Dr. Orly Taitz, ESQ

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PRO SE PLAINTIFF IN MS

IN THE US DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

Dr. Orly Taitz, ESQ et al	)	CASE 12-CV-280
v	)	HON. HENRY WINGATE
Democratic Party of Mississippi et al	)	PRESIDING

PER ORDER OF THE COURT PLAINTIFF SUBMITS THIS SUPPLEMENTAL BRIEF

I. PRECEDENT ON STAYING CERTIFICATION OF ELECTION

1. Originally this case was filed under MS code 23-15-961, later 23-15-963. Originally defense stated that the case was filed 1 day late, however above statutes do not specify calendar days or business days and whether mail box rule apply. MS paralegal Sandra Inman provided an affidavit Exhibit 2 that she called the clerk of the court and was instructed that statute specified business days, which explains the discrepancy. Additionally Defense in their motion to dismiss claimed that the case was filed too early, as Obama was not nominated yet. He has been nominated now and the case is ripe for adjudication. In 2010 U.S. District Court Judge Ralph R. Beistline ordered a STAY of CERTIFICATION of ELECTION RESULTS by the Secretary of State of Alaska of the results of the election of the U.S. senator Lisa Murkowski pending resolution of constitutional violation challenges in a legal action Miller v Campbell 10-cv-00252 -RRB USDC of Alaska. After constitutional challenges were resolved, the stay was lifted. Based on this precedent, in case at hand a STAY in certification of election results by the Secretary of State and a STAY in presenting the Certificate of Ascertainment to the Electors can be issued 2. McCarthy v. Briscoe 429 U.S. 1317, 97 S.Ct. 10, 50 L.Ed.2d 49 1976 McCarthy is a case coming out of the 5th Circuit. U.S. Supreme Court granted an emergency injunction and ordered the Secretary of State of Texas to place on the ballot the name of an independent candidate for the U.S. President Senator McCarthy. Based on this precedent this court can issue a declaratory relief and an injunction to issuance of the Certificate of votes for Candidate Obama and Certificate of Ascertainment by the Secretary of State.

3. Aside from certifying elections results SECRETARY OF STATE HAS A DUTY TO PRESENT A CERTIFICATE OF ASCERTAINMENT TO THE ELECTORAL COLLEGE on the first Monday after second Wednesday in December, which falls on December 17, 2012. As this court has jurisdiction to STAY and ENJOIN certification of election results, consequently it has jurisdiction to enjoin presentment of a Certificate of Ascertainment to the electoral college.

c. Duty to certify the Certificate of nomination. Secretary of state of Mississippi Delbert Hosemann certified the Certificate of Nomination of Barack Obama which was provided to him by the Nominating convention of the Democratic Party. The certification stated " WE DO HEREBY **CERTIFY** that the following are the nominees of said Party for President and Vice President of the United States respectively and that the following are **legally qualified** to serve as President and Vice President of the United States respectively **under the applicable provisions** of the United States Constitution:"

According to the *Cyclopedia of Law and Procedure, vol. 15* (NY: American Law Book Company, 1905), pp. 338-339:*When the authority to make a nomination is legally challenged by objections filed to the certificate of nomination, and violation or disregard of the party rules is alleged, the court must hear the facts and determine the question.*Plaintiffs in this case, among them 3 Presidential Candidate, duly registered as such, challenged the nomination of Barack Obama due to fraud committed by him in his claim of eligibility and his use of forged IDs, name not legally his and a stolen Social Security number in

claiming eligibility . Additionally, OCON (official certification of Candidate) was falsified and Certification of the Candidate sent by the DNC to Secretary of State was based on fraudulent information.

As such this court can issue a DECLARATORY RELIEF THAT SECRETARY OF STATE CERTIFIED CANDIDATE OBAMA BASED ON INCORRECT/FRAUDULENT INFORMATION PROVIDED BY THE DNC in its Certification of the Candidate. Based on such declaratory relief this court can render injunctive relief.

