IN THE SUPREME COURT
STATE OF WASHINGTON

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<tr><td>JAMES E. BROE, KENNETH R. SEAL,
ROBERT BAKER, MARK SUSSMAN,
STAN WALTER, BILL WISE, ANDY
STEVENS, ED CRAWFORD,
JASON LAGEN, LOUISE WORKMAN,
JOCELYN MURCELLI, MIKE
MURCELLI, and KEVIN MCDOWELL,
American Citizens, Washington Residents
and Registered Voters in the State
of Washington,

Plaintiffs,

v.

SAMUAL S. REED, Secretary of State
for the State of Washington,

Defendant.</td><td>)
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Cause No. 8-2-473-8

AMENDED PETITION

FOR A

WRIT OF MANDAMUS</td></tr>
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I. STATEMENT OF JURISDICTION

This action is brought by plaintiffs, registered voters in the State of Washington against Samuel S. Reed in his official capacity as Secretary of State, pursuant to RAP 16.2, and RCW 29A.68.020(2).

II. STATEMENT OF THE CASE

Plaintiffs have standing to challenge the election of a candidate who has been elected but was ineligible at the time of his election to run for the office pursuant to RCW 29A.68.020(2).

Plaintiffs assert that President-elect Barack Hussein Obama (hereafter, Sen. Obama) was at the time of the election in Washington, ineligible to run for the office of President, because 1) he did not establish his American citizenship; 2) he did not establish that he was a "natural born citizen" as required by U.S. Constitution, Article II, Section I, and 3) he did not run under his legal name of Barry Soetoro.

III. SUMMARY OF ARGUMENT

Sen. Obama has admitted that he was born in 1961 to a mother alleged to be an American citizen who was 18 at the time of his birth, and a father who was a Kenyan national and a British citizen, not a U.S. resident.

Under the applicable federal law at the time of Sen. Obama's birth Sen. Obama could not obtain American citizenship except through a process of naturalization. The U.S. Constitution, Article II, Section I requires that Sen. Obama be a "natural born citizen." The Act of March

26, 1790, 1 Stat. 103 is the governing statute on this issue, and declares that "the right of citizenship shall not descend to persons whose fathers have never been resident in the United States. . . ."

For these reasons, pursuant to RCW 29A.68.120, the Secretary of State must set aside those votes cast for this candidate because he was ineligible at the time of his election, and this court should so order pursuant to a Writ of Mandamus issued pursuant to RCW 7.19 et seq.

IV. ARGUMENT

A. Issues Presented

Whether the body or officer had jurisdiction of the subject matter of the determination under review. RCW 7.16.120(1).

Whether the authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination. RCW 7.16.120(2).

Whether, in making the determination, any rule of law affecting the rights of the parties thereto has been violated to the prejudice of the relator. RCW 7.16.120(3)

Whether there was any competent proof of all the facts necessary to be proved, in order to authorize the making of the determination. RCW 7.16.120(4).

Whether the factual determinations were supported by substantial evidence. RCW 7.16.120(5).

B. Summary of Arguments to Issues Presented

i. The body or officer had jurisdiction of the subject matter of the determination under review.

The Secretary has a duty imposed on him by Article III, Section 4 and Section 17 of the Washington State Constitution to faithfully carry out his duties to ensure fair elections. This suit seeks the setting aside of votes cast in the State of Washington pursuant to RCW 29A.68.120.

ii. The authority, conferred upon the body or officer in relation to that subject matter, has been pursued in the mode required by law, in order to authorize it or to make the determination.

The Secretary of State received by registered mail, return receipt requested a follow-up letter from counsel Stephen Pidgeon on September 10, 2008 that included the original letter of August 11, 2008 filing a formal complaint requesting that the Secretary of State investigate the candidacy of Barack Obama on the grounds that his legal name was not Barack Obama, but Barry Soetoro; that he has or had dual citizenship; and that Mr. Obama was not a "natural born American citizen." The pleadings in the Pennsylvania case *Berg v. Obama*, US Dist Ct E.D Pennsylvania, Civ. Act. No. 08-cv-04083 were attached. RCW 29A.68.020(2) requires no exhaustion of administrative remedies.

