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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

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ALAN KEYES, PH.D., ET AL.,)
)
Plaintiffs,)
)
vs.) No. SACV 09-0082 DOC
) Item No. 3
BARACK H. OBAMA, et al.,)
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Hearing on Motions
Santa Ana, California
Monday, October 5, 2009

Debbie Gale, CSR 9472, RPR
Federal Official Court Reporter
United States District Court
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09cv0082 Obama 2009-10-05 Item 3

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1 **SANTA ANA, CALIFORNIA, MONDAY, OCTOBER 5, 2009**

2 **Item No. 3**

3 (8:38 a.m.)

08:38 4 THE COURT: All right. Counsel, let me call to
08:38 5 order the matter of Captain Pamela Barnett, et al. versus
08:38 6 Barack Obama, et al.

08:38 7 Counsel, will you make your appearances, please.

08:38 8 MS. TAITZ: Yes. Orly Taitz for all the
08:38 9 plaintiffs aside from two.

08:38 10 THE COURT: Counsel.

08:38 11 MR. WEST: Good morning, Your Honor. Assistant
08:38 12 United States Attorney, Roger West, for the defendants.
08:38 13 With me today is co-counsel David DeJute, Assistant U.S.
08:38 14 Attorney.

08:38 15 MR. DeJUTE: Hello.

08:38 16 MR. WEST: And also, with us today is Mr. Eric
08:38 17 Soskin, who is a trial attorney with the Department of
08:39 18 Justice, Washington, Your Honor.

08:39 19 THE COURT: Where is Mr. Kleep?

08:39 20 MR. WEST: I haven't seen him, Your Honor.

08:39 21 THE COURT: Is he in another room?

08:39 22 MR. WEST: I don't know, Your Honor. I haven't
08:39 23 seen him.

08:39 24 MS. TAITZ: I haven't seen him.

08:39 25 THE COURT: Is 45 minutes acceptable to both

08:39 1 sides? I think that's an adequate time, since I read your
08:39 2 papers.

08:39 3 MR. WEST: Yes, Your Honor. Might I just bring up
08:39 4 one housekeeping matter? Inasmuch as the surreply -- leave
08:39 5 was given to file a surreply, and it was filed on Thursday
08:39 6 evening. I was out of town. Mr. DeJute, able co-counsel,
08:39 7 has done the research on that, and I would ask permission
08:39 8 for him to argue that part.

08:39 9 THE COURT: Certainly. But you have 45 minutes.
08:39 10 However you want to divide that is your decision.

08:39 11 MR. WEST: Thank you, Your Honor.

08:39 12 THE COURT: All right. 45 minutes is starting,
08:39 13 counsel on behalf of the government. And then I'll have
08:39 14 some questions of both of you.

08:39 15 MR. WEST: Yes, Your Honor.

08:39 16 Just very briefly, I do not intend to go back over
08:39 17 the briefing that we've done in the case. I know Your
08:40 18 Honor's read it, and it's not my habit to reiterate things
08:40 19 that are in the brief.

08:40 20 What I'd like to do right now, however, is just
08:40 21 focus briefly on the policy issues in this case, the
08:40 22 questions that really underlie why the government has taken
08:40 23 the position that it has in the case.

08:40 24 Your Honor, if plaintiffs had their way in this
08:40 25 case and this case were not dismissed, that would mean that

08:40 1 anyone with a political agenda and a filing fee could file
08:40 2 an action in any of the 93 United States District Courts in
08:40 3 this United States seeking to contest the qualifications and
08:40 4 the right to continue in office of any sitting president.

08:40 5 That, Your Honor, I submit, would render the very
08:40 6 delicate balance that the founding fathers created in the
08:40 7 Constitution, in the separation of powers doctrine and in
08:41 8 the doctrine of balanced -- checks and balances -- that
08:41 9 would do tremendous damage to that.

08:41 10 Imagine the specter -- and in this case it's
08:41 11 already happened. The President has been sued in a number
08:41 12 of districts.

08:41 13 THE COURT: Which districts?

08:41 14 MR. WEST: The Middle District of Georgia. I
08:41 15 believe the Western District of Texas -- at least those two
08:41 16 I know of. I believe there are several others as well. I
08:41 17 believe in Pennsylvania in the *Berg* case, B-E-R-G, case.

08:41 18 In any event -- and there may be others. And the
08:41 19 same issue is being raised in every case. If the President
08:41 20 were forced to go through pretrial and discovery and trial,
08:41 21 imagine what would happen to his ability to function as the
08:41 22 chief executive officer of the United States of America.

08:41 23 Moreover, what would happen if, for example, some
08:41 24 judge in one district were to decide that the President is
08:42 25 not qualified or did not meet the qualifications to be

08:42 1 President, and another judge faced with the same issue in
08:42 2 another district were to decide, yes, he is qualified.

08:42 3 What would we do then? We would have appeals.

08:42 4 In the meantime, the President's ability, for
08:42 5 example, to conduct foreign policy would be severely
08:42 6 damaged.

08:42 7 I mean, imagine the prospect of going into
08:42 8 negotiations, for example, over nuclear nonproliferation or
08:42 9 some other extremely delicate matter with our foreign
08:42 10 adversaries and allies looking at the President saying,
08:42 11 "Wait a minute, I just heard that a district judge in your
08:42 12 country decided that you're not fit to be President. Why
08:42 13 should I engage you in negotiations?" Imagine what it would
08:42 14 do to the ability of the President -- and this is any
08:42 15 President. We're not just talking about the current
08:42 16 incumbent President. This is an attack on the presidency
08:43 17 itself.

08:43 18 Imagine the damage that would accrue if matters
08:43 19 such as these could be litigated in courts. The damage that
08:43 20 could accrue to the President's ability to pass his domestic
08:43 21 agenda. The President of the United States is the only
08:43 22 officer of the United States who is elected through the vote
08:43 23 of all of the people of the United States. He's not -- it's
08:43 24 not like a Congressman or a Senator. He doesn't have just
08:43 25 one constituency. His constituency is the people of the

08:43 1 United States.

08:43 2 I submit that the constitutional -- the textual
08:43 3 commitment in the Constitution to the questions which the
08:43 4 plaintiffs in this case seek to raise renders it mandatory,
08:43 5 in my view, that these matters be considered nonjusticiable.
08:43 6 That the remedies, if any, which these plaintiffs have and
08:43 7 other plaintiffs who wish to challenge the fitness and
08:43 8 qualifications of a President to serve in office -- those
08:44 9 are committed to the legislative branch, to the Congress,
08:44 10 and not to courts, and for very good reasons.

08:44 11 THE COURT: Only to the Congress?

08:44 12 MR. WEST: Yes, Your Honor.

08:44 13 THE COURT: And then in your argument you stated
08:44 14 that minimally if the Court disagreed, it should be
08:44 15 transferred to the D.C. District.

08:44 16 MR. WEST: No, Your Honor. The *quo warranto* --
08:44 17 the plaintiffs have made the argument that the *quo warranto*
08:44 18 aspects of this case should be transferred to the D.C.
08:44 19 District. We have not suggested that that be transferred.

08:44 20 If the -- if, in fact, they wish to bring a *quo*
08:44 21 *warranto* action, they should bring an original one in the
08:44 22 D.C. District.

08:44 23 THE COURT: Thank you.

08:44 24 MR. WEST: And I'll submit the matter for any
08:44 25 other questions which the Court may have.

08:44 1 THE COURT: I going to have a couple, but not now.

08:44 2 Counsel.

08:44 3 MR. DeJUTE: Thank you, Your Honor.

08:44 4 THE COURT: Once again, would you make your
08:44 5 appearance for the record. I know who you are, but I want
08:44 6 my record to know who you are.

08:44 7 MR. DeJUTE: Good morning, Your Honor. David
08:44 8 DeJute, Assistant United States Attorney for the defendants.

08:45 9 Just briefly, Your Honor. With respect to the
08:45 10 surreply, it makes essentially two points. The one is that
08:45 11 the reserved rights of the Ninth Amendment entitle these
08:45 12 plaintiffs to come before this Court. And without going
08:45 13 through the historical analysis, which is very interesting,
08:45 14 of the law of nations and treaties that were extant in the
08:45 15 1750s and so on, plaintiffs concede that the Ninth Amendment
08:45 16 has to do with unenumerated rights. They also concede, as
08:45 17 they must, that the Constitution is a written document.
08:45 18 That written document, as Your Honor just mentioned, gives
08:45 19 to Congress and to no one else the ability to remove a
08:45 20 sitting President from office.

08:45 21 The Ninth Amendment simply is not a source of
08:45 22 rights even as a matter of theory when that written document
08:45 23 already enumerates those rights to a different coordinate
08:45 24 branch of government.

08:45 25 The only other point that they make in their

08:45 1 surreply is with respect to the FOIA, or Freedom of
08:46 2 Information Act, claims. And their argument is essentially
08:46 3 that this Court should disregard the fact that they haven't
08:46 4 been filed properly and should use its power to
08:46 5 constructively construe that because they've been attempting
08:46 6 to get information, then this Court should construe those as
08:46 7 proper FOIA requests. It simply is not the law that they
08:46 8 can circumvent the jurisdictional requirements of venue and
08:46 9 district to do their FOIA requests in a roundabout way.

08:46 10 They did not file their FOIA requests in a proper
08:46 11 manner, and they should be held to have those FOIA requests
08:46 12 dismissed and re-file or make them; and if the final agency
08:46 13 action is something with which they disagree, then they can
08:46 14 file the appropriate FOIA action in the appropriate district
08:46 15 at that time.

08:46 16 Thank you, Your Honor.

08:47 17 THE COURT: Thank you.

08:47 18 Counsel, your argument concerning standing, I'd
08:47 19 like to hear it, please. You stated that that was the crux
08:47 20 of the issue, that the Court didn't need to go any further,
08:47 21 so I'd like you to repeat your argument.

08:47 22 MR. WEST: Well, I believe the political question
08:47 23 is clearly also present. But with respect to standing,
08:47 24 Your Honor, our argument is that plaintiffs cannot establish
08:47 25 the requisite injury in fact to establish standing in this

08:47 1 case. No plaintiff in this case can establish a
08:47 2 particularized harm as to him or her sufficient to vest them
08:47 3 with what is traditionally known as standing to bring an
08:47 4 action in the U.S. District Court.

08:47 5 They -- no plaintiff in this case has any greater
08:47 6 standing than a taxpayer standing. You know, try as they
08:47 7 might, they cannot particularize an injury to them. In
08:47 8 fact, they cannot even -- in certain cases they cannot even
08:48 9 identify an injury itself.

08:48 10 Moreover, with the respect to the question of
08:48 11 redressability, which is another aspect, another prong of
08:48 12 the standing question, as I've stated before, we do not
08:48 13 believe that any of the questions in this case are
08:48 14 justiciable, and therefore, there's no redressability --
08:48 15 there's nothing that this Court can redress.

08:48 16 And that, in essence, is our standing argument.
08:48 17 No injury in fact and no redressability.

08:48 18 THE COURT: Okay. Have you concluded your
08:48 19 arguments? Are you satisfied?

08:48 20 MR. DeJUTE: Yes, sir.

08:48 21 THE COURT: Counsel, are you satisfied?

08:48 22 MR. SOSKIN: Yes, sir.

08:48 23 THE COURT: Do you have anything you would like to
08:48 24 say?

08:48 25 MR. SOSKIN: No, Your Honor. I'm just here to

08:48 1 advise and assist these gentlemen in any way possible.

08:48 2 THE COURT: Counsel, are you satisfied?

08:48 3 MR. WEST: Yes, Your Honor. Thank you.

08:48 4 THE COURT: Before I turn to Ms. Taitz for a
08:48 5 moment, I just have one or two questions for you.

08:49 6 This idea of political question is an interesting
08:49 7 one. I'd like you to walk me through the process, if you
08:49 8 would, of how that would actually take place. In other
08:49 9 words, if, in fact, Ms. Taitz was correct, or better yet,
08:49 10 let's assume that Arnold Schwarzenegger was running for
08:49 11 President. He was born in Austria, apparently cannot become
08:49 12 or run as a candidate, and he now decides to declare for the
08:49 13 Presidency of the United States.

08:49 14 In this belief on your part that Congress is the
08:49 15 deciding branch of government, I want you to assume that
08:49 16 that Congress is a Republican Congress for a moment and
08:49 17 explain to me and walk me through -- and I'm going to
08:49 18 require you to do that. We can spend all day or night until
08:50 19 you do. Walk me through how that works.

08:50 20 MR. WEST: First of all, Your Honor, you're
08:50 21 talking about a candidate for President.

08:50 22 THE COURT: I'm going to talk about both
08:50 23 eventually, so I've got plenty of time. Let's just start
08:50 24 with Arnold Schwarzenegger. I'm going to suggest to you the
08:50 25 Courts are going to have to intervene at some time in what

08:50 1 you perceive to be a political question and stop

08:50 2 Schwarzenegger from running for President.

08:50 3 MR. WEST: Well, I believe, your Honor, the
08:50 4 question of whether a person is properly qualified as a
08:50 5 candidate is a different breed of cat altogether from
08:50 6 someone who is a sitting President whom the plaintiffs are
08:50 7 seeking to remove from office.

08:50 8 THE COURT: Are you going to answer my question?

08:50 9 MR. WEST: Yes. I believe that the Courts could
08:50 10 have some jurisdiction over the question of whether a
08:50 11 candidate is qualified to be on the ballot.

08:50 12 THE COURT: Do you agree, Counsel?

08:50 13 MR. DeJUTE: I do agree, Your Honor.

08:50 14 THE COURT: Counsel, do you agree?

08:50 15 MR. SOSKIN: I don't believe we need to take that
08:50 16 position at this time, but it's conceivable that there would
08:51 17 be standing in a scenario in which such a case could be
08:51 18 adjudicated.

08:51 19 THE COURT: So in what might be commonly called a
08:51 20 political question, because that's a broad word, at least in
08:51 21 that hypothetical, the Courts might be the intervening
08:51 22 party. We can just say might.

08:51 23 Okay. Now, I want to take this situation. I want
08:51 24 you to walk me through, assuming that this is a Democratic
08:51 25 Congress, the process wherein Congress would take this issue

08:51 1 and decide that President Obama did not meet the
08:51 2 constitutional mandates. How would that work?

08:51 3 MR. WEST: I believe a bill could be introduced in
08:51 4 the Congress to -- probably to call for an investigation
08:51 5 into the issue of whether he is qualified to be President.
08:51 6 There are provisions within the Constitution which call
08:51 7 for -- for instance, the 25th Amendment, which calls for --
08:51 8 which has a set schedule, if you will, or a set of
08:52 9 procedures for questioning whether a President is capable of
08:52 10 remaining in office or whether he should be removed either
08:52 11 temporarily or permanently.

08:52 12 In addition, as we point out in our papers, under
08:52 13 the *Nixon* case, the question of impeachment, if we were to
08:52 14 talk about impeachment here -- and I don't really know where
08:52 15 the Court is going, so I'm giving you the lay of the land as
08:52 16 I see it. And I'm not suggesting in any way, shape, or form
08:52 17 that impeachment is appropriate in this case. But let me
08:52 18 just say this: That the *Nixon* case makes it clear, both the
08:52 19 D.C. Circuit and the Supreme Court, that the question of
08:52 20 impeachment is not a question which Courts can involve
08:52 21 themselves in.

08:52 22 That's one of the reasons why we are making the
08:52 23 argument we're making, because the Constitution is clear.
08:52 24 The only two uses of the words "sole," "sole power" anywhere
08:52 25 in the Constitution are where Congress -- where the founding

08:53 1 fathers gave to Congress the sole power to impeach and the
08:53 2 sole power to try impeachments.

08:53 3 So if you're talking about the impeachment
08:53 4 procedure, the articles of impeachment are drawn up in the
08:53 5 House, and the impeachment is tried in the Senate.

08:53 6 THE COURT: Now, I'm going to come back to my
08:53 7 question. I want you to walk me through the process in this
08:53 8 particular case. Is it impeachment?

08:53 9 MR. WEST: I don't know.

08:53 10 THE COURT: That's my belief also, that we don't
08:53 11 know.

08:53 12 MR. WEST: Right. I believe it would depend upon
08:53 13 how Congress wished to address it, how Congress wished to
08:53 14 view it. And I think that if these plaintiffs believe that
08:53 15 they have some claim that Barack Obama's birth certificate
08:53 16 is forged, let them go through their congressman. It's the
08:53 17 only workable way, Your Honor. It's the way the founding
08:53 18 fathers intended.

08:53 19 THE COURT: I understand. I'm going to come back
08:53 20 to my question because I'm still unclear about what you
08:54 21 said.

08:54 22 I heard you say that you didn't know the
08:54 23 methodology at the present time by which the legislative
08:54 24 branch, Congress, would proceed. That it could be
08:54 25 impeachment, or I also heard the implication that there was

08:54 1 no process in place, and that Congress might enact a process
08:54 2 in this peculiar situation.

08:54 3 MR. WEST: Well, I believe we have the 25th
08:54 4 Amendment, Your Honor, which sets forth a procedure. For
08:54 5 example, the contemplation, I believe, in the 25th Amendment
08:54 6 is a situation where the President is incapacitated for some
08:54 7 reason. I believe that this could be a species of
08:54 8 incapacitation if they want to try to establish that Barack
08:54 9 Obama was not a United States citizen. The procedures
08:54 10 outlined in the 25th Amendment I believe would be the
08:54 11 procedures that would be utilized.

08:54 12 THE COURT: Do you agree, Counsel?

08:54 13 MR. DeJUTE: I do agree, Your Honor. And I would
08:54 14 just add that, you know, the reason we don't know what the
08:55 15 procedure is, is because the plaintiffs through no fault
08:55 16 have been somewhat unclear. And it either is impeachment or
08:55 17 it's not impeachment, it seems to me. "Impeachment" simply
08:55 18 meaning, in the colloquial way, removal from office. So
08:55 19 they are seeking the President's removal from office, or
08:55 20 they are not.

08:55 21 If they are seeking the President's removal from
08:55 22 office, not as a candidate, but as someone whom the electors
08:55 23 have sworn in and the Chief Justice twice swore into office,
08:55 24 then it seems to me the only way you can remove a sitting
08:55 25 President from office is through the impeachment procedures.

08:55 1 And as Mr. West has indicated, that is entirely the province
08:55 2 of Congress.

08:55 3 If they are not seeking removal, if they are
08:55 4 seeking something else, then there's the whole doctrine of
08:55 5 this Court not being willing to issue nugatory orders.

08:56 6 If the sole power to remove someone is through
08:56 7 impeachment, then if they're seeking anything other than
08:56 8 that, then, at the end of this trial, when this Court were
08:56 9 to declare, at their best case scenario -- I'm not
08:56 10 suggesting this is in any way factual -- that somehow the
08:56 11 President is ineligible for office, this Court would be
08:56 12 without power to enforce -- no Court is in the business of
08:56 13 giving advisory judgments, where the only thing that they
08:56 14 could do with it was to pass it on to Congress and say do
08:56 15 what they will with this.

