding whether a presidential nominee is qualified, as this could lead to chaotic results. Were the courts of 50 states at liberty to issue injunctions restricting certification of duly-elected presidential electors, the result could be conflicting rulings and delayed transition of power in derogation of statutory and constitutional deadlines. Any investigation of eligibility is best left to each party, which presumably will conduct the appropriate background check or risk that its nominee's election will be derailed by an objection in Congress, which is authorized to entertain and resolve the validity of objections following the submission of the electoral votes.

3. Plaintiff dramatically misconstrues the law governing the Secretary of State's acceptance and processing of declarations of candidacy. Her arguments, even if the law she argues applied to presidential candidates, would not be persuasive. But that law does not apply. RCW 29A.56.360 applies. It does not impose on the Secretary of State the duties plaintiff urges; indeed it does not permit them.

Nevertheless, plaintiff contends that the Secretary of State must investigate the "identity and citizenship status of candidates"[1], and relies on *Dumas v. Gagner,* 137 Wn.2d 268 (1999), as Washington Supreme Court authority for that contention. *Dumas* does not apply and does not support plaintiff's contention if it did. *Dumas* and all other cases addressing a Washington election official's duties to investigate candidates before the election address the information provided in the declaration of candidacy. These declarations are created by RCW 29A.24.030, which provides in relevant part:

> A candidate who desires to have his or her name printed on the ballot for election to an office other than president of the United States, vice president of the United States, or an office for which ownership of property is a prerequisite to voting shall complete and file a declaration of candidacy.

Plaintiff knows the law, she quotes the text of §.030 in her motion.[2] Nevertheless, she contends that the Secretary of State has the duty, apparently under this statute, to investigate President Obama's

[1] Plaintiff's Memorandum, page 2.
[2] Plaintiff's Motion for Order to Show Cause, page 5.

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citizenship before placing him on the ballot. Even if §.030 applied to candidates for president, *Dumas* does not support plaintiff's contention; it specifically rejects such a broad interpretation of that law. I conclude that the Secretary of State has not violated the law by provisionally certifying President Obama's candidacy without undertaking an investigation into his citizenship. Further, I conclude that he will not have violated the law when he removes the "provisional" condition after President Obama is officially nominated.

4. Plaintiff contends that the Secretary of State violated RCW 29A.56.360 because he provisionally certified President Obama's candidacy before the Democratic Party nominates him. He did the same for candidate Mr. Romney. The reason for doing so is clear. The step must occur before ballots are printed, and if the Secretary of State delays certification there is substantial risk that county auditors across the state will miss the deadline established by state and federal law for mailing ballots to overseas and military voters. Plaintiff objects contending that President Obama has not yet been nominated, but she offers no evidence or argument that his nomination is uncertain. In fact, on July 24, the day the Secretary of State provisionally certified President Obama as a nominee, he received a letter from chair of the Democratic National Committee that informed him:

> As your office may be aware, the 2012 Democratic National Convention (the "Convention") will be held on September 3-6, 2012 in Charlotte, North Carolina. At that time, the Convention will formally nominate the following candidates as the Democratic Party's nominees for President and Vice President of the United States, respectively, in the November 6, 2012 general election:
>
> [For President of the United States, Barack Obama]
>
> In advance of the Convention, I am providing this provisional statement to enable your office to fulfill all of its statutory duties regarding certificates of nomination in a timely and efficient manner, and to ensure that Barack Obama and Joseph R. Biden, Jr., appear as the Democratic Party's nominees for President and Vice President of the United States, respectively, on the ballot for the general election to be held on November 6, 2012. This includes, without limitation, appearance on all absentee and early voting ballots and inclusion on all voter information documents.

No rational person could conclude that the there exists any substantial uncertainty about the nomination of either President Obama or Mr. Romney. I conclude that no violation of the law has occurred in this regard.

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5. Plaintiff contends that it is wrong to treat nominated candidates for president differently than write-in candidates are treated. She contends that write-in candidates for president "have to swear an eligibility oath and if they don't swear the oath their declarations will not be accepted."[3] She compares write-in candidates with major party nominees, but it really is a comparison of write-in candidates with all nominees, both major and minor party nominees – there is no significant difference in the treatment of major and minor party presidential nominees, except that the minor party nominee must consent to his or her nomination. Plaintiff does not contend that the law treating write-in candidates differently is unconstitutional or is being misapplied by the Secretary of State, just that it is wrong. Her argument is not persuasive.

