

U.S. District Court
for the District of Columbia Case No. 1:08-cv-02254 JR

Court of Appeals Case No. 09-5080
Consolidating No. 09-5161

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

_____ O _____

GREGORY S. HOLLISTER,

Plaintiff – Appellant,

v.

BARRY SOETORO, et al,

Respondents – Appellee.

_____ O _____

DECLARATION OF LAWRENCE J. JOYCE, ESQUIRE

Lawrence J. Joyce, Esquire
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Tucson, AZ 85712
D.C. Circuit Bar No. 52501
(520) 584-0236

*As In Pro Se Amicus for himself
and as Attorney for Amicus,
Philip J. Berg, Esquire*

I, Lawrence J. Joyce, Esquire am over the age of eighteen (18), and I am the Attorney filing for Leave to file a Brief *Amicus Curiae* on behalf of myself in *pro se* and as Attorney for *Amicus*, Philip J. Berg, Esquire. I have personal knowledge of the facts herein and if called to do so, I could and would competently testify under oath.

I, Lawrence J. Joyce declare as follows:

1. I am a licensed Attorney in the State of Arizona in good standing and am admitted to practice before the United States Court of Appeals for the District of Columbia Circuit.
2. I have read the Opposition of Appellants, Gregory S. Hollister and John D. Hemenway (document number 1218512, prepared by and filed by John D. Hemenway, Esquire) which was filed on December 2, 2009, in response to my and Philip J. Berg's Motion for Leave to file an *Amicus Curiae* Brief in support of Appellants. I am addressing the Appellants' Opposition as follows:

I. Hemenway's Objection Improperly, And Incorrectly, Impugns Improper Motives To Counsel

3. Hemenway's accusation that either Berg or I had entered into this case for the sake of making money would not survive a Motion for Summary Judgment. The accusation of Hemenway contains not one single statement

of fact upon which the conclusion could rationally be drawn that either of this Court's *Amici* had such a motive, or that the undersigned expressed such a thing to Hollister. We note that, significantly, this accusation is unaccompanied by any signed Declaration of Appellant Hollister at all, let alone a Declaration by him stating even one single fact upon which such a conclusion could be based. However, since counsel is ordinarily expected to argue in the alternative, I shall proceed to the following rebuttal of Hemenway's accusation despite the absence of any factual basis for that accusation.

4. Fighting battles like this is no way to make money, as each of the *Amici* can attest to. With respect to Philip J. Berg, I refer this Court to his own Declaration concerning his selfless efforts on behalf of the causes he has believed in.
5. In contrast to Mr. Berg, who is a supporter of Hillary Clinton, I myself participated as an *Amicus* or as counsel for various *Amici* in over a dozen different abortion cases, advocating the right to life---and liberty---of the unborn. In each of these cases, with its large amount of research and drafting, I did all of my work *Pro Bono Publico*, and made considerable financial donations to my client *Amici* client organizations for the printing costs of the briefs. In fact, I specifically studied law for the purpose of

assisting in the effort to overturn *Roe v. Wade*. I have no practice of law per se outside of such work, and I continue to support myself by my work full-time as a pharmacist. Aside from the charitable nature of such work, as anyone who is involved in the advocacy of the pro-life cause can tell you, anyone who eventually does come up with the argument that takes down *Roe v. Wade* faces a very considerable risk of substantial physical violence in retribution for having done so.

6. In addition, in 2004 I took a leave of absence from my job to move to Chicago to volunteer full-time for the campaign of Alan Keyes in his bid for the U.S. Senate. (As it turns out, I made this decision strictly for Keyes himself, as this was before I even knew anything about his opponent in that race, Appellee Soetoro in the case at bar.) This was hardly for the sake of seeking fame and fortune, however: The *Chicago Tribune* reported that Keyes was down by 27 points in the polls before I even got to Chicago. I immediately returned to my practice of pharmacy in Arizona right after that campaign, and I have been practicing pharmacy alone for a living since that time, though I have continued to do *Pro Bono* work as an attorney for pro-life clients.
7. As to the case at bar, all of the work done by myself has likewise been done *Pro Bono Publico*; and if it should turn out that Soetoro is indeed

constitutionally ineligible, the authors of this case will be stepping on toes, at a minimum. There are reports that some persons swooned at the campaign appearances of Soetoro, and removing from office the first African-American President will not sit well with quite a few other people, as well. Anyone who takes on such an adored figure as Soetoro becomes a potential target for revenge, and I am fully aware of this.