08:56 16 So it's either impeachment, where they do not have
08:56 17 jurisdiction, or it is an advisory opinion, in which this
08:56 18 Court should not issue one.

08:56 19 THE COURT: Lastly, with the Military Commission
08:56 20 Act, or with numerous iterations, Congress sought to make
08:56 21 certain that this disparity -- in other words, 600 federal
08:56 22 judges in the United States, 93 districts, the specter could
08:56 23 be that the parties were picking a forum, either a liberal
08:57 24 or conservative forum, for their own uses, whichever party,
08:57 25 whichever entity is involved. I hear that argument very

08:57 1 clearly. Congress sought to cause uniformity in the
08:57 2 Military Commission Act, et cetera, by placing that within
08:57 3 the purview of the D.C. Circuit. Now, I understand a
08:57 4 *quo warranto* going to the D.C. Circuit. But is that your
08:57 5 position also, that if there ever was a resolution by a
08:57 6 Court, that it should be in the D.C. Circuit?

08:57 7 MR. WEST: I don't believe that *quo warranto* is
08:57 8 applicable to the President of the United States. I would
08:57 9 not concede that.

08:57 10 However, if it were, the only statute that we know
08:57 11 of that would cover this kind of a situation would be the
08:57 12 D.C. statute. But I think that we're not conceding at all
08:57 13 that *quo warranto* would apply to the President of the
08:57 14 United States.

08:57 15 THE COURT: I'm not asking you to take that
08:57 16 position either. I just recognize the value of your
08:57 17 argument and how discomfoting it is that parties could go
08:58 18 across the nation and simply pick what they perceive, by
08:58 19 either party's choice, a liberal or conservative district by
08:58 20 reputation, which doesn't mean that we are on the bench. We
08:58 21 cast away politics when we come to the bench, as you know.

08:58 22 But still there's a perception different parts of
08:58 23 the country are more liberal or conservative than others,
08:58 24 and the question I've always had is whether Congress, with
08:58 25 the separation of powers, had the ability literally under

08:58 1 the Military Commission Act to start focusing the Courts and
08:58 2 directing the Courts to hear a motion or decide these issues
08:58 3 in one jurisdiction and if that wasn't violative of the
08:58 4 separation of powers in and of itself. But that's not an
08:58 5 issue before us.

08:58 6 Are you satisfied with your argument for the time
08:58 7 being?

08:58 8 MR. DeJUTE: I am, Your Honor.

08:58 9 THE COURT: (To Mr. Soskin:) And you're, once
08:58 10 again, taking no position on anything?

08:58 11 MR. SOSKIN: Mr. West and Mr. DeJute have ably
08:58 12 stated the position.

08:58 13 THE COURT: (To Mr. West:) Counsel, are you
08:58 14 satisfied?

08:58 15 MR. WEST: Yes, Your Honor. I have very able
08:58 16 assistance from Mr. DeJute. Thank you.

08:59 17 THE COURT: All right. Ms. Taitz, the lectern's
08:59 18 yours for 45 minutes.

08:59 19 MS. TAITZ: Well, Your Honor, I actually can
08:59 20 answer all those questions that you just asked. And I would
08:59 21 start by saying that impeachment might not be a proper
08:59 22 proceeding, because impeachment is a proceeding for someone
08:59 23 who is a legitimate President. If this Court will find that
08:59 24 indeed Mr. Obama was not legitimate for presidency due to
08:59 25 the fact that he did not fulfill the requirements of

08:59 1 Article II, Section 1, of the Constitution, then not only he
08:59 2 didn't qualify for Presidency, he didn't qualify for
08:59 3 impeachment. And that's why we have *quo warranto*. And we
08:59 4 do have *quo warranto* statutes both in the District of
08:59 5 Columbia and the Supreme Court.

09:00 6 THE COURT: Now, just a moment.

09:00 7 And there's where counsel's argued that if you're
09:00 8 going to file *quo warranto*, you should be in the District of
09:00 9 Columbia.

09:00 10 MS. TAITZ: Well, Your Honor --

09:00 11 THE COURT: I think you concede that in your
09:00 12 papers.

09:00 13 MS. TAITZ: No, actually, I brought with me
09:00 14 several cases that state that California choice of law would
09:00 15 require, under the government interest test, for you,
09:00 16 Your Honor, to use a home statute for the defendants when
09:00 17 the defendants are providing interest of the government.

09:00 18 Who are the defendants here? We have the
09:00 19 President, the Vice President, Secretary of State. Clearly,
09:00 20 these other defendants that would be under -- that would be
09:00 21 the proper defendants of -- under the governmental interest
09:01 22 test. And as such, Your Honor, not only you would be
09:01 23 allowed to use a *quo warranto* statutes, you would be
09:01 24 mandated to use this statute, *quo warranto* statute of the
09:01 25 District of Columbia, as applied to the defendants.

09:01 1 Why do we have this provision? Specifically
09:01 2 because our interest is the interest of the United States of
09:01 3 America and its government. Not individuals that happen to
09:01 4 be in the position. Our interest is to make sure that those
09:01 5 individuals are legitimate for the position, and therefore,
09:01 6 I would expect the Department of Justice not be an
09:01 7 adversary, because as a matter of fact, they came in this
09:01 8 case, July the 13th, as an intervening party representing
09:01 9 United States of America, stating that if legitimacy of the
09:02 10 President is at stake, the Department of Justice needs to
09:02 11 represent the United States of America as an interest in
09:02 12 parties.

09:02 13 THE COURT: All right. Well, I know they're a
09:02 14 proper party. I want you now to address the Court
09:02 15 concerning standing. I want to hear about standing.

09:02 16 MS. TAITZ: Absolutely, Your Honor.

09:02 17 Well, actually, before I go into standing, I
09:02 18 wanted to kind of go straight for the jugular and respond to
09:02 19 what Mr. West just mentioned.

09:02 20 And he started -- I mean, his main argument, and I
09:02 21 just want to address it off the bat, is that any plaintiff
09:02 22 with a political agenda can file, and a filing fee -- and I
09:02 23 know about all those filing fees. I've been filing them and
09:02 24 paying them -- will be able to bring a legal action against
09:02 25 the sitting President.

09:02 1 Well, Mr. West has misrepresented the case. This
09:03 2 is not a case of a political agenda. This is a legal
09:03 3 question of constitutional law. And the question is whether
09:03 4 Mr. Obama is legitimate for presidency or not. There is
09:03 5 nothing political about it. I didn't bring a case saying
09:03 6 whether we should or shouldn't bomb Iran or their nuclear
09:03 7 facilities. I didn't bring a question whether we should or
09:03 8 should not adopt health care, even though as a health
09:03 9 professional I have strong feelings about that. No. I
09:03 10 brought a question about legitimacy for presidency. And,
09:03 11 therefore, the political agenda argument just falls by the
09:03 12 wayside. It's just irrelevant in this particular case.

09:03 13 Now, another issue I would like to address, and
09:03 14 that's what Mr. West brought at the very beginning, his main
09:04 15 argument, that there were a number of cases around the
09:04 16 country.

09:04 17 However, Your Honor, there was never *res judicata*.
09:04 18 None of those questions were ever tried on the merits. And
09:04 19 I do hope that it would be that you will have the bravery
09:04 20 to -- to try this case on the merits as we've been bringing
09:04 21 those cases for a year.

09:04 22 They've been dismissed on technicalities, on the
09:04 23 issues of jurisdiction or standing. It was never brought on
09:04 24 standing.

09:04 25 The closest I came was in the state of Georgia.

09:04 1 The first was the case of Major Cook. We did have TRO,
09:04 2 temporary restraining order, filed. But what happened in
09:04 3 that case is that Judge Land dismissed it, not because the
09:04 4 case was tried on the merits, but because the Department of
09:05 5 Defense has revoked Major Cook's deployment orders.

09:05 6 When I brought the case to Georgia stating that my
09:05 7 client, Major Cook, cannot in good conscience be deployed to
09:05 8 Afghanistan due to the fact that he does not know whether
09:05 9 the orders given by the President are legitimate orders,
09:05 10 instead of bringing proper evidence, proper documents
09:05 11 showing that the President is indeed eligible and the orders
09:05 12 are lawful, the Department of Defense has revoked his
09:05 13 orders. They stated you -- you no longer have to go to
09:05 14 Afghanistan; go home to your wife.

09:05 15 And that's why Judge Land has dismissed the case
09:05 16 of Major Cook. If anything, that case has shown to the
09:06 17 whole world that there is a serious problem with legitimacy
09:06 18 of Mr. Obama. Why else would the Department of Defense
09:06 19 revoke the deployment orders? And by this, undermine the
09:06 20 whole U.S. military?

09:06 21 The only reasonable explanation is that the top
09:06 22 brass of U.S. military knew that they don't have proper
09:06 23 documentation, and that's why they revoked the orders.

09:06 24 Now, the second case where we also had a hearing,
09:06 25 again was never decided on the merits. If anything, that

09:06 1 case actually provided standing, as Judge Land heard the
09:06 2 case. And in that case, my client, Captain Connie Rhodes,
09:06 3 M.D., was stating similarly that she cannot in good
09:06 4 conscious go to Iran -- to Iraq -- be deployed to Iraq under
09:07 5 the orders of Commander-in-Chief specifically because she
09:07 6 has grave doubts to his legitimacy.

09:07 7 And on the stand she argued that she is a medical
09:07 8 doctor who went through training in Illinois, any place --
09:07 9 state of Illinois, and as a doctor, she knows that no person
09:07 10 can be born in this country without having a proper hospital
09:07 11 birthing file, a proper hospital birth certificate that
09:07 12 would show the name of the hospital, the name of an
09:07 13 attending physician and signatures. She is an attending
09:07 14 physician. She had grave concerns.

09:07 15 And in that case, Judge Land decided --

09:07 16 THE COURT: Did she refuse to serve?

09:07 17 MS. TAITZ: Um, well, what happened in her case --
09:08 18 and I brought --

09:08 19 THE COURT: Did she refuse to serve?

09:08 20 MS. TAITZ: At the end she agreed, but it was
09:08 21 under coercion. It was under duress. I have brought her
09:08 22 e-mails because in order to -- to address this issue, I have
09:08 23 asked -- after she agreed not to proceed with the case and I
09:08 24 was threatened by Judge Land if I bring yet again another
09:08 25 case about legitimacy I will be sanctioned. And I said,

09:08 1 here you go, I'll bring it right away. I'll bring it yet
09:08 2 again. Go ahead, sanction me. And I would like to -- leave
09:08 3 of court not to be the counsel on the case as she did end up
09:08 4 deploying to Iraq. But I was given leave of court --

09:08 5 THE COURT: Is Lieutenant Freese going to deploy
09:08 6 if given orders?

09:09 7 MS. TAITZ: Pardon?

09:09 8 THE COURT: Is Lieutenant Freese going to deploy
09:09 9 if given orders?

09:09 10 MS. TAITZ: Well, Lieutenant Freese is a plaintiff
09:09 11 in this case.

09:09 12 THE COURT: Is Lieutenant Freese going to deploy
09:09 13 if given orders?

09:09 14 MS. TAITZ: I don't know. I cannot state for
09:09 15 sure, Your Honor.

09:09 16 THE COURT: It's troubling. It's troubling, I
09:09 17 would think, to this Court and any Court to have the specter
09:09 18 of what I believe is probably the most patriot group of
09:09 19 individuals in our country, those who serve in the military,
09:09 20 to decide to serve by virtue of who the President is or is
09:09 21 not. And until either resolved by Congress or the Courts or
09:09 22 never resolved, that's the Commander-in-Chief.

09:09 23 It's difficult because I think anybody who served
09:09 24 in the military, if I recall correctly, took an oath to
09:09 25 serve the Constitution and to serve the United States. Some

09:10 1 may have served, as myself, under President Johnson in
09:10 2 conflict and also under President Nixon, and I can never
09:10 3 recall questioning who the President was. I only had one
09:10 4 country, and I think most people in the military believe
09:10 5 that. Therefore, when we get to standing eventually, which
09:10 6 I've asked you to address.

09:10 7 MS. TAITZ: Yes.

09:10 8 THE COURT: It's speculative on this Court's part
09:10 9 at the present time until I hear your argument, because
09:10 10 Lieutenant Freese takes the position that he's troubled by
09:10 11 this, but in the motion that you've brought, I don't see at
09:10 12 the present time any harm, any actual harm. There's been no
09:10 13 refusal to serve. And I'm not even certain if orders have
09:10 14 been cut for overseas military duty, which is why I've asked
09:10 15 you to address the issue of standing.

09:10 16 MS. TAITZ: Yes, Your Honor. Going to the issue
09:10 17 of standing, there are several layers of standing that I
09:10 18 would like to address. And the first one, it's as you have
09:11 19 mentioned already. It's standing of ones that took an oath
09:11 20 to uphold the Constitution of this nation. And as a matter
09:11 21 of fact, as we speak, there is a case going on in the
09:11 22 District of Columbia, and I'm sure you're aware of it --
09:11 23 it's a case of David Rodearmel v. Hillary Clinton, where the
09:11 24 only standing there is the standing of a governmental
09:11 25 official to uphold his oath, and whereby, according to

09:11 1 Mr. Rodearmel, according to his oath, he cannot serve under
09:11 2 Hillary Clinton because there is a constitutional violation.

09:11 3 And the three district judge panel has found
09:11 4 sufficient standing to go ahead with this case. In case at
09:12 5 hand, majority of plaintiffs are plaintiffs that took an
09:12 6 oath to uphold the Constitution of this nation. I believe
09:12 7 40 out of 48 took such an oath. Majority of them are
09:12 8 members of U.S. military, and several State representatives,
09:12 9 one State senator.

09:12 10 And the argument that Mr. West has brought was,
09:12 11 well, your clients continue their life as they did before.
09:12 12 Well, so did Mr. Rodearmel. He works in the State
09:12 13 Department. He gets up in the morning, he goes to the State
09:12 14 Department every day. However, there is this pesky issue of
09:12 15 the Constitution of the United States of America that needs
09:13 16 to be upheld.

09:13 17 And clearly, if three judges in District of
09:13 18 Columbia found sufficient standing to proceed with this
09:13 19 case, and it is being decided right now, there is no reason
09:13 20 for not one but over 40 plaintiffs in this case not to have
09:13 21 standing based on the oath of office that they took.

09:13 22 And we do have perfect precedence for that. We
09:13 23 have *Allen v. Board of Education* and *Clark v. United States*
09:13 24 *of America*.

09:13 25 THE COURT: All right. I'm going to break the

09:13 1 standing issue down and have you focus on it.

09:13 2 Your complaint states that "All inactive or
09:13 3 military personnel have standing to challenge and demand
09:13 4 clear and convincing proof because they are subject to
09:13 5 recall service at any time and subject to the *de facto* chain
09:13 6 of command." End of quote.

09:14 7 In order for Article III standing to be met, the
09:14 8 Supreme Court requires that the injury be both actual and
09:14 9 imminent, not conjectural or hypothetical, and that the
09:14 10 injury must be likely, not merely speculative. And that's
09:14 11 the *Lujan* case.

09:14 12 Now, the plaintiffs, at least in this category
09:14 13 concerning standing, are currently inactive in the military,
09:14 14 and are therefore not currently subject to any orders from
09:14 15 the Commander-in-Chief, President Obama; therefore, it
09:14 16 appears you're basing your standing on the possibility that
09:14 17 they could be called back to service at any time and would
09:14 18 at that point have to follow the Commander-in-Chief's
09:14 19 commands, which it appears that plaintiff believes would be
09:14 20 injurious because they would have to follow the commands of
09:14 21 someone who does not meet the requirements to hold the
09:14 22 position.

09:14 23 However, tentatively, my feeling is that the
09:14 24 chance that plaintiffs would be called back to active duty
09:14 25 fails to meet the requirement that injury not be merely

09:14 1 hypothetical or speculative, and is thereby both
09:15 2 hypothetical and speculative at the present time. And
09:15 3 that's *Bates v. Rumsfeld*, where plaintiff challenged the
09:15 4 military's policy of forcing personnel to receive Anthrax
09:15 5 vaccine, was no longer on active duty and the vaccine was
09:15 6 only being administered to selective units. There plaintiff
09:15 7 did not meet the requirement that injury be concrete,
09:15 8 actual, or imminent.

09:15 9 Now, I'm going to make you break down your
09:15 10 argument for a moment. I'm going to speak to you about that
09:15 11 group, because I'm going to get to Lieutenant Freese next.

09:15 12 So tentatively, right now you're losing, at least
09:15 13 as far as that group of retired or inactive military
09:15 14 personnel, because it's conjectural or hypothetical, and I
09:15 15 want you to address me and convince me that I'm wrong on
09:15 16 that.

09:15 17 MS. TAITZ: Sure. With pleasure, Your Honor.

09:15 18 When we're talking about constitutional rights of
09:15 19 citizens, those rights have to be viewed in completely
09:16 20 different light than any other rights. And I would give you
09:16 21 an example of *Brown v. Board of Education*. If Thurgood
09:16 22 Marshall were to stand here in front of you today and he
09:16 23 would state my client --

09:16 24 THE COURT: He's dead, Counsel.

09:16 25 MS. TAITZ: I know, I know. But I'm just giving

09:16 1 you a hypothetical question.

09:16 2 How about any constitutional attorney would state,
09:16 3 would stand here and argue to you, Your Honor, my clients
09:16 4 are harmed by segregation. You could state, well, how were
09:16 5 they harmed? They get up in the morning and they go to
09:16 6 their school. What is the harm that they go to one school
09:16 7 and not another school?

09:16 8 When the plaintiffs bring cases such as cases of
09:16 9 establishment clause, separation of state -- of religion and
09:17 10 state, when the Supreme Court have already decided *Brown v.*
09:17 11 *Board of Education* and *Clark v. USA*, what was the specific
09:17 12 harm to the members of the Board of Education when they
09:17 13 brought this lawsuit? Nobody was standing with a bat ready
09:17 14 to hit them. Nobody was telling them you have to go to
09:17 15 Iran. Nobody was killing them. But yet they brought this
09:17 16 case. And the Supreme Court decided that when there is a
09:17 17 violation of the Constitution of the United States of
09:17 18 America, that's harm enough for a person who took an oath of
09:17 19 office to uphold this Constitution.

09:17 20 And therefore, all of my plaintiffs who took an
09:18 21 oath to uphold the Constitution, based on prior -- based on
09:18 22 precedence of *Allen v. Board of Education*, and *Clark v.*
09:18 23 *United States of America*, finding -- where they have a
09:18 24 finding that telling a plaintiff to do something which would
09:18 25 violate his oath of office is a harm, is a measurable harm,

09:18 1 and therefore he has standing.

09:18 2 THE COURT: All right. I'm going to read to you
09:18 3 some initial thoughts I have and let you address this more
09:18 4 directly, and persuade me that I'm wrong.

09:18 5 Your complaint states that, "Because Lieutenant
09:18 6 Freese is on active military duty, he has standing to
09:18 7 challenge and demand clear and convincing proof of the
09:18 8 constitutional qualifications of the Commander-in-Chief and
09:18 9 the legality of the current chain of command,"
09:19 10 quote/unquote. That's in Paragraph 6.

