

THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

U.S. DIS  
DISTR  
I

RT

2008 MAY 7 11:43

**Fred Hollander,**  
*Plaintiff,*

v.

**Senator John McCain**  
&  
**Republican National Committee**  
*Defendants.*

CIVIL ACTION NO. 08-99-JL

**Plaintiff's Opposition To The**  
**Motion Of The United States Citizenship And Immigration Service**  
**To Quash Plaintiff's Third-Party Subpoena**

NOW COMES the plaintiff and hereby submits his Opposition To The Motion Of The United States Citizenship And Immigration Service To Quash Plaintiff's Third-Party Subpoena for the following documents: (1) defendant Senator John McCain's certificate of birth; and (2) defendant Senator John McCain's certificate of citizenship.

**Background**

Plaintiff brings this action to challenge the eligibility of defendant Senator John McCain ("McCain") to the Office of the President. McCain's birth occurred outside of the United States and its territories, and therefore he is not a "natural born citizen" in the context of the Fourteenth Amendment of the U.S. Constitution. Instead, McCain was naturalized some time after his birth and therefore not eligible to the Office of the President as prescribed by Article II, Section 1 of the U.S. Constitution. Plaintiff would demonstrate with McCain's certificate of birth that he was born at either: (1) the city of Colon, Panama; (2) the Coco Solo Naval Air Station; or (3) the Submarine Base Hospital. Plaintiff would demonstrate with McCain's certificate of citizenship that he was in fact naturalized some time after his birth. Both of these documents should be on file at the United States Citizenship and Immigration Service as they would have been required in order for McCain to obtain his U.S. passport.

**Argument**

Plaintiff certainly intended no disrespect to this Court by any inadvertent non-compliance with regard to the filing of the subpoena to the United States Citizenship and Immigration

Service ("USCIS"). However, since time is of the essence in this action, plaintiff respectfully requests this Honorable Court DENY the Motion to Quash, which is almost entirely based on grounds that would not adversely affect either the USCIS or the defendants.

The USCIS argues to quash plaintiff's subpoena on the following grounds: (1) improper form in that it was not signed by a clerk of the court; (2) improper service by certified mail rather than personal delivery; (3) premature issuance as discovery has not yet opened; (4) non-compliance with Touhy regulations; and (5) potential violation of the Privacy Act. On the first four grounds, the USCIS suggests that by the failure of the plaintiff to comply with procedures, it was somehow disadvantaged, yet it does not with respect to any of these four grounds, state how it was disadvantaged or how any rights would be infringed in any way. As the USCIS is not a party to this action, it is difficult to imagine how it could be disadvantaged, even by the filing prior to the start of discovery, and thus difficult to imagine the motivation of the USCIS to even raise these issues. The subpoena which is the subject of this motion should be allowed with respect to the first four grounds for the following reasons: (1) even though the subpoena was not signed by a clerk of the court, the USCIS does not question its authenticity; (2) even though the subpoena was served by certified mail, the USCIS declares by Declaration of Simon Nader that it has received the subpoena; (3) even though discovery has not yet opened, there is no cause to disadvantage the USCIS as it is not a party to this action; and (4) USCIS has not cited any reason why there should or must be compliance with any particular Touhy regulations.

The only substantial issue raised by the USCIS is that of defendant McCain's privacy. In 5 U.S.C. § 522(2), following subparagraph (e), there is already a provision to protect a person's privacy by prescribing that certain details could be redacted:

To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

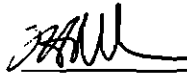
The inclusion of this provision obviates the justification of the USCIS to resist releasing the documents demanded by the subpoena even if the documents were protected by the Privacy Act. The documents in question are McCain's certificates of birth and citizenship, which are not

protected by the Privacy Act considering the circumstances. Since McCain seeks the Office of the President and has sworn to New Hampshire's Secretary of the State that he is eligible to the Office of the President, these documents must be a matter of public record in order to demonstrate to the public that he is indeed eligible to the Office of the President. Also, since McCain, by his capacity as a United States Senator and by his campaigning for the Office of the President, is a person in the public eye whose privacy would not be violated by the release of documents that simply prove his generally well-known date and location of birth as well as his naturalization as a United States citizen.

WHEREFORE, in light of all of the above-stated reasons, plaintiff prays this Honorable Court DENY the Motion Of The United States Citizenship And Immigration Service To Quash Plaintiff's Third-Party Subpoena.

Respectfully submitted,

*Date: April 24, 2008*



\_\_\_\_\_  
Fred Hollander, Pro Se  
P.O. Box 6161  
Nashua, NH 03063-6161  
(603) 882-5565

**Certificate of Service**

I hereby certify that a copy of the foregoing pleading was served on the defendant pursuant to Fed.R.Civ.P 5 (b)(2)(E) by e-mailing the pleading to mail@nhlawoffice.com and by mailing the pleading to Seth R. Aframe, U.S. Department of Justice, 53 Pleasant St, Fourth Floor, Concord, NH 03301-3904.



\_\_\_\_\_  
Fred Hollander, Pro Se

U.S. DISTRICT COURT  
DISTRICT OF NH  
FBI

2008 MAY -7 A 11:43

■ 56 Dorchester Way  
■ Nashua, NH 03064

May 6, 2008

Fred Hollander v. Senator John McCain & Republican National Committee, No.  
1:08-cv-99-JL

**Office of the Clerk**  
US District Court  
55 Pleasant Street, Room 110  
Concord, NH 03301

Dear Clerk,

Enclosed for filing please find:

1. Plaintiff's Opposition To The Motion Of The United States Citizenship And Immigration Service To Quash Plaintiff's Third-Party Subpoena;

This was originally mailed on April 24, 2008 with copies also sent that day to Charles G. Douglas, III, Esq. and Seth R. Aframe. Even though the post office affixed the postage and post mark, it was returned to me due to postage due. If you can, please accept this for filing at this time.

Thank you for your attention and consideration.

Sincerely,



Fred Hollander

U.S. DISTRICT COURT  
DISTRICT OF N.H.  
FILED

■ 56 Dorchester Way  
■ Nashua, NH 03064

2008 MAY -7 A 11:43

April 24, 2008

Fred Hollander v. Senator John McCain & Republican National Committee, No.

1:08-cv-99-JL

**Office of the Clerk**  
US District Court  
55 Pleasant Street, Room 110  
Concord, NH 03301

Dear Clerk,

Enclosed for filing please find:

1. Plaintiff's Opposition To The Motion Of The United States Citizenship And Immigration Service To Quash Plaintiff's Third-Party Subpoena;

Thank you for your attention to this matter.

Sincerely,



Fred Hollander

Enclosures (1)

cc: Charles G. Douglas, III, Esq., Douglas, Leonard & Garvey, P.C.,

Seth R. Aframe, Assistant United States Attorney