I began this explanation of my decision with some history of the birther movement, and I conclude with some more history.

Even after the election of 2008, so-called birther lawsuits continued. A lawyer, self styled as the leader of the birther movement, filed a series of lawsuits on behalf of service members seeking to avoid deployment to war zones on the grounds that President Obama, the commander in chief, did not legitimately hold that office. Some federal courts eventually forbade him from filing any additional lawsuits.

One such case, *Rhodes v. MacDonald*, 2009 WL 2997605 (M.D. Ga. 2009), contained a passage that particularly resonated in light of the type of evidence plaintiff offers in this case. The federal district court wrote, in relevant part at paragraph 3:

> [Plaintiff] has presented no credible evidence and has made no reliable factual allegations to support her unsubstantiated, conclusory allegations and conjecture that President Obama is ineligible to serve as President of the United States. . . . Then, implying that the President is either a wandering nomad or a prolific identity fraud crook, she alleges that the President "*might* have used as many as 149 addresses and 39 social security numbers prior to assuming the office of President. Acknowledging the existence of a document that shows the President was born in Hawaii, Plaintiff alleges that the document "cannot be verified as genuine, and should be *presumed* fraudulent." . . . Finally, in a remarkable shifting of the traditional legal burden of proof, Plaintiff unashamedly alleges that Defendant has the burden to prove his "natural born" status. Thus, Plaintiff's counsel, who champions herself as a defender of liberty and freedom,

[3] Plaintiff's Motion for Order to Show Cause, page 4. Plaintiff does not identify the eligibility oath she is referring to; probably she means the declaration of candidacy.

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> seeks to use the power of the judiciary to compel a citizen, albeit the President of the United States, to "prove his innocence" to "charges" that are based upon conjecture and speculation. Any middle school civics student would readily recognize the irony of abandoning fundamental principles upon which our Country was founded in order to purportedly "protect and preserve" those very principles."

In her Memorandum, plaintiff Jordan seems to anticipate that the Secretary of State would seek dismissal under CR 12(b)(6), and argues that she has presented substantial evidence that President Obama's birth certificate is forged. She quotes the standard for substantial evidence. "Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding."

She offers as evidence the musings of the infamous Arizona sheriff Joe Arpiao, supported by the report by a part-time computer programmer last employed in May 2007, who examined a copy of the pdf image of President Obama's birth certificate and concluded that the original was forged. She offers the affidavit of a private investigator who opines that President Obama is fraudulently using the social security number of another person who was born in 1890[4] and was issued the social security number in 1977. The investigator is not able to identify the person and does not offer any insight as to why this hypothetical person waited until he or she was 87 years old before applying for and receiving a social security number. The rest of plaintiff's evidence is the standard fare of the blogosphere that has been floating around since 2008.

In light of this evidence, I close with an additional passage from *Rhodes v McDonald,* cited above. On the issue of evidence, the court wrote at paragraph 4:

> Although the Court has determined that the appropriate analysis here involves principles of abstention and not an examination of whether Plaintiff's complaint fails to state a claim under Federal Rule of Civil Procedure 12(b)(6), the Court does find the Rule 12(b)(6) analysis helpful in confirming the Court's conclusion that Plaintiff's claim has no merit. To state a claim upon which relief may be granted, Plaintiff must allege sufficient facts to state a claim to relief that is "plausible on its face." For a complaint to be facially plausible, the Court must be able "to draw the reasonable inference that the defendant is liable for the misconduct alleged" based upon a review of the factual content pled by the Plaintiff. The factual allegations must be sufficient "to raise a right to relief above the speculative level." Plaintiff's complaint is not plausible on its face. . . . Unlike in *Alice in Wonderland,* simply saying something is so does not make it so. [Citations omitted]

[4] Just ten years after Chester Arthur was elected President!

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I do not usually devote so much time quoting the decisions of other courts in other cases. I do so here to make the point that just as all the so-called evidence offered by plaintiff has been in the blogosphere for years, in one form or another, so too has all the law rejecting plaintiff's allegations. I can conceive of no reason why this lawsuit was brought, except to join the chorus of noise in that blogosphere. The case is dismissed.

Date: August 29, 2012

Thomas McPhee, Judge

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