

IN THE SUPERIOR COURT OF THE STATE OF INDIANA

MARION COUNTY

ORLY TAITZ	) Cause # 49D14-1203-MI-012046
KARL SWIHART	) Reply to Opposition to Rule 60 motion for
BOB KERN	) Relief from Judgment
FRANK WEYL	)
EDWARD KESLER,	)
PLAINTIFFS	)
V	)
ELECTIONS COMMISSION,	)
SECRETARY OF STATE,	)
DEFENDANTS	)

REPLY TO OPPOSITION TO RUE 60 MOTION FOR RELIEF FROM JUDGMENT

1. Plaintiffs Taitz and Kern filed a verified and notarized complaint of elections fraud with the Secretary of State of Indiana. Secretary of State never responded to the complaint filed by Taitz.

after multiple inquiries by Kern secretary of State advised him that his complaint was forwarded to the Elections Commission, but neither Taitz nor Kern ever got a determination by either secretary of state or elections commission in response to their complaints. complaints contained evidence that candidate for the U.s. Presidency Barack Hussein Obama is violating the elections code and is committing elections fraud by using forged identification papers: forged birth certificate, forged selective service certificate and a stolen Social Security number from a state, where he never resided. they also provided evidence that Obama is

violating Elections code 3-5-7, whereby he is not using his legal name on the ballot as required by the code.

Plaintiffs Swihart, Weyl and Kesler brought forward the same evidence, but brought it in a form of an elections challenge by residents of Indiana in front of the Elections Commission. Members of the Elections Commission refused to enter their evidence into the record, violated Plaintiffs right for a meaningful redress of grievances under the color of authority and aided and abetted Obama in placing his name on the 2012 Primary Presidential election ballot by virtue of identity fraud, elections fraud and use of forged identification papers. considering the fact that Obama is a citizen of three foreign nations: Indonesia, Kenya and Great Britain, such actions by the Elections Commission and Secretary of State can be seen as treasonous.

2. Within 30 days of the decision by the elections Commission Plaintiffs filed a complaint seeking a declaratory relief deeming Obama not eligible to be on the ballot and seeking injunction.

3. Defendants filed a motion to dismiss. they claimed that the motion for the declaratory relief and injunction represents an agency appeal and should be dismissed due to some deficiencies in the complaint, among them lack of addresses of some of the Plaintiffs, lack of the verification statement, lack of \$500 bond and the agency record not being complete.

4. Plaintiffs filed an amended complaint, where they provided necessary verification statement, missing addresses and sought an extension of time by the court to complete the agency record and file a \$500 bond. They also sought an emergency hearing.

5. Motion hearing was held on June 12, 2012.

6. After the motion hearing the minute order was posted which stated "Court orders case dismissal for failure to follow requests" Plaintiffs filed a rule 60 motion stating that this is an error of fact as there were no requests made and Plaintiffs never failed to follow any requests.

7. Shortly thereafter Defendants submitted a proposed order to dismiss which was signed by the court.

8. Plaintiffs filed a second Rule 60 motion for Relief from judgment based on error of fact. Plaintiffs argued that the order was made in error, since causes of action for Negligence, Breach of fiduciary Duties and Fraud were never heard by the court on the merits and those causes of action cannot be dismissed with Prejudice and Declaratory relief and injunctive relief can be granted based on these causes of action. Additionally the cause of action of Agency Appeal was not heard on the merits as well and it cannot be dismissed with Prejudice.

In relation to the cause of action of Appeal of the Administrative Decision by the Secretary of State and Elections Commission, allowing candidate Obama on the primary ballot, this cause of action was not heard on the merits. It was dismissed pursuant to a motion to dismiss by the defendants, where Defendants sought to dismiss it due to two technical deficiencies:

- a) The certified record from the agency was not completed within the 30 day period
- b) there is not a \$500 bond

Both deficiencies relate to procedural requirement in order to hear the matter by this court. The issue of eligibility of Obama for the ballot was never heard on the merits by this court and therefore the dismissal was not a dismissal with prejudice.