II. GOVERNMENTAL EMPLOYEES CAN BE SUED IN RICO FOR ACTIONS TAKEN WHILE HOLDING PUBLIC OFFICE AND/OR MISUSE OF THEIR PUBLIC OFFICE.

In her RICO statement p39 Taitz expressly clarified that Defendants are sued as individuals and also as participants in RICO enterprise. Caption and description of the parties on page 3 of the FAC show that **only** the Secretary of State is being sued **only in his capacity as the Secretary of State**. His name was not mentioned. In regards to other plaintiffs, there was **no statement** that they are sued **only in their official capacity**. They were named by their personal names, such as Alvin Onaka and Loretta Fuddy, it was explained where they work and how they are connected to the case and it was explained that they are RICO defendants as individuals, **for actions taken while holding public office and/or misuse of their public office.**

Nu-Life Constr. Co. v. NYC Board of Education, 779 F. Supp. 248 (E.D.N.Y. 1991) . Employees of the Board of Education of the city of New York were convicted in **Civil RICO for their actions in their capacity as employees of the city.**

From LaFlamboy v. Landek, 587 F. Supp. 2d 914 (N.D. Ill. 2008): "In addition, public officials can be held individually liable **for actions taken while holding public office and/or misuse of their public office.** See, e.g., United States v. Warner, 498 F.3d 666, 696 (7th Cir. 2007) (affirming RICO conviction of former Illinois governor based on activities defendant was serving as Illinois Secretary of State and Governor); United States v. Emond, 935 F.2d 1511, 1512 (7th Cir. 1991) (affirming RICO conviction of village manager who "used his official position as Streamwood's village manager to extort money from persons with business before the village government."). [Footnote 17.] Indeed, as discussed below, the Seventh Circuit has held that certain violations of Illinois' Official Misconduct Statute, specifically, 720 ILCS 5/33-3(d), **which applies to misconduct committed while in office, can constitute a RICO predicate act.** See United States v. Garner, 837 F.2d 1404, 1419 (7th Cir. 1987); see also United States v. Genova, 333 F.3d 750, 758 (7th Cir. 2003) (720 ILCS 5/33-3(d) "defines a species of bribery" and thus violations constitute predicate acts for RICO purposes; violations of 720 ILCS 5/33-3(c), however, do not).**Public officials were found guilty in Civil RICO in bribery,** see Environmental Tectonics v. W.S. Kirkpatrick, Inc., 847 F.2d 1052, 1067 (3d Cir.1988),

Bieter Company, Appellant, v. Beatta Blomquist 987 F.2d 1319 ¶53 (8th Circuit) "...Were we to accept the district court's analogy to Williamson, the application of **civil RICO** in cases of **public corruption** would appear to be restricted to those cases in which a plaintiff suffers a taking because of bribery or the like. We find no support for restricting RICO's application in

that manner. Such a holding would not be consistent with the purposes of RICO, **one of which is to root out public corruption**, see United States v. Angelilli, 660 F.2d 23, 32-33 (2d Cir.1981) (discussing legislative history), cert. denied, 455 U.S. 910, 102 S.Ct. 1258, 71 L.Ed.2d 449 (1982), and would remove the threat of heavy civil sanctions from those who choose to corrupt public officials for their own gain but do so prior to having lost to their competitors[9] the very time when such villainy can have the most effect." Moreover, the court should follow the precedent of Gutenkauf v. City of Tempe, No. CV-10-02129-PHX-FJM, 2011 WL 1672065, at *5 (D. Ariz. May 4, 2011) where it can sua sponte analyze actions of the governmental officials as officials and individuals. In this case actions of Onaka and Fuddy were not in furtherance of their functions as bona fide governmental officials but rather as accomplices in a RICO scheme, where they acted with an unprecedented level of malice and knowingly certified complete forgery, claiming it to be a genuine birth certificate. Moreover, their further actions show that they acted in furtherance of RICO, as on 05.31.2012 they certified a new, improved forgery, which attorneys for co-defendants Tepper and Begley submitted to this court.