09:19 11 Your opposition argues that standing stems from
09:19 12 the oath that the military officers are required to take in
09:19 13 which they swear to support and defend the Constitution.

09:19 14 For support of this proposition, you've relied
09:19 15 primarily, as you've stated, on *Board of Education v. Allen*.
09:19 16 In *Allen*, the plaintiffs on the Board of Education took an
09:19 17 oath which required them to uphold the Constitution, and
09:19 18 they alleged that if pursuant to that oath they refused to
09:19 19 follow a law requiring them to lend books to parochial
09:19 20 schools on the basis that it violated the establishment
09:19 21 clause of the First Amendment to the Constitution, then they
09:19 22 would likely be expelled from office, that state funds to
09:19 23 their school district would be reduced. While standing was
09:19 24 not challenged before the Court, the Court observed that it
09:19 25 had no doubt that the Board of Education had a personal

09:19 1 stake in the outcome of the litigation.

09:19 2 Plaintiffs argued in this action it is similar to
09:20 3 the one in Allen because the active military officer has
09:20 4 taken an oath to support and defend the Constitution, and
09:20 5 Lieutenant Freese argues that if pursuant to that oath he
09:20 6 refused to follow the orders of President Obama on the basis
09:20 7 that his holding the Office of President violates the
09:20 8 natural-born citizen clause of the Constitution, he would
09:20 9 face a substantial risk of disciplinary action.

09:20 10 That's the argument you propose to me. However,
09:20 11 the footnote regarding standing in Allen is not binding
09:20 12 Supreme Court precedent, and the Supreme Court has
09:20 13 significantly tightened the standing requirement subsequent
09:20 14 to the Allen ruling.

09:20 15 And I want you to talk to me about *City of South*
09:20 16 *Lake Tahoe v. California Tahoe Regulatory Planning*
09:20 17 *Commission*. That's at 625 F.2d 231. It's a Ninth Circuit
09:20 18 1980 case.

09:20 19 Moreover, plaintiffs' argument is difficult to
09:20 20 follow because the Ninth Circuit has rejected the reasoning
09:20 21 of the footnote in Allen on the basis that the real source
09:20 22 of an oath taker's complaint is not sufficiently concrete to
09:21 23 establish standing.

09:21 24 The Ninth Circuit, discussing the standing of
09:21 25 persons who take an oath to enforce the Constitution to

09:21 1 bring an action for injunctive and declaratory relief
09:21 2 regarding the constitutionality of an action, reasoned that
09:21 3 an oathmaker's complaint is limited to an abstract objection
09:21 4 at an unconstitutional act because he generally faces no
09:21 5 injury other than an abstract one should they not object to
09:21 6 the act.

09:21 7 The Court found that the oathmaker's objection was
09:21 8 insufficient to invoke standing because, quote, "The
09:21 9 difficulty with abstract constitutional grievances is that
09:21 10 they lack the specificity and adversarial coloration that
09:21 11 transmute vague notions of constitutional principle into a
09:21 12 forum historically viewed as capable of judicial
09:21 13 resolution."

09:21 14 Therefore, pursuant to the reasoning of *South*
09:21 15 *Lake Tahoe*, it appears, at least tentatively, that Plaintiff
09:22 16 Lieutenant Freese is failing to establish standing on his
09:22 17 military oath because his injuries are not sufficiently
09:22 18 concrete to establish an Article III standing.

09:22 19 So now I want you to once again address me
09:22 20 concerning Lieutenant Freese, and then I want to move on to
09:22 21 the state representatives in just a moment. We'll get each
09:22 22 one of these down.

09:22 23 MS. TAITZ: Absolutely. Absolutely, Your Honor.

09:22 24 What's interesting that, actually, in their reply
09:22 25 to my response, the Department of Justice has already

09:22 1 considered the point that in general, the oathtakers have
09:22 2 standing, so there is no adversarial point there. Their
09:22 3 only point that they brought in their reply to my response
09:22 4 was that nothing new has happened; that there is no -- that
09:22 5 in *Allen v. Board of Education* there was something new
09:22 6 whereby the Board of Education was forced to buy certain
09:23 7 books. And in this case nothing new has happened.

09:23 8 Your Honor, I submit to you that nothing -- that
09:23 9 something very new has happened. The whole nation was
09:23 10 forced to buy Mr. Obama as a legitimate President. That's
09:23 11 something new. And when I have presented to this Court
09:23 12 information showing that according to Sandra Ramsey Lines --

09:23 13 THE COURT: I want you to answer my question
09:23 14 concerning Lieutenant Freese.

09:23 15 MS. TAITZ: What I'm saying -- that Lieutenant
09:23 16 Freese have taken an oath before the election, and after
09:23 17 election, when Mr. Obama became the President, a new act has
09:23 18 happened that created this adversarial position. If -- if
09:23 19 Lieutenant Freese would have taken an oath of office after
09:23 20 the election, the government could have rightfully argued
09:24 21 that nothing new happened. But as a matter of fact, all of
09:24 22 my plaintiffs took an oath to defend the Constitution before
09:24 23 the election.

09:24 24 THE COURT: All right. Now, just a moment,
09:24 25 please, Ms. Taitz.

09:24 1 I want to move on for a moment.

09:24 2 Your complaint alleges that because the state
09:24 3 representatives have a special nondelegable constitutional
09:24 4 right and responsibility to verify the qualifications of the
09:24 5 chief legislative -- or Chief Executive Officer of the
09:24 6 United States of America, who is responsible for allocating
09:24 7 large sums of funds, since receipt of those funds from any
09:24 8 officer without legal authority would be complicitly in
09:24 9 theft or conversion. That's your paragraph 8 of the
09:24 10 complaint.

09:24 11 You've argued that this -- the defendants have
09:24 12 argued that this allegation is wholly insufficient to
09:24 13 constitute injury in fact because it is neither actual or
09:25 14 imminent and is highly speculative. And that's in the
09:25 15 motion, I believe, at page 8, if I'm not mistaken.

09:25 16 Moreover, defendants assert that the allegation
09:25 17 fails to withstand any logical scrutiny, because the causes
09:25 18 of action of theft and conversion require intent, et al.

09:25 19 Now, I want to take Plaintiffs Alan Keyes and Gail
09:25 20 Lightfoot for a moment, because remember this spectrum of
09:25 21 standing. You've got 30 or 40-some different complainants.

09:25 22 MS. TAITZ: Yes.

09:25 23 THE COURT: And therefore I don't want to sweep
09:25 24 that issue either one side or the other, which is why I'm
09:25 25 giving both sides a very fair opportunity to break this

09:25 1 down.

09:25 2 Let's discuss Alan Keyes for a moment, and Gail
09:25 3 Lightfoot. They appeared on the California ballot as
09:25 4 candidates for President or Vice President in the 2008
09:25 5 national presidential elections.

09:26 6 Plaintiff Wiley Drake, who I think I saw earlier
09:26 7 in the audience, is here. And Mr. Drake, or Reverend Drake,
09:26 8 was the vice presidential nominee for the American
09:26 9 Independent Party in the 2008 presidential election on the
09:26 10 California ballot.

09:26 11 Plaintiff Robinson is -- is Robinson present?

09:26 12 All right. Plaintiff Robinson was a pledged
09:26 13 presidential elector for the American Independent Party in
09:26 14 the 2008 presidential election for the California ballot.

09:26 15 Defendants are arguing to this Court that the
09:26 16 political candidate -- that the political candidate
09:26 17 plaintiffs have failed to establish injury in fact because
09:26 18 they were not serious enough contenders for the presidency
09:26 19 That's the argument. That Obama's alleged lack of
09:26 20 qualifications for the position caused them any harm. In
09:27 21 other words, they were nonfactors is what's politely being
09:27 22 said from defendants' standpoint. In other words,
09:27 23 defendants are really arguing that the political candidate
09:27 24 plaintiffs would have lost in any event.

09:27 25 Defendants are arguing to this Court that these

09:27 1 plaintiffs cannot meet the injury-in-fact requirement
09:27 2 because they cannot counter the argument that from a simple
09:27 3 mathematical analysis, they were not on the ballot in enough
09:27 4 states in the 2008 Presidential Election to even hope that
09:27 5 they could gain the requisite 270 electoral votes to win the
09:27 6 presidency or vice presidency of the United States.

09:27 7 Now, I've been in a quandary over the last week
09:27 8 and weekend of how Ross Perot would have fit into that
09:27 9 scenario, how many states do you have to qualify and what
09:27 10 happens if you qualify in 34 states rather than 50 states,
09:27 11 but those are states with high voting populations that might
09:27 12 have given you the majority vote in the country as happened
09:28 13 under Gore-Bush, but didn't give you the electoral college
09:28 14 vote, you know, that old conundrum.

09:28 15 In order to establish injury in fact, the injury
09:28 16 must affect the plaintiff in a personal and individual way.

09:28 17 How do you address the defense' argument that in
09:28 18 effect they've stated that your clients had little or no
09:28 19 chance and that this didn't make a difference?

09:28 20 MS. TAITZ: Absolutely.

09:28 21 THE COURT: It might to the Republican Party,
09:28 22 certainly, and maybe historically, maybe if Ross Perot was
09:28 23 involved today -- but the American Independent Party didn't
09:28 24 have a prayer.

09:28 25 MS. TAITZ: Sure. That's a very good argument

09:28 1 that was brought by the Department of Justice.

09:28 2 Now, first of all, I would like to state that out
09:28 3 of 48 plaintiffs, I represent 46. Two plaintiffs are
09:28 4 represented by Mr. Kreep.

09:28 5 THE COURT: No, no. Remember this. They are, but
09:28 6 today's the day of the hearing. And what I did was point
09:28 7 out to each of you the nonsense that would occur if I
09:29 8 severed Reverend Drake, because upon filing a new complaint,
09:29 9 I would have joined you back together again. These are the
09:29 10 same issues basically. And I'm not going to wait now for
09:29 11 the third or fourth or fifth bite of the apple, which is why
09:29 12 I encouraged you to file properly to get this resolved one
09:29 13 way or the other for the good of the country and the good of
09:29 14 the parties involved.

09:29 15 So if Mr. Kreep is here, so be it, he's going to
09:29 16 be welcome to argue in a few moments. But if he's not, this
09:29 17 is his day. So you, in a sense, represent 48. Mr. Kreep is
09:29 18 representing two other persons.

09:29 19 MS. TAITZ: Mr. Kreep is representing Mr. Drake.
09:29 20 I don't know if Mr. Robinson is here.

09:29 21 THE COURT: He's not. But anyway, let's address
09:29 22 this. I'm breaking it down. I don't want to hear this
09:29 23 mushroom argument.

09:29 24 MS. TAITZ: Okay. Sure. My only point is that I
09:29 25 was not prepared to argue on behalf of Mr. Drake and

09:29 1 Mr. Robinson --

09:30 2 THE COURT: You don't have to.

09:30 3 MS. TAITZ: -- as Mr. Kreep is representing them.

09:30 4 But I will argue --

09:30 5 THE COURT: I'm giving that you opportunity.

09:30 6 MS. TAITZ: -- on behalf of Ambassador Keyes and

09:30 7 Gail Lightfoot, who was vice presidential candidate.

09:30 8 THE COURT: Because essentially it's the same

09:30 9 argument, I expect.

09:30 10 MS. TAITZ: What is interesting -- that with

09:30 11 Ambassador Keyes it's a more in-depth argument and more of

09:30 12 an injury, because I don't know if Your Honor is aware, but

09:30 13 Ambassador Keyes was actually a runner-up in a senatorial --

09:30 14 in a senatorial election in Illinois.

09:30 15 THE COURT: I'm aware.

09:30 16 MS. TAITZ: Prior to Mr. Obama becoming the

09:30 17 President, he was one time senator and therefore --

09:30 18 *(Mr. Kreep enters the courtroom.)*

09:30 19 THE COURT: Let the record reflect Mr. Kreep is

09:30 20 now present.

09:30 21 MS. TAITZ: Yes.

09:30 22 And therefore, he can show a very sizable and

09:31 23 measurable injury here, because if indeed it is found that

09:31 24 Mr. Obama did not satisfy his -- satisfy the necessary

09:31 25 requirements of residency, of citizenship, then not only

09:31 1 Mr. -- Ambassador Keyes had a very strong case for damages
09:31 2 against Mr. Obama in relation to the presidential election,
09:31 3 but also in relation to the senatorial election.

09:31 4 THE COURT: All right. Now, I'm going to briefly
09:31 5 ask you a question concerning jurisdiction, and then invite
09:31 6 you to be seated, and then I'll hear from Mr. Kreep.

09:31 7 (To Mr. Kreep:) And pay you the equal courtesy
09:31 8 and tell you where we're at briefly, but your arguments will
09:31 9 be brief.

09:31 10 I'm concerned about this political question
09:31 11 doctrine, and this is going to be addressed in the argument
09:31 12 and I expect a response. So get your pen in hand, write it
09:31 13 down. If I'm asking, I'm curious, and I want an answer.

09:32 14 The political questions may be a justiciable
09:32 15 question, not directly a jurisdictional question, but they
09:32 16 appear to be intertwined. I'd anticipated that you would
09:32 17 argue on behalf of the administration that challenging
09:32 18 President Obama's natural citizenship is a political
09:32 19 question, something only the elective branches can decide,
09:32 20 which you've done this morning very effectively.

09:32 21 I'm curious about that. A political question
09:32 22 suffered its first modern setback back in *Baker v. Carr* in
09:32 23 1962, the classic "one-person, one-vote" case involving
09:32 24 state reapportionment practices. That pretty much declared
09:32 25 that the only consistent area for political questions is

09:32 1 national security, foreign relation issues.

09:33 2 Then came along *Powell v. McCormack* at 395 U.S.
09:33 3 486, in 1969, which effectively dismantled the political
09:33 4 question when it came to the exclusion of a tainted but duly
09:33 5 elected member of Congress, or at least it appears to have
09:33 6 done so. It held that federal courts have jurisdiction over
09:33 7 such an issue, and that *Powell*, on the merits, had been
09:33 8 unconstitutionally excluded.

09:33 9 Whatever was left of the political question
09:33 10 doctrine in the area of foreign policy and national security
09:33 11 appears to be pretty much destroyed in *Boumediene v. Bush*,
09:33 12 128 Supreme Court 2229, 2008, which overturned the Military
09:33 13 Commission Act for denying Guantanamo detainees their habeas
09:33 14 corpus rights, which is why I started there, but wanted you
09:33 15 to conclude your argument.

09:34 16 So, therefore, be careful about this
09:34 17 jurisdictional issue, and that you don't believe it's simply
09:34 18 being swept under the rug by the Court or that you've
09:34 19 addressed it. And in your next go-around, briefly, I want
09:34 20 you to come right back to this jurisdictional issue just as
09:34 21 I've given Ms. Taitz my concerns about standing and letting
09:34 22 her effectively argue that rather than this broad argument.
09:34 23 I want you to specifically address that.

09:34 24 So let's assume that the jurisdictional question
09:34 25 is in play, and the question may be whether this is a

09:34 1 substantial --

09:34 2 (To Mr. West:) Go ahead, finish your

09:34 3 conversation, because I want you to huddle.

09:34 4 MR. WEST: I'm sorry, Your Honor.

09:34 5 THE COURT: It's not impolite; in fact, I'm
09:34 6 encouraging it. Make sure, because I want you to hear what
09:34 7 I'm saying. I'm not going to let you do this mushroom
09:34 8 argument either.

09:34 9 Okay. Now, the question may be whether there's a
09:34 10 substantial federal question and whether the suit has been
09:35 11 brought in the wrong district court versus in this federal
09:35 12 court rather than the district circuit. And that's why I
09:35 13 started in that place and didn't adequately express my
09:35 14 concerns and wanted to hear your argument first.

09:35 15 I'm a little concerned about simply sweeping this
09:35 16 case under the jurisdictional rug concerning the merits or
09:35 17 lack thereof concerning President Obama's legitimacy to be
09:35 18 the President.

09:35 19 One of the interesting things -- and we're getting
09:35 20 ahead of ourselves, and I don't know if we'll get that far
09:35 21 or not -- but it's the citizenship statute at 8 U.S.C.
09:35 22 1401(g), which is "undeniability," favorable to your
09:35 23 argument eventually, especially as termed by Justice Kennedy
09:35 24 in *Tuan Anh Nguyen v. INS* at 533 U.S. 53, 2001. Kennedy's
09:36 25 read on that is very interesting; and that is, he basically

09:36 1 throws away, in a sense, location. We've got the oddity of
09:36 2 one candidate, Senator McCain, actually being born in
09:36 3 Panama, but it's a, quote/unquote, "territory."

09:36 4 Well, think about that for a moment. Let's assume
09:36 5 that he would have been in transit -- well, his mother would
09:36 6 have been in transit -- my apologies -- through West Germany
09:36 7 and would have had the child prematurely. How denigrating
09:36 8 to say to a woman that, by virtue of service with your
09:36 9 husband in the military, that because you were in Panama,
09:36 10 you couldn't run for president -- but ably serving our
09:36 11 military, as Senator McCain's father had, and a mother who's
09:37 12 following her husband, in a sense in his military duty and
09:37 13 patriotism to this country, passing through West Germany,
09:37 14 cannot be a candidate. Very interesting argument.

09:37 15 What Justice Kennedy seems to do, and what I would
09:37 16 expect would be a 5-4 Court, is pay a lot of deference to a
09:37 17 pregnant mother and wife and say really it doesn't matter
09:37 18 whether it's Panama or West Germany, that that's an American
09:37 19 mother, an American citizen. So there's the oddity there.
09:37 20 And perhaps we get to the merits of that some day, perhaps
09:37 21 we don't.

09:37 22 But that's a very strong case, quite frankly, in
09:37 23 the government's corner if we ever get to the merits of
09:37 24 this. And I've been really questioning, not looking ahead,
09:37 25 but wondering how we place a woman who is ably, in a sense,

09:38 1 serving this country along with her husband in the position
09:38 2 of serving this country and passing through West Germany or
09:38 3 some other NATO country during this period of time, having a
09:38 4 child outside the United States and not be able to be a
09:38 5 presidential candidate. It's a real conundrum and a real
09:38 6 insult, I think, to the mother.

09:38 7 With your candidate --

09:38 8 MS. TAITZ: Yes.

09:38 9 THE COURT: -- whether born, from your
09:38 10 perspective, in Kenya or whatever, I think I would have
09:38 11 raised the same questions if we ever get to the merits of
09:38 12 this; and that is, how can you take an American mother
09:38 13 passing into another jurisdiction to see a husband, or for
09:38 14 whatever reason, and cast aside the ability to run?

09:38 15 MS. TAITZ: Absolutely.

09:38 16 THE COURT: That's that real insult to, quite
09:38 17 frankly, gender.

09:38 18 MS. TAITZ: Absolutely, Your Honor.

09:38 19 And well, first of all, of course, this is an
09:38 20 issue to be decided on the merits. And --

09:38 21 THE COURT: By Congress?

