

No.

In the Supreme Court of the United States

ABDUL KARIM HASSAN,

Petitioner,

v.

THE STATE OF COLORADO AND SCOTT GESSLER,
COLORADO SECRETARY OF STATE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner is a naturalized American citizen and candidate for President. Respondents invoked the natural born clause of the Constitution and Colorado law to deny petitioner presidential ballot access because of his national origin. The respondents and the lower courts do not dispute that respondent's invidious national origin discrimination against petitioner violates the Equal Protection Clause and Citizenship Clause of the Fourteenth Amendment. They also do not dispute that invidious national origin discrimination is an absurd result. However, they inexplicably refuse to take the next logical step and conclude that the invidious national origin discrimination in the natural born clause is irreconcilable with and therefore trumped and implicitly repealed by the Fourteenth Amendment – it is agreed by all that irreconcilability is a condition that triggers implicit repeal. They also refused to conclude that the absurd result of invidious national origin discrimination should be avoided in favor of the equality alternative guaranteed by the Fourteenth Amendment.

The questions presented are:

1. Whether the invidious national origin discrimination in the natural born clause of the Constitution is trumped by the Equal Protection clause and Citizenship Clause of the Fourteenth Amendment under the doctrine of implicit repeal or the absurdity doctrine?
2. Whether the denial of petitioner's motion and the issuance of non-precedential/unpublished dispositions/opinions by the Court of Appeals in this case, and the Circuit rule allowing for such

dispositions, violate the Constitution, including the Fifth Amendment and Article III of the Constitution?

LIST OF PARTIES

The Petitioner is Abdul Karim Hassan.

The Respondents are:

The State of Colorado

Scott Gessler, Colorado Secretary of State

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I. OPINIONS BELOW

This is a petition for certiorari to the Tenth Circuit Court of Appeals. The opinion of the district court in *Hassan v. Colorado*, 870 F.Supp.2d 1192 (D.Colo., 2012) is reported and published, and is reprinted in the Appendix to the Petition (“App.”) at 4a-21a. The Tenth Circuit’s decision in *Hassan v. Colorado*, --- Fed.Appx. ----, 2012 WL 3798182 (10th Cir., Sep 04, 2012) which affirmed the decision of the Colorado District Court is reprinted in the appendix at 1a-3a.

II. JURISDICTION

The district court in *Hassan v. Colorado* (4a-21a) had subject matter jurisdiction over all claims pursuant to 28 U.S.C. §§ 1331 and 1337 as well as 28 U.S.C. §§ 2201 and 2202. The Colorado district court entered its opinion and order disposing of the entire case on May 3, 2012. (4a-21a). On May 4, 2012, petitioner filed a timely notice of appeal. The Tenth Circuit Court of Appeals had appellate jurisdiction pursuant to 28 U.S.C. § 1291. The order and judgment of the Tenth Circuit was issued and entered on September 4, 2012. (1a-3a). This Court extended the time to file a petition for certiorari to February 1, 2013. (22a-23a). The jurisdiction of the U.S. Supreme Court is invoked pursuant to 28 U.S.C. 1254(1) and 2101(c). By letter dated February 1, 2013, this Court returned the petition for correction and resubmission within 60 days of said letter.

III. CONSTITUTIONAL PROVISIONS INVOLVED

A. The Natural Born Provision

The natural born provision is contained in Article II, Section I, Clause 5, of the Constitution which states 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; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

B. The Fourteenth Amendment

Citizenship Clause: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” U.S. Const. Amend. XIV, § 1, cl. 1;

Equal Protection Clause: “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV.

C. The Fifth Amendment

No person shall . . . be deprived of life, liberty, or property, without due process of law U.S. Const. Amend. V.

While not appearing in the text of the Fifth Amendment, the U.S. Supreme Court has held that:

[t]his Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment.

Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 217 (1995).

IV. STATEMENT OF CASE

Based on United States Census Bureau data, as of the year 2010, there were more than fifteen (15) million naturalized American citizens. As such, because the natural-born provision of the U.S. Constitution invidiously discriminates against all naturalized American citizens in terms of eligibility for the U.S. Presidency, this is one of the largest cases of invidious discrimination in the history of the United States and involves the highest office in the land. Furthermore, as far as is known, this is the first time ever that a naturalized American citizen, who has been personally injured and harmed by the natural born provision has challenged its validity in light of the equal protection and due process guarantees of the Fifth Amendment and the citizenship clause of the Fourteenth Amendment. As such, this case presents significant constitutional issues of first impression and public importance for the Supreme Court to decide. In fact, since the abolition of slavery and the repeal of the slavery provisions in the Constitution, the natural born provision represents the only and most widespread

form of invidious discrimination that remains in our Constitution. Despite about sixty-years of modern equal protection jurisprudence, the Supreme Court has never been presented with and has never decided the significant issues presented herein.

A. The Underlying Facts

Petitioner Abdul Karim Hassan (“Hassan” or “petitioner”) is a naturalized American citizen who was born in the country of Guyana in 1974 and whose race is East Indian. As the lower courts found, petitioner has met all the constitutional requirements for becoming President except the requirement in the natural born clause that he be a natural born citizen. Petitioner is a U.S. presidential candidate in 2012 and in 2016. See www.abdulahassanforpresident.com. 11 CFR 100.72(b) and 100.131(b). Notably, petitioner’s video on Youtube¹ in which he discusses his issue positions and campaign has received over 350,000 views and numerous supportive comments in just the last year – typically only nationally known and viable presidential candidates get so many video views. Petitioner’s presidential campaign has spread far and wide across the nation and has exceeded expectations many times over.

B. The FEC and State Proceedings

After meeting and deliberating, the Federal Election Commission on September 2, 2011, issued a

¹ <http://www.youtube.com/watch?v=7Cd18lsx1ls>

written ruling² that even though plaintiff is a naturalized citizen, he is not prevented from running for President and that as a person running for President he is subject to the laws governing contributions, expenditures and campaigning etc., the same way all other presidential candidates are. Following the FEC's ruling, plaintiff, as part of his presidential campaign, sought rulings from the election authorities in several states as to whether, as a naturalized citizen, he would qualify to be placed on the presidential ballot in those states. Among those that said no is the respondent herein – the State of Colorado (24a-25a) as well as the State of New Hampshire (26a-27a).

C. The District Court Proceedings

Following the denials of ballot access because of his national origin, petitioner commenced several lawsuits to challenge this invidious discrimination by the states. On November 29, 2011, petitioner filed an action for declaratory and injunctive relief against the State of New Hampshire and its Secretary of State. See *Hassan v. New Hampshire*. Civil #: 11-cv-552-JD (DNH). On November 30, 2011, petitioner filed a similar action against the State of Colorado and its Secretary of State. See *Hassan v. Colorado* Civil #: 11-cv-3116 MJW (DCO). On December 1, 2011, petitioner filed a similar action against the State of Iowa and its Secretary of State. *Hassan v. Iowa* Civil #: 11-cv-574- REL (SDIA). In all three of these actions, petitioner sought: 1) a declaration that

²

http://www.abdulhassanforpresident.com/fec/FEC_Advisory_Opinion_Hassan_for_President.pdf

the state's national origin discrimination in denying him ballot access violated the Citizenship Clause and the Equal Protection Clause of the Fourteenth Amendment; and 2) a declaration that the national origin discrimination in the natural born clause is irreconcilable with, and therefore trumped and implicitly repealed by the equal protection clause and the Citizenship Clause of the Fourteenth Amendment. Petitioner also argued that under the absurdity doctrine, the Court must choose the equality in the Fourteenth Amendment over the absurd result of invidious national origin discrimination in the natural born clause especially given that equality and not discrimination is consistent with the liberty and justice goal and purpose of the Constitution and the anti-discrimination public policy of the United States.

All three district courts seem to agree that the presumption against implicit repeal is overcome and that implicit repeal is triggered by the existence of an irreconcilable conflict. In this regard, the district court in *Hassan v. Colorado* stated in relevant part as follows (16a):

Branch v. Smith, 538 U.S. 254, 273 (2003). “An implied repeal will only be found where provisions in two statutes are in ‘irreconcilable conflict,’ or where the latter Act covers the whole subject of the earlier one and ‘is clearly intended as a substitute.’”

Moreover, the courts and the defendants in all three cases did not dispute, and conceded that the national origin discrimination against petitioner by the states violated the equal protection and

citizenship clauses of the Fourteenth Amendment. See *Afroyim v. Rusk*, 387 U.S. 253, 262 (1967) (invalidating statute that discriminated against citizens because they were naturalized and not natural born). Both race and national origin are subject to strict scrutiny analysis. See *United States v. Virginia*, 518 U.S. 515, 532 n. 6, (1996) (noting that “[t]he Court has thus far reserved most stringent judicial scrutiny for classifications based on race or national origin”). See *Clark v. Jeter*, 486 U.S. 456, 461 (1988) (reiterating that discrimination based on race or national origin is subject to strict scrutiny). *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 439 (1985) (reiterating that discrimination based on race, national origin, and alienage is subject to strict scrutiny.). *Graham v. Richardson*, 403 U.S. 354, 371-72 (1971) (reiterating that discrimination based on race, national origin, and alienage is subject to strict scrutiny). Yet, the courts in these three cases mysteriously refused to take the next logical step and conclude that the Fourteenth Amendment was in irreconcilable conflict with the national origin discrimination in the natural born clause. Instead, the district courts and defendants adopted the original intent reasoning in *Dred Scott v. Sandford*, 60 U.S. 393, 426 (1857), and concluded that invidious national origin discrimination in the natural born clause is still valid because the Fourteenth Amendment was never intended to repeal this invidious discrimination. Unlike the district courts, the Supreme Court has repudiated (see point “B” below) its original intent reasoning in *Dred Scott* and moreover, where an irreconcilable conflict is present, petitioner need not show intent to repeal in order to trigger implicit

repeal as is reflected by the very standard in *Branch* above which was adopted by the lower courts.