III DEFENSE CLAIMS THAT PLAINTIFF SUED IN RICO UNDER ONLY 2 PREDICATE ACTS. THIS IS NOT TRUE.

PREDICATE ACTS FULLY DESCRIBED IN 49 PAGES OF RICO STATEMENT, 45 PAGE COMPLAINT as well as exhibits and subsequent pleadings submitted by the Plaintiffs: (1)"racketeering activity" bribery, extortion, 18, United States Code: Section 201 (relating to bribery), sections 471, 472, and 473 (relating to counterfeiting), section 1028 (relating to fraud and related activity in connection with identification documents, , section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1425 (relating to the procurement of citizenship or nationalization unlawfully), section 1426 (relating to the reproduction of naturalization or citizenship papers), section 1427 (relating to the sale of naturalization or citizenship papers), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1542 (relating to false statement in application and use of passport), section 1543 (relating to forgery or false use of passport), section 1544 (relating to misuse of passport), section 1546 (relating to fraud and misuse of visas, permits, and other documents), [1]section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering, section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1960 (relating to illegal money transmitters), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2320 (relating to trafficking in goods or services bearing counterfeit marks), (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain, or (G) any act that is indictable

under any provision listed in section 2332b(g)(5)(B); sections 1461 to 1465 (relating to obscene material)

2. Defamation was not a predicate act in itself, but a form of intimidation and retaliation against Taitz, who is a victim, witness and informant herein. It falls under **section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant),** Systematic Defamation and assassination of her character was done with the purpose of intimidating her and with the purpose of destroying her name as a professional, as a licensed Doctor of Dental Surgery and Attorney and in order to destroy her business: her medical and legal practice, it was done with the goal of impoverishing her and destroying her ability to support herself and her family. One of the most egregious actions was hiring by RICO accomplices of a painter to create a series of pornographic paintings under title "birther Orly Taitz" and posting those all over the internet, in news papers, holding an exhibition and sending those pornographic paintings to 3 children of Taitz. This constitutes RICO violation under **Title 18, United States Code, sections 1461 to 1465 (relating to obscene material) which are predicate offenses** for violation of the RICO statutes, 18 U.S.C. §§ 1961 to 1969 Exhibit 1.

III. REQUESTED 1 SENTENCE CLARIFICATION OF RICO DEFENDANTS AND THEIR ROLES IN RICO CONSPIRACY.

Defendant's attorney Tepper claimed that the fact that there are a number of defendants in RICO conspiracy means that Plaintiff Taitz is litigious and the claims are improbable. However, let's remember the Watergate, where over 30 high ranking governmental officials were indicted and went to prison. If Watergate were to be presented to Judge Sirica as a civil RICO, it would seem improbable at first. ObamaForgeryGate is much more egregious, as we have high ranking officials committing most serious crimes, committing treason in covering up forgery in IDs of a foreign national who got in the White House by virtue of fraud and use of forged IDs. Seeing ObamaForgeryGate through the prism of Watergate, it is easier to understand that allegations are not improbable. More information is provided in some 49 pages of RICO statement, 45 page First amended complaint and come 90 pages of exhibits to the complaint. There are 8 named defendants: **#1**Barack Hussein Obama, aka Barack (Barry) Soetoro, aka Barry Soebarkah, citizen of Indonesia per his Indonesian school records, committed massive fraud by getting into the White House using flagrantly forged birth certificate, forged Selective Service application, last name and fraudulently obtained Connecticut Social Security number xxx-xx-4425, which was never assigned to him according to E-Verify and SSNVS Obama was complicit in all predicate acts listed above. **#2**"Obama for America" RICO organization created to finance all of the predicate acts listed above. **#3**Alvin Onaka- Registrar of the Department of Health State of Hawaii and **#4** Loretta Fuddy, director of Health of HI. Onaka and Fuddy repeatedly authorized a computer forgery claiming it to be Obama's genuine type written 1961 birth certificate **sections 471, 472, and 473 (relating to counterfeiting),), section 1028 (relating to fraud and related activity in connection with identification documents, , section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), #5** Michael Astrue, commissioner of Social Security, acted with malice and covered up Obama's use of a stolen Connecticut social Security number xxx-xx-4425; **#6** Nancy Pelosi, as a

