

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
CAUSE NO. 49D14-1203-MI-012046

ORLY TAITZ, KARL SWIHART,)
EDWARD KESLER, BOB KERN,)
and FRANK WEYL)

Petitioners,)

v.)

INDIANA ELECTION COMMISSION,)
and INDIANA SECRETARY OF)
STATE,)

Respondents.)

FILED

JUL 25 2012

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Stephen J. White
CLERK OF THE MARION SUPERIOR COURT

ORDER ON RESPONDENTS' MOTION FOR SANCTIONS

Respondents, the Indiana Election Commission ("IEC") and the Indiana Secretary of State, moved this Court to order monetary sanctions against one or more Petitioners and to award Respondents their costs and attorney fees pursuant to Indiana Rule of Trial Procedure 11 and Indiana Code § 34-52-1-1. And the Court, being duly advised in the premises, now **FINDS** and **ORDERS** as follows:

1. Petitioners' Complaint for Emergency Injunctive and Declaratory Relief ("Complaint") is an unlawful attempt to circumvent the judicial review process and the requirements of Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5-1-1 *et seq.* ("AOPA").
2. Petitioners failed to meet the procedural requirements of AOPA, divesting this Court of its authority to entertain this matter. *See* Ind. Code § 4-21.5-5-7; Ind. Code § 4-21.5-5-8; Ind. Code § 4-21.5-5-14.

3. Petitioners Taitz and Kern do not have standing to seek judicial review of IEC's unanimous decision to deny the challenges to President Obama's qualifications for the office of United States President because they did not file challenges with the IEC that were heard during the February 24th meeting wherein the IEC denied the other Petitioners' challenges. *See* Ind. Code § 4-21.5-5-2.

4. Petitioners are not entitled to injunctive or declaratory relief because said relief is not available under AOPA. *See Scales v. Hospitality House of Bedford*, 593 N.E.2d 1283, 1286 (Ind. Ct. App. 1992). Even if the Petition was construed as a request for a stay under Indiana Code § 4-21.5-5-9, Petitioners did not verify their request, did not provide a bond, are requesting relief that is not available (disruption of the status quo), and have failed to prove that the IEC's unanimous denial of the challenges was illegal or invalid.

5. The IEC does not have the power to determine a candidate or incumbent President's qualifications for the office of United States President. The United States Constitution has reserved that power exclusively to Congress. *See* U.S. Const., Art. II, § 1.

6. Petitioner Taitz is an attorney licensed to practice law in the State of California.

7. This is not Petitioner Taitz's first attempt to bring her claims in a United States court. *See* Respondents' Exhibit 1.

8. Petitioners are acting *pro se*. Nevertheless, Petitioners must adhere to the same standard of conduct and the same established rules of procedure as attorneys. *See C.T. v. Gammon*, 928 N.E.2d 847, 849 n.1 (Ind. Ct. App. 2010); *Novatny v. Novatny*, 872 N.E.2d 673, 677 n. 3 (Ind. Ct. App. 2007); *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004); *Parks v. Madison County*, 783 N.E.2d 711, 723 (Ind. Ct. App. 2003); *Davidson v. Perron*, 756 N.E.2d 1007, 1013 (Ind. Ct. App. 2001); *Diaz v. Carpenter*, 650 N.E.2d 688 (Ind. Ct. App. 1995);

Bradem v. St. Joseph County Commissioners, 621 N.E.2d 1133 (Ind. Ct. App. 1993). “Indeed, it has long been the rule in Indiana that *pro se* litigants without legal training are held to the same standard as trained counsel and are required to follow procedural rules.” *Receveur v. Buss*, 919 N.E.2d 1235, 1238 n.4 (Ind. Ct. App. 2010). The Court may not “indulge in any benevolent presumptions on [their] behalf, or waive any rule for the orderly and proper conduct of [their] appeal.” *Foley v. Mannor*, 844 N.E.2d 494, 496 n. 1 (Ind. Ct. App. 2006).