Plaintiffs are stating that Plaintiffs Taitz and Kern filed an elections fraud complaint with the Secretary of State, however they never got any determination from the Secretary of State or elections Commission, therefore the 30 day period did not even start, as 30 day period starts after the decision by the agency is made, so they are not in violation of the 30 day rule. Plaintiffs Swihart, Weyl and Kessler are stating that they had a hearing by the elections commission, however they did not violate the 30 days rule either as they filed their complaint within 30 days from the hearing and there was no record to submit, as the elections commission refused to admit their evidence into the record, so they did not fail

to submit the record as there was nothing to submit to this court. Moreover, Plaintiffs brought forward a precedent of Indiana Family and Social Services v Alice Meyer, where the Court of Appeals of the State of Indiana ruled "Just as the trial court has discretion to grant an extension of time, subject to the "good cause" requirement, the trial court has the discretion to find that a petition "subject to dismissal should not, upon a proper showing, be dismissed" the court of Appeals in Meyer relied on Ind. Bd of Educ v Brownsburg Cnty Sch Corp. 813NE.2d330, 333(Ind. Ct App.2004)(citing Ind Code §4-21. 5-5-13(b)) finding that "An extension of time to file the record shall be granted by the trial court for good cause" .

9. Defendants filed an opposition, however in §12 of their opposition they conceded that Causes of action for Negligence, Breach of Fiduciary Duty and Fraud were not heard on the merits and are not dismissed with prejudice. "Respondents are willing to stipulate that her other claims (breach of fiduciary duty, negligence, and fraud) that were never before the Court are not dismissed with prejudice, but reserve all defenses, including those related to the statute of limitations."

10. In relation to the remaining cause of action of Agency Appeal , defendants flagrantly misrepresented the code, the facts and the precedents.

Respondents state that they maintain their position that Taitz does not have standing because she did not file an elections challenge. Defendants repeatedly ignore the fact that Taitz filed a verified and notarized "Elections Fraud" complaint. She submitted it repeatedly and both Secretary of State and Elections Commission did not respond. Both Secretary of State and Elections commission became complicit in elections fraud by Obama, where they had a duty to act and the failed to do so.

11. Defendants misrepresented the wording of Rule 60 and the facts of the case.

rule 60 states

(B) Mistake--Excusable neglect--Newly discovered evidence--Fraud, etc. On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons:

(1) mistake, surprise, or excusable neglect;

defendants claim that there was no mistake in the ruling. In reality they stipulated that a serious mistake was made first and for most in relation to three major causes of action: Negligence, Breach of Fiduciary Duty and Fraud, as according to their own admission those causes of action were not heard and were not dismissed with prejudice, while the order to dismiss states that all claims are dismissed with prejudice. Based on their own stipulation there is a serious error, which warrants granting a rule 60 motion.

Further, their own opposition reflects that the remaining cause of action of agency appeal was never heard on the merits and cannot be dismissed with prejudice. As a matter of fact, in just one month Plaintiffs will be entitled to bring yet another elections challenge in relation to the general election, additionally, they can bring a claim of elections fraud at any time. There is no specific time frame for the elections fraud claim. Defendants own response reflects the fact that the dismissal was without prejudice based only on two technical deficiencies that can be cured by the Plaintiffs, which justifies setting aside the order to dismiss with prejudice and filing an order to dismiss without prejudice and with leave to amend.

At this junction there are two options: the Plaintiffs can proceed with the causes of action for Negligence, Breach of Fiduciary Duty and Fraud against the defendants and bring the elections challenge and contest in one month during the General election and bring the appeal in one month or the court can follow the precedent of Ind Family and Social Services v Alice. Meyer and Ind. Bd. Of Educ. v Brownsburg Cmty. Sch Corp and grant an extension to Plaintiffs to complete the record and submit bond. The Plaintiffs assert that due to the fact that this is a matter of national importance and the matter of national security and legitimacy of the major U.S. Presidential candidate is at stake, and in order to preserve the voters right to vote for a legitimate candidate, and in light of the fact that the Plaintiffs brought a timely elections contest and filed a timely appeal, there is a

good cause for the court to exercise its' power and its jurisdiction to grant an extension of 30 days to complete the agency record and submit a \$500 bond and proceed on all the causes of action on the merits.