Chair of the Democratic National Convention certified Obama as a legally eligible candidate for the U.S. President, while she knew that Obama is a foreign national using forged IDs. **#7** Democratic Party of Mississippi acted with malice and committed fraud in submitting Obama's name as a candidate for the U.S. President, while knowing that he is a foreign national, who is committing fraud and using forged IDs. **#8**Secretary of State and Democratic Party of MS were put on notice regarding forgery in Obama's IDs in November 2008, in Thomas v Hosemann. They covered up all evidence and certified Obama as a legally eligible candidate, while knowing that he is using forged IDs.

RICO participants, who were not listed as named defendants #1 George Soros, billionaire financier **financed RICO organizations #2"Fogbow", "Obama for America**", May 2010 Fogbow convention. According to #3**Painter Jim lacey George Soros** financed creation of **obscene material,** series of **pornographic paintings of Taitz (sections 1461 to 1465 relating to obscene material)**created in order to intimidate her as a whistle blower **section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant). #4**Attorney Scott Tepper, co-founder of Fogbow, engaged in intimidation of Taitz, submitted to court various forgeries, claiming those to be valid birth certificates; #5 A number of employees of different courts who tampered with pleadings by Taitz in order to cover up Obama's forged IDs. **#6** William Chatfield, former director of Selective Service, knowingly and with malice covered up flagrant forgery in the application for the Selective Service**), sections 471, 472, and 473 (relating to counterfeiting),), section 1028 (relating to fraud and related activity in connection with identification documents, , section 1341 (relating to mail fraud), section 1343 (relating to wire fraud),#7 Patrick Donahoe,** Postmaster General, received two certified mail complaints showing that Obama's alleged Selective Service application contains a forged post office stamp with 2 digits year "80", when for over 200 years US post office used 4 digit stamp and all other mail sent in 1980 contained a 4 digit year "1980". Postmaster covered up this flagrant forgery. **), sections 471, 472, and 473 (relating to counterfeiting)), section 1028 (relating to fraud and related activity in connection with identification documents, , section 1341 (relating to mail fraud), section 1343 (relating to wire fraud),#8** Harry Ballantyne, Chief Actuary of Social Security, according to National databases, one of the Social Security numbers used by Obama, was a number of Ballantyne's deceased mother, Lucille Ballantyne. **#9** CNN and Anderson Cooper "360-keeping them Honest" publicized a microfilm of the birth certificate of another person, claiming it to be Obama's. **#10** Computer hackers, who destroyed Taitz web sites, hacked e-mail accounts, **#11** John Does, who tampered with her and her husband's cars, **#12** Brian Schatz, former chair of the Democratic party of HI, Lieutenant Governor of HI, falsified wording of the certificate of Candidate, removed words "eligible to Constitution", to cover up Obama's lack of Constitutional eligibility. In summary Plaintiff Taitz suffered over $500,000 estimated damages, her businesses were destroyed, her good name was assassinated in an effort to tamper with her as a whistleblower, informer and victim, to intimidate her, so she will dismiss her complaint. Obama, "Obama for America" and accomplices got a financial benefit from RICO of $1 billion raised from the public and $1 billion of matching funds from the taxpayers for RICO enterprise based on forgery and fraud. Obama donors got estimated $90 billion in kickbacks from Obama in the form of Federal grants and U.S. Government backed loans for failing ventures.

Respectfully Submitted Dr. Orly Taitz Esq

EXHIBIT 1

1. *Orly Taitz* **Birther** *