09:38 22 MS. TAITZ: Pardon?

09:38 23 THE COURT: By Congress?

09:38 24 MS. TAITZ: No, no. By you, Your Honor. We can
09:39 25 deal with this. We don't need Congress. And as a matter of

09:39 1 fact, members of Congress and Senate actually told us so.
09:39 2 And as I submitted my surreply, I have submitted a letter
09:39 3 from Senator Jeff Sessions, which actually echoed numerous
09:39 4 such letters, as I was questioning the issue of eligibility.
09:39 5 As I have written to the Secretary of State of California,
09:39 6 Deborah Bowen, and questioned her, how did she verify
09:39 7 Mr. Obama's eligibility, and I actually got a response from
09:39 8 her. I still cherish that e-mail that's saying "I didn't."
09:39 9 They didn't verify anything. They just took his statement
09:39 10 for granted where he had filled out a declaration that he is
09:39 11 eligible. They just took it for granted and ran with it.
09:39 12 And I have urged my supporters to check, and they did check.
09:40 13 They did a great job. They checked with each and every
09:40 14 Secretary of State all over the nation, and the point is
09:40 15 that nobody checked. So we're not dealing here with a
09:40 16 political question. We're dealing here with a question
09:40 17 whether fraud was committed.

09:40 18 THE COURT: All right.

09:40 19 MS. TAITZ: And -- and --

09:40 20 THE COURT: Thank you. Let me take two other
09:40 21 issues into -- and I may --

09:40 22 MS. TAITZ: If I can just finish responding to
09:40 23 what you just stated.

09:40 24 THE COURT: All right. Briefly.

09:40 25 MS. TAITZ: So we have received letters from

09:40 1 Senator Sessions as well as other senators and congressmen.
09:40 2 And they stated, "Senate ethics rules preclude me from
09:40 3 becoming personally involved in pending litigation. I
09:40 4 sincerely hope that this matter can be fully and promptly
09:40 5 resolved by the Courts --" by you, Your Honor. "In the
09:40 6 meantime, please do not hesitate to contact me in the future
09:40 7 should you have a question regarding an issue over which I
09:40 8 have jurisdiction."

09:40 9 THE COURT: I'm going to joke for a moment. I
09:41 10 wonder if Senator Sessions was in the party in power at the
09:41 11 present time, if he would take the same position, or if he
09:41 12 viewed this as a question for the legislature and for
09:41 13 Congress.

09:41 14 MS. TAITZ: Actually --

09:41 15 THE COURT: Just a moment, Counsel. I want to
09:41 16 address two other things.

09:41 17 You've consistently requested discovery if we go
09:41 18 beyond the 12(b)(6). And, believe me, that's very much in
09:41 19 balance right now. But assume we did for a moment. For the
09:41 20 life of me, I do not understand why this Court would require
09:41 21 President Obama or -- I mean, you actually wanted
09:41 22 appearances at one time. I mean, the first obvious, he
09:41 23 doesn't have any memory of his birth. He's of no value in
09:41 24 terms of testimony, affidavits, or anything else. I don't
09:41 25 have any memory of my birth, believe it or not. So,

09:41 1 therefore, that's not going to go very far.

09:41 2 Number two, why am I going through all the FOIA
09:41 3 requests originally with Mueller, et cetera? I always had
09:42 4 great pride in this country. Never liked the phrase "second
09:42 5 to none." I always believed that we were first. Let me talk
09:42 6 to you patriotically for a moment.

09:42 7 If we ever went to the merits, why aren't we just
09:42 8 obtaining a birth certificate from Hawaii? Why isn't that
09:42 9 certificate examined, if we ever got to the merits? Why am
09:42 10 I going outside this country, and what kind of credence do I
09:42 11 give to foreign records, whether there are from Indonesia,
09:42 12 Slovakia, Italy -- I don't want to miss anybody here -- or
09:42 13 Kenya? I always thought and believed that America was
09:42 14 ethical and good and that our records, you know, our way of
09:42 15 life was, quite frankly --

09:42 16 MS. TAITZ: Absolutely.

09:42 17 THE COURT: -- to be emulated across the world.

09:42 18 MS. TAITZ: Absolutely. And that's --

09:42 19 THE COURT: And so why am I -- and there's a lot
09:42 20 of controversy, apparently, about these Kenyan birth
09:42 21 certificates, and there's controversy, from your standpoint,
09:43 22 about the birth certificate from Hawaii.

09:43 23 But why do I need to go through the machinations
09:43 24 of the FBI, Mueller, et cetera?

09:43 25 MS. TAITZ: Yes.

09:43 1 THE COURT: Those are easily obtained. They're
09:43 2 something I can take judicial notice of.

09:43 3 So why this, in a sense, growing mushroom of
09:43 4 people who have to come into this Court and who you think
09:43 5 you would depose?

09:43 6 MS. TAITZ: Absolutely, Your Honor.

09:43 7 Well, in regards to the birth certificate, as it
09:43 8 was stated previously, a number of lawsuits were filed, and
09:43 9 the position of the State of Hawaii is that they would be
09:43 10 happy to give us the original birth certificate provided
09:43 11 there is a consent. The problem here is that Mr. Obama
09:43 12 refuses to give such a consent.

09:43 13 And that's why -- yeah, I didn't say that he
09:43 14 remembers his birth. I don't remember my birth either.

09:43 15 THE COURT: Good.

09:43 16 MS. TAITZ: However -- however, if I am not lying,
09:44 17 if I'm not defrauding anybody, I will have no problem
09:44 18 signing a consent form. You want my birth certificate?
09:44 19 Fine. Be my guest. Go to Russia, get my birth certificate.
09:44 20 There is nothing wrong there.

09:44 21 And it is, as a matter of fact, a circumstantial
09:44 22 evidence of guilty mind when Mr. Obama has spent over a
09:44 23 million dollars on attorneys, in attorneys' fees, trying to
09:44 24 quash each and every subpoena to obtain such a birth
09:44 25 certificate and birthing file from a hospital -- any

09:44 1 hospital.

09:44 2 THE COURT: The last question to you is this: I
09:44 3 understand your point, by the way. It doesn't need to be
09:44 4 belabored now.

09:44 5 MS. TAITZ: If I may add just one more point.

09:44 6 THE COURT: No, Counsel, you may not. Just one
09:44 7 moment.

09:44 8 The concern that the government expresses is that
09:45 9 they truly believe and argue that the congressional, the
09:45 10 legislative branch should resolve this. And I think that we
09:45 11 will recognize that once a President has taken the oath that
09:45 12 they're in a different position -- and the government's had
09:45 13 a hard time explaining to me what that methodology is once a
09:45 14 President has taken the oath, but certainly before the
09:45 15 President takes an oath of office, the electoral college is
09:45 16 required to cast their votes. The government has argued --
09:45 17 I forget in which page of their brief -- that that was the
09:45 18 proper time to raise what you perceive the illegitimacy of
09:46 19 President Obama's qualifications to be President. In this
09:46 20 particular lawsuit, the lawsuit before this Court, not the
09:46 21 Pennsylvania or the Georgia lawsuit -- it's my belief that,
09:46 22 in this lawsuit, you filed on the day of the inauguration.
09:46 23 Is that true?

09:46 24 MS. TAITZ: Yes.

09:46 25 THE COURT: All right. Now, in filing on the day

09:46 1 of the inauguration, what effectively occurred was that the
09:46 2 electoral college had no opportunity to call qualification
09:46 3 into question. Why did you file in this jurisdiction or
09:46 4 file this lawsuit on the day of President Obama's
09:46 5 inauguration?

09:46 6 MS. TAITZ: Well --

09:46 7 THE COURT: I believe at 3:00 o'clock or
09:46 8 1:00 o'clock after he'd been installed.

09:46 9 MS. TAITZ: Well, actually, I came in the morning.

09:46 10 THE COURT: Okay.

09:46 11 MS. TAITZ: And it took some time to process the
09:46 12 paperwork. And specifically it was done to prevent the
09:47 13 government from coming back and arguing *fait accompli*; he is
09:47 14 already the President. I brought the original action on the
09:47 15 day of inauguration before he had any opportunity to perform
09:47 16 any function.

09:47 17 THE COURT: Where did you do that?

09:47 18 MS. TAITZ: Pardon?

09:47 19 THE COURT: Where did you bring that?

09:47 20 MS. TAITZ: Downstairs, right here.

09:47 21 THE COURT: What day?

09:47 22 MS. TAITZ: On January 20th, inauguration day, I
09:47 23 brought the case. The case was filed on inauguration day.

09:47 24 THE COURT: Why didn't you follow it? It was
09:47 25 stamped at 3:26 p.m. You mean it took you from 8:00 o'clock

09:47 1 in the morning to 3:26 to file this?

09:47 2 MS. TAITZ: Well, Your Honor, your clerks don't

09:47 3 start until later. It was 10:00 o'clock.

09:47 4 THE COURT: Kristee, what time did you get here

09:47 5 today? No, no. Kristee, what time did you get here?

09:47 6 THE CLERK: Around 7:00.

09:47 7 THE COURT: All my clerks get here at 7:00.

09:47 8 Downstairs they opened about 8:00 to 9:00.

09:48 9 MS. TAITZ: They -- but they don't accept

09:48 10 paperwork, from what I recall, until later in the day. I

09:48 11 think it was 10:00 o'clock. That's when they start taking

09:48 12 paperwork.

09:48 13 THE COURT: Regardless --

09:48 14 MS. TAITZ: And some of the paperwork --

09:48 15 THE COURT: Regardless, why did you wait and move

09:48 16 this case into a posture where we already had a duly sworn

09:48 17 President, rather than filing this case so that the

09:48 18 electoral college could bring this up? Because, you see,

09:48 19 any member of the electoral college could have raised this.

09:48 20 MS. TAITZ: Yes, Your Honor. And I actually

09:48 21 brought the issue that I tried to explain to you last time.

09:48 22 I did bring the case on behalf of these plaintiffs

09:48 23 back in November, and at that time Mr. Drake and

09:48 24 Mr. Robinson has argued that they wanted Mr. Kreep to be one

09:48 25 of the attorneys on the case. Mr. Kreep left the state and

09:48 1 went to Hawaii. He showed up back one day before the
09:49 2 electoral college meeting, and when he showed up --
09:49 3 THE COURT: So just a moment.
09:49 4 MS. TAITZ: -- it was too late.
09:49 5 THE COURT: Without getting into the nuances
09:49 6 between the two of you. Then, this is something internally
09:49 7 that happened, a breakdown of some type in the plaintiffs'
09:49 8 team of attorneys?
09:49 9 MS. TAITZ: Well, in this particular case --
09:49 10 THE COURT: And if so --
09:49 11 MS. TAITZ: -- I brought --
09:49 12 THE COURT: Just a minute. And if so, why
09:49 13 couldn't you have filed? Do you need Mr. Kleep? It appears
09:49 14 that you don't necessarily like him.
09:49 15 MS. TAITZ: Well, in this case, I don't. However,
09:49 16 in prior case, since both of us represented all three of the
09:49 17 plaintiffs, I have a whole number of e-mails that I have
09:49 18 addressed to Mr. --
09:49 19 THE COURT: Just a moment. You didn't answer my
09:49 20 question. Why didn't you file this case?
09:49 21 MS. TAITZ: Because the plaintiffs wanted to wait
09:49 22 for Mr. Kleep.
09:49 23 THE COURT: So that's a conscious choice on the
09:49 24 plaintiffs' team, then, that you acceded to at that time to
09:50 25 put this case in the posture and position of a duly sworn

09:50 1 President.

09:50 2 MS. TAITZ: Well, again, Your Honor, not duly
09:50 3 sworn President. If one is sworn based on fraudulent
09:50 4 information, then the word "duly" wouldn't...

09:50 5 THE COURT: Just a moment, just a moment. I won't
09:50 6 quibble with you about the hour -- our stamp shows 3:26.
09:50 7 I'm going to assume you tried to file it at 8:30. Okay?
09:50 8 But remember, I believe he was sworn in at, I don't know,
09:50 9 11:00, 12:00, I'm not sure. There's three hours' time
09:50 10 difference. So he would have already been sworn in or close
09:50 11 to have been sworn in by the time you ever got to the front
09:50 12 desk.

09:50 13 So if there's lack of diligence here, it's not
09:50 14 that you didn't get to the counter in time; it's the fact
09:50 15 that you waited until the last day. That's not -- I don't
09:50 16 understand that. No court could have interjected a
09:50 17 preliminary injunction as you've asked in that short period
09:50 18 of time. No court probably would have been willing to.

09:51 19 So I'm hearing and I'm going to make a finding,
09:51 20 unless I hear differently, that this is an internal
09:51 21 breakdown in the plaintiffs' team, some type of disagreement
09:51 22 that puts us in the position of the electoral college not
09:51 23 being able to decide this issue.

09:51 24 Now, you can briefly respond to that, and then I
09:51 25 want to hear from Mr. Kreep for a moment.

09:51 1 MS. TAITZ: Well, Your Honor, this is more -- more
09:51 2 than the breakdown of the team. The whole point is I
09:51 3 brought a number of legal actions. And one of these -- of
09:51 4 those legal actions, *Lightfoot v. Bowen* on behalf of one of
09:51 5 the plaintiffs in this case, Gail Lightfoot, was filed
09:51 6 before the electoral college meeting.

09:51 7 And I went straight to the Supreme Court of
09:51 8 California, and then I went to the Supreme Court of the
09:51 9 United States of America. And the stamp -- I will be happy
09:51 10 to provide it -- shows December 12th. The Supreme Court of
09:51 11 the United States of America had my case where I already
09:52 12 represented Gail Lightfoot. I represented Pamela Barnett.
09:52 13 I represented Mr. Turner, who is here right now, seven
09:52 14 plaintiffs in all. And the Supreme Court did not act.

09:52 15 Luckily, Chief Justice Roberts agreed that the
09:52 16 case needs to be heard by all nine justices; but he
09:52 17 scheduled it, not for December 13 and 14, saying, wait a
09:52 18 minute, we need to get this information, he scheduled it for
09:52 19 January the 23rd, after inauguration.

09:52 20 On January 21st, right after inauguration,
09:52 21 somebody erased all the information about this case from the
09:52 22 docket of the Supreme Court. And I have filed complaints.

09:52 23 I have -- I have --

09:52 24 THE COURT: All right. Thank you very much.

09:52 25 MS. TAITZ: -- questioned.

09:52 1 THE COURT: Thank you. Would you be seated for
09:52 2 just a moment. You'll have another opportunity.

09:52 3 Mr. Kreep, where we stand is the following:

09:53 4 I'm deeply concerned about whether you have
09:53 5 standing or not.

09:53 6 Concerning the military personnel that have been
09:53 7 either retired or inactive, I'm deeply concerned that this
09:53 8 is conjectural and hypothetical, that the injury is not
09:53 9 actual and imminent.

09:53 10 Concerning Lieutenant Freese, I'm deeply
09:53 11 concerned, unless there's a refusal of orders -- which is
09:53 12 not before us, and apparently was the Georgia case involving
09:53 13 Major Cook -- that this is conjectural also.

09:53 14 And concerning the state representatives, when you
09:53 15 came in, I was talking to counsel about Allen Keyes and Gail
09:53 16 Lightfoot, but Pastor Drake is here, and -- the vice
09:53 17 presidential nominee for the American Independent Party.
09:53 18 And also I'd asked if the -- if Robinson was present, who is
09:53 19 not.

09:53 20 Now, you can address me on any issues, but I'm
09:54 21 deeply concerned about standing after reading government's
09:54 22 brief.

09:54 23 MR. KREEP: First of all, Your Honor, let me
09:54 24 apologize to you and to counsel for my delay. I ran into
09:54 25 some automobile problems that kept me, and I tried to --

09:54 1 THE COURT: Well, you're here. This is your
09:54 2 opportunity.

09:54 3 MR. KREEP: Please accept my apologies,
09:54 4 Your Honor, and counsel.

09:54 5 THE COURT: I know there was a severance motion
09:54 6 filed on Friday or Thursday evening. I'm not going to grant
09:54 7 that severance motion. It's ridiculous in the sense that
09:54 8 even if there's a conflict between the two of you, even if I
09:54 9 granted a severance, what would occur is that the severance
09:54 10 would take place, and I can tell you I would rejoin you.
09:54 11 This isn't going to be a seriatim hearing. The issues are
09:54 12 the same. And if there's a disagreement over tactics, you
09:54 13 can argue a different viewpoint.

09:54 14 So, Counsel.

09:54 15 MR. KREEP: Thank you, Your Honor. I didn't
09:54 16 intend that matter to be heard this morning, obviously, Your
09:54 17 Honor, but obviously, the Court's order is the Court's
09:54 18 order.

09:54 19 THE COURT: It's been heard, and it's going to be
09:54 20 denied.

09:54 21 MR. KREEP: Thank you, Your Honor.

09:54 22 THE COURT: Let's move on now.

09:54 23 MR. KREEP: We also filed a motion for leave to
09:54 24 file another amended complaint.

09:55 25 THE COURT: You can, Counsel, but you can guess

09:55 1 where that's going. Today's the day. It's been clear to
09:55 2 all parties. I've been gracious in terms of setting aside
09:55 3 this time, and I've tried to indicate in every which way
09:55 4 that these issues are the same. And what's not going to
09:55 5 happen is Ms. Taitz bringing her motion, and then you
09:55 6 following with another motion, following with another
09:55 7 hearing. Even if your clients are in conflict -- okay? --
09:55 8 that doesn't stop you from arguing a different position
09:55 9 today. So I'm being a gentleman about that. What I don't
09:55 10 want to do is catch you by surprise later on. I'm giving
09:55 11 you every opportunity today and indicating that if I was
09:55 12 you, I would argue my matters today.

09:55 13 MR. KREEP: Yes, Your Honor.

09:55 14 THE COURT: Okay. The lectern's yours.

09:55 15 MR. KREEP: Thank, You Honor.

09:55 16 First of all, I only represent two plaintiffs in
09:55 17 this case, Mr. Robinson and Pastor Drake. I am not in a
09:55 18 position to nor would I speak on behalf of any of the other
09:55 19 plaintiffs because I don't think it's proper. They are
09:55 20 represented by counsel. They have their own chosen counsel.
09:56 21 My clients have me.

09:56 22 With regard to some -- I would like to address
09:56 23 some of the issues that you questioned Dr. Taitz about, if I
09:56 24 may, briefly.

09:56 25 THE COURT: Please.

09:56 1 MR. KREEP: One of the things I think is
09:56 2 misunderstood, with all due respect to the Court, because
09:56 3 I've done some research on this, is that at the time that --
09:56 4 if we were to talk about Mr. McCain, your analogy is not a
09:56 5 good one. And the reason why is at that point in time the
09:56 6 federal law was that people born in the Panama Canal to
09:56 7 military were not considered natural-born citizens. The law
09:56 8 was actually changed subsequently. We need to go into that,
09:56 9 but so -- with all due respect, it's not a good analogy.