In addressing the arguments based on the absurdity doctrine, the district court in *Hassan v. New Hampshire*, 2012 WL 405620, *4, fn 5 (D.N.H. Feb. 8, 2012), which was cited by the Tenth Circuit, stated in relevant part as follows:

The Absurdity Doctrine provides that “interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.” *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). As discussed, Hassan has not demonstrated that the legislative purpose behind the Fifth or Fourteenth Amendments was to abrogate the Natural Born Citizen Clause.

The district court was wrong because under its own statement of the doctrine above, intent to abrogate is not a requirement for the absurdity doctrine to apply. While slavery and national origin discrimination were not viewed as absurd by our Founding Fathers, today we view both as absurd. For example, in reference to earlier national origin discrimination against Japanese Americans, the Supreme Court in *Adarand v. Peña*, 515 U.S. 200, 213 (1995), stated in relevant part that, “[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” Here, the absurdity doctrine warranted a ruling in plaintiff’s favor because the

absurd result of invidious citizenship discrimination should have been avoided in favor of the equality mandate of the Fourteenth Amendment which is more consistent with the liberty and justice goals of the Constitution and the anti-discrimination public policy of the United States.

Notably, because their rulings were based on an adoption of the reasoning in *Dred Scott*, the lower courts and defendants, totally evaded petitioner's arguments based on *Dred Scott*. The lower courts also did not address or fully address many other Supreme Court decisions which provided powerful support for plaintiff's position. See *Afroyim v. Rusk*, 387 U.S. 253, 262 (1967) (holding that, "(The naturalized citizen) becomes a member of the society, possessing all the rights of a native citizen, and standing, in view of the constitution, on the footing of a native."). *Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976) (finding that the 14th Amendment *impliedly* abrogated the 11th Amendment where the subject, like here, was discrimination). *McDonald v. City of Chicago, Ill.*, 130 S.Ct. 3020, 3059-3060 (2010), (explaining that Constitutional slavery/citizenship discrimination and Constitutional equality are "irreconcilable" -a condition that triggers *implicit* repeal.). *Afroyim v. Rusk*, 387 U.S. 253 (1967) (invalidating statute which discriminated against plaintiff because he was a naturalized citizen and not a natural born citizen.). *United States v. Virginia*, 518 U.S. 515, 532 n. 6, (1996) (noting that "[t]he Court has thus far reserved most stringent judicial scrutiny for classifications based on race or *national origin*.").

D. The Court of Appeals Proceedings

The Tenth Circuit issued an unpublished/non-precedential disposition (1a-3a) affirming the published decision of the district court without original analysis or opinion of its own. By relying and adopting the rulings of the district courts, all three Courts of Appeals missed a significant concession that was explicitly made for the first time on appeal by defendants in all three cases. In this regard, the State of Iowa, stated as follows in its appellate brief, which was also repeated by New Hampshire and Colorado as well (Iowa. Br. 20 – 2012 WL 3025300):

The Equal Protection clause demands that individuals be treated equally by the federal and state governments, regardless of national origin.

By contrast, the natural born provision invoked by defendants, demands that individuals be treated unequally by the federal and state governments because of national origin – the total opposite of what the Fourteenth and Fifth Amendments demand. This is a textbook example of irreconcilable conflict which triggers implicit repeal and the analysis can end at this point with a reversal of the lower courts.

In addressing the irreconcilable conflict between the equal protection clause of the Fourteenth/Fifth Amendments and the natural born clause, respondent Colorado, like Iowa and New Hampshire admitted that, “the *concepts* espoused in the two clauses appear to be at odds with one another.” (*i.e.*, Colorado Br. 21-22). However, defendants made the strange argument that this irreconcilable conflict is not really an irreconcilable

conflict because “The Constitution is not the Government,” (Colorado Br. 22) – an argument that is irrelevant to this case because petitioner is not suing the Constitution – he is suing a state government that discriminated against him because of his national origin. Obviously realizing that this is a quibbling point, defendants preemptively state, “this is not a trivial point.” (Colorado Br. 22). This “trivial point” point cannot overcome the obvious irreconcilable conflict that exists and we need to be brave and face the fact that implicit repeal has occurred. Believing that non-precedential opinions violate Article III and the due process clause of the Fifth Amendment of the Constitution and believing that the Tenth Circuit would not choose invidious discrimination over constitutional equality if it were bound by and responsible for its decision, petitioner made a motion for published/precedential opinion but the Tenth Circuit held that, “Appellant’s motion for publication is denied.” (1a-3a).

V. REASONS FOR GRANTING THE PETITION

The first reason for granting review of the invidious discrimination in the natural born clause is that as many as three United States Courts of Appeals have decided this, “important question of federal law that has not been, but should be, settled by this Court.” Supreme Court Rule 10(c). The second reason for granting review is that the three Courts of Appeals that have decided this very important issue have, “decided an important federal question in a way that conflicts with relevant

decisions of this Court” – the decisions below conflict with the Supreme Court’s repudiation of its decision in *Dred Scott* (see point “B” below) which upheld citizenship discrimination in the Constitution – the very issue presented herein.

The first reason for granting review of the question of unpublished/non-precedential opinions is that it is an “important question of federal law that has not been, but should be, settled by this Court.” SCR 10(c). The second reason is that there is a split amongst the Courts of Appeals on the treatment of unpublished/non-precedential opinions. SCR 10(b). Third, the Supreme Court should review this issue under its supervisory power because it is an issue that comes under such power including the Court’s rule-making authority. SCR 10(a).

**A. The Invidious Discrimination
Herein is an Important Question
of Federal Law That has not Been
but Which Should be Settled by
This Court**

**1. After 220 Years, The Time Is
Right for the Supreme Court to
Settle the Issue and End the
Invidious Discrimination Against
More Than 15 Million American
Citizens**

More than 150 years ago in the infamous case of *Dred Scott v. Sandford*, the Supreme Court settled one form of invidious citizenship discrimination in the Constitution and allowed it to continue – a decision it now regrets (see point “B”). Today, for the

first time since *Dred Scott*, this Court is presented with the only form of invidious discrimination and the only form of invidious citizenship discrimination that remains in our Constitution and it should once again settle the issue - but unlike *Dred Scott*, it should put an end to the invidious citizenship discrimination challenged in this case.

I know of no one who believes that the invidious national origin discrimination in the natural born clause is not worthy of Supreme Court review. It is obvious that a very bad form of invidious discrimination, against more than 15 million American citizens, throughout the entire country, that is contained in the supreme law of the land, and which involves the highest office in the land, is worthy of Supreme Court review many times over. The last time before this case that the Supreme Court was faced with invidious citizenship discrimination in the Constitution, it not only reviewed the case, it held oral arguments over six-days in *Dred Scott* and issued an opinion that was over 100 pages long. The invidious national origin discrimination in the natural born clause has stigmatized more than more than 15 million Americans as disloyal and untrustworthy and has relegated these decent and loyal naturalized American citizens like petitioner to second-class status for more then 220 years and this Court must immediately end this long national nightmare with all deliberate speed in light of the citizenship clause and the equal clause of the Fourteenth Amendment and the liberty and justice goals of the Constitution as well as the anti-discrimination public policy of the

United States today. See 4 U.S.C. § 7201(b) for example.

The defendants in the several cases brought by petitioner all have one thing in common – they all have statutes which prohibit national origin discrimination in their respective states. Likewise, all the lower courts in this case and the Supreme Court also have one thing in common – they all have policies, based on federal law such as Title VII of the Civil Rights Act of 1964, which prohibit national origin discrimination.

In vetting Justice Anthony Kennedy for the Supreme Court, the Reagan Administration and the FBI asked Justice Kennedy to answer the following question³:

Have you ever been a member of any club or organization that excludes as members or restricts access to individuals on the basis of race or national origin (*e.g.*, KKK) religion (*e.g.*, certain country clubs), or sex (*e.g.*, Masons, Cosmos Club, Metropolitan Club)?

While the esteemed Justice Kennedy obviously had nothing to do with national origin discrimination, ironically, the Reagan Administration and the FBI associated “national origin” discrimination with organizations like the “KKK” - not with state governments, the courts or the Constitution – this is what makes the invidious national origin discrimination in this case ironic and

³ <http://www.businessinsider.com/justice-anthony-kennedys-background-check-2012-7>

egregious and in need of Supreme Court review. Additionally, Canon 2(C) of the federal Code of Judicial Conduct, states in relevant part as follows:

A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

Because national origin discrimination is generally associated with organizations like the “KKK” and is such an evil thing that it would likely disqualify a person from being nominated or serving as a judge, this Court must review the decision of the lower courts and respondents to subject petitioner to invidious national origin discrimination. When lower courts claim that the law requires an evil thing to be done, this Court must ensure that such an evil is truly warranted and that there are no alternatives, and if so, it must explain to the nation why such an evil cannot be avoided, especially in light of the anti-discrimination public policy of the nation today. Ironically, even Justice Taney in *Dred Scott* recognized that although slavery and citizenship discrimination were enshrined in the Constitution, the Supreme Court should explain in detail to the nation why such evils should continue – surely this Court can do more and better than it did in *Dred Scott*.