The legislature has seen fit to grant statutory standing to any registered voter to challenge the election of a candidate on the basis of ineligibility pursuant to RCW 29A.68.020(2). If the candidate did not establish his

eligibility by the time of the election, the Secretary of State has a duty under RCW 29A.68.120 to set aside those votes cast for him, and certify the winner of the election by the most votes cast.

iii. The rule of law affecting the rights of the Plaintiffs has been violated to their prejudice.

The U.S. Constitution, Article II, Section I, establishes an expectation in law that the President of the United States would be a "natural born citizen." Plaintiffs have a right to expect that their candidates for the office of the Presidency would be eligible to hold that office, particularly the office of the commander in chief of the nation. An ineligible candidate is a usurper, and an ensuing illegal Presidency would undermine the entire constitutional fabric of this nation.

iv. There is competent proof of all the facts necessary to be proved, in order to authorize the issuance of a Writ of Mandamus.

Sen. Obama has admitted all of the salient and relevant facts sufficient to determine whether he is a "natural born citizen" or whether his American citizenship requires naturalization. If his citizenship requires naturalization, then he is not a "natural born citizen."

Sen. Obama has never produced any evidence whatsoever that he has naturalized into citizenship. Without naturalization, he is not a citizen of the United States, because he cannot be a "natural born citizen" when his father was a foreign national, and his mother gave birth to him before her 18th birthday, and he was born prior to 1986.

The Secretary of State need make no inquiry, other than to review the facts as alleged by Sen. Obama. The Secretary of State has a statutorily imposed duty to apply the law to the facts to determine a candidate's eligibility. In the case of Sen. Obama, he did not.

v. The factual determinations are supported by substantial evidence.

Sen. Obama has himself claimed the following facts: That he was born to Stanley Ann Dunham, his mother, and Barack Hussein Obama, Sr. his father, in August of 1961. He alleges that his mother was an American citizen, and admits that his father was a Kenyan national. Kenya, at the time of his birth, was a British colony, and under the laws of the United Kingdom at that time, Sen. Obama was a British citizen by birth. Sen. Obama's website claims that Sen. Obama's Kenyan citizenship expired in 1982. Sen. Obama's mother was 18 years old at the time of his birth.

Sen. Obama is ineligible to hold the office of the President on these facts alone, because he cannot be, as a matter of law, a "natural born citizen."

Further, Sen. Obama has not produced anything other than a document of questionable origin that claims to be a Certification of Live Birth from the state of Hawai'i to corroborate his claim that he was born

on U.S. soil. Hawaiian Revised Statute §338-17.8 allows for registration of births which took place outside of the Territory or State of Hawaii.[1]

Sen. Obama could have received such a Certification of Live Birth upon a mere registration. Consequently, such a document is worthless to establish whether Sen. Obama was actually born on U.S. soil. Sen. Obama has blocked the release of his college transcripts from Occidental College, Columbia University and Harvard. He has not produced the passport under which he travelled to Pakistan in 1981. He has failed to produce an actual Certificate of Live Birth from the State of Hawaii prior to his election in Washington. He did not do so because he cannot. The record is absolutely clear. Sen. Obama has failed to provide any evidence of a native birth, of his being a "natural born citizen" of the United States of America, and of his name change from his legal name of Barry Soetoro to Barack Hussein Obama.

C. Remedy Sought

Plaintiffs seek a Writ of Mandamus to order the Secretary of State to set aside the votes cast for Sen. Obama pursuant to RCW 29A.68.120, because Sen. Obama was openly ineligible under the applicable laws leading up to the presidential election in 2008 because he was not a

[1] Hawaiian Revised Statute §338-17.8. Certificates for children born out of State. (a) Upon application of an adult or the legal parents of a minor child, the director of health shall issue a birth certificate for such adult or minor, provided that proof has been submitted to the director of health that the legal parents of such individual *while living without the Territory or State of Hawaii* [emphasis added] had declared the Territory or State of Hawaii as their legal residence for at least one year immediately preceding the birth or adoption of such child.