09:56 10 The second thing is, is that federal law at the
09:56 11 time required Mr. Obama's mother to be a resident
09:56 12 continuously in the United States for five years after age
09:56 13 14 in order to convey her citizenship if the child was not
09:57 14 born in the United States. So the issue is if the child was
09:57 15 born in Mombasa, in what was then --

09:57 16 THE COURT: Just a moment. There's the
09:57 17 interesting point.

09:57 18 Bear with me for a moment.

09:57 19 The law got changed, didn't it?

09:57 20 MR. KREEP: Yes, Your Honor.

09:57 21 THE COURT: So therefore, depending upon the
09:57 22 Congress, we can change the constitutional right to be
09:57 23 President?

09:57 24 MR. KREEP: No, Your Honor.

09:57 25 THE COURT: It appears to me that Congress did.

09:57 1 MR. KREEP: Well --

09:57 2 THE COURT: So when we talk about constitutional
09:57 3 and embedded principles, it appears to me that Congress has
09:57 4 acted and changed what our perception would be of this
09:57 5 constitutional mandate.

09:57 6 MR. KREEP: Your Honor, Congress --

09:57 7 THE COURT: A big concern.

09:57 8 MR. KREEP: Congress changes laws all the time
09:57 9 that have a variety of implications for the Constitution.
09:57 10 Some of them get challenged, some of them don't. Some of
09:57 11 them wait 20 years before or 40 years before they're
09:57 12 challenged.

09:57 13 THE COURT: All I'm doing is pointing out that
09:57 14 this isn't the constitutional bedrock that the public and
09:58 15 you might argue; that this is something that Congress has,
09:58 16 in a sense, changed from time to time. And therefore, this
09:58 17 has become a political issue.

09:58 18 And what I pointed out to you how absurd it is,
09:58 19 from at least Justice Kennedy's standpoint in the case that
09:58 20 I cited to you, that an American citizen who's a woman might
09:58 21 be transiting through a particular zone and give birth, and
09:58 22 therefore you can be the presidential candidate or not the
09:58 23 presidential candidate.

09:58 24 I can imagine the hue and cry you would be raising
09:58 25 on the other side if this had been Senator John McCain,

09:58 1 whose father was, you know, head of CINCPAC at the time,
09:58 2 commander-in-chief of all the forces in Vietnam, when his
09:58 3 son was captured, and he couldn't run for President of the
09:58 4 United States after ably serving our country?

09:58 5 MR. KREEP: Well, there actually was litigation
09:58 6 over that issue, Your Honor. In fact, one of my clients,
09:58 7 Mr. Robinson, was a plaintiff in the litigation up in
09:59 8 federal court in San Francisco over that exact issue.

09:59 9 THE COURT: Judge Illston.

09:59 10 MR. KREEP: I apologize. I don't remember the
09:59 11 judge's name, Your Honor. I was not involved in that case.
09:59 12 I'm just aware of it.

09:59 13 THE COURT: Okay.

09:59 14 MR. KREEP: Getting back, Your Honor, with regard
09:59 15 to -- a lot of the complaint -- the reason why -- and I'm
09:59 16 not arguing the motion to amend the complaint, but the
09:59 17 reason why we didn't argue a lot of points in the complaint
09:59 18 was because, as we stated in our brief, we didn't think they
09:59 19 were well-taken.

09:59 20 We thought that -- we thought that a lot of the
09:59 21 plaintiffs -- strike that -- a lot of the defendants there
09:59 22 shouldn't have been in there. We thought it was just
09:59 23 muddying the waters, and we wanted to focus --

09:59 24 THE COURT: You've been much more focused, I
09:59 25 agree.

09:59 1 MR. KREEP: -- on what we believe should be the
09:59 2 issue, which is the eligibility issue, Your Honor.

09:59 3 With regard to deposing Mr. Obama, Your Honor,
09:59 4 that's something, obviously, that will be taken up. I think
09:59 5 a justification for it, with all due respect, is that he
09:59 6 says in his book he has his birth certificate. So if, for
10:00 7 whatever reason, there is a problem obtaining it from
10:00 8 Hawaii, and if this case survives today, Your Honor, I've
10:00 9 already made arrangements with a Hawaiian attorney to
10:00 10 associate and become *pro hac vice* to help us ford the
10:00 11 barriers in Hawaii to obtain that birth certificate. It can
10:00 12 be done by an appropriate subpoena.

10:00 13 Whether there's need to take Mr. Obama's
10:00 14 deposition would remain to be seen. But I think since he is
10:00 15 the only logical defendant in this case, I don't think it's
10:00 16 out of the realm of possibility.

10:00 17 And with regard -- I'm not going to get into the
10:00 18 false statements Dr. Taitz has made about me. She's
10:00 19 repeatedly done it. I can back up everything I say as to
10:00 20 what happened. I didn't get back to California the day
10:01 21 before the electoral college. I got back a week before and
10:01 22 had been working on the case with an attorney in Hawaii, by
10:01 23 the way, and attorneys on the East Coast. Throughout the
10:01 24 entire time, I was in Hawaii on a business trip, not a
10:01 25 vacation, Your Honor. Anyway, with regard to our position,

10:01 1 Your Honor, we've argued in our brief how the electoral
10:01 2 college, as a result of changes in state laws, 26 state
10:01 3 laws, and the District of Columbia have mandated that
10:01 4 electors vote according to the election's results in their
10:01 5 particular states. If they fail to do that, they are facing
10:01 6 criminal fines, civil penalties, a variety of things.

10:01 7 So it's no longer the way it was when the founding
10:01 8 fathers set all this up, and that we would have wise men who
10:01 9 would cast their votes in the electoral college to make sure
10:01 10 that people who were in the rural areas weren't swayed by
10:01 11 inappropriate reasons to vote, for some bribery, lack of
10:01 12 information, whatever. Today with the internet, today with
10:01 13 television, everybody seems to have the ability to learn
10:02 14 just about anything they want. I'm amazed to see the things
10:02 15 that are being written about me by various people on the
10:02 16 internet. Always fascinates me.

10:02 17 That was the original intent of the electoral
10:02 18 college. Now, we have a situation where not only do the
10:02 19 electors in the big "E" sense, the electoral college, but
10:02 20 the electors in the small "E" sense, the voters --

10:02 21 THE REPORTER: Your Honor.

10:02 22 THE COURT: A little slower. I want a complete
10:02 23 record.

10:02 24 MR. KREEP: I apologize.

10:02 25 Now, the days -- we are in the situation where,

10:02 1 because of the internet and television, the big "E"
10:02 2 electors, electoral college electors, and the small "E"
10:02 3 electors, the voters, have access to just about any piece of
10:02 4 information about any candidate that they might want. It's
10:02 5 amazing what's out there. A lot of it's false. I can't
10:02 6 tell you how many bizarre rumors I've seen about Mr. Obama
10:02 7 on the internet.

10:02 8 THE COURT: Let's get to the argument.

10:02 9 MR. KREEP: Okay.

10:02 10 THE COURT: Okay.

10:02 11 MR. KREEP: So the electoral college is not
10:03 12 serving the job that it originally did, so there is no more
10:03 13 electoral college to be the one to challenge us, because we
10:03 14 don't have Mr. Levenshane (*phonetic*) in Virginia in 1972
10:03 15 casting --

10:03 16 THE COURT: Let me stop you for a moment. Let me
10:03 17 repeat to you what I just heard. The electoral college
10:03 18 procedurally can challenge this, but they're not doing their
10:03 19 job.

10:03 20 MR. KREEP: No, they're not.

10:03 21 THE COURT: That's what I heard.

10:03 22 MR. KREEP: They're not allowed in the state --
10:03 23 because of state laws passed imposing civil and criminal
10:03 24 penalties on electors in 26 states and the District of
10:03 25 Columbia, they can't.

10:03 1 THE COURT: Has that been passed in Illinois?

10:03 2 MR. KREEP: I'm sorry, I don't remember the list
10:03 3 of all states that it's been passed in, Your Honor.

10:03 4 THE COURT: If it hasn't been passed in Illinois,
10:03 5 assuming that, then it could be raised by one of the
10:03 6 electoral college persons from Illinois. If it hasn't been
10:03 7 passed in Alabama and Senator Sessions was concerned, it
10:04 8 could be raised by one of the electoral college persons from
10:04 9 Alabama.

10:04 10 MR. KREEP: Yes, Your Honor.

10:04 11 THE COURT: It's -- the 26 is not impressive to
10:04 12 me. It can be raised by any member of the electoral
10:04 13 college.

10:04 14 MR. KREEP: But it still would have to be voted on
10:04 15 by the majority of the electoral college to do it,
10:04 16 Your Honor, and given the mandates, that would be
10:04 17 exceedingly hard.

10:04 18 THE COURT: So was the conscious decision, then,
10:04 19 made not to raise this in the electoral college and let
10:04 20 President Obama be sworn in?

10:04 21 And I'm coming back to the original question I
10:04 22 asked Ms. Taitz.

10:04 23 We find ourselves in significantly different
10:04 24 positions -- or a different position, I'm sorry, when a
10:04 25 person is sworn into office, which is why I started this

10:04 1 discussion with the government to walk me through the
10:04 2 process. They've not adequately answered that. They tossed
10:04 3 out impeachment as a possibility, and they also tossed out
10:04 4 that Congress could really make up the rules as they go in a
10:04 5 unique situation, if your position was well-taken.

10:05 6 I'm being a little facetious about that, but I'm
10:05 7 not. They didn't answer my question. You're not answering
10:05 8 my question either.

10:05 9 MR. KREEP: Your Honor, I am of the belief that
10:05 10 any individual should have the right to bring a case before
10:05 11 any federal district court to challenge the eligibility.

10:05 12 THE COURT: And my question was why this wasn't
10:05 13 raised in the electoral college, whether you believe that 26
10:05 14 states mandated to those representatives from that electoral
10:05 15 college or not. And at least there ought to have been due
10:05 16 notice. It should have been raised in the electoral
10:05 17 college. And that's the crux really of the government's
10:05 18 argument.

10:05 19 And I'm asking you again, and for the final time,
10:05 20 why wasn't this raised in the electoral college? If you
10:05 21 choose not to answer it or you tend to just give me a
10:05 22 mushroom argument, then I'll take it as you don't know.

10:05 23 MR. KREEP: I'll just tell you right out,
10:05 24 Your Honor, I don't know.

10:05 25 THE COURT: Okay. Continue your argument.

10:05 1 MR. KREEP: Thank you, Your Honor.

10:05 2 With regard to the issue of Congress, Your Honor,
10:05 3 we've gone through in our brief the restrictions on what
10:06 4 Congress can do regarding the vote in the electoral college.
10:06 5 There is no provision -- there is a provision for reviewing
10:06 6 the paper. If you remember our brief, we laid that out very
10:06 7 succinctly, Your Honor. There's no provision for Congress
10:06 8 to make a determination of eligibility. And given the
10:06 9 political reality of these days, I'm not sure how many
10:06 10 people have the -- would have had the guts to do it.

10:06 11 There was the option at the certification of the
10:06 12 electoral college vote for a congressman or a senator --
10:06 13 there have to be one of each -- to have raised the issue at
10:06 14 this --

10:06 15 THE COURT: If Senator Sessions is concerned, why
10:06 16 didn't he raise it?

10:06 17 MR. KREEP: I have no idea, Your Honor. Okay?

10:06 18 But I can tell you procedurally why he couldn't
10:06 19 have. Okay? He -- procedurally he couldn't have because,
10:06 20 according to the record -- and this is not an issue brought
10:06 21 up, so I didn't go out and get the paperwork -- Vice
10:06 22 President Chaney didn't ask the magic -- use the magic
10:07 23 words, didn't ask the question. He didn't ask if there was
10:07 24 a challenge, which he's supposed to do. Why didn't he do
10:07 25 it? I have no idea.

10:07 1 THE COURT: Within the same party, certainly, I
10:07 2 assume that they're talking to each other.

10:07 3 MR. KREEP: I would assume so, Your Honor, but I
10:07 4 gave up a long time ago trying to understand politicians.

10:07 5 THE COURT: Okay. All right. Why don't you
10:07 6 conclude your argument.

10:07 7 MR. KREEP: Your Honor, it's the position of my
10:07 8 clients -- and again, I'm only representing my clients. I'm
10:07 9 not representing the military. I'm not representing any of
10:07 10 the people that you -- most of which you asked me about
10:07 11 originally, Your Honor, so I can't speak for them. I would
10:07 12 not speak for them. But it is our position that the
10:07 13 citizens of the United States have a right to know whether
10:07 14 Mr. Obama is constitutionally eligible to serve as President
10:07 15 of the United States. If for no other reason than if he is
10:07 16 not, then every action he has taken is subject to challenge
10:07 17 and possible invalidation because the actions he has taken
10:07 18 as President require a President.

10:07 19 THE COURT: How do you respond to the question I
10:08 20 asked the government, finally, before we take a recess, and
10:08 21 that is, what does that look like? In other words, I asked
10:08 22 the government, how does that work? It looks wonderful on
10:08 23 paper, but how does Congress react to that especially when
10:08 24 Congress might be the same party that's in power? After
10:08 25 all, it's a political branch.

10:08 1 Your argument is that it's not a political
10:08 2 question. Your argument is that that's why the Court should
10:08 3 intervene.

10:08 4 Their argument is, from the government's
10:08 5 perspective, no, it's Congress that should intervene. I've
10:08 6 heard impeachment as a possibility, difficult to surmise
10:08 7 that coming from any house or any legislative body that's in
10:08 8 power with the same President, whether it's Democrat or
10:08 9 Republican. I've asked them how that works. Nobody's been
10:08 10 able to explain that to me, and I can't walk through that
10:08 11 process myself.

10:08 12 MR. KREEP: I think what happens, Your Honor, and
10:08 13 maybe I'm being naive, but I've been also accused of worse
10:08 14 things. I believe that if Mr. Obama is not eligible to
10:09 15 serve as President of the United States, he never was.
10:09 16 Therefore, any action that he has taken would be invalid.
10:09 17 And I believe that under the 25th Amendment, because that
10:09 18 would seem to be the closest thing we've got, if he is
10:09 19 disqualified or unqualified or unable to serve, Mr. Biden
10:09 20 would -- Vice President Biden, would take over as President
10:09 21 of the United States, and then any things, any executive
10:09 22 orders, any nominations, any legislation that had to be
10:09 23 signed by a valid President would have to be redone. It
10:09 24 would be a do-over.

10:09 25 THE COURT: And that's why, in short summary, I'm

10:09 1 hearing you believe that the federal court should intervene.

10:09 2 MR. KREEP: Yes, Your Honor.

10:09 3 THE COURT: Now, one more question. Ninety-three
10:09 4 or 94 districts across the United States. If I was in the
10:09 5 government's position, and I think counsel ably argued this,
10:09 6 that perceive for a moment hypothetically that I'm either a
10:09 7 conservative or a liberal. You can chose which one. And
10:10 8 I'm not, of course, on the bench because we're not a
10:10 9 political body. But the public believes that different
10:10 10 parts of the country are more liberal or conservative. Now,
10:10 11 I decide because I'm the opposition party, either Democrat
10:10 12 or Republican or Independent, to search across the country
10:10 13 in what I perceive is the best judicial forum. For goodness
10:10 14 sakes, I want, for instance, all Republicans who are on the
10:10 15 federal bench or all Democrats on the federal bench
10:10 16 appointed by a certain president, or the Ninth Circuit might
10:10 17 be perceived to be more liberal than, say, the Fourth
10:10 18 Circuit by some. I don't believe that's true, but let's
10:10 19 just assume that for a moment. By the way, I think we're a
10:10 20 very well-balanced circuit.

10:10 21 But the danger from the government's perspective
10:10 22 is that the opposition, the person not in power, can seek
10:10 23 out what they believe is the most favorable forum. So for
10:10 24 instance, you might perceive hypothetically that Orange
10:11 25 County may have a reputation for being a conservative to

10:11 1 moderate county, and therefore, this is a good place to
10:11 2 bring a lawsuit. Whereas, you want to avoid another
10:11 3 particular jurisdiction in the country.

10:11 4 Why did you two bring the lawsuit in Orange
10:11 5 County?

10:11 6 MR. KREEP: I didn't bring the lawsuit in Orange
10:11 7 County, Your Honor. I came in much after the lawsuit was
10:11 8 filed.

10:11 9 THE COURT: Ms. Taitz, why did you bring the
10:11 10 lawsuit here? I know you live here, don't you? You're a
10:11 11 resident.

10:11 12 MS. TAITZ: I am a resident.

10:11 13 THE COURT: Why here? It could have been brought
10:11 14 in Illinois. It could have been brought in D.C. Why in
10:11 15 Orange County?

10:11 16 MS. TAITZ: First of all, I can bring an action
10:11 17 where I am a licensed attorney.

10:11 18 THE COURT: I know you can. I'm asking why.

10:11 19 MS. TAITZ: And, you know, it's not only where.

10:11 20 THE COURT: Excuse me, I'm asking why.

10:11 21 MS. TAITZ: (A) because I'm a licensed attorney
10:11 22 here. I cannot go to Illinois and bring an action there,
10:11 23 because I'm not a licensed attorney in Illinois.

10:11 24 THE COURT: Can you go *pro hac vice*?

10:12 25 MS. TAITZ: In order to have *pro hac vice*, you

10:12 1 need to have an attorney from another jurisdiction who
10:12 2 cosigns it.

10:12 3 And as a matter of fact, I did attempt to resolve
10:12 4 this issue in the District of Columbia because District of
10:12 5 Columbia has *quo warranto*. Before I did it, I followed all
10:12 6 the procedures. I submitted to Eric Holder. I submitted --

10:12 7 THE COURT: So that's your answer. You did try it
10:12 8 on earlier dates.

10:12 9 MS. TAITZ: Exactly.

10:12 10 THE COURT: It's not simply a forum that you
10:12 11 chose. You had a multiplicity of forums that you signed
10:12 12 before.

10:12 13 MS. TAITZ: Yes.

10:12 14 THE COURT: That answers the question. Thank you
10:12 15 very much. I'm satisfied.

10:12 16 MR. KREEP: May I?

10:12 17 THE COURT: Counsel?

10:12 18 MR. KREEP: Yes. Just one brief thing, Your
10:12 19 Honor.

10:12 20 THE COURT: I just wanted to make sure there's no
10:12 21 forum shopping. And I'm satisfied, Ms. Taitz, with your
10:12 22 answer. You filed in Georgia. You attempted to file in
10:12 23 Pennsylvania. You attempted to file with the California
10:12 24 Supreme Court. You attempted to file with the
10:12 25 Washington D.C. court. That answers the question.

10:12 1 MS. TAITZ: And, Your Honor, Mr. Obama can rest
10:12 2 assured this is not the most conservative forum in the
10:12 3 nation.

10:12 4 THE COURT: Well, thank you. I hope we're a
10:13 5 well-balanced forum.

10:13 6 Counsel.

10:13 7 MR. KREEP: Just a side note, Your Honor. I'm
10:13 8 well aware of what's happened with a certain federal court
10:13 9 judge in Sacramento, how a certain group has managed to put
10:13 10 people in line and trade spaces to get certain types of
10:13 11 cases in forums. That's the reality of life. Okay.