/s/ Orly Taitz ESQ

Dated

/s/ Karl Swihart

Dated

/s/ Frank Weyl

Dated

/s/ Bob Kern

Dated

/s/ Edward Kesler

Dated

PROPOSED ORDER

IN THE SUPERIOR COURT OF THE STATE OF INDIANA

MARION COUNTY

ORLY TAITZ	)	Cause # 49D14-1203-MI-012046
KARL SWIHART	)	ORDER
BOB KERN	)	
FRANK WEYL	)	
EDWARD KESLER,	)	
PLAINTIFFS	)	
V	)	
ELECTIONS COMMISSION,	)	
SECRETARY OF STATE,	)	
DEFENDANTS	)	

Plaintiffs filed a Rule 60 Motion for relief from Judgment due to error. Defendants stipulated that an error indeed was made and causes of action for Negligence, Breach of Fiduciary Duties and Fraud were not heard on the merits and are not dismissed with Prejudices.

Due to stipulation by the Defendants, Plaintiffs are allowed to proceed with causes of action for Negligence, Breach of Fiduciary Duty and Fraud.

In relation to the cause of action of Appeal of the Administrative Decision by the Secretary of State and Elections Commission, allowing candidate Obama on the primary ballot, this cause of action was not heard on the merits. It was dismissed pursuant to a motion to dismiss by the defendants, where Defendants sought to dismiss it due to two technical deficiencies:

a) The certified record from the agency was not completed within the 30 day period

b) there is no \$500 bond

Both deficiencies relate to procedural requirement in order to hear the matter by this court. The issue of eligibility of Obama for the ballot was never heard on the merits by this court and therefore the dismissal was not a dismissal with prejudice.

Plaintiffs are stating that Plaintiffs Taitz and Kern filed an elections fraud complaint with the Secretary of State, however they never got any determination from the Secretary of State or elections Commission, therefore the 30 day period did not even start, as 30 day period starts after the decision by the agency is made, so they are not in violation of the 30 day rule. Plaintiffs Swihart, Weyl and Kessler are stating that they had a hearing by the elections commission, however they did not violate the 30 days rule either, as they filed their complaint within 30 days from the hearing and there was no record to submit. The Elections Commission refused to admit their evidence into the record, so they did not fail to submit the record as there was nothing to submit to this court. Moreover, Plaintiffs brought forward a precedent of Indiana Family and Social Services v Alice Meyer, 927 N.E. 2d367, 368 (Ind 2010) where the Court of Appeals of the State of Indiana ruled "**Just as the trial court has discretion to grant an extension of time, subject to the good cause" requirement, the trial court has the discretion to find that a petition "subject to dismissal should not, upon a proper showing, be dismissed"** the court of Appeals in Meyer relied on Ind. Bd of Educ v Brownsburg Cnty Sch Corp. 813NE.2d330, 333(Ind. Ct App.2004)(citing Ind Code §4-21. 5-5-13(b)) finding that "**An extension of time to file the record shall be granted by the trial court for good cause**". At this junction there are two options: the Plaintiffs can proceed with the causes of action for Negligence, Breach of Fiduciary Duty and Fraud against the defendants and bring the elections challenge and contest in one month during the General election and bring the appeal in one month or the court can follow the precedent of Ind Family and Social Services v Alice. Meyer and Ind. Bd. Of Educ v Brownsburg Cnty Sch Corp. and grant an extension to Plaintiffs to complete the record and submit bond. The court finds that due to the fact that this is a matter of national importance and the matter of national security and legitimacy of the major U.S. Presidential

candidate is at stake, and in order to preserve the voters right to vote for a legitimate candidate, and in light of the fact that the Plaintiffs brought a timely elections contest and filed a timely appeal, there is a good cause for the court to exercise its' power and its jurisdiction to grant an extension of 30 days to complete the agency record and submit a \$500 bond and proceed on all the causes of action on the merits.

WHEREFORE,

It is ORDERED AND ADJUDICATED that Plaintiffs Rule 60 motion for Relief from Judgment is GRANTED. Plaintiffs are given 30 days to complete the agency record and submit a certified agency record to this court together with a \$500 bond. Defendants are to file an answer within 30 days from filing of the certified record and bond by the Plaintiffs.

Signed_____

Superior Court Judge Honorable S.K. Reid

Dated_____

CERTIFICATE OF SERVICE

I Yulia Yun, attest that I am not a party to this case and I served the defendants with a true and correct copy of above pleadings by first class mail through their attorney

Deputy Attorney General of Indiana

Jefferson Garn

Indiana Government Center South, 5th Floor

302 West Washington Str.

Indianapolis, IN 46204-2770

Signed _____

Yulia Yun

Dated