"natural born citizen," because he has failed to establish that he has naturalized as an American citizen, or that his legal name is Barack Hussein Obama.

D. Jurisdiction and Venue

This case arises under the Washington Constitution, RCW 29A.68.020 and Article III, Section 4 and Section 17 of the Washington State Constitution, RCW 29A.69.020, and U.S. Constitution, Article II, Section I, and presents a state question within this Court's jurisdiction. As this is an action against a state officer for mandamus, jurisdiction and venue are proper in the Supreme Court of the State of Washington pursuant to RAP 16.2.

Plaintiffs are resident of King, Skagit, and Snohomish Counties, Washington.

Defendant Samuel S. Reed is named as the Secretary of State for the State of Washington in that capacity, with an office address of Legislative Office Building, P.O. Box 40220 Olympia, WA 98504-0220.

E. Statement of Applicable Facts

The candidate's parents, Stanley Ann Dunham and Barack Obama, Sr. were married on or about February 2, 1961. Ms. Dunham was at that time believed to be an American citizen. Mr. Obama was a citizen of Kenya. Six months later, Barack Hussein Obama was born. The candidate claims he was born in Honolulu, Hawaii on August 4, 1961, however, the Queen's Medical Center, Kapi'olani Medical Center,

Shriners Hospital, Straub Clinic & Hospital, Hawaii Health Systems Corporation, Kuakini Hospital, Rehabilitation Hospital of the Pacific, St. Francis Healthcare System of Hawaii, Straub Heatlh, Tripler Medical Center, Wahiawa General Hospital, and Wilcox Memorial Hospital claim no record of any birth.

Sen. Obama's paternal grandmother has claimed that she was present at his birth in Mombasa Coastal Hospital in Mombasa, Kenya. Hawaii has no *Certificate* of Live Birth in Hawaii for Sen. Obama, and an article published on June 9, 2008 claims that a research team did locate a Certificate Registering the Birth of Barack Obama, Jr. at a Kenya Maternity Hospital.[2] Following the appointment of the candidate's cousin Raila Odinga to Prime Minister in Kenya, the Kenyan birth records for Barack Hussein Obama are no longer available for review.

Whether or not Sen. Obama was born in Hawaii, at the time of his birth he was a citizen of the United Kingdom by virtue of his father's citizenship. On December 12, 1963, Kenya became independent, and pursuant to the Independence Constitution of Kenya, Sen. Obama became a Kenyan citizen on December 12, 1963.

Pursuant to Section 301(a)(7) of the Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, 235, 8 U.S.C. §1401(b), Matter of S-F-

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[2] Wayne Madsen, Journalist with Online Journal as a contributing writer and published an article on June 9, 2008, stating that a research team went to Mombasa, Kenya, and located a Certificate Registering the birth of Barack Obama, Jr. at a Kenya Maternity Hospital, to his father, a Kenyan citizen and his mother, a U.S. citizen.

and G-, 2 I & N Dec. 182 (B.I.A.) approved (Att'y Gen. 1944), the federal statute in effect at that time, the candidate could not acquire American citizenship, because he was born out of the country and only one parent was an American, and she was disqualified under the Act because she did not have five continuous years of residency following her fourteenth birthday before the child was born, as she was only 18. Sen. Obama could not have become an American citizen except through a naturalization process at the time of his birth.

