

ORIGINAL

WALSTON CROSS, ATTORNEYS
222 Columbus Avenue, Suite 420
San Francisco, California 94123
Telephone: (415) 956-9200
Facsimile: (415) 956-9205

1 Gregory S. Walston, State Bar No. 196776
2 Orestes Alexander Cross, State Bar No. 250471
3 WALSTON CROSS
4 222 Columbus Avenue, Suite 420
5 San Francisco, California 94133
6 Telephone: (415) 956-9200
7 Facsimile: (415) 956-9205
8 Email: gwalston@walstonlaw.com

9 ATTORNEYS FOR PLAINTIFF
10 MARKHAM ROBINSON

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 MARKHAM ROBINSON,
14 Plaintiff
15 v.
16 SECRETARY OF STATE DEBRA
17 BOWEN, et al.
18 Defendants.

Case No. 08-CV-3836 JL

**PLAINTIFF'S EX PARTE
APPLICATION FOR AN ORDER
SHORTENING TIME ON
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

L-R 6-3

FILED

08 AUG 13 PM 2: 33

WALSTON CROSS, ATTORNEYS
222 COLUMBUS AVENUE, SUITE 420
SAN FRANCISCO, CALIFORNIA 94123
TELEPHONE: (415) 956-9200
FACSIMILE: (415) 956-9205
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INTRODUCTION

19 This is an action by an electoral college member and the chairman-elect of the American
20 Independent Party, challenging Senator John McCain's eligibility to run for, and serve as,
21 President of the United States. Specifically, this action points out that Senator McCain is
22 ineligible to run for, and serve as, President of the United States under Article II's "natural born"
23 citizen requirement because McCain was born in Panama. *Accord*, Gabriel J. Chin, *Why Senator
24 John McCain Cannot Be President: Eleven Months and a Hundred Yards Short of Citizenship*,
25 Arizona Legal Studied Discussion Paper No. 08-14 (attached to plaintiff's motion for a
26 preliminary injunction as Exhibit A.)

27 As set forth in plaintiff's motion for a preliminary injunction, this issue is properly
28 resolved forthwith in order to avoid the chaos of resolving them after the election, and afford the
non-prevailing party meaningful appellate options with regard to this compelling issue.

1 Significantly, this issue is a pure question of law that can be resolved without discovery, and
2 defendants have already briefed it in conjunction with a case that presented the same issue. *See*,
3 *Hollander v. McCain*, 2008 DNH 129; 2008 U.S. Dist. LEXIS 56729 (D. N.H. 2008).¹ It is now
4 August 12, 2008. The general election occurs on November 4, 2008. Plaintiff respectfully urges
5 the Court to shorten time on this motion so that it is heard on September 3, 2008.

6 ARGUMENT

7 I.

8 THE COURT SHOULD SHORTEN TIME.

9 The Court has authority to shorten time for good cause under Local Rule 6-3, the Court's
10 inherent power to control its calendar, and the power to control time to hear motions under Fed. R.
11 Civ. P. 6(d).

12 Good cause exists to shorten time on plaintiff's motion for a preliminary injunction. There
13 are already less than three months remaining until the general election. Every day that passes
14 makes judicial resolution of the issue of Senator McCain's candidacy more difficult. At the
15 outset, if Senator McCain wins the presidency, resolving the issue of his eligibility *after* the
16 election will simply inflict havoc on our system of democratic government: will McCain's running
17 mate assume the presidency or the candidate with the second-most electoral votes? It is simply
18 irresponsible to put off resolution of these issues until after the election.

19 Further, the longer resolution of this issue is delayed, the more cumbersome it will be. If
20 these issues are resolved shortly before the election, the state will have to reprint ballots, the
21 Republicans will have to nominate a new candidate, and public attitudes towards the legal and
22 political processes will be strained. In short, there is simply no sense delaying this action beyond
23 the very minimal amount of time necessary for it to be briefed by the parties and addressed by the
24 Court.

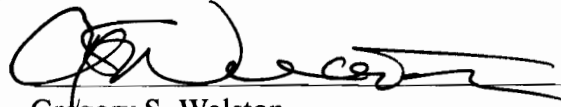
25
26 ¹ In *Hollander*, a "taxpayer" plaintiff was dismissed for lack of standing. Nonetheless the
27 substantive issues were briefed by defendants. Further, unlike *Hollander*, plaintiff in this case has
28 standing. As both an elector and chairperson-elect of a rival Party on the same ballot, plaintiff has
"a personal stake in the outcome of the election" sufficient to establish his standing to challenge
the election. *Miyazawa v. City of Cincinnati*, 45 F.3d 126, 128 (6th Cir. 1995); *see also, Erum v.*
Cayetano, 881 F.2d 689, 691 (9th Cir. 1989).

1 4. Plaintiff respectfully submits that allowing this matter a full briefing schedule will
2 be prejudicial for the reasons set forth in the above argument.

3 5. There have been no previous time modifications in this action, nor will this
4 proposed modification affect the scheduling order.

5 6. L-R 37-1 is inapplicable because this matter does not involve a discovery dispute.

6 I declare under penalty of perjury that the foregoing is true and correct and based on my
7 personal knowledge. Executed August 12, 2008 in San Francisco, California.

8 

9 Gregory S. Walston

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
WALSTON CROSS, ATTORNEYS
222 Columbus Avenue, Suite 420
San Francisco, California 94123
Telephone: (415) 956-9200
Facsimile: (415) 956-9205