

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
HATTIESBURG DIVISION**

**Daniel Scott Thomas**, Elector for the  
State of California, who is nominated to  
vote in the Electoral College and is pledged  
to vote for Candidate Alan Keyes for  
President of the United States; ET AL

**PLAINTIFFS**

**vs.**

**CIVIL ACTION NO.  
2:08 CV 241 KS-MTP**

**Delbert Hoseman**, in his official capacity  
as Secretary of State for the State of Mississippi,

**DEFENDANT**

---

**MOTION FOR EXPEDITED RULING CLARIFYING STAY OF DISCOVERY  
OR IN THE ALTERNATIVE, MOTION TO LIFT STAY ON DISCOVERY  
TO THE EXTENT THAT THE STAY MAY APPLY TO EFFORTS  
TO OBTAIN BIRTH CERTIFICATE**

---

The Plaintiffs respectfully move the Court for an expedited ruling clarifying the stay of discovery previously issued by the Magistrate to make it clear that the stay does not apply to efforts to obtain the birth certificate of the President elect for the reasons stated below, or, in the alternative, the Plaintiffs move the Court for an order lifting the stay on discovery to the extent that the stay may apply to the Plaintiffs' efforts to obtain a copy of the birth certificate of President Elect Obama.

The Plaintiffs request an expedited ruling because persons holding the office of Elector will begin voting at various times on Monday, December 15, 2008, up to and

through 1:00 p.m., in Hawaii, (5 p.m. Central Time). If the stay is lifted today (December 15, 2008), the birth certificate may still be obtained in time to be used by at least some Electors. If the birth certificate shows a birth outside the United States, the remaining Electors would still have time to exercise their Constitutional duty to challenge the qualifications of the President elect before the voting is complete.

The Plaintiffs caused to be issued in Hawaii a subpoena for the birth certificate of President elect Obama. The Health Department declined to provide access to the birth certificate without a court order stating that the Plaintiffs have a direct and tangible interest in the birth certificate. On December 2, 2008, the Plaintiffs caused to be filed an action in the United States District Court of Hawaii to enforce the subpoena. On December 4, 2008, the Magistrate in this action issued, *sua sponte*, an order staying discovery, stating in part, "all discovery in this matter not relevant to the issue of Eleventh Amendment immunity is hereby stayed..."

As more particularly set out in the Plaintiffs' response to the motion to dismiss, the birth certificate of the President elect is relevant to the issue of Eleventh Amendment immunity, and therefore, efforts to obtain the birth certificate should not be stayed by the order. With respect to Mr. Obama's candidacy, if the subpoenaed records, or the absence of records, reveals that Mr. Obama is not a natural born citizen as required by Article II of the Constitution, then the Plaintiffs will have both Constitutional and federal law claims to enforce, and the Eleventh Amendment will not bar this suit.

On the other hand, access to the subpoenaed records may reveal that Mr. Obama is a natural born citizen as required by Article II of the Constitution. In that

event, Plaintiffs will have no claim Constitutional or federal law claims and the Eleventh Amendment will then completely protect Defendants and shield them from this suit. However, until the subpoenaed record is obtained, it can not be known whether or not the Eleventh Amendment applies. Therefore, the stay must not apply to the efforts to obtain the birth certificate of the President elect.

The District Court in Hawaii will re-consider the Plaintiffs' efforts to enforce the subpoena if this court determines that the birth certificate is relevant to the Eleventh Amendment immunity defense, or, if this Court determines that the Defendant is not entitled to an Eleventh Amendment immunity defense. (See the December 10, 2008, order attached hereto).

**THEREFORE**, the Plaintiffs move the Court for an expedited ruling clarifying the stay of discovery previously issued by the Magistrate, or, in the alternative, for an order lifting the stay of discovery, at least to the extent that it may apply to the birth records of the President Elect on the grounds that the birth certificate is relevant to the Eleventh Amendment immunity defense.

Respectfully submitted,

---

/s/ James D. Bell  
Attorney James D. Bell  
Mississippi Bar No. 2333  
318 S. State Street  
Jackson, Mississippi 39201  
601-981-9221

Attorney J. Thomas Smith  
Tennessee Bar No. 003613  
1816 Old Natchez Trace  
Franklin, Tennessee 37069  
615-790-2159

Attorney Philip R. Boardman  
Virginia Bar No. 48110  
2017 Cunningham Drive  
Suite 210  
Hampton, Virginia 23666  
757-826-2200

Attorney James Hochberg  
Hawaii Bar No. 3686  
745 Fort Street, Suite 1450  
Honolulu, Hawaii 96183  
808-534-1514

**CERTIFICATE OF SERVICE**

I, James D. Bell, do hereby certify that on the below date I have caused to be electronically filed the foregoing instrument with the Clerk of the Court, via the ECF system, with notification being provided to the following by and through the ECF system:

Jim Hood, Attorney General  
Shawn S. Shurden, Esquire  
Special Assistant Attorneys General  
Civil Litigation Division  
Walter Sillers Building  
550 High Street, Suite 1200  
Jackson, Mississippi 39201

**SO CERTIFIED**, this the 15<sup>th</sup> day of December, 2008.

/s/ James D. Bell  
James D. Bell

---