Given the universal agreement that national origin discrimination is an invidious evil that should never be tolerated or supported, why are defendants supporting the national origin discrimination in this case? Defendants will explain that while they agree it is an evil, it is an evil that the Constitution forces them to engage in. The argument by the defendants

and the lower courts that their hands are tied by the invidious discrimination in the Constitution is identical to the reasoning of Justice Taney in *Dred Scott v. Sandford*, 60 U.S. 393, 426 (1857) but such reasoning has been repudiated by this Court (see point “B” below) and defendants and the courts are not stuck with discrimination and can choose the equality contained in the Fourteenth Amendment.

Furthermore, unlike the defendants and the lower courts, this Court in the modern era has never allowed invidious discrimination to stand based on the argument that its hands were tied. As explained below, even though in 1857 this Court found the citizenship discrimination in *Dred Scott* to be part of the Constitution, this Court and the rest of the country has now concluded that such discrimination would be unlawful even before the passage of the Thirteenth, Fourteenth and Fifteenth Amendments. (see point “B” below).

In *Plessy v. Ferguson*, 163 U.S. 537 (1896), the Supreme Court gave constitutional protection to racial segregation. More than fifty years later in *Brown v. Board of Education*, 347 U.S. 483 (1954), this Court felt the time was right and it overruled *Plessy* and ended discrimination that was the constitutional law of the land for more than fifty years. In *Korematsu v. United States*, 323 U.S. 214, 216 (1944) and *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943), this Court upheld national origin discrimination against Japanese Americans. However, in the 1980s, the country felt the time was right to apologize for that decision and the Congress did so while awarding millions in compensation to the victims of that national origin discrimination. In

Bolling v. Sharpe, 347 U.S. 497 (1954), the Supreme Court felt the time was right for a major change in equal protection jurisprudence, and more than 150 years after it was adopted, the Supreme Court held that the Fifth Amendment prohibited the federal government from engaging in discrimination even though the Fifth Amendment does not contain an equal protection clause like the Fourteenth Amendment. In *Reed v. Reed*, 404 U.S. 71 (1971), this Court felt the time was right to extend the Fourteenth Amendment to cover gender discrimination even though the Fourteenth Amendment was never intended to cover such gender discrimination. Just recently, in 2012, this Court felt the time was right to review discrimination against same-sex couples and granted certiorari in *Hollingsworth v. Perry*, Supreme Court Docket #: 12-144, and *United States v. Windsor*, Supreme Court Docket #: 12-307. We can continue to list examples but the point should be clear. The invidious discrimination in this case represents the last major piece of unfinished business in the civil rights history of the Supreme Court and the United States. The millions of victims of the invidious national origin discrimination challenged in this case have waited more than 220 years and they should not be made to wait any longer – this Court should grant certiorari. History should not record that when asked to review the evil of national origin discrimination against millions of good American citizens the Supreme Court turned its back and did nothing.

2. The Lower Courts Highlighted the Need for Supreme Court to Settle the Natural Born Issue

The Supreme Court should grant certiorari because the lower courts have highlighted the need for guidance from this court in light of the first impression nature of the important constitutional issues presented. In *Hassan v. USA*⁴, the district court addressed the issues herein and stated in relevant part as follows:

Likely because of the rarity of such challenges, the Supreme Court has not established a test for determining whether or when one constitutional provision "trumps," as plaintiff argues, another

The district court in *Hassan v. Montana* stated in relevant part as follows⁵:

Judges Gershon [New York], DiClerico [New Hampshire], and Longstaff [Iowa] noted that it is unclear whether the principles of implicit statutory repeal apply to the Constitution.

Likewise, the defendants in *Hassan v. Iowa*, stated in relevant part as follows⁶:

Neither of these cases address when and how a Constitutional amendment may "abrogate" or "implicitly repeal"

⁴ See USDC - EDNY Docket at: Case #: 08-cv-938 (NG) – Document 28, page 3-4

⁵ See Montana District Court Docket at: Case #: 11-cv-72 (DWM) – Document 22, page 3

⁶ See District Court Docket - SDIA - Case #: 11-cv-574 (REL)(RAW) - Document 2-1, page 8

other Constitutional provisions. Indeed, it does not appear that any authority exists on this subject.

While the defendants in *Hassan v. Iowa* did recognize that “the case of *Fitzpatrick v. Bitzer* presents an example of implicit abrogation. 427 U.S. 445, 96 S.Ct. 2666, 49 L.Ed.2d 614 (1976),” – a case which favors petitioner, they were correct in highlighting the scarcity of authority on the subject and the need for guiding standards and tests. Moreover, the decision in *Hassan v. Iowa*, which incorporated the decision of the New Hampshire Court, declined to view *Fitzpatrick v. Bitzer*, 427 U.S. 445 456 (1976), as an example of implicit repeal because it held that⁷, “a majority of federal courts have declined to view *Fitzpatrick* as holding that the Fourteenth Amendment effected an *implicit repeal* of the Eleventh Amendment.” The Supreme Court’s abrogation ruling in *Fitzpatrick* can be the basis for a ruling in petitioner’s favor in this case. This Court should grant review where the outcome of the case hinges on resolving a split in authority among the courts of appeals. In fact, the Iowa district court even relied on the proposition that⁸ it is, “unlikely that a majority of the present Supreme Court would sustain a holding that the fourteenth amendment, of its own force, represents a pro tanto repeal of the eleventh amendment.” Once again, this Court should grant review where the outcome of the case hinges on a projection of how the Supreme Court would rule or

⁷ See District Court Docket - SDIA - Case #: 11-cv-574 (REL)(RAW) - Document 16, page 8, fn 6

⁸ See District Court Docket - SDIA - Case #: 11-cv-574 (REL)(RAW) - Document 16, page 8, fn 6

that the Supreme Court would change an existing ruling.

3. The Federal Election Commission Highlighted the Need for the Supreme Court to Settle the Natural Born Issue

In addressing the merit issues in the context of the Supreme Court, the Chairperson of the FEC stated in relevant part as follows⁹:

Whether the Fourteenth Amendment trumps the -- that provision in the Constitution, is something that I guess if I -- I envision that if it were to be decided by a court, it might be decided by the Supreme Court and ultimately not by lower courts.

The FEC Chairperson was correct to state that the merit issues herein should ultimately be decided by the Supreme Court. She was not alone - yet another FEC commissioner commented that the natural born issues herein, “are ultimately probably for the judicial branches, vis-a-vis what the Constitution means¹⁰.” In light of the FEC’s specialized knowledge and role in this area, the preceding views warrant a grant of certiorari in this case.

4. The Supreme Court Should Finally Settle the Issue Because it has Already Rejected The

⁹ <http://www.fec.gov/audio/2011/2011090102.mp3>

¹⁰ <http://www.fec.gov/audio/2011/2011090102.mp3>

Rationale for the Natural Born Clause

It is commonly accepted that the source of the natural born provision is a July 25, 1787 letter from John Jay (who was then serving as the Continental Congress's Minister of Foreign Affairs) to George Washington (who was presiding over the Constitutional Convention in Philadelphia). In this regard, the Congressional Research Service has stated in relevant part that¹¹:

The use of the [natural born] phrase in the Constitution may have derived from a suggestion in a letter from John Jay to George Washington during the Convention expressing concern about having the office of Commander-in-Chief devolve on, any but a natural born Citizen, as there were fears at that time about wealthy European aristocracy or royalty coming to America, gaining citizenship, and then buying and scheming their way to the presidency without long-standing loyalty to the nation.

On a lighter note, petitioner can confirm that he has never been accused of being part of “wealthy European aristocracy or royalty.” However, petitioner agrees that the assumption and rationale behind the natural born requirement was the distrust of foreigners and the belief at the time that naturalized citizens were less loyal than native born

¹¹ http://www.legistorm.com/score_crs/show/id/82388.html

citizens. Very significantly, while the Supreme Court in *Schneider*, 377 U.S. at 168, did not address or resolve the legal question about Presidential eligibility and the arguments herein based on the implicit repeal and absurdity doctrines, it specifically and directly rejected its “distrust” rationale and basis as a factual matter when it stated in relevant part that:

This statute proceeds on the impermissible assumption that naturalized citizens as a class are less reliable and bear less allegiance to this country than do the native born. This is an assumption that is impossible for us to make.

Given the Supreme Court’s outright rejection of the non-allegiance and distrust rationales, the natural born requirement is without any factual foundation or value and can no longer stand when confronted by the guarantees of equal protection in the Fourteenth and Fifth Amendments under the implicit repeal/abrogation and the Absurdity Doctrine. A natural extension of this Court’s rejection of the rationale for the natural born clause, would be a ruling through a grant of certiorari in this case, which formalizes the rejection of the invidious citizenship discrimination in the natural born clause.

5. State Election Authorities Have Highlighted the Need for the Supreme Court to Settle the Natural Born Issue

In 2011, the North Carolina’s Board of Elections ruled that petitioner was ineligible to be

placed on the North Carolina presidential ballot and stated in relevant part as follows:

Until Article II, Section 5 of the United States Constitution is repealed or held otherwise ineffective by the Supreme Court of the United States; you will not qualify as a Presidential Candidate in the State of North Carolina because you are not a natural born citizen.

The State of North Carolina correctly recognized that only the Supreme Court can settle and resolve the national origin discrimination in the natural born clause. This is even more true because the presidency is a national office based on elections in all fifty states and the Supreme Court is the only national court. As such, this Court should grant certiorari and provide the state election authorities and the FEC with guidance.