10:13 12 As far as I know, that did not happen here as far
10:13 13 as I know. This was just the luck the draw, good or bad.

10:13 14 THE COURT: Depends on which way I rule for which
10:13 15 party.

10:13 16 Mr. Kreep, have a seat for a moment. Thank you
10:13 17 very much.

10:13 18 Counsel, what we're going to do is there. We're
10:13 19 going to take a very, very brief recess, probably 15 minutes
10:13 20 to 20 minutes so you can use the restroom. And I want to be
10:13 21 respectful of the audience because the facilities are
10:13 22 limited. Maybe we'll make that 20 minutes to half an hour
10:13 23 so you can go out and come back in if you choose to. Then,
10:13 24 it's very brief.

10:13 25 Answer my question concerning jurisdiction.

10:13 1 That's the main thing that I am concerned with right now.
10:13 2 You can respond, if you will, to the standing issue. That's
10:13 3 where you really asked me to start. You can respond, if you
10:14 4 like, finally to this initial question I had about walking
10:14 5 me through the process.

10:14 6 I can tell you I don't know if there's a
10:14 7 satisfactory answer, so you don't have to waste time with
10:14 8 it. I hear impeachment. I hear the 25th Amendment, but
10:14 9 it's unique. We really don't know, quite frankly. We're
10:14 10 not there. So I'm not expecting, I just have been weighing
10:14 11 in my own mind what is the political, what's not.

10:14 12 The complaint came to me in this large a form with
10:14 13 so many parties, and I was a little worried about Congress'
10:14 14 ability to isolate cases in the D.C. circuit and whether
10:14 15 that, in fact, was a separation of powers problem, although
10:14 16 they did it, of course, under the act.

10:14 17 I was a little concerned, also, initially if this
10:14 18 was forum shopping. I'm convinced now it was not after
10:14 19 Mrs. Taitz' answer, and I appreciate that.

10:14 20 Ms. Taitz, I would respectfully ask you to address
10:14 21 succinctly the question concerning standing. That's your
10:14 22 shakiest ground right there. We may not be going any
10:14 23 further unless you can address that in terms of the actual
10:15 24 harm, not the hypothetical harm.

10:15 25 And I like cases decided on the merits, but we

10:15 1 have to get that legally. That's why I've given you every
10:15 2 opportunity to file correctly. I've invited the government
10:15 3 to get this case moving. They've been courteous, and we've
10:15 4 got the case at least into court rather than floating it to
10:15 5 the Ninth Circuit and back on this issue concerning service.
10:15 6 So I'm very pleased at least.

10:15 7 Finally, I believe this: I think that we as
10:15 8 Americans appreciate one thing. We appreciate being heard.
10:15 9 We can criticize the decider in his or her decision-making
10:15 10 process, but the one thing we abhor is not having an open
10:15 11 forum, a place to speak to these issues. I hope that I've
10:15 12 been relatively courteous. I know I've only given you 45
10:15 13 minutes to an hour each, but I read your briefing a number
10:15 14 of times and I'm satisfied.

10:15 15 The questions I'm asking you are questions I'm
10:15 16 truly concerned about, and my mind isn't made up, or I'd
10:15 17 have a tentative out for you right now, and one of you would
10:15 18 have prevailed and gone on your way.

10:16 19 So when you come back, about ten minutes on each
10:16 20 side. I don't need to hear a complete retracing. You can
10:16 21 cite a case if you would like to. But why don't we
10:16 22 reconvene, let's say, about 25 minutes to the hour. Okay.
10:16 23 We'll try at that time, or 20 minutes to the hour.

10:16 24 Thank you, Counsel.

10:16 25 *(Recess held at 10:16 a.m.)*

10:38 1 THE COURT: All right. We're back on record. And
10:38 2 once again just reintroduce yourself to the record just so I
10:38 3 have a complete record.

10:38 4 MR. WEST: Thank you, Your Honor. Assistant
10:38 5 United States Attorney Roger West for the government.

10:38 6 THE COURT: Thank you.

10:38 7 MR. WEST: Your Honor asked the government to
10:38 8 address the question of jurisdiction in the -- in two
10:38 9 respects. The first, I think, Your Honor, correct me if I'm
10:38 10 wrong, but you're most interested in the political question
10:38 11 issue, and as you phrased it before, walk you through the
10:38 12 procedures.

10:39 13 Let me say a couple of things about that if I
10:39 14 could. The first is, with respect to removal of the
10:39 15 President, it is absolutely clear from the text of the
10:39 16 Constitution in various sections that the power to remove a
10:39 17 President, whether through impeachment or through the other
10:39 18 procedures which are now enumerated in the 25th Amendment to
10:39 19 the Constitution, are committed to the Congress.

10:39 20 There is a textual -- demonstrable, textual
10:39 21 commitment by the Constitution of these questions to the
10:39 22 legislative branch. And while that's important, as
10:39 23 Your Honor pointed out, that there has been an erosion over
10:39 24 the years, at least some legal scholars believe so, in the
10:39 25 whole question of the political question doctrine. Talked

10:39 1 about *Powell v. McCormack*, talked about certain other cases.

10:39 2 But if you go back to *Baker v. Carr*, Your Honor,
10:39 3 it is clear, and it's never been overruled that a political
10:40 4 question that -- the political question doctrine involves at
10:40 5 least a situation where the Constitution, the text of the
10:40 6 Constitution, the document created by our founding fathers
10:40 7 and since amended, where the text of the Constitution
10:40 8 commits a question to a branch. That's where it belongs.

10:40 9 And, here, the text of the Constitution, it's
10:40 10 absolutely -- it could not be clearer, vests in the
10:40 11 Congress, both the power to impeach, and in fact, if you
10:40 12 read the *Nixon* case, *Nixon v. United States*. It's at 938
10:40 13 Fed 2d 239 and also affirmed by the Supreme Court.

10:40 14 THE COURT: I represent to you I have.

10:40 15 MR. WEST: Yes, sir.

10:40 16 You will see from that case that even the question
10:40 17 of the procedures that the Senate chose to use to impeach
10:40 18 Judge Walter Nixon were off limits to the courts. It was a
10:40 19 political question, and it -- and the Ninth Circuit -- the
10:41 20 D.C. Circuit cites with approval and the Supreme Court
10:41 21 affirmed it, the political question, the textual --
10:41 22 demonstratively committed, textual commitment of the
10:41 23 question to the legislative branch, that that part of the
10:41 24 political question doctrine is alive and well.

10:41 25 THE COURT: What I hear from your argument is

10:41 1 therefore the federal court or courts, including the circuit
10:41 2 courts and the Supreme Court, would never have --
10:41 3 jurisdiction is a wrong word, but to enter into this arena
10:41 4 and area; that this is the exclusive domain of Congress.

10:41 5 MR. WEST: Yes, Your Honor, it is.

10:41 6 THE COURT: And that would even occur when the
10:41 7 hypothetical I gave you that was so weighted where I had the
10:41 8 President of the United States from the same majority that
10:42 9 would be empowering the Senate and Congress, you know, the
10:42 10 likelihood of impeachment would be small probably, in a
10:42 11 political sense. In the real world.

10:42 12 But even in that situation, the courts would never
10:42 13 have a role to play from your perspective?

10:42 14 MR. WEST: Yes. The only -- the only part of a
10:42 15 court that would have a role to play would be the Chief
10:42 16 Justice of the United States, who would have the power under
10:42 17 article -- under the Article I, Section 2, Clause 5 and
10:42 18 Article I, Section 3, Clause 6, the two clauses -- the two
10:42 19 articles that deal with impeachment, if the President is --
10:42 20 if articles of impeachment are drafted in the House of
10:42 21 Representatives against the President the United States, and
10:42 22 subsequently there is a trial in the Senate, that trial is
10:42 23 presided over by the Chief Justice of the United States.

10:42 24 THE COURT: It's never a question for the court?

10:42 25 MR. WEST: No. No, Your Honor. I know courts

10:43 1 don't like to hear that they don't have power, but with all
10:43 2 due respect, Your Honor, this is a situation where no court
10:43 3 has the power to do this.

10:43 4 And I set forth at the outset, Your Honor, some
10:43 5 big picture reasons why I believe it would be a disaster of
10:43 6 stunning proportions. It would render our constitutional
10:43 7 system of government which was carefully crafted by the
10:43 8 founding fathers, it would render it crippled if we had a
10:43 9 situation where a single United States District Court judge
10:43 10 would have the power to remove a President of the
10:43 11 United States, which brings up another aspect of the
10:43 12 political question doctrine; namely, separation of powers.

10:43 13 THE COURT: Let me finish your argument for you.
10:43 14 And then that individual potential judge, whoever he or she
10:43 15 was in the country, that case, then, going to the circuit or
10:43 16 to the Supreme Court, and you've cast out at the very
10:43 17 beginning the harm to the country in terms of the cloud or
10:44 18 taint hanging over the executive branch.

10:44 19 MR. WEST: Yes, Your Honor.

10:44 20 THE COURT: Okay. I understand your argument.

10:44 21 MR. WEST: Now, with respect to the question that
10:44 22 you had before of helping you to walk through the procedure
10:44 23 that might occur -- now, with respect to impeachment, the
10:44 24 legislative branch has the power to decide how they're going
10:44 25 to do that. In the case -- if you go back to the *Nixon*

10:44 1 case. That was a case where a federal judge was being
10:44 2 impeached. *Nixon* was all about the question of what
10:44 3 procedures the Senate decided to use in that case and
10:44 4 whether those procedures constituted a trial within the
10:44 5 meaning of the Constitution.

10:44 6 And the Senate in that case had a procedure, I
10:44 7 believe, where they used a committee to decide the question,
10:44 8 and that was the issue in the case.

10:44 9 So there is room within the legislative branch for
10:44 10 some, you know, crafting of some procedures on occasion.

10:44 11 THE COURT: Does this preclude, then, an
10:44 12 individual senator raising this issue or question? In other
10:45 13 words, you say it's the legislative branch. The courts have
10:45 14 no power. They should not enter into this area because of
10:45 15 separation of powers. Does that mean an individual senator
10:45 16 can raise this?

10:45 17 MR. WEST: I believe an individual senator can
10:45 18 raise anything he wishes at any time. I think it's a
10:45 19 question then of what happens next, and I believe that is
10:45 20 within the province of Congress to decide.

10:45 21 THE COURT: That's the proper forum, you believe?

10:45 22 MR. WEST: Yes.

10:45 23 THE COURT: It's raised by Congress or the Senate?

10:45 24 MR. WEST: Right.

10:45 25 THE COURT: Okay.

10:45 1 MR. WEST: With respect to walking you through the
10:45 2 major portion of the Constitution.

10:45 3 THE COURT: Just a moment.

10:45 4 Ms. Taitz, has any senator raised this issue? Any
10:45 5 congress person, and if so, why not?

10:45 6 MS. TAITZ: Maybe I'll let the government --

10:45 7 THE COURT: I'll come back to that.

10:45 8 Okay. Answer that question.

10:45 9 MR. WEST: Your Honor, just briefly, with respect
10:45 10 to the procedures that would be utilized to remove a
10:45 11 President under the 25th Amendment to the Constitution,
10:45 12 Section 4 of that amendment talks about some of the
10:45 13 procedures. It says whenever the Vice President and the
10:45 14 majority of either the principle officers of the executive
10:46 15 departments or such other body as Congress may by law
10:46 16 provide transmit to the President *pro tempore* of the Senate
10:46 17 and the Speaker of the House of Representatives their
10:46 18 written declaration that the President is unable to
10:46 19 discharge the powers and duties of his office, the Vice
10:46 20 President shall immediately assume the powers and duties of
10:46 21 office as acting President.

10:46 22 THE COURT: Slower. Just a little slower.

10:46 23 MR. WEST: I'm sorry.

10:46 24 Thereafter, when the President transmits to the
10:46 25 President *pro tempore* of Senate and the Speaker of the House

10:46 1 of Representatives his written declaration that no inability
10:46 2 exists, he shall resume the powers and duties of his office
10:46 3 unless the Vice President and a majority of either the
10:46 4 principle officers of the executive department or of such
10:46 5 other body as Congress may by law provide transmit within
10:46 6 four days to the President *pro tempore* of the Senate and the
10:46 7 Speaker of the House of Representatives their written
10:47 8 declaration that the President is unable to discharge the
10:47 9 powers and duties of his office. Thereupon, Congress shall
10:47 10 decide the issue, assembling within 48 hours for that
10:47 11 purpose if not in session. If the Congress within 21 days
10:47 12 after receipt of the latter written declaration, or if
10:47 13 Congress is not in session, within 21 days after the
10:47 14 Congress is required to assemble, determines by two-thirds
10:47 15 vote of both houses that the President is unable to
10:47 16 discharge the powers and duties of his office, the Vice
10:47 17 President shall continue to discharge the same as acting
10:47 18 President; otherwise, the President shall resume the powers
10:47 19 and duties of the office.

10:47 20 Seems to me, Your Honor, that that is a clear
10:47 21 textual commitment to the Congress of the power to remove a
10:47 22 President. And I would respectfully submit that it's a
10:47 23 political, nonjusticiable question.

10:47 24 Thank you, Your Honor.

10:48 25 THE COURT: Counsel, thank you very much.

10:48 1 I think you've answered many of my questions.

10:48 2 Counsel, do you have any further comments?

10:48 3 MR. DeJUTE: I would simply add to tie that up,
10:48 4 Your Honor, not that it needs much tying up from Mr. West,
10:48 5 but that Your Honor left the break by suggesting that maybe
10:48 6 there's not an adequate, you know, solution to what the
10:48 7 proper process would be. I think Mr. West has --

10:48 8 THE COURT: Excuse me. Or that there may be, but
10:48 9 it's for Congress to implement. And therefore that the
10:48 10 Constitution, if your argument is correct, allows Congress
10:48 11 to implement what is very unclear at the present time, and
10:48 12 therefore, my initial question really has no answer.
10:48 13 There's no methodology that you can point out to me, subject
10:48 14 or short of the impeachment process at the present time.

10:48 15 MR. DeJUTE: Your Honor has it perfectly, and the
10:48 16 only thing I would add is that in the absence of being able
10:48 17 to point out what the correct or proper process would be
10:48 18 does not mean that we cannot be clear that this is not the
10:49 19 proper process.

10:49 20 THE COURT: Right.

10:49 21 MR. DeJUTE: These plaintiffs, this forum, with
10:49 22 all due respect, is not the proper people or forum to talk
10:49 23 about removing the duly elected and sworn-in President from
10:49 24 office.

10:49 25 THE COURT: Okay. Now, I'm going to kid you a

10:49 1 little bit. How did they do? Did they do okay? The able
10:49 2 colleague who takes no position.

10:49 3 MR. SOSKIN: The able gentlemen here did a
10:49 4 commendable job.

10:49 5 THE COURT: They did fine. Thank you very much.
10:49 6 Now, Ms. Taitz, the lectern's yours, please.

10:49 7 MS. TAITZ: Well, Your Honor, you brought an
10:49 8 example of Arnold Schwarzenegger, and I'm going to bring
10:49 9 another example just to show how absolutely ridiculous this
10:49 10 whole argument was.

10:49 11 And right -- actually, before the election, when
10:49 12 I'd written to Secretary of State Bowen and she said that
10:49 13 they did not check credentials of the candidate. I have
10:49 14 written an article, and this article was published in the
10:50 15 local newspaper. And it stated -- and it might be a more
10:50 16 extreme article, but it stated Osama bin Laden can be on
10:50 17 your ballot in the next election because, arguendo,
10:50 18 hypothetically speaking, if we allow this ridiculous
10:50 19 argument that one can become a President and
10:50 20 Commander-in-Chief by virtue of massive fraud and not one
10:50 21 citizen in the country, not one judge in the country can
10:50 22 challenge it aside from biased Congress and Senate that has
10:50 23 the majority of the same party, we have a dictatorship. We
10:50 24 have a tyranny. We don't have a Constitution. We don't
10:50 25 have a rule of law.

10:50 1 Because I argue somebody like Osama bin Laden can
10:50 2 show up in this country and just like Barack Obama write, I
10:50 3 am eligible, and he can bring \$700 million from Saudi Arabia
10:51 4 buy an election and then say too late, too late, *deja vu*,
10:51 5 *fait accompli*, we're done.

10:51 6 THE COURT: Let me go back to my question, then.
10:51 7 If the government's right and impeachment is available,
10:51 8 minimally impeachment, or Congress implementing some method
10:51 9 to resolve this issue, why hasn't that been raised by
10:51 10 congressional representatives or senators?

10:51 11 MS. TAITZ: Your Honor, I'm not here representing
10:51 12 the Congress.

10:51 13 THE COURT: But better yet -- I'm sorry, that's
10:51 14 unfair on my part. Has it been raised?

10:51 15 MS. TAITZ: But, Your Honor, if you have given the
10:51 16 government time to --

10:51 17 THE COURT: Answer that question for me. You'll
10:51 18 have plenty of time. Has it been raised?

10:51 19 MS. TAITZ: As I have read to you the letters that
10:51 20 were sent by the senators and congressmen to their
10:52 21 constituency, and I might repeat it, they have stated, yet
10:52 22 again, "that Senate ethics rules preclude me from becoming
10:52 23 personally involved in pending litigation. I will sincerely
10:52 24 hope this matter can be fully and promptly resolved by the
10:52 25 courts."

10:52 1 THE COURT: I'm sorry. That does not answer my
10:52 2 question.

10:52 3 MS. TAITZ: Well, that answers it. Congress and
10:52 4 Senate responded to the citizen by saying if I as a senator
10:52 5 get involved, then it would be prejudicial. Ethics
10:52 6 committee prevents me from getting involved in cases like
10:52 7 this one because it would be undue influence on you as a
10:52 8 district judge, and that's why the senators and congressmen
10:52 9 sustained so that you can decide this case on the merits.

10:52 10 And what the Department of Justice did, they
10:52 11 completely misrepresented the issue. They kept saying duly
10:53 12 elected. No. Sorry.

10:53 13 If one got in the White House by virtue of massive
10:53 14 fraud when I have presented to you statements from two
10:53 15 licensed investigators from different sides -- different
10:53 16 parts of the country showing that Mr. Obama has 39 different
10:53 17 social security numbers in national databases and the social
10:53 18 security number that he used most often is the social
10:53 19 security number of an individual who is deceased today, who
10:53 20 was born in 1890 in the state of Connecticut, Your Honor, I
10:53 21 submit to you this is massive fraud.

10:53 22 And we know how corrupt the government and the
10:53 23 Congress is. They have the same ruling party in government
10:53 24 and in Congress. They, no matter what, will not -- will not
10:53 25 decide this issue. Even if I were to present to them a

10:54 1 videotape of Mr. Obama being born in Kenya, and there is a
10:54 2 group of Kenyan doctors speaking Swahili all around him,
10:54 3 they will still find that this is insufficient evidence. No
10:54 4 matter what I presented to them they are simply not willing
10:54 5 to take the challenge.