Stanley Ann Dunham was divorced from the candidate's natural father shortly after the birth of the candidate and following her return to Hawaii where she allegedly had the birth registered. She then met and married an Indonesian national named Lolo Soetoro. In 1967 or 1968, she relocated with Lolo Soetoro and Obama to Indonesia, where she had a second child, whose birth was subsequently registered in Hawaii. With the adoption of Obama by Lolo Soetoro, his birth name was changed as a matter of law from Barack Hussein Obama to Barry Soetoro, and the candidate became an Indonesian national. Again, at this time, American citizenship was not available to Sen. Obama except through naturalization.

In 1971, Stanley Ann Dunham and Barry Soetoro returned to Hawaii. Ms. Dunham did not divorce her second husband Lolo Soetoro until 1980, Hawaii Case No. 1DV00-0-117619.

The candidate then attended colleges in the United States, including Occidental in California, Columbia University, and Harvard

Law School. When he was 20 years old, he traveled to Pakistan, as detailed in his book, *Dreams of my Father*. He did not have an American passport at that time. His own website claims that Sen. Obama's Kenyan citizenship did not expire until 1982. In 1980, Sen. Obama was not an American citizen and his legal name was Barry Soetoro. He has never shown evidence that he has naturalized as an American citizen, and he has never produced any document that indicates a name change from Barry Soetoro to Barack Hussein Obama.

The candidate was at the time he was elected ineligible for American citizenship because: 1) his father was a Kenyan national; 2) his mother was an American national who gave birth before her 19th birthday. The candidate has failed to establish that he was a "natural born" citizen of the United States, that he was a citizen of the United States, and that he was running for office under his legal name.

F. Statement of Grounds

Plaintiffs have statutory grounds for a writ of mandamus pursuant to RCW 7.16.160, to "compel the admission of the Secretary of State to the use and enjoyment of a right to the election of eligible candidates in Washington to which such Plaintiffs, as registered voters in this state, are entitled."

i. Barack Hussein Obama is ineligible for the office of the President of the United States.

Presidential candidate and now President-elect Barack Hussein Obama has not established by any means that he is in fact an American citizen or a natural born American citizen as required under Article II, section I of the United States Constitution, which provides as follows:

> "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"

To establish his being "a natural born citizen," the candidate must establish that he was born of citizens (plural in the original), and that he is not the descendant of a father that was never resident in the United States. The Act of March 26, 1790, 1 Stat. 103. Sen. Obama can establish neither.

To establish that he is an American citizen, the candidate must either prove that he was born in the United States subject to the jurisdiction thereof, pursuant to the Fourteenth Amendment – which he cannot – or prove that he meets the eligibility requirements under a federal naturalization statute. The candidate has produced no oath of allegiance or record of taking any oath of allegiance.

In the event that the candidate was born outside of the fifty United States, and when only one parent is American and the other a foreign national, the law governing his citizenship at the time of his birth was

established by the Nationality Act of 1940, Section 201, 54 Stat. 1137, [3] and the Immigration and Nationality Act of 1952.[4] Section 301(a)(7) of

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[3] "Section 201. The following shall be nationals and citizens of the United States at birth:

"(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had *ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years*, [emphasis added] the other being an alien: Provided, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

(h) The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934."

[4] The Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, 235, 8 U.S. Code Section 1401 (b). (Section 301 of the Act).

"Section 301. (a) The following shall be nationals and citizens of the United States at birth:

"(1) a person born in the United States, and subject to the jurisdiction thereof;

"(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States, who prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

(b) Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a), shall lose his nationality and citizenship unless he shall come to the United States prior to attaining the age of twenty-three years and shall immediately following any such

the Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, 235, 8 U.S.C. §1401(b), Matter of S-F-and G-, 2 I & N Dec. 182 (B.I.A.) approved (Att'y Gen. 1944), required that when a child is born abroad and one parent is a U.S. citizen, that parent would have had to live ten (10) years in the United States, five (5) of which were after the age of fourteen. At the time of Obama's birth, his mother was only eighteen years old, and therefore did not and could not meet the residency requirements to pass to her son U.S. Citizenship. The Act of November 6, 1966 (80 Stat. 1322), amended Section 301 (a) (7) of the Immigration and Nationality Act of 1952 to read as follows:

"Section 301 (a) (7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years."