6. Even Congress Has Highlighted The Need For The Supreme Court to Settle The Natural Born Issue

On March 13, 2008, Justice Clarence Thomas and Justice Anthony Kennedy appeared before the House Appropriations Sub-Committee, with Rep. Jose E. Serrano as the Chairman. As part of his introductory statement, Chairman Serrano stated in relevant part as follows¹²:

Chairman Jose Serrano: And for those of you who were trying to figure out what we were discussing for a few

¹² The excerpt can be found at page 101 of the transcript of the second session of March 13, 2008 Hearing.

minutes, we did not make any major decisions on anything. Although I must say, on a personal level, that for about 10 years, I have been trying to get out of you an unofficial comment on whether or not someone born in Puerto Rico can serve as President. And from what I understand from a California case, you may have to decide on Senator McCain. So if you do, I will try to get myself included in the same thing.

In likely anticipation of having this issue before the Supreme Court, the justices have refrained from giving an answer in public. However, this case provides the ideal vehicle for this Court to answer the questions Congress has been posing for years about the natural born provision – an answer that will directly affect more than fifteen (15) million naturalized American citizens including Congressman Serrano and petitioner herein.

7. The Supreme Court Should Settle the Natural Born Issue Because it Routinely Grants Certiorari to Review Invidious “Strict Scrutiny” Discrimination

This Court has played a historic role in eradicating invidious discrimination and it is precisely because of this Court’s routine grant of certiorari in strict scrutiny discrimination cases like this one that laws which discriminate because of strict scrutiny characteristics such as race and national origin have ceased to exist. *Schneider v. Rusk*, 377 U.S. 163, 165 (1964) and *Afroyim v. Rusk*,

387 U.S. 253 (1967), are just two of the many cases in which the Supreme Court granted certiorari and invoked the Fifth and Fourteenth Amendments to invalidate laws which discriminated against naturalized citizens and in favor of natural born citizens – the very type of discrimination petitioner challenges in this case. In fact, no law discriminating on the basis of a strict scrutiny characteristic such as race or national origin has survived in this Court in the last 60 years.

8. The Supreme Court Should Settle the Natural Born Issue Because it Affects the Eligibility for the Highest Office in the Land

In *Bush v. Gore*, 531 U.S. 98 (2000), this Court confirmed that uncertainty about the Presidency should not linger, and generally, presidential eligibility should be decided forthwith. In *Bush*, this Court granted certiorari about three times in a matter of days, held oral arguments and issued a very expeditious decision that resolved the issue of who should become President after the 2000 presidential elections. While the nature of the cases is different, this case also deals with massive uncertainty as to Office of President by pitting the natural born provision against the Fifth and Fourteenth Amendments. This Court should grant certiorari to resolve this uncertainty forthwith, especially given the increasing number of foreign-born citizens and the bigger and bigger role immigrants are playing in American politics and elections.

**B. Certiorari Should be Granted
Because the Lower Court
Decisions Conflict With This
Court's Repudiation of its
Decision in *Dred Scott***

When the Founding Fathers gave us the Constitution, it contained three major forms of invidious discrimination. The first and most infamous was the provisions of the Constitution which allowed black people to be owned as slaves. The second was the denial of citizenship to people of African origin. The third was the denial of full citizenship to citizens like petitioner because of national origin – denying naturalized citizens the right to hold the presidency based on the invidious and erroneous belief and stigma that American citizens who were born outside the United States cannot be trusted.

In *Dred Scott v. Sandford*, 60 U.S. 393, 426 (1857), the Supreme Court affirmed the Constitution's citizenship discrimination against people of African origin and stated as follows:

No one, we presume, supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted. Such an argument would be altogether

inadmissible in any tribunal called on to interpret it. If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its adoption.

Like Justice Taney in the above excerpt, respondent and the lower courts are taking the extremely unfortunate and erroneous view that we are bound by original intent on issues of invidious discrimination and that the only way to escape the bondage of the last remaining form of invidious citizenship discrimination in our Constitution is through formal amendment. In the decades that followed *Dred Scott*, the Supreme Court repudiated its citizenship ruling in *Dred Scott* that the only way to remedy invidious citizenship discrimination in the Constitution is through formal amendment. Justices of the United States Supreme Court have described the Supreme Court's decision in *Dred Scott v. Sandford*, 60 U.S. 393 (1857), as a great "self-inflicted wound"¹³. See *South Carolina v. Regan*, 465 U.S. 367, 412 (1984). See also *Parker v. District of Columbia*, 478 F.3d 370, 391 (D.C. Cir., 2007) ("Dred Scott is as infamous as it was erroneous in holding that African-Americans are not citizens."). *Image Carrier Corp. v. Beame*, 567 F.2d 1197, 1199 (2d Cir.

¹³ See http://www.supremecourt.gov/publicinfo/speeches/sp_03-21-03.html - In reference to the *Dred Scott* decision, then Chief Justice Rehnquist said in a 2003 speech that 'It was rightly referred to by a later Chief Justice as a "self-inflicted wound" from which it took the Court at least a generation to recover.'

1977) (“*Scott v. Sandford*, 60 U.S. (19 How.) 393, 15 L.Ed. 691 (1857) (the *Dred Scott* case), remains the most discredited of Supreme Court decisions. We reject the attempt to resurrect this apparition of the past.”).

Despite being over 150 years old, *Dred Scott* is still the most recent Supreme Court case that deals with invidious citizenship discrimination in the Constitution itself. The lower courts adopted a legal position that if applied to the *Dred Scott* case, would lead to the same result reached by Justice Roger Taney even though the U.S. Supreme Court now views that result as grossly erroneous and shameful. Using an even clearer example, assume the lower courts were sitting in 1856 when slavery was still part of the Constitution. Assume that a slave from a slave state sued for his freedom by arguing that the slavery provision in the Constitution was irreconcilable with and therefore implicitly repealed by the due process/equality and liberty guarantees in the Fifth Amendment. Using the implicit repeal analysis of the lower courts, this Court would have to rule against the slave because: 1) the slavery provision was very specific and the Fifth Amendment was more “general”; 2) there is a strong presumption against implicit repeal – despite the slave’s argument that such a presumption goes away when the subject is invidious discrimination; 3) the Fifth Amendment was never intended to repeal the slavery provision because when the Fifth Amendment was adopted, slavery was the only part of the Constitution specifically protected from repeal for 20 years; and 4) the Founding Fathers did not see any conflict or irreconcilability between the slavery

provision and the Fifth Amendment because of the preceding point and because many of them owned slaves before and after the Fifth Amendment was adopted. Thankfully, under plaintiff's analysis – an analysis that is consistent with this Court's repudiation of *Dred Scott*, the slave would win his freedom. The slavery and invidious citizenship discrimination in *Dred Scott* and the invidious citizenship discrimination in this case are chilling reminders that the Absurdity Doctrine and the doctrine of implicit repeal are vital and necessary parts of Constitutional jurisprudence.

Dred Scott's right to citizenship was destroyed because of his ancestry/origin and here, petitioner's right to full citizenship is being destroyed because of his national origin – like Dred Scott, petitioner is being relegated to second class status. See *Schneider*, 377 U.S. at 169 (discriminating against citizens because of their naturalized status “creates indeed a second-class citizenship”). *Plyler v. Doe*, 457 U.S. 202, 233-234 (1982) (BLACKMUN, J., concurring) (“a citizen cannot hope to achieve any meaningful degree of individual political equality if granted an inferior right of participation in the political process. Those denied the vote are relegated, by state fiat, in a most basic way to second-class status.”). Here, denying more than 15 million naturalized citizens the right to participate as candidates in the most important political process in the nation – the presidential election process, is to condemn plaintiff and this class of naturalized citizens to permanent second-class status. This court must grant review and bury the remnants of *Dred Scott*.

**C. The Issue of Unpublished
Opinions is an Important One
That Should be Resolved by
This Court, Especially in Light
of its Supervisory Power and
the Split in the Circuits**

As noted in its order and judgment, the Tenth Circuit denied petitioner's motion for a published/precedential/binding opinion – holding that, “Appellant’s motion for publication is denied.” (3a). The terms unpublished and non-precedential are used herein to mean dispositions and opinions that are not given precedential or binding effect. Petitioner made the motion for published/binding opinion because there was good reason to believe that if the court issued a binding precedent, the outcome of the case would change. Simply put, if the court of appeals was bound by its ruling, it is reasonable to conclude that it would never have joined the ranks of Justice Taney in *Dred Scott* and choose invidious citizenship discrimination over constitutional equality – especially in light of the Supreme Court’s repudiation of *Dred Scott*. Moreover, the motions for published/binding opinion were necessary because it was a way to ensure that the Court address the central arguments including those based on *Dred Scott* instead of running from them because of their political and social sensitivity – very strangely, and probably because of the judgment history has visited on Justice Taney for his reasoning in *Dred Scott*, the defendants and the lower courts simply ran away from the *Dred Scott* arguments.

For the reasons stated by Judge Arnold in *Anastasoff v. United States*, 223 F.3d 898, 900 (8th Cir.), vacated as moot, 235 F.3d 1054 (8th Cir. 2000), the refusal of the Court of Appeals to issue binding decisions in this case and the respective Circuit rule¹⁴ allowing for such refusal, violate Article III of the United States Constitution. Moreover, such rules and refusal also violate the due process and equality guarantees of the Fifth Amendment for several reasons. In *Payne v. Tennessee*, 501 U.S. 808, 828 (1991), the Supreme Court stated in relevant part as follows:

Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.