8. Hemenway, however, oblivious to my past and present efforts, mischaracterizes the motives of Berg and myself generally, and a conversation which I had with Hollister specifically. In urging Appellant Hollister to understand that he must dismiss Hemenway, I considered the possibility that Hollister might be thinking that Phil Berg and I were trying to shut Hemenway out in the cold with no thanks at all, or any consideration, for the help which Hemenway did offer before he began to change, and became the object of understandable sympathy that he is today. To ensure that Hollister would think no such thing of Berg and myself, I assured Hollister that if the end of this case should result in any monetary gain for myself or Berg, that I was not considering shutting Hemenway out with no thanks, and that Hollister could rest assured that Berg and I would make certain that Hemenway would still be given a full share of any such gain,

anyway. I hoped that in that way, Hollister would not think that Berg or I were trying to be ungrateful to Hemenway.

9. Hemenway's mischaracterization of this conversation between me and Hollister, and Hemenway's accusation that I undertook my efforts in this case for the sake of pecuniary gain, is completely off base, and is based on a total lack of knowledge of the facts. As to Hemenway himself, we readily acknowledge that he, too, did volunteer his efforts, and that he no doubt likewise understood the risk to himself that he took in openly questioning the constitutional qualifications of Soetoro. But this gives him no cause to impugn improper motives to the *Amici*.
10. I furthermore sincerely doubt that Hemenway accurately characterizes his own conversation with Hollister on point, or that he even remembers that conversation correctly at all. For I had advised Hollister of my background *Pro Bono* work in great detail prior to the time that the conversation in question between myself and Hollister even took place, and it was against that background of factual information about myself, which I had already given to Hollister in two lengthy email messages, that I assured Hollister that neither Berg nor myself had any intent of being ungrateful to Hemenway. Consequently, I am highly skeptical that Hollister would have even said to

Hemenway that I had made any statement that either Berg or I had entered into this case for the sake of making money.

II. I Established Contact With Hollister During The Case

11. Not only did the undersigned contact Hollister to advise him of the initiation of the appeal in this case, but the undersigned also contacted Hollister on numerous occasions to advise him of the developments in this case once this Court's *Amici* learned, belatedly, of this Court's original briefing schedule for this case. In addition, the undersigned never suggested that Berg be removed from the case. In fact, when Hollister said that he wanted Berg removed, the undersigned advised Hollister against that, and got Hollister to agree that he would at least consider bringing Berg back in at a later time. So here we have yet another example of Hemenway making an accusation that is no doubt based upon his age-related circumstances.

III. Hollister Expressly Stated His Desire To Exclude Hemenway

12. As to Appellant Hollister supposedly not being able to recall ever contemplating discharging Hemenway (Obj. at 3), we first note that this statement likewise is not accompanied by a signed statement by Hollister himself stating facts upon which that conclusion could be based. And in fact,

to the contrary of what Hemenway says, not only did Hollister expressly tell the undersigned that he wanted the undersigned to be his only attorney, and not only did Hollister, in a later conversation with the undersigned, refer to Hemenway's return as co-counsel as constituting bringing Hemenway *back into* the case (without any controversy or issue about the fact that Hemenway had been excluded), but Hollister also signed a Retainer Agreement with the undersigned in which Hollister stated his desire to have the undersigned be his only attorney, at least for the time being, and with Berg being mentioned as being the only other attorney who might come back in. A copy of that Retainer Agreement is attached hereto and incorporated in by reference as **EXHIBIT "A"**.

I declare under the penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Signed this 16th day of December, 2009.

Respectfully submitted,

s/ Lawrence J. Joyce

LAWRENCE J. JOYCE, *Amici on behalf of himself in pro se and as Attorney for Amici Philip J. Berg, Esquire*

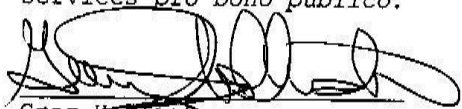
EXHIBIT “A”

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Attorney-Client Retainer Agreement

I, the undersigned, Greg Hollister, to hereby express my desire to be represented exclusively by attorney Lawrence J. Joyce of Tucson, Arizona, in the case of *Hollister v. Soetoro, et al.*, which is currently before the United States Court of Appeals for the District of Columbia Circuit, until such time as attorney Phil Berg of Lafayette Hill, Pennsylvania, can be admitted to the bar of that Court and likewise become my attorney as well. I understand that neither Mr. Joyce nor Mr. Berg will be charging me for their services, and that they shall be performing their services *pro bono publico*.


Greg Hollister

Date 22 Sep 09

accepted: Lawrence J. Joyce

Date _____