9. A claim is frivolous if

it is taken primarily for the purpose of harassment, if the attorney is unable to make a good faith and rational argument on the merits of the action, or if the lawyer is unable to support the action taken by a good faith and rational argument for an extension, modification, or reversal of existing law.

Elbert v. Elbert, 579 N.E.2d 102, 114 (Ind. Ct. App. 1991).

10. In order to determine if a claim is unreasonable, a court must look “to the totality of the circumstances, including the law and facts ascertainable at the time of filing.” *McDonald v. McDonald*, 631 N.E.2d 522, 524 (Ind. Ct. App. 1994). A claim is unreasonable if “no reasonable attorney would consider the claim worthy of litigation.” *Id.*, citing *General Collections, Inc. v. Decker* 545 N.E.2d 18, 20 (Ind. Ct. App. 1989).

11. “A claim or defense is ‘groundless’ if no facts exist which support the legal claim presented by the losing party.” *Alaska Seaboard Partners Ltd. P'ship v. Hood*, 949 N.E.2d 1247, 1256 (Ind. Ct. App. 2011).

12. Petitioners’ claims are frivolous, unreasonable, and groundless. Petitioners have no “good faith or rational argument on the merits” of their claims against Respondents. *Elbert*, 579 N.E.2d at 114. “[N]o facts exist which support” Petitioners’ claims against Respondents. *Alaska Seaboard Partners Ltd. P'ship*, 949 N.E.2d at 1256.

13. On June 12, 2012, this Court held a hearing on all motions pending as of May 21, 2012.

14. At that hearing, each Petitioner claimed that she or he did not receive the May 21st Order setting the June 12th hearing.

15. Petitioner Taitz repeatedly claimed that she did not receive the Court's May 21st Order.

16. However, Petitioner Taitz posted the Court's May 21st Order on her website on May 25, 2012. *See* Respondents' Exhibit 2, p. 6-8.

17. Despite Petitioner Taitz's statements to the contrary, Petitioner Taitz did in fact receive this Court's May 21st Order well before the June 12th hearing date. Indeed, she and all of the other Petitioners were present at the June 12th hearing.

18. Petitioner Taitz's conduct before this Court is sanctionable.

19. This Court hereby awards Respondents their attorney fees pursuant to Indiana Code § 34-52-1-1. Petitioners shall pay Respondents \$9,405.00, the total amount of attorney fees incurred by Respondents for Deputy Attorneys General Garn and Shelby's representation in this matter. *See* Respondents' Exhibits 3 and 4.

20. The Court hereby awards monetary sanctions against Petitioners as follows:

a. Petitioner Orly Taitz is sanctioned \$_____ for her behavior before this Court and frivolous, unreasonable, and groundless claims.

b. Petitioner Bob Kern is sanctioned \$_____ for his frivolous, unreasonable, and groundless claims.


c. Petitioner Karl Swihart is sanctioned \$_____ for his frivolous, unreasonable, and groundless claims.

d. Petitioner Frank Weyl is sanctioned \$ _____ for his frivolous, unreasonable, and groundless claims.

e. Petitioner Edward Kesler is sanctioned \$ _____ for his frivolous, unreasonable, and groundless claims.

21. Petitioners shall pay the sums ordered herein within 14 days of this Order.

SO ORDERED this _____ day of JUN 25 2012, 2012.



Honorable S.K. Reid
Judge, Marion Superior Court 14

Distribution:

Jefferson Garn
Kate Shelby
Office of the Attorney General
I.G.C.S – 5th Floor
302 West Washington Street
Indianapolis, IN 46204

Orly Taitz
29839 Santa Margarita Pkwy, Ste 100
Rancho Santa Margarita, CA 92688

Karl Swihart
460 Austin Drive
Avon, IN 46123

Edward Kesler
3070 S. Leisure Place
West Terre Haute, IN 47885

Frank Weyl
701 N. Brentwood Lane
Muncie, IN 47304

Bob Kern
1040 N. Delaware St.
Indianapolis, IN 46202