First, due process is violated because the practice of designating dispositions as non-precedential creates unequal justice under the law where two similarly-situated litigants can receive conflicting rulings simply because the court declared itself not bound by and not responsible for the first ruling. Second, the policy creates unequal justice because cases designated as non-precedential receive less care, time and attention than precedential opinions. Third and even more significant, it seems that one of the main reasons why judges do not want to be bound by unpublished opinions is the belief that these decisions may not be correct especially

¹⁴ See for example, Circuit Rule 36 of the Tenth Circuit

because far less attention is paid to them. There is a view that courts do not have confidence in the correctness of unpublished opinions because they may be prepared mostly by staff with little input from judges and that a bench memorandum prepared by staff may turn into the unpublished disposition. However, Article III requires that cases be decided by judges and if the involvement of the judges with the briefs, law and facts is so minor that the judges cannot state with confidence that the decision is correct and sound, then the issuance of such an opinion violates due process. A court is not allowed to say that because it has a heavy caseload, it will make rulings based on gut feeling instead of on the law and facts. Significantly, the knowledge that the court will be bound by a decision in his case in the future, will give the litigant some assurance that the Court tried to reach the right decision. The dangers of unpublished opinions are especially great in cases like this one that involves minority groups and socially and politically sensitive issues. We begin by examining the reason why I made a motion for published opinion in this case.

Importantly, non-precedential opinions violate due process for several other reasons. First, unpublished opinions significantly destroy a litigant's right to seek reconsideration – because these non-precedential opinions like the ones in this case do not address the arguments raised on appeal, it is impossible to determine whether the court overlooked or misconstrued the facts or arguments – the standard for moving for rehearing/reconsideration. Second, they also significantly destroy a litigant's right to move for

rehearing en banc. One of the grounds set forth in FRAP 35 for rehearing en banc is where “the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.” See FRAP 35(a)(2)(b). However, litigants receiving unpublished/non-precedential opinions are deprived of this ground for rehearing en banc because such non-precedential opinions by definition are not “authoritative.” Third, non-precedential opinions deprive litigants of the primary grounds for Supreme Court review – circuit splits. Because non-precedential opinions do not represent the law of the Circuit, they cannot be used to establish a Circuit split. Moreover, because the quality of non-precedential opinions is generally poor without much consideration or analysis – they are generally not ready for Supreme Court review and thus deprives litigants of a meaningful chance of such review – the Second Circuit for example states in its Rule 32 that its unpublished summary orders, “are prepared chiefly for the guidance and information of counsel and parties, and the district court,” – no mention of this Supreme Court.

While the estimates vary, about 75 percent of opinions and other dispositions in the several U.S. Courts of Appeals are unpublished and do not carry precedential value. Moreover, the issue implicates the power of the judiciary under the Constitution, the principle of stare decisis and our nation’s foundation of equal justice for all. As such, the importance of this issue cannot be overstated. The en banc panel noted in *Anastasoff v. United States*, 235 F.3d 1054 (8th Cir. 2000) that, “The controversy over the status of unpublished opinions is, to be sure, of

great interest and importance.” In fact, the controversial use of unpublished/non-precedential opinions has also been the subject of congressional hearings with judges such as Samuel Alito, then of the Third Circuit, and Alex Kozinski of the Ninth Circuit testifying¹⁵. Chief Justice John Roberts has also remarked that, “A lawyer ought to be able to tell a court what it has done¹⁶” – by extension, a court should be responsible for and bound by its decisions. Justice Alito’s work on this issue was described as follows¹⁷:

In his memorandum from the Advisory Committee on Appellate Rules to the Chair of the Standing Committee on Rules of Practice and Procedure, then-Judge Alito, the Advisory Committee Chair, emphasized that Rule 32.1 “does not require any court to issue an unpublished opinion or forbid any court from doing so.” He further noted that the Rule does not delineate criteria for deciding whether to publish an opinion, nor does the Rule take a position “on whether refusing to treat an unpublished opinion of a federal court as binding precedent is constitutional.”

¹⁵ See http://www.uscourts.gov/News/TheThirdBranch/02-07-01/Unpublished_Opinions_Draw_Congressional_Scrutiny.aspx

¹⁶ See April 15, 2004 Article by Tony Mauro of Legal Times - <http://www.judicialaccountability.org/download/judiciaconfbacksciteunplshd.htm>

¹⁷ <http://georgetownlawjournal.org/files/pdf/97-/Weisgerber.PDF> - page 632

In adopting FRAP 32.1 the Supreme Court recognized the very serious problems with unpublished/non-precedential opinions. While FRAP 32.1 was a good first step, as noted in the above excerpt, Justice Alito and the Advisory Committee that proposed FRAP 32.1 specifically noted that the issue of the constitutionality of unpublished/non-precedential opinions was left unanswered. The time is right for the Supreme Court to settle this extremely important question of federal law especially in light of the Supreme Court's supervisory role over the lower courts and the steps this Court has taken already such as the adoption in April 2006 of FRAP 32.1.

This court should also grant certiorari because the Circuits are split on the use of unpublished/non-precedential opinions. In terms of opinions, Judge Arnold in *Anastasoff* declared non-precedential opinions to be unconstitutional – an opinion that was set aside en banc, not on the merits but only on mootness grounds. By contrast, Judge Kozinski in *Hart v. Massanari*, 266 F.3d 1155 (9th Cir. 2001), disagreed with Judge Arnold and held that unpublished/non-precedential opinions are not unconstitutional.

In terms of Circuit rules, following the amendment to FRAP 32.1, all circuits now allow citation to unpublished opinions issued after 2007. However, as to unpublished/non-precedential opinions issued prior to 2007, some circuits allow citation and others do not. In terms of precedential effect, two circuits give unpublished opinions precedential effect – the D.C. Circuit gives precedential effect to opinions issued after 2002 but

not before, while the Fifth Circuit gives precedential effect to unpublished opinions issued before 1996 but not after. The federal judicial center has summarized on its website, the treatment of unpublished/non-precedential decisions among the federal circuit courts website¹⁸.

The fact that unpublished/non-precedential dispositions are unconstitutional does not mean that lower federal circuits will be required to publish or give every opinion precedential effect. It would seem to be reasonable and constitutional to require a party to an appeal to request a published/precedential opinion, within a specified time after briefing is complete. First, such an approach would give the Court time to prepare and produce the type of opinion that is ready for publication. Second, because most losing parties will not want the decision published, requiring that a request for publication be made prior to the issuance of a decision will likely reduce the requests for publication dramatically. Third, because published/precedential opinions take much longer to issue, many litigants may choose the quicker option of an unpublished opinion. Fourth, as in this case, this procedure will allow a party to require publication/precedential effect where such designation and the extra care and attention that come with it will make a difference in the outcome of the case – this is especially true, where like here, the issues are significant constitutional issues of first impression. Fifth, this procedure will guard against bias, fear or favor especially in cases where the Judges, as human beings, may want to avoid socially

¹⁸ [http://www.fjc.gov/public/pdf.nsf/lookup/citrules.pdf/\\$file/citrules.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/citrules.pdf/$file/citrules.pdf)

and politically sensitive issues or parties. Sixth, this procedure will allow a party to require published/precedential treatment where the reasoning and analysis is just as or even more important than the outcome. As in *Dred Scott*, had the circuit courts in this case address the arguments of petitioner and put forth detailed reasons why they chose invidious citizenship discrimination over constitutional equality – such reasons can motivate the country, the other branches of government and even this Court to change the result.

VI. CONCLUSION

Based on the foregoing, Petitioner kindly request that this Honorable Court grant his petition for certiorari, together with such other, further and different relief as the Court deems just and proper.

Dated: Queens Village, New York
March 25, 2013

Respectfully submitted,

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**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

[Filed: 09/04/2012]

ABDUL KARIM HASSAN,

Plaintiff-Appellant

v.

THE STATE OF COLORADO;
SCOTT GESSLER, in his official
capacity as Secretary of State of
the State of Colorado,

Defendants- Appellees.

No. 12-1190
(D.C. No. 1:11-
CV-03116-MJW)

(D. Colo.)

ORDER AND JUDGMENT¹

Before **GORSUCH**, Circuit Judge, **BRORBY**,
Senior Circuit Judge, and **HOLMES**, Circuit
Judge.

¹ After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Abdul Karim Hassan is a naturalized citizen who wishes to run for the Presidency of the United States. This even though the Constitution says “[n]o person except a natural born Citizen . . . shall be eligible to the Office of President.”

U.S. Const. art. II, § 1, cl. 5. After the Colorado Secretary of State informed him that his ineligibility for office precluded his placement on the ballot, Mr. Hassan brought this lawsuit asserting that the natural-born-citizen requirement, and its enforcement through state law barring his access to the ballot, violates the Citizenship, Privileges and Immunities, and Equal Protection Clauses of the Fourteenth Amendment. The magistrate judge heard the case on consent of the parties and eventually concluded that the Fourteenth Amendment did not affect the validity of Article II’s distinction between natural-born and naturalized citizens. *See Hassan v. Colorado*, ___ F. Supp. 2d ___, 2012 WL 1560449 (D. Colo. 2012); *see also Hassan v. New Hampshire*, No. 11-cv-552-JD, 2012 WL 405620 (D.N.H. Feb. 8, 2012) (reaching same conclusion in Hassan’s challenge to exclusion from New Hampshire ballot). The magistrate judge granted summary judgment to defendants and Mr. Hassan appealed.