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coming be continuously physically present in the United State(s) for at least five years: Provided, That such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years.

(c) Subsection (b) shall apply to a person born abroad subsequent to May 24, 1934: Provided, however, That nothing contained in this subsection shall be construed to alter or affect the citizenship of any person born abroad subsequent to May 24, 1934, who, prior to the effective date of this Act, has taken up a residence in the United States before attaining the age of sixteen years, and thereafter, whether before or after the effective date of this Act, complies or shall comply with the residence requirements for retention of citizenship specified in subsections (g) and (h) of section 201 of the Nationality Act of 1940, as amended."

The immigration laws in effect at the time of and as amended five years after Obama's birth simply did not allow for citizenship at birth for children born abroad to a U.S. citizen parent and a non-citizen parent if the citizen parent was under the age of nineteen.

However, in 1986 - Subsec. (g). Pub. L. 99-653 substituted "five years, at least two" for "ten years, at least five" in 8 U.S.C. § 1401(g). This act for the first time allowed Sen. Obama the opportunity to claim American citizenship, if he could show 1) that one of his parents was an American citizen; 2) that she was physically present in the United States or its outlying possessions for a period totaling not less than five years, at least two of which were after attaining the age of fourteen years. 8 U.S.C. § 1401(g). Sen. Obama has failed to establish any of these things.

Even if Sen. Obama could produce such evidence, his reliance on 8 U.S.C. § 1401(g) to establish his citizenship is *prima facie* evidence of naturalization, which automatically disqualifies him under Article II, Section I. Sen. Obama was not a citizen of the United States prior to 1986, and he could not have obtained U.S. citizenship except through naturalization. He is, as a matter of law and based on the evidence openly before us all, not a "natural born citizen."

In *Rogers v. Bellei,* 401 U.S. 815, 823-826 (1971) the Supreme Court gives us the best background on this subject.

"The statutes culminating in § 301 merit review:

"1. The very first Congress, at its Second Session, proceeded to implement its power, under the Constitution's Art. I, § 8, cl. 4, to "establish an uniform Rule of Naturalization" by producing the Act of March 26, 1790, 1 Stat. 103. That statute, among other things, stated, "And the children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural born citizens: *Provided,* That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States. . . ."

"2. A like provision, with only minor changes in phrasing and with the same emphasis on paternal residence, was continuously in effect through three succeeding naturalization Acts. Act of January 29, 1795, § 3, 1 Stat. 415; Act of April 14, 1802, § 4, 2 Stat. 155; Act of February 10, 1855, c. 71, 1, 10 Stat. 604. The only significant difference is that the 1790, 1795, and 1802 Acts read retrospectively, while the 1855 Act reads prospectively as well. *See Weedin v. Chin Bow,* 274 U. S. 657, 274 U. S. 664 (1927), and *Montana v. Kennedy,* 366 U. S. 308, 366 U. S. 311 (1961).

"3. Section 1 of the 1855 Act, with changes unimportant here, was embodied as § 1993 of the Revised Statutes of 1874.

"4. The Act of March 2, 1907, § 6, 34 Stat. 1229, provided that all children born abroad who were citizens under Rev.Stat. § 1993 and who continued to reside elsewhere, in order to receive governmental protection,

were to record at age 18 their intention to become residents and remain citizens of the United States, and were to take the oath of allegiance upon attaining their majority.

"5. The change in § 1993 effected by the Act of May 24, 1934, is reflected in n 2 *supra*. This eliminated the theretofore imposed restriction to the paternal parent and prospectively granted citizenship, subject to a five-year continuous residence requirement and an oath, to the foreign-born child of either a citizen father or a citizen mother.

"6. The Nationality Act of 1940, § 201, 54 Stat. 1138, contained a similar condition directed to a total of five years' residence in the United States between the ages of 13 and 21.