10:54 6 So when we have a ruling party in Congress and
10:54 7 Senate and in government who is taking away our
10:54 8 constitutional rights, in that case, the judiciary has the
10:54 9 right to intervene. And we have numerous cases that provide
10:54 10 such power of intervention. We have *Morrison v. Olson* from
10:54 11 1988. We have *Bowsher v. Synar* of also 1988. We have
10:54 12 *Flast v. Cohen* from 1968.

10:55 13 And, most importantly, just last year we had
10:55 14 *District of Columbia v. Heller*. This is the case that
10:55 15 overrides all the prior cases.

10:55 16 This is the case that says that ordinary citizens
10:55 17 of this country have the right to enforce the Constitution
10:55 18 of the United States of America and the provisions of this
10:55 19 Constitution.

10:55 20 We have according to *D.C. v. Heller*, the Ninth
10:55 21 Amendment and the Fifth and the 14th Amendment give any
10:55 22 citizen, any person sitting in this room, not even members
10:55 23 of the military, but any citizen of this country
10:55 24 constitutional rights to uphold the -- to uphold the
10:56 25 Constitution, not only enumerated powers, but also

10:56 1 unenumerated powers.

10:56 2 We had *Griswold v. Connecticut*. This is a case
10:56 3 that dealt with contraceptives. This was an unenumerated
10:56 4 power that was not mentioned in the Constitution, and the
10:56 5 right of citizens was upheld there.

10:56 6 I submit to you, Your Honor, that in this case in
10:56 7 *Barnett v. Obama, et al.*, when we are raising the issue of
10:56 8 Article II, Section 1, this is power that specifically -- we
10:56 9 have to -- specifically enumerated, specifically mentioned
10:56 10 in the Constitution, we have a clear definition in the
10:56 11 Constitution, and as such, not only members of the military,
10:56 12 but any citizen have the rights to uphold those powers.

10:57 13 Now, in terms of standing, I would like to add one
10:57 14 more point. As it was mentioned in *Rodearmel*, and it was
10:57 15 mentioned in *Clark v. United States of America* and *Allen v.*
10:57 16 *Board*, when one, as part of his employment, a person has to
10:57 17 take an oath and later on is forced to violate his oath of
10:57 18 office, that was found to be a *de facto* taking of his
10:57 19 employment. And therefore, Your Honor, you are here, I'm
10:57 20 sure, day in and day out as a district judge taking --
10:58 21 hearing cases where employment was taken by the government
10:58 22 from the citizens in different capacities.

10:58 23 So we do have standing. At the very minimum of
10:58 24 each and every person who took an oath, even people -- even
10:58 25 members of the military that are now in the reserves, they

10:58 1 still have a form of employment. Their reservist status is
10:58 2 a form of employment. As a matter of fact, Major Cook
10:58 3 stated something like 12 or \$13,000 a year that they receive
10:58 4 as reservists, as active reservists. That's sufficient for
10:58 5 standing.

10:58 6 Moreover, all of the citizens have standing as
10:58 7 taxpayers. Each and every one of my plaintiffs, each and
10:58 8 every one of my clients is a taxpayer, and as such, based on
10:59 9 *Flast v. Cohen*, they do have standing as taxpayers.

10:59 10 We have a salary that we have paid Mr. Obama. If
10:59 11 it is found that he got into this position based on fraud
10:59 12 with social security number of another person, refusing to
10:59 13 unseal his vital records with a certification of live birth
10:59 14 that according to the -- according to forensic document
10:59 15 experts is a forged document, that affects us as taxpayers.
10:59 16 Because we've paid his salary, and it was obtained by fraud.

10:59 17 But moreover, we're not talking here, Your Honor,
10:59 18 only about 200,000, 250,000, I'm not sure what salary of the
11:00 19 President is. We are talking about billions and trillions
11:00 20 of dollars that are leaving U.S. Treasury, going into
11:00 21 directions unknown.

11:00 22 Just one example, when, based on the stimulus
11:00 23 package signed by Mr. Obama, AIG got \$130 billion from
11:00 24 U.S. Treasury to stimulate U.S. economy, and 59 percent of
11:00 25 this money, which is closed to 80 billion -- with a "B" --

11:00 1 \$80 billion went to foreign banks, we have a right to ask,
11:00 2 excuse me, who is this man? Is he legitimate? Is he giving
11:00 3 away billions of U.S. dollars to foreign banks legitimately?
11:00 4 We have the right to ask this question.

11:01 5 Now, in terms of the ripeness of the case. I
11:01 6 submit to you, Your Honor, that when I brought my first
11:01 7 case, *Lightfoot v. Bowen*, on behalf of Gail Lightfoot, on
11:01 8 behalf of Mr. Turner and other plaintiffs, the only answer I
11:01 9 got from the Supreme Court of California was one word:
11:01 10 Denied.

11:01 11 I don't know why was it denied. They did not give
11:01 12 me any explanation. However, a number of constitutional
11:01 13 scholars have argued that the reason the case was denied,
11:01 14 because prior to election, it was not ripe yet. Because the
11:01 15 citizens of this country could not show any harm before the
11:01 16 election. Your Honor, I submit you to, God knows we've
11:01 17 experienced plenty of harm now. Now --

11:02 18 *(Clapping in courtroom.)*

11:02 19 MS. TAITZ: It is ripe, Your Honor. It is ripe to
11:02 20 review this issue.

11:02 21 And again, what is the most important point, the
11:02 22 government time and again intentionally misrepresented this
11:02 23 issue, this is not an issue of politics. This is an issue
11:02 24 of *quo warranto*, clearly *quo warranto*.

11:02 25 If the framers of the Constitution didn't want us,

11:02 1 the citizens of this country, to come to court like this one
11:02 2 and challenge the issue of legitimacy of any federal
11:02 3 employee, any federal officer, including the President, they
11:02 4 would not have included *quo warranto* in statutes. The
11:02 5 reason we have *quo warranto* statutes, and it's in D.C. that
11:03 6 can be applied, as I stated, in the State of California and
11:03 7 in the Supreme Court of the United States of America --

11:03 8 THE COURT: How are you precluded from doing that,
11:03 9 regardless of this Court's ruling? In other words,
11:03 10 whichever way this Court rules, why can't you bring *quo*
11:03 11 *warranto* in the District of Colombia?

11:03 12 MS. TAITZ: Your Honor, I have -- well, I have
11:03 13 submitted originally on behalf of my clients a *quo warranto*.
11:03 14 It was submitted on behalf of attorney general -- attorney
11:03 15 general on behalf of Major General Childers, on behalf of
11:03 16 State Representative Niceley, on behalf of Timothy
11:03 17 Comerford, state representative of New Hampshire, Lieutenant
11:03 18 Colonel Easterling -- I'm sorry, Lieutenant Easterling,
11:04 19 Lieutenant Colonel Earl Graef, on behalf of Officer Grimes,
11:04 20 and on behalf of a major in U.S. Marine Corps, Mr. Cannon.

11:04 21 I have submitted that March 1st to Attorney
11:04 22 General Eric Holder. And Eric Holder had plenty of time to
11:04 23 do God knows what, but in seven months he could not find
11:04 24 time to even respond. And, Your Honor, I have submitted
11:04 25 certified mail receipts. Attorney General has received the

11:04 1 paperwork on March 17th, March 27, and then a number of my
11:04 2 supporters have submitted and resubmitted. Nothing was ever
11:04 3 done.

11:04 4 I have also submitted in the District of Columbia
11:05 5 to the U.S. Attorney for the District of Columbia,
11:05 6 Jeffrey A. Taylor. And in prior submissions, I have shown
11:05 7 certified mail receipts.

11:05 8 THE COURT: Why do you believe this Court has *quo*
11:05 9 *warranto* jurisdiction?

11:05 10 MS. TAITZ: As I have stated, Your Honor, this
11:05 11 Court -- and I have read from the statutes, California
11:05 12 Choice of Rules would require based on governmental interest
11:05 13 test that is adopted by the State of California to apply the
11:05 14 defendant's home law. And when the government stated that
11:05 15 this is not a proper choice of law and jurisdiction in their
11:05 16 reply to my response, they opened themselves to this
11:05 17 decision. Fine. You don't like the law in the State of
11:05 18 California. Here you go, we can apply, according to the
11:06 19 California choice of law, the law of the District of
11:06 20 Columbia and -- because each and every defendant is a
11:06 21 resident of the District of Columbia.

11:06 22 And District of Columbia has very clear *quo*
11:06 23 *warranto* statutes, and therefore, Your Honor, that gives you
11:06 24 an opportunity to decide based on *quo warranto* whether
11:06 25 Mr. Obama got into his position duly or by fraud.

11:06 1 And if he did get into this position by fraud,
11:06 2 based on the same *quo warranto*, you have the power to remove
11:06 3 one from office that he is usurping, that he is not eligible
11:06 4 to hold. And that's what I have argued in my pleadings.

11:07 5 And I would like to bring one more point.
11:07 6 Mr. West has stated that it would be a disaster to allow the
11:07 7 citizens of this country to assert their constitutional
11:07 8 rights in different courts. And as a matter of fact, couple
11:07 9 days ago, in his pleading, Mr. Kleep said that it's
11:07 10 irrelevant -- that the constitutional rights are irrelevant.

11:07 11 Your Honor, I submit to you that they have no clue
11:07 12 what they're talking about, what disaster is, because they
11:07 13 never experienced it. I was born in a communist country. I
11:07 14 came from a country where citizens did not have a right to
11:07 15 uphold their constitutional rights. Have you ever heard of
11:07 16 any attorney being able to challenge Stalin? Or -- or Mao
11:08 17 Tse Tung? Or in today's world, somebody like Fidel Castro
11:08 18 or Hugo Chavez or Mahmoud Ahmadinejad? In those countries,
11:08 19 the laws exist on paper only but not *de facto*. The
11:08 20 constitutional rights like we have in this country, the
11:08 21 Ninth Amendment, are only on paper. It was never enforced.

11:08 22 Your Honor, I would like to give you one little
11:08 23 example, and that example from my own family.

11:08 24 My great uncle was sent to Siberia, to a civilian
11:08 25 labor camp in Siberia. His attorneys could not effectively

11:08 1 challenge the orders. The courts, the judges were just
11:08 2 puppets of the regime. I remember my great aunt. She was a
11:08 3 beautiful blonde lady, that when it happened, when her
11:09 4 husband was sent to Siberia, decided that she doesn't want
11:09 5 to live anymore. She decided that she wanted to end her
11:09 6 life. She had two young children. She sat in the bus stop.
11:09 7 She cut her veins. Luckily, she was saved by a good
11:09 8 samaritan, a neighbor.

11:09 9 And I remember that my relatives, both of my
11:09 10 grandparents were doing charity, and that was a very special
11:09 11 charity. Well, if you can imagine a big Russian hat. They
11:09 12 were going from home to home with this Russian hat. People
11:09 13 were throwing money. And that's how this lady and her two
11:09 14 children survived. When her husband came from Siberia, he
11:09 15 didn't live long, for long, his health was broken and he
11:09 16 died soon thereafter.

11:09 17 Your Honor, that's what happens when citizens of
11:10 18 the country don't have the right to enforce their
11:10 19 constitutional rights that are given to them by God, that
11:10 20 are given to them by the Constitution.

11:10 21 *(Applause from audience.)*

11:10 22 MS. TAITZ: And I know, Your Honor, that is a real
11:10 23 disaster. And I was just horrified from the moment
11:10 24 Mr. Obama started running, and the moment he opened his
11:10 25 mouth and I could hear what he was saying, I knew where we

11:10 1 are going, because I lived it, I felt it on my own skin, and
11:10 2 it was just one nightmare. And I worked on this issue
11:10 3 24/7/365. I was not a constitutional lawyer before. But
11:10 4 this is such an important issue that I felt I have to work
11:10 5 not 24, but 25/7/365.

11:10 6 And I know that you've been -- you served as a
11:11 7 Marine and you took an oath to uphold the Constitution. I
11:11 8 know that you took an oath to uphold the Constitution as a
11:11 9 state judge and later as a federal judge, and I hope that
11:11 10 you will not take from my clients, from all the people here,
11:11 11 from all the citizens of this country their right to uphold
11:11 12 the Constitution, their right to have the legitimate
11:11 13 President. We have *quo warranto* statutes. You have the
11:11 14 right to enforce those statutes, and I hope that you will
11:11 15 not take those rights.

11:11 16 Thank you, Your Honor.

11:11 17 *(Applause from the audience.)*

11:11 18 THE COURT: Let me speak to the audience. I
11:11 19 certainly haven't tried to quell your enthusiasm and, in
11:11 20 fact, I tried to set up the cameras next door for the
11:12 21 overflow members of the public, because I wanted the public
11:12 22 to have access. Let me tell you that I don't intend to
11:12 23 chill your enthusiasm, but I'm going to ask you to stop for
11:12 24 just a moment and reflect for a moment.

11:12 25 I can assure you that during these proceedings,

11:12 1 President Obama hasn't called me, thank you, and applied any
11:12 2 pressure, nor has any member from the government, but I can
11:12 3 assure you, Ms. Taitz, that something's happened that will
11:12 4 not affect my decision, but it is troubling. And that is
11:12 5 apparently on your blog you encourage people who subscribe
11:12 6 to your blog to contact the courts. We've absorbed 40 to a
11:12 7 hundred phone calls a day on occasion. You have to be
11:12 8 careful, and I assure you that it doesn't -- it has the
11:12 9 opposite effect.

11:12 10 If there's any improper pressure or effort, it's
11:12 11 coming because you requested members of the public to
11:12 12 literally call the court and give their input.

11:12 13 That's not the America I grew up in. No, I'm
11:12 14 speaking now. I've given you all the courtesy. The America
11:13 15 I grew up in had two well-balanced sides with thoughtful
11:13 16 audiences and thoughtful jurists and a thoughtful
11:13 17 legislature and a thoughtful government. And I think before
11:13 18 I hear Mr. Kreep, I want to respond to one parting point
11:13 19 that you and I have to begin with.

11:13 20 I don't believe that my government's corrupt as
11:13 21 you do, or as you stated.

11:13 22 And I've worked in Russia with Rule of Law, and
11:13 23 I've worked in Arkhangel'sk in many parts, and I know of
11:13 24 what you speak. I was there in 1990s after the Soviet Union
11:13 25 broke up. It's a 99 percent conviction rate. A system of

11:13 1 justice I just don't understand, so I hear that heartfelt
11:13 2 story. But that's a personal experience that doesn't
11:13 3 subscribe to this country.

11:13 4 And I believe that regardless of party
11:13 5 affiliation -- and I want you to hear this very strongly --
11:13 6 that most, if not the vast majority of people, who run for
11:14 7 public office are absolutely ethical and honest. And that's
11:14 8 where you and I part company when we talk about a corrupt
11:14 9 government.

11:14 10 Mr. Drake is absolutely honest and ethical.
11:14 11 Mr. Keyes is. So I start from a different point of assuming
11:14 12 the ethics in my government. And the disturbing part to me
11:14 13 isn't your argument. We'll decide that on the merits. But
11:14 14 having that belief, then I think that the Constitution did
11:14 15 one fundamental thing that apparently you hadn't
11:14 16 experienced, and that is, it gives the very common people
11:14 17 like me and all of my fellow citizens the ability to have
11:14 18 some say in the governance by we, the common people.

11:14 19 So therefore, basically, I start at a starting
11:14 20 point of trusting, you know, the majority of people who run
11:14 21 for office, and I believe that they're very ethical. I
11:15 22 think that that's a strength.

11:15 23 Now, for those of you who applauded, I've let that
11:15 24 go, but it's part of what's continually occurred. You're
11:15 25 welcome to because the situation will resolve itself in a

11:15 1 few moments because I'll wish all of you good-bye. But I'm
11:15 2 just going to ask you to maintain a little bit of that
11:15 3 balance for a moment while we listen to Mr. Kreep. Okay?
11:15 4 And you're not disadvantaged by the applause meter today,
11:15 5 nor are you advantaged by lack thereof.

11:15 6 So Mr. Kreep, your position, please.

11:15 7 MR. KREEP: Your Honor, with all due respect to
11:15 8 Mr. West and the other attorneys in the Department of
11:15 9 Justice, I think that their argument is based upon an
11:15 10 assumption that I don't think is present here.

11:15 11 In order to impeach someone, if you look at the
11:15 12 laws, it assumes you have someone that's properly in office.
11:15 13 In order to disqualify them under the 25th Amendment, if you
11:15 14 read the laws, it assumes that someone is properly in
11:15 15 office. We are in a situation where if what the plaintiffs
11:16 16 believe is true, if Mr. Obama never did qualify to run for
11:16 17 or serve as President of the United States, then I don't
11:16 18 know if he can impeach 'cause, from a void ab initio point
11:16 19 of view, he was never in office.

11:16 20 That's the difference we have. That's why saying,
11:16 21 well, it's a political issue and Congress does this, and
11:16 22 Congress did that, and only Congress can do this, and only
11:16 23 Congress can do that. I don't think that applies,
11:16 24 Your Honor. I think we're in a what we refer to -- those of
11:16 25 us who have been around this, doing this stuff for a few

11:16 1 years -- a case of first impression. I mean, I couldn't
11:16 2 certainly find anything anywhere near like this in research,
11:16 3 and I and several law clerks spent a heck of a lot of time
11:16 4 on this.

11:16 5 So with all due respect to Mr. West, et al., I
11:16 6 think their argument misses the point. Okay. I don't think
11:16 7 it's a political question because I don't think there's a
11:16 8 political way to deal with it. I think it's a legal
11:16 9 question that has to be decided by a judge.

11:16 10 The premier question is, is Mr. Obama eligible to
11:17 11 serve as President of the United States?

11:17 12 If he's not now, he never was. He somehow didn't
11:17 13 lose it since he got elected. And if he never was, then
11:17 14 he's not there legally.

11:17 15 Mr. Biden may be there. I guess we could have all
11:17 16 sorts of theories as to what happens if Mr. Obama is no
11:17 17 longer there, but he's just not there. And that's what this
11:17 18 whole lawsuit is all about.

11:17 19 We can criticize each other. You know, Dr. Taitz
11:17 20 has been putting on -- urging people on her blog to sue me
11:17 21 because I dared to become involved in this case. That's her
11:17 22 issue. I'm trying to win this case. My job is to try to
11:17 23 win this case. My job is not to attack the Department of
11:17 24 Justice. My job is not attack Dr. Taitz. My job is to win
11:17 25 this case. The simple matter is this Court today is going

11:17 1 to make a decision as to whether this case is going to go
11:17 2 forward.

11:17 3 There's all sorts of configurations it can go
11:17 4 forward in. You can bump out a lot of defendants. I would
11:18 5 be amazed if you didn't. You can bump out a bunch of the
11:18 6 case, because of lot of it has nothing to do with the case.

11:18 7 THE COURT: Which defendants have standing?

11:18 8 MR. KREEP: Which defendants have standing?

11:18 9 THE COURT: I'm sorry. Which plaintiffs have
11:18 10 standing?