We affirm. We discern no reversible error in the magistrate judge’s disposition and see little we might usefully add to the extensive and thoughtful opinion he issued. To be sure, Mr. Hassan contends the magistrate judge overlooked one aspect of his claim. Mr. Hassan insists his challenge to Colorado’s enforcement of the natural-

born-citizen requirement did not depend exclusively on invalidation of Article II by the Fourteenth Amendment. Even if Article II properly holds him ineligible to *assume the office* of president, Mr. Hassan claims it was still an unlawful act of discrimination for the state to deny him *a place on the ballot*. But, as the magistrate judge's opinion makes clear and we expressly reaffirm here, a state's legitimate interest in protecting the integrity and practical functioning of the political process permits it to exclude from the ballot candidates who are constitutionally prohibited from assuming office. *See generally Munro v. Socialist Workers Party*, 479 U.S. 189, 193-95 (1986); *Bullock v. Carter*, 405 U.S. 134, 145 (1972).

The judgment of the district court is affirmed. Appellant's motion for publication is denied.

Entered for the Court
Neil M. Gorsuch
Circuit Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 11-cv-03116-MJW

ABDUL KARIM HASSAN,

Plaintiff,

v.

THE STATE OF COLORADO and
SCOTT GESSLER, in his official capacity as
Secretary of State of the State of Colorado

Defendants.

**ORDER ON MOTION TO DISMISS (DOCKET
NO. 8) FILED BY DEFENDANTS STATE OF
COLORADO AND SCOTT GESSLER
CONVERTED TO A MOTION FOR SUMMARY
JUDGMENT (DOCKET NO. 26)**

MICHAEL J. WATANABE
United States Magistrate Judge

Initially, this case was before this court pursuant to an Order Referring Case (Docket No. 2) issued by Judge William J. Martinez on December 2, 2011. On May 1, 2012, the parties filed a joint motion consenting to the disposition of this matter by this court (Docket No. 31). Pursuant to 28 U.S.C § 636(c), Judge Martinez entered an order granting the parties' motion and assigning the case for all

purposes to this court (DocketNo. 32). The case was reassigned on May 1, 2012 (Docket No. 33).

PLAINTIFF'S ALLEGATIONS

Plaintiff Abdul Hassan alleges the following in his Complaint for Declaratory and Injunctive Relief (Docket No. 1). Plaintiff is a naturalized American citizen seeking candidacy for the Presidency of the United States. Plaintiff's candidacy was announced in March 2008 through his website www.abdulahassanforpresident.com. Subsequent to his announcement, plaintiff posted one or more Youtube videos regarding his candidacy and purchased nationwide advertising through Google linking to his presidential website.

In July 2011, plaintiff asked defendants the State of Colorado and Scott Gessler to rule on his eligibility for inclusion on the Colorado presidential ballot, in view of plaintiff's status as a naturalized American citizen. In a letter dated August 12, 2011, defendants responded to plaintiff's inquiry. Defendants stated that pursuant to Section 1-4-303 of the Colorado Revised Statutes, any individual seeking access to the presidential ballot is required to submit a notarized statement of intent and therein affirm that they meet "the constitutional qualifications for the office of the President as outlined in Article II, Sec. 1, Clause 5 of the U.S. Constitution: 1) 35 years or older, 2) at least a 14-year resident of the United States, and 3) a natural-born citizen of the United States." Defendants further stated that any individual who fails to check the three boxes affirming their eligibility, or who affirmatively discloses that they do not meet the

requirements, will not be placed on the Colorado presidential ballot. Due to plaintiff's status as a naturalized American citizen, plaintiff cannot sign the statement of intent under oath, and therefore cannot access the Colorado presidential ballot.

Plaintiff's single claim asserts violations of plaintiff's rights under the Equal Protection Clause, the Citizenship Clause, and the Privileges and Immunities Clause of the Fourteenth Amendment. Plaintiff claims that the natural born provision of the U.S. Constitution is "irreconcilable with and is trumped, abrogated and implicitly repealed" by the aforementioned clauses of the Fourteenth Amendment as well as the Equal Protection guarantee of the Fifth Amendment. Plaintiff also argues that the natural born provision is invalid under the Absurdity Doctrine in light of current public policy concerns. Plaintiff asks the court to: (1) declare § 1-4-303, C.R.S. unconstitutional under the Fourteenth amendment due to the natural born requirement; (2) declare that the natural born provision of the U.S. Constitution has been trumped, abrogated, and implicitly repealed by the Fifth and Fourteenth Amendments; (3) declare that defendants' refusal to accept plaintiff's filing of his declaration of candidacy because of plaintiff's national origin violates the Fourteenth Amendment; and (4) enjoin defendants from discriminating against plaintiff due to his national origin and/or status as a naturalized American citizen with respect to the presidential election ballot in Colorado.

PENDING MOTION

Now before the court is defendants' Motion to Dismiss (Docket No. 8). At the April 23, 2012 status conference, the parties agreed to convert defendants' Motion to Dismiss to a Motion for Summary Judgment, and the court so ordered. On April 27, 2012, the parties filed a Stipulated Motion for Leave to Incorporate List of Stipulated Facts into Motion for Summary Judgment (Docket No. 28). The court entered an order granting the parties' motion and deeming the facts admitted for the purposes of the Motion for Summary Judgment (Docket No. 30) on April 30, 2012.

The stipulated facts are as follows: 1) Plaintiff is a 2012 candidate for the Presidency of the United States; 2) Plaintiff is over the age of 35 years; 3) Plaintiff is a naturalized American citizen; 4) Plaintiff has been a resident of the United States for more than fourteen years; 5) Plaintiff is not a natural-born citizen of the United States; 6) With the exception of the "natural-born citizen" requirement, Plaintiff satisfies all of the constitutional requirements for holding the Office of the President of the United States; 7) Colorado Secretary of State Scott Gessler ("the Secretary") is the chief elections officer for the State of Colorado; 8) The Secretary is responsible for ensuring the qualifications of candidates for statewide and federal elections; 9) Plaintiff contacted the Secretary to inquire about Plaintiff's eligibility for the presidential ballot in Colorado; 10) The Secretary responded in the letter attached to the Complaint (Doc. 1) as Exhibit 1; 11) In pertinent part, the letter stated that access to the Presidential ballot in Colorado requires a prospective

candidate to file a candidate statement of intent; 12) The letter also stated that any individual “who affirmatively discloses that he or she does not meet the constitutional qualifications for the office, will not be placed on the ballot in Colorado.”; 13) Among other things, the Candidate Statement of Intent requires the prospective candidate to affirm his eligibility for office under penalty of perjury; 14) The Secretary will not place a prospective candidate on the presidential ballot unless that prospective candidate submits the Candidate Statement of Intent; 15) Plaintiff has not submitted a Candidate Statement of Intent to the Secretary because he is unable to affirm that he meets the natural-born citizen requirement of Article II, Section 5; and 16) Plaintiff has not identified presidential electors for the 2012 general election.

Defendants argue plaintiff’s claim is not yet ripe for review. In addition, defendants argue that the natural born provision has not been implicitly repealed by the Fifth or Fourteenth Amendments because the U.S. Constitution cannot be repealed by implication, and even if it could, plaintiff has failed to demonstrate that implicit repeal has occurred.

The court has carefully considered the Complaint (Docket No. 1), the subject motion (Docket No. 8), the response (Docket No. 16), and the reply (Docket No. 21). In addition, the court has taken judicial notice of the court’s file, and has considered the applicable Federal Rules of Civil Procedure and case law. The court now being fully informed finds and orders as follows.

Rule 56(a) provides that summary judgment shall be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “A party seeking summary judgment bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, interrogatories, and admissions on file together with affidavits, if any, which it believes demonstrate the absence of genuine issues for trial.” *Robertson v. Board of County Comm’rs of the County of Morgan*, 78 F. Supp. 2d 1142, 1146 (D. Colo. 1999) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Mares v. ConAgra Poultry Co.*, 971 F.2d 492, 494 (10th Cir. 1992)). “Once a properly supported summary judgment motion is made, the opposing party may not rest on the allegations contained in the complaint, but must respond with specific facts showing the existence of a genuine factual issue to be tried. . . . These facts may be shown ‘by any of the kinds of evidentiary materials listed in Rule 56(c), except the mere pleadings by themselves.’” *Southway v. Central Bank of Nigeria*, 149 F. Supp. 2d 1268, 1273 (D. Colo. 2001), *aff’d*, 328 F.3d 1267 (10th Cir. 2003). However, “[i]n order to survive summary judgment, the content of the evidence that the nonmoving party points to must be *admissible*.” *Adams v. American Guarantee & Liability Ins. Co.*, 233 F.3d 1242, 1246 (10th Cir. 2000). “The nonmoving party does not have to produce evidence in a form that would be admissible at trial, but ‘the content or substance of the evidence must be admissible.’” *Id.* “Hearsay testimony that would be inadmissible at trial cannot be used to defeat a

motion for summary judgment because ‘a third party’s description of a witness’ supposed testimony is ‘not suitable grist for the summary judgment mill.’” *Id.*

“Summary judgment is also appropriate when the court concludes that no reasonable juror could find for the non-moving party based on the evidence presented in the motion and response.” *Southway*, 149 F. Supp. 2d at 1273. “The operative inquiry is whether, based on all documents submitted, reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict. . . . Unsupported allegations without ‘any significant probative evidence tending to support the complaint’ are insufficient . . . as are conclusory assertions that factual disputes exist.” *Id.*; *Robertson*, 78 F. Supp.2d at 1146 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); quoting *White v. York Int’l Corp.*, 45 F.3d 357, 360 (10th Cir. 1995)). “Evidence presented must be based on more than ‘mere speculation, conjecture, or surmise’ to defeat a motion for summary judgment.” *Southway*, 149 F. Supp.2d at 1274. “Summary judgment should not enter if, viewing the evidence in a light most favorable to the non-moving party and drawing all reasonable inferences in that party’s favor, a reasonable jury could return a verdict for that party.” *Id.* at 1273.