"7. The Immigration and Nationality Act, by its § 407, 66 Stat. 281, became law in December, 1952. Its § 301(b) contains a five years' continuous residence condition (alleviated, with the 1957 amendment, *see* n 1, by an allowance for absences less than 12 months in the aggregate) directed to the period between 14 and 28 years of age.

"The statutory pattern, therefore, developed and expanded from (a) one, established in 1790 and enduring through the Revised Statutes and until 1934, **where citizenship was specifically denied to the child born abroad of a father who never resided in the United States**, [bold added] to (b), in 1907, a governmental protection condition for the child born of an American citizen father and residing abroad, dependent upon a declaration of intent and the oath of allegiance at majority, to (c), in 1934,

a condition, for the child born abroad of one United States citizen parent and one alien parent, of five years' continuous residence in the United States before age 18 and the oath of allegiance within six months after majority, to (d), in 1940, a condition, for that child, of five years' residence here, not necessarily continuous, between ages 13 and 21, to (e), in 1952, a condition, for that child, of five years' continuous residence here, with allowance, between ages 14 and 28." *Rogers v. Bellei,* 401 U.S. 815, 823-826 (1971).

ii. Plaintiffs have standing to challenge the right of Barack Hussein Obama to assume office pursuant to RCW 29A.68.020.

Plaintiffs have standing to challenge the right of the candidate to assume office pursuant to RCW 29A.68.020(2) "Because the person whose right is being contested was not at the time the person was declared elected eligible to that office."

iii. Plaintiffs have a right to the statutory remedy set forth in RCW 29A.68.120.

The candidate has admitted facts publicly that establish his ineligibility to be a candidate for the office of the President prior to the national general election held on November 4, 2008. The candidate cannot establish that he is a "natural born citizen," he has not established that he is an American citizen, and he has not established that his legal name is Barack Hussein Obama. The candidate was therefore ineligible,

and the Secretary of State has a duty to set aside those votes cast for him pursuant to RCW 29A.68.120.

Sen. Obama is ineligible to hold the office of the Presidency on facts he has already admitted. Assuming he could prove the criteria sufficient to warrant citizenship under 8 U.S.C. § 1401(g), such a claim of citizenship is a citizenship established by means of naturalization through statute.

iv. The Rule of Law demands that the Secretary of State set aside the votes cast for Barack Hussein Obama, and a Writ of Mandamus ordering the Secretary is appropriate.

Article II, Section I requires that Sen. Obama be a "natural born citizen" of the United States. He is not. The Secretary of State need not make any inquiry other than to review the facts as openly admitted by Sen. Obama concerning his birth. The Secretary does have a duty imposed on him by Article III, Section 4 and Section 17 of the Washington State Constitution to faithfully carry out his duties to ensure fair elections by applying applicable law to the facts that can be ascertained at that time.

Plaintiffs have statutory standing to any registered voter to challenge the election of a candidate on the basis of ineligibility pursuant to RCW 29A.68.020(2). If the candidate did not establish his eligibility by the time of the election, the Secretary of State has a duty under RCW 29A.68.120 to set aside those votes cast for him, and certify the winner of the election by the most votes cast.

V. CONCLUSION

For these reasons, this court should issue a Writ of Mandamus and order the Secretary of State to immediately set aside those votes cast for Barack Hussein Obama.

This Amendment dated December 7, 2008.

Respectfully submitted by:

____

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CERTIFICATE OF SERVICE BY MAIL

I, Stephen Pidgeon, now certify that I cause a true copy of the foregoing to be served upon the following:

Secretary of State Samuel Reed	Attorney General Rob McKenna
416 Sid Snyder Avenue	Washington State Attorney General
Legislative Office Building	1125 Washington St POB 40100
Olympia, Washington 98504	Olympia, Washington 98504

By United States Express Mail, Return Receipt Requested, postage prepaid, this 8th day of December, 2008.

____

STEPHEN PIDGEON, WSBA#25265