11:18 11 MR. KREEP: I believe -- I'm only going to speak
11:18 12 for my plaintiffs, Your Honor. I'm not going to speak for
11:18 13 Dr. Taitz's plaintiffs. I don't think that's proper
11:18 14 ethically. Under the *Holland* case, Your Honor, I think that
11:18 15 Mr. Drake has standing. He was on the presidential ballot
11:18 16 for the 2008 Presidential Election representing American
11:18 17 Independent Party ticket. He was on there with Mr. Keyes,
11:18 18 who was Dr. Taitz's client. I believe that Mr. Robinson,
11:18 19 who's not here, has standing. He is the current President
11:18 20 of the American Independent Party.

11:18 21 We're talking about something basic, Your Honor.
11:18 22 If Mr. Obama was not legally on the ballot because if he
11:18 23 can't serve as President, then he couldn't run for
11:18 24 President. If he was never legally on the ballot, then
11:18 25 we're talking about every other political party has been

11:19 1 damaged. Every other candidate for President has been
11:19 2 damaged because they did not have a fair election.

11:19 3 There's all sorts of rumors and accusations about
11:19 4 \$750 million Mr. Obama received and FEC this and false that.
11:19 5 That's got nothing to do with it. If he is not -- that's
11:19 6 got nothing to do with today. If he is not eligible, he
11:19 7 ain't there.

11:19 8 And the other issues, you know, if there's massive
11:19 9 campaign finance fraud he participated in, then there may be
11:19 10 grounds for impeachment or censure or a variety of things,
11:19 11 but that all assumes he was properly elected.

11:19 12 THE COURT: What's the injury in fact, to your
11:19 13 client?

11:19 14 MR. KREEP: The injury in fact to my client, Your
11:19 15 Honor, is they didn't have a fair election. I understand
11:19 16 that there was some discussion, "Well, there's no way that
11:19 17 Mr. Keyes could have won," and there's no way that Mr. Drake
11:19 18 could have won, but as someone pointed out to me in the
11:19 19 hall, Your Honor, that's a static analysis, not a dynamic
11:19 20 analysis. What would have happened if Hillary Clinton had
11:20 21 been the presidential candidate instead of Barack Obama?
11:20 22 Would Mr. McCain have won? Would a third-party candidate
11:20 23 have won because the people were so sick and tired of both
11:20 24 major parties that they would have voted for a third party?

11:20 25 We don't know. We can't know because we don't

11:20 1 have the ball, the globe that the seers look in and can tell
11:20 2 the future and the past and all that.

11:20 3 THE COURT: Well, there's another part to your
11:20 4 argument that I really want to consider, and that is that it
11:20 5 would legitimize the two-party system to such an extent that
11:20 6 independent parties would never have an opportunity. In
11:20 7 other words, the rise of Ross Perot for instance, which did
11:20 8 get a substantial amount of the American vote.

11:20 9 MR. KREEP: Or the Bull Moose Party, Your Honor.

11:20 10 THE COURT: Or the Bull Moose Party, historically.

11:20 11 MR. KREEP: Progressive Party, Robert La Fayette.

11:20 12 THE COURT: What it would do from your perspective
11:20 13 is, if the Court simply ruled that your clients never had a
11:20 14 legitimate opportunity, that really begs the question that,
11:21 15 so what? Shouldn't they be inclined to have a level playing
11:21 16 field even if they got X percent of the vote?

11:21 17 MR. KREEP: Exactly, Your Honor.

11:21 18 THE COURT: And otherwise, it would legitimize the
11:21 19 two-party system.

11:21 20 MR. KREEP: It would de-legitimize -- it would
11:21 21 turn us into a solely two-party system and forever doom us
11:21 22 to that. As we've seen, Your Honor, we used to have the
11:21 23 democratic -- what was it? We used to have a combination of
11:21 24 the Democratic Republican Party. It was one party. And
11:21 25 then there was the Whigs, and then the Whigs went the way of

11:21 1 history, and then we had the Democratic Party and the
11:21 2 Republican Party, and then we had H. Ross Perot's party, and
11:21 3 we had George Wallace's party, which won a number of states.
11:21 4 We can't tell what's going to happen in the future, but we
11:21 5 have to protect above all the democracy that we have.

11:21 6 Now, Your Honor asked a question, and it was never
11:22 7 answered. There has been no impeachment motion filed so
11:22 8 far, that I'm aware of, in Congress. Your Honor asked a
11:22 9 question if any senators have raised this issue. Senator
11:22 10 Shelby has publicly, and I believe Senator Coburn has
11:22 11 publicly. Both of them you can do Googles and find them. A
11:22 12 number of congressmen have raised this publicly. They have
11:22 13 not brought impeachment, but they have raised the issue.
11:22 14 Whether they're going to do anything more, I have no idea,
11:22 15 Your Honor.

11:22 16 Finally --

11:22 17 THE COURT: I believe Congress is restricting
11:22 18 itself because of the series of cases in Pennsylvania,
11:22 19 Georgia, the filing in California, and this case. In other
11:22 20 words, this isn't the case -- the first case of impression.
11:22 21 We've got a case down in Georgia that was just resolved
11:22 22 unfavorably.

11:22 23 MR. KREEP: Yes, Your Honor, but all these have
11:22 24 been done on basically procedural issues. Nothing has gone
11:22 25 to the merits so far, which is why this case, I think, is so

11:23 1 important.

11:23 2 THE COURT: I'm most concerned about standing. In
11:23 3 other words, unless I'm comfortable with standing, we don't
11:23 4 get to the merits, which is unfortunate from your
11:23 5 perspective.

11:23 6 MR. KREEP: I understand, Your Honor. Again.

11:23 7 THE COURT: That's why I keep raising the
11:23 8 opportunity to address standing because I am troubled by it.

11:23 9 MR. KREEP: I'm not much of one to wax poetics,
11:23 10 Your Honor.

11:23 11 THE COURT: Well, everybody else has, so why don't
11:23 12 you try.

11:23 13 MR. KREEP: I think there's been a little too much
11:23 14 of that.

11:23 15 THE COURT: That's fine. I've tried not to chill
11:23 16 the enthusiasm.

11:23 17 MR. KREEP: Your Honor, let's assume for the
11:23 18 moment that the people are right, and by the people I
11:23 19 mean -- I don't mean the people as in the prosecutor, I
11:23 20 mean, the Department of Justice. Let's assume the
11:23 21 Department of Justice is right, only Congress or the
11:23 22 electoral college can do anything. Period. Nobody else.
11:23 23 Period. Okay? As Dave argued -- and we've submitted
11:23 24 counter arguments -- the Court's going to have to decide
11:23 25 which way it's gonna go.

11:24 1 What that means is that you could have somebody --
11:24 2 and I've actually argued this before in another court on
11:24 3 this issue, Your Honor. In fact, I was -- Dr. Taitz said
11:24 4 that she puts --

11:24 5 THE COURT: Slower, slower.

11:24 6 MR. KREEP: When Dr. Taitz said that she put
11:24 7 something in an article she wrote, I was kind of interested
11:24 8 because it was an argument I had made in another court
11:24 9 hearing a number of months, some time back.

11:24 10 Basically, what it comes down to, Your Honor, is
11:24 11 that if you decide that no one but Congress or the electoral
11:24 12 college has the right to make this decision, in a sense, our
11:24 13 representative government, our three-part representative
11:24 14 government goes bye-bye.

11:24 15 THE COURT: Let me ask you something. I'm most
11:24 16 troubled if I never get to that point. In other words, I
11:24 17 also believe that one of the virtues of our country is the
11:25 18 access of the American public to a court system to have
11:25 19 issues resolved. But I keep saying to each of you I'm most
11:25 20 troubled and trying to highlight what's of concern
11:25 21 apparently to me and other courts. And regardless of what
11:25 22 other courts have done, I'm concerned about standing. I
11:25 23 never get to justiciability and jurisdiction if I don't get
11:25 24 past the standing hurdle.

11:25 25 MR. KREEP: I'm sorry. I'm trying to respond.

11:25 1 THE COURT: Yes, and that's what's troubling to
11:25 2 me. The question is, let's assume that I rule in your favor
11:25 3 and I then get to what I call the political question,
11:25 4 jurisdictional issue, so be it. What happens if I can't get
11:25 5 by the standing issue? Should I, in my opinion, address
11:25 6 jurisdiction or leave it for another day?

11:26 7 MR. KREEP: I would ask that you address it,
11:26 8 Your Honor, because I have absolutely no doubt that if -- if
11:26 9 the plaintiffs lose, there's going to be an appeal. And
11:26 10 since I doubt that Dr. Taitz is willing to work with me
11:26 11 still, it will be two appeals. And I have absolutely no
11:26 12 doubt that if we are successful, the DOJ is going to appeal.

11:26 13 THE COURT: Why wouldn't I raise the issues
11:26 14 involved, though, and if standing was an issue and this
11:26 15 went, you know, up to a higher court and came back, and,
11:26 16 hypothetically, why would I take this argument as the final
11:26 17 argument on that issue? Why wouldn't I be wise to wait and
11:26 18 let you address the Court again if I found against you on
11:26 19 standing and I was wrong, or other courts had -- and let you
11:26 20 come back and argue the jurisdictional issue anew?

11:26 21 MR. KREEP: Your Honor, for a very simple reason.
11:27 22 Like it or not, this case is on the people's minds. Like it
11:27 23 or not, this is an issue. The longer this thing festers,
11:27 24 the worse it's going to get.

11:27 25 You've seen the emotional outbursts of people in

11:27 1 this room, Your Honor. How many cases have you had where
11:27 2 something like that has happened? I've done cases that are
11:27 3 much more emotional. I've been involved in the Prop. 8
11:27 4 litigation. You're seeing something that is, in my almost
11:27 5 34 years of experience, is rare. I'm not saying it's a bad
11:27 6 thing; I'm just saying it's rare.

11:27 7 I think that is because of the weightiness of the
11:27 8 issues that we're dealing with, and because of the delays --
11:27 9 we had seven-month delays because the cotton-picking case
11:27 10 couldn't get served. Because of delays already, Your Honor,
11:27 11 I think it's important for the Court to, to the extent that
11:27 12 it feels proper, rule on as many issues as possible, so that
11:27 13 if it goes up, no matter who takes it up, and it comes back
11:27 14 down, then we're not in another six-month argument cycle and
11:28 15 we're another six months down the road.

11:28 16 That would be my suggestion to the Court in
11:28 17 response to your question.

11:28 18 THE COURT: I want to thank you for that
11:28 19 thoughtful answer.

11:28 20 MR. KREEP: May I finish my argument, Your Honor?

11:28 21 THE COURT: Please.

11:28 22 MR. KREEP: If only Congress can do this
11:28 23 Your Honor, then we vitiated the second -- Article II, the
11:28 24 requirements, because that means we're putting it in the
11:28 25 hands of the political parties, in essence. The arguments

11:28 1 that I've seen in other cases that I've been involved with,
11:28 2 Your Honor -- and I've been involved with more than just two
11:28 3 in California. The ones I've been involved with, basically
11:28 4 the position has been the political parties, it's up to
11:28 5 them. We know best, you know, pat-pat on the head, go away.

11:28 6 Well, we argued -- in our brief, Your Honor, we
11:28 7 dealt with that issue. Okay?

11:28 8 And the whole idea, Your Honor, is that if there
11:28 9 is not Joe citizen out here who can come in and enforce the
11:28 10 parts of the Constitution, that part of the Constitution,
11:28 11 which part next can't Joe citizen enforce? Joe citizen
11:29 12 can't bring a lawsuit over the First Amendment, freedom of
11:29 13 religion, freedom of speech. We're talking about the
11:29 14 Constitution. Can't say it's okay to sue on this part of
11:29 15 the Constitution, not okay to sue on that part of the
11:29 16 Constitution. That slippery slope argument I've always
11:29 17 thought is a ridiculous argument, but it applies here,
11:29 18 Your Honor.

11:29 19 Who has the rights? The Constitution says that
11:29 20 those rights are not reserved to the states; they're
11:29 21 reserved to the people. Okay? I understand Congress has
11:29 22 gone way out of its way to insulate itself from a lot of
11:29 23 stuff.

11:29 24 I handled a federal court case challenging the
11:29 25 appointments of federal court judges, interestingly enough,

11:29 1 at one point in time. The federal court judge ruled that it
11:29 2 was constitutional for U.S. senators in their selection of
11:29 3 judges to discriminate on race, sex, sexual orientation,
11:29 4 everything in the world. No one had a right because
11:30 5 senators are immune from all those things, because they've
11:30 6 made themselves immune. They can sexually harass one of
11:30 7 their aides, and they'll never be held -- held to bear for
11:30 8 it because they've made themselves immune from all the
11:30 9 federal labor laws. It's the type of situation here. The
11:30 10 government is saying, "aeh," nobody can do it. Congress
11:30 11 reserves it for themselves.

11:30 12 Your Honor, the idea is basically if this case
11:30 13 fails, and this is an important case -- I mean, you can tell
11:30 14 by the publicity -- I mean, on a whole variety of levels.
11:30 15 It's an important constitutional case, not just an important
11:30 16 case involving this President.

11:30 17 I will tell you I don't know where Mr. Obama was
11:30 18 born. I have my suspicions. And if he was born in Hawaii,
11:31 19 then maybe this case goes away and maybe it doesn't.
11:31 20 There's other issues, but maybe it does. But if he was born
11:31 21 in Mombasa, in what was then the British sultanate of
11:31 22 Zanzibar and now known as Kenya, then we have a real
11:31 23 constitutional issue here.

11:31 24 And if the people are told, "Us guys in Congress
11:31 25 and us gals in Congress, we know what to do; you don't.

11:31 1 You're just a bunch of shmucks out there that can't think
11:31 2 for yourselves, and you have to rely on us," then we've
11:31 3 turned from Jefferson's concern of the mobocracy of the
11:31 4 masses versus a representative government to an elitocracy.
11:31 5 We've got the people in Congress saying only they should be
11:31 6 able to decide things, only they know what's best for us.

11:31 7 And I would submit, Your Honor, that's throwing
11:31 8 the Constitution up on its head. And I thank you very much,
11:31 9 Your Honor.

11:31 10 THE COURT: Thank you.

11:31 11 *(Audience applause.)*

11:32 12 THE COURT: Okay. Thank you. Counsel, you'll
11:32 13 hear from me within the next day to a year. I'm just
11:32 14 kidding you.

11:32 15 *(Laughter in courtroom.)*

11:32 16 THE COURT: I need some time just to sort out the
11:32 17 arguments. I didn't put out a tentative today because I
11:32 18 wanted to thoughtfully listen to your respective positions.
11:32 19 I think that's a courtesy I could pay you. After all,
11:32 20 jurists aren't supposed to make up their minds beforehand --
11:32 21 and your papers get you part way there. It's the arguments
11:32 22 that are also helpful.

11:32 23 Obviously, you are hearing from your perspective,
11:32 24 Ms. Taitz and Mr. Kreep, that I'm most concerned about
11:32 25 standing. If you haven't heard that, I don't know what you

11:32 1 heard.

11:32 2 You've heard from the government's position that
11:32 3 if standing is appropriate, that I'm most concerned about
11:32 4 justiciability -- J-U-S-T-I-C-I-B -- for some reason I'm
11:33 5 tongue-tied on that. I'm most concerned about whether the
11:33 6 Courts really do lack jurisdiction if we get by the standing
11:33 7 argument, and what's happened to the political question
11:33 8 doctrine regardless. But I'm concerned whether this is
11:33 9 substantial and I'm concerned if it's in the correct venue,
11:33 10 even if we got there. In other words, there's a whole
11:33 11 trilogy of questions.

11:33 12 I'm a little concerned, just speaking out loud,
11:33 13 what I do and how far I go in an opinion. If I rule against
11:33 14 you, of course, it's resolved; it's going forward. I would
11:33 15 grant an interloc to take it up immediately, of course.

11:33 16 If I rule against you, of course, you would take
11:33 17 it up immediately. I would put it in the same position.
11:33 18 You don't need an interloc, but I would give you one and
11:33 19 encourage one to go up immediately.

11:33 20 The question is how far a Court goes. I may raise
11:33 21 different issues in the opinion and not decide them. It's
11:33 22 only because if I ruled that do you not have standing, I may
11:34 23 point out the issues involved in the jurisdictional
11:34 24 political question area, but not resolve them at the present
11:34 25 time, as you've suggested, awaiting to see if the standing

11:34 1 against you, the ruling is correct or not. It gives you
11:34 2 another opportunity to argue that, and to really marshal
11:34 3 your resources.

11:34 4 If I do rule for you in terms of standing, then,
11:34 5 obviously I'm going to address jurisdictional issues and
11:34 6 political question issues and whether this is the proper
11:34 7 venue and whether this is a material issue, et cetera.

11:34 8 All right. Now, I want to thank all of you.

11:34 9 I also want to thank the audience who have been
11:34 10 here. I know that --

11:34 11 MR. KREEP: Your Honor, the 26(f) hearing, are we
11:34 12 going to...

11:34 13 THE COURT: I'm going to get there in a moment,
11:34 14 but I wanted to thank the audience.

11:34 15 I didn't chill your enthusiasm to such an extent
11:34 16 that you weren't welcome in the federal courts, and
11:34 17 the -- the little bit of applause doesn't affront me, but
11:35 18 also understand it has no bearing upon me. That's your own
11:35 19 emotion coming out. There's a vast amount -- the country
11:35 20 also may feel differently than those assembled here.

11:35 21 The second thing is, I want to caution both of
11:35 22 you. There's been no input from the government, and I don't
11:35 23 expect that there would be.

11:35 24 Ms. Taitz, if you can control the phone calls. I
11:35 25 leave that to you. If not, I want to assure you I'm not

11:35 1 accepting any of those phone calls. They're simply going
11:35 2 into an answering machine and being deleted by the
11:35 3 secretary. I'll just say to you I don't think that that was
11:35 4 helpful putting on an internet blog that you thought that
11:35 5 people could influence the Court by calling them. It was
11:35 6 inappropriate.

11:35 7 MS. TAITZ: May I respond?

11:35 8 THE COURT: No, no, it's done. You've put it out
11:35 9 there. Now it's your responsibility. But it won't bear on
11:35 10 my decision or my writing. My writing will be transparent.
11:35 11 My thoughts will be transparent.

11:35 12 Concerning the dates, I'm going to delay that,
11:36 13 because you both agreed to the dates, and therefore, in the
11:36 14 order, if we're going forward, the dates will be set out as
11:36 15 agreed upon. There's nothing to decide today in terms of
11:36 16 scheduling conference. If we're not going forward, then the
11:36 17 dates are meaningless.

11:36 18 So I'm going to thank you, excuse you. I want to
11:36 19 thank all of you for your arguments, Mr. Kreep, Ms. Taitz,
11:36 20 counsel on behalf of the government. They're well-taken by
11:36 21 the Court. I appreciate it.

11:36 22 MR. DeJUTE: Thank you, Your Honor.

11:36 23 MR. KREEP: Thank you, Your Honor.

11:36 24 *(At 11:36 a.m., proceedings were adjourned.)*

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CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
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Date: October 12, 2009

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