JUSTICIABILITY

“Ripeness is a justiciability doctrine ‘drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.’” *U.S. v. Vaquera-Juanes*, 638 F.3d 734,

736 (10th Cir. 2011) (quoting *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993)). The ripeness doctrine exists to prevent courts “from entangling themselves in abstract disagreements” by avoiding “premature adjudication.” *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967). Defendants argue that plaintiff’s claim is not prudentially ripe; defendants do not address constitutional ripeness. The court finds that constitutional ripeness is not an issue in this matter and therefore will proceed only with the prudential ripeness analysis.

Generally, two factors are utilized to determine if an issue is prudentially ripe: the fitness of the issue for judicial resolution and the hardship to the parties of withholding judicial consideration. *Kan. Judicial Review v. Stout*, 519 F.3d 1107, 1116 (10th Cir. 2008). First, to determine the fitness of the issue, the court must “focus[] on whether determination of the merits turns upon strictly legal issues or requires facts that may not yet be sufficiently developed.” *Id.* at 1118. Second, hardship exists if “the challenged action creates a direct and immediate dilemma for the parties.” *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1499 (10th Cir. 1995).

Defendants argue that plaintiff’s claim is not fit because plaintiff’s complaint fails to allege that he has completed all of the requirements under § 1-4-303, C.R.S. Specifically, the statute requires plaintiff to submit “the names of registered electors who are thus nominated as presidential electors” along with an indication from each elector as to their acceptance of the nomination. Plaintiff’s complaint makes no

mention of nominated electors. In addition, Defendants argue that there is no direct and immediate dilemma because plaintiff has failed to allege that he is willing and able to satisfy the electors requirement. In other words, defendants argue that “there is no certainty that [plaintiff] would meet the minimum qualifications” set forth in the Colorado statute. For support, defendants cite *Gonzales* and note that ripeness may depend on “whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all.” 64 F.3d at 1499.

The Tenth Circuit Court’s decision in *Roe No. 2 v. Ogden*, 253 F.3d 1225 (10th Cir. 2001), is instructive on this issue. In *Ogden*, the plaintiff law school students challenged the constitutionality of a bar admission rule which authorized questions on the bar application regarding, among other things, the applicant’s history of drug and alcohol dependency. The defendants argued the students’ claims were not prudentially ripe because none of the students had graduated or passed the bar. *Ogden*, 253 F.3d at 1231. However, in holding that the claims were ripe, the court stated that “while there is always the chance that the Students will not graduate or fail the exam, that contingency, in and of itself, is not sufficient to defeat ripeness.” *Id.* at 1232 (internal quotes omitted). The court noted that the students had already taken substantial steps towards the disputed question by spending the time and resources required to attend three years of law school. *Id.* Further, a determination of the merits did not require the further development of facts; the court did not need to know whether the students

would graduate and pass the bar in order to make a determination. *Id.*

Here, plaintiff is in a similar position to the students in *Ogden*. It is undisputed that plaintiff cannot sign the statement of intent, affirming he meets the natural born requirement, without committing perjury. Plaintiff's claim is directed specifically at the natural born requirement; plaintiff is not challenging the other requirements found in the Colorado statute such as the electors requirement. While it is true that plaintiff failed to allege that he could meet the electors requirement, the merits of plaintiff's claim turn strictly on a legal issue (i.e., the implicit repeal of the natural born provision) and does not require the development of additional facts for its determination. In addition, there is clearly a direct and immediate dilemma for the parties. The natural born provision directly prevents plaintiff from appearing on the Colorado presidential ballot. . In order to appear on the 2012 ballot, plaintiff must submit his statement of intent 155 days prior to the general election. This is a sufficiently immediate deadline. Certainly it is possible that plaintiff will be unable to meet the electors requirement. However, in view of the steps plaintiff has taken towards his goal, such as the creation of his presidential website, the contingent or uncertain nature of plaintiff's ability to meet electors requirement is not enough to defeat ripeness. A determination can be made by this court without knowing whether plaintiff can meet the requirement. Accordingly, the court finds that plaintiff's claim is ripe for review.

IMPLICIT REPEAL

Plaintiff argues that a constitutional provision may be repealed through implication by a subsequent constitutional amendment. Repeal by implication is a rule of statutory construction. See *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 164 (1976). Accordingly, the court must first determine if rules of statutory construction apply to constitutional interpretation.

The parties do not cite to, and the court cannot find, any cases directly addressing the applicability of the rules of statutory construction to the Constitution. Several commentators have suggested, in the context of the larger topic of the various theories of constitutional interpretation, that the rules of statutory construction are applicable. See Robert G. Natelson, *The Founders' Hermeneutic: The Real Original Understanding of Original Intent*, 68 Ohio St. L.J. 1239, 1246-49 (2007) (noting that “[d]ebaters in the First Congress explicitly applied Anglo-American rules of construction to the Constitution”); Louis J. Sirico, Jr., *Original Intent in the First Congress*, 71 Mo. L. Rev. 687, 689-90 (2006) (finding “no suggestion that the rules of construction should be any different for a constitution than for a statute”). But see Kevin M. Stack, *The Divergence of Constitutional and Statutory Interpretation*, 75 U. Colo. L. Rev. 1, 3 (2004); Caleb Nelson, *Originalism and Interpretive Conventions*, 70 U. Chi. L. Rev. 519, 556 (2003) (noting that “members of the founding generation expressed a variety of different views” as to what rules of interpretation applied to the Constitution).

In addition, several commentators have noted Chief Justice Marshall's use of the common law rules of statutory construction in interpreting the Constitution. Larry D. Kramer, *The Supreme Court 2000 Term Forward: We the Court*, 115 Harv. L. Rev. 4, 99 (2001); Bernard H. Siegan, *Separation of Powers & Economic Liberties*, 70 Notre Dame L. Rev. 415, 452 (1995); H. Jefferson Powell, *The Original Understanding of Original Intent*, 98 Harv. L. Rev. 885, 948 (1985).

The parties do not address this threshold issue concerning the applicability of the rules of statutory construction to constitutional interpretation. Accordingly, the court will make no findings on this issue. Nevertheless, the court will assume the rules of statutory construction, and thus implied repeal, are applicable to the Constitution for the purposes of this order.

The court notes that Article V of the Constitution provides an express method to amend the Constitution. Even assuming the rules of statutory construction are applicable, it could be argued that the Framers did not intend the Constitution to be modified through means other than amendment, such as implied repeal. However, as plaintiff points out, the Supreme Court has recognized implicit modifications to the Constitution absent express amendment. *See Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976) (holding the Fourteenth Amendment partially abrogated Eleventh Amendment sovereign immunity).

It is “a cardinal principle of statutory construction that repeals by implication are not favored.” *United States v. United Cont’l Tuna Corp.*, 425 U.S. 164, 168 (1976). Accordingly, implicit repeal will not be found absent clearly expressed congressional intent. *Branch v. Smith*, 538 U.S. 254, 273 (2003). “An implied repeal will only be found where provisions in two statutes are in ‘irreconcilable conflict,’ or where the latter Act covers the whole subject of the earlier one and ‘is clearly intended as a substitute.’” *Id.* (quoting *Posadas v. Nat’l City Bank*, 296 U.S. 497, 503 (1936)).

Plaintiff argues that because the natural born clause facially discriminates on the basis of national origin, it must be presumed invalid and the burden must shift to the state to withstand the strict scrutiny test. Further, plaintiff reasons that this presumption of invalidity necessarily destroys the presumption against repeal, and therefore congressional intent need not be shown. Plaintiff cites *City of Cleburne, Tex v. Cleburne Living Center*, 473 U.S. 432 (1985), for the proposition that the principles of implied repeal are inapplicable when the earlier statute is discriminatory on its face.

The court finds no support for plaintiff’s argument in *Cleburne*. The portion of *Cleburne* cited by plaintiff explains the applicability of the strict scrutiny test to statutes challenged under the Equal Protection Clause; *Cleburne* does not involve implicit repeal. Plaintiff suggests that the applicability of the principles of implied repeal depends on the content of the allegedly repealed statute. There is simply no authority supporting plaintiff’s contention that

implied repeal and strict scrutiny interact in this manner. As plaintiff notes in his response to defendants' motion, plaintiff is not arguing that the natural born provision itself is unconstitutional. Accordingly, whether or not the natural born provision discriminates on its face, a strict scrutiny analysis is not relevant to plaintiff's challenge. See *Black's Law Dictionary* 244 (8th ed. 2004) (defining "facial challenge" as a "claim that a statute is unconstitutional on its face"). Plaintiff's challenge is fully couched in his theory of implicit repeal.

Therefore, the court finds that the presumption against repeal remains in effect.

To overcome the presumption against repeal, it must be shown that the legislature had a "clear and manifest" intent to repeal the earlier statute. *Yellowfish v. City of Stillwater*, 691 F.2d 926, 928 (10th Cir. 1982). "Moreover, silence in the legislative history is insufficient to support repeal by implication." *United States v. Hahn*, 359 F.3d 1315, 1322 (10th Cir. 2004).

Plaintiff argues that the Equal Protection Clause of the Fifth Amendment and various clauses of the Fourteenth Amendment implicitly repealed the natural born provision. The court's analysis will make no distinction between plaintiff's Fifth Amendment and Fourteenth Amendment equal protection arguments. See *Adarant Constructors, Inc. v. Pena*, 515 U.S. 200, 217 (1995) (stating that the Court's approach to equal protection claims under the Fifth Amendment is precisely the same as the approach under the Fourteenth Amendment).

Plaintiff does not provide any *specific* arguments demonstrating congressional intent to repeal the natural born provision. Plaintiff only cites to cases which discuss the Equal Protection Clause in more general terms. This absence of any showing of intent alone is likely enough for the court to hold at plaintiff has failed to overcome the presumption against implicit repeal. However, a quick discussion of congressional action (and inaction) regarding the natural born provision is enlightening on the issue of intent.

As noted in several articles, Congress considered and rejected several proposals to amend or repeal the natural born provision prior to, and shortly following, the ratification of the Fourteenth Amendment. See Sarah Helene Duggin & Mary Beth Collins, “*Natural Born*” in the USA: *The Striking Unfairness and Dangerous Ambiguity of the Constitution’s Presidential Qualifications Clause and Why We Need to Fix It*, 85 B.U. L. Rev. 53, 148 (2005) (citing H.R.J. Res. 269, 40th Cong. (1868) and H.R.J. Res. 52, 42d Cong. (2d Sess. 1871)); Malinda L. Seymore, *The Presidency and the Meaning of Citizenship*, 2005 B.Y.U. L. Rev. 927, 947 (2005) (citing H.R.J. Res. 166-169, 42nd Cong. (3d Sess. 1872) and S.R. 284, 41st Cong. (3d Sess. 1871)). In addition, there is no mention of repeal of the natural born provision in the congressional debates on the Civil Rights Act or the Fourteenth Amendment. See Seymore *supra*, at 986 (further noting that “there are only a few mentions of the Presidential Eligibility Clause during the debate on the Fourteenth Amendment, and they appear to be incidental”). This is strong evidence that the ratification of the

Fourteenth Amendment was not intended to repeal the natural born provision.

Plaintiff also argues, in general terms, that the Supreme Court's interpretation of the Fourteenth Amendment has evolved since its ratification. Plaintiff argues that the current view of the Fourteenth Amendment supports implied repeal of the natural born provision. However, the continued consideration and rejection of proposals to amend or repeal the natural born provision contradicts plaintiff's position. *See* H.R.J. Res. 59, 108th Cong. (2003); Duggin & Collins *supra*, at 149 (citing H.R.J. Res. 795, 90th Cong. (1967)); Seymore *supra*, at 947 (citing S.J. Res. 161, 92d Cong (1971)). More importantly, these proposals are further evidence against an intent for the Fourteenth Amendment to repeal the natural born clause. *See Andrus v. Shell Oil Co.*, 446 U.S. 657, 666 n.8 (1980) (stating that subsequent congressional actions should not be "rejected out of hand as a source that a court may consider in the search for legislative intent," but warning that they "must be weighed with extreme care").

Based on the above, the court finds that plaintiff has failed to show a clear and manifest intent for the Fourteenth Amendment to repeal the natural born provision. Accordingly, the court finds that the natural born provision has not been implicitly repealed.

THE ABSURDITY DOCTRINE

Plaintiff argues that the natural born provision is invalid under the Absurdity Doctrine in

light of current public policy and Supreme Court precedent.

The Absurdity Doctrine is a rule of statutory construction which states that “interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.” *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). The doctrine is applicable “only when it would have been unthinkable for Congress to have intended the result commanded by the words of the statute - that is, when the result would be ‘so bizarre that Congress could not have intended it.’” *Robbins v. Chronister*, 435 F.3d 1238, 1241 (10th Cir. 2006) (quoting *Demarest v. Manspeaker*, 498 U.S. 184, 190-91 (1992)). It is not enough to show that the result is contrary to congressional desire. *Id.*

Assuming, as the court does above, that the rules of statutory construction apply to constitutional interpretation, the court cannot find that the Absurdity Doctrine acts to invalidate the natural born provision. Certainly the result of the provision is not so bizarre that Congress could not have intended it; there is ample evidence that the natural born provision was intended, at least in part, to prevent naturalized citizens such as plaintiff from qualifying for the Office of the President. See *Seymore supra*, at 933-41 (tracing the origins of the natural born clause and stating it was “motivated by fear that foreign-born, naturalized citizens' loyalty could not be assured”); Lawrence Friedman, *An Idea Whose Time has Come - The Curious History, Uncertain Effect, and Need for Amendment of the*

“Natural Born Citizen” Requirement for the Presidency, 52 St. Louis U. L.J. 137, 141-43 (2007) (stating that naturalized citizens were not intended to be eligible under the natural born provision). Indeed, the very fact that Congress has consistently rejected proposals to amend or repeal the natural born provision argues against any suggestion that the result of the provision is absurd. In addition, even assuming subsequent actions by Congress, such as the ratification of the Fourteenth Amendment, demonstrate a desire for a different result, this is not enough to invalidate the natural born provision under the Absurdity Doctrine.

Accordingly, because the natural born clause has not been implicitly repealed, nor is it invalid under the Absurdity Doctrine, Colorado state laws requiring all presidential candidates to affirm that they are natural born citizens are constitutional.

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Defendants’ Motion for Summary Judgment is **granted**.

Pursuant to Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCiv.R. 54.1 defendants are entitled to costs. A bill of costs must be filed on the appropriate form within 14 days of the date of this order.

Date: May 3, 2012

s/ Michael J. Watanabe
United States
Magistrate Judge

**[Letterhead of the Supreme Court of the
United States]**

November 26, 2012

Mr. Abdul Karim Hassan
215-28 Hillside Avenue
Queens Village, NY 11427

Re: Abdul K. Hassan
v. Colorado et al.
Application No: 12A521

Dear Mr. Hassan:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Sotomayor; who on November 26, 2012 extended the time to and including February 1, 2013.

This letter has been sent to those designated on the attached notification list.

Sincerely,
William K. Suter, Clerk

By: /s/

Clayton Higgins
Case Analyst.

**[Letterhead of the Supreme Court of the
United States]**

NOTIFICATION LIST

Abdul Karim Hassan
215-28 Hillside Avenue
Queens Village, NY 11427

Clerk
United States Court of Appeals for the Tenth Circuit
Byron White Courthouse
1823 Stout Street
Denver, CO 80257

**LETTERHEAD OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO]**

August 12, 2011

Abdul K. Hassan
215-28 Hillside Avenue
Queens Village, New York 11427

Via email delivery

RE: Your inquiry regarding Presidential ballot access
for a naturalized citizen

Dear Mr. Hassan:

We are in receipt of your letter dated July 18, 2011, in which you inquire about accessing the ballot in Colorado as a candidate for President. You stated that you meet all of the constitutional requirements for holding the office of President except that you are not a natural born citizen.

In Colorado, an individual may have his or her name placed on the ballot as an unaffiliated candidate for President by submitting a notarized candidate's statement of intent and a filing fee of \$500 (Section 1-4303, C.R.S.). I am enclosing a copy of the statement of intent for unaffiliated Presidential candidates. As you can see from the form, any individual seeking access to the Presidential ballot must specifically affirm that he or she meets each of the constitutional qualifications for the office of the President as outlined in Article II, Sec. 1, Clause 5 of the U.S. Constitution: 1) 35 years

or older, 2) at least a 14-year resident within the United States, and 3) a natural-born citizen of the United States.

The Secretary of State is responsible for ensuring that only eligible candidates are placed on the ballot, and must give effect to applicable federal and state law unless a court has held such law to be invalid. To our knowledge, no court has held that any of the qualifications for the office of President as outlined in the U.S. Constitution are invalid. Consequently, our Office must give effect to those requirements. Any individual who submits a candidate statement of intent for President and fails to check the boxes affirming his or her eligibility, or who affirmatively discloses that he or she does not meet the constitutional qualifications for the office, will not be placed on the ballot in Colorado.

I hope you find this response helpful, please do not hesitate to contact our Office if we can be of further assistance.

Sincerely,

Judd Choate, Director
Elections Division

Encl.

**[LETTERHEAD OF THE NEW HAMPSHIRE
DEPARTMENT OF STATE]**

July 19, 2011

Abdul K. Hassan, Esq.
215-28 Hillside Avenue
Queens Village, NY 11427

Dear Mr. Hassan:

This is in response to your recent inquiry about Presidential Ballot Access.

I have enclosed a copy of the Declaration of Intent (RSA 655:17-b) which an independent candidate for the Office of President would fill out and sign under oath. The candidate would then need to obtain and file 3,000 nomination papers signed by registered voters in the state of New Hampshire, as outlined on the information sheet.

Also enclosed is a copy of the Declaration of Candidacy (RSA 655:47) which a candidate For the Office of President would complete and file for access to the New Hampshire Presidential Primary ballot.

Please note the wording by statute in both these forms: "No person except a Natural born citizen...."

The New Hampshire state legislature amended the statutes to include the above wording on the declaration forms for candidates for

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President. Therefore, this office will not accept a filing from any person who is not a natural born citizen.

Sincerely,

Karen H. Ladd
Assistant Secretary of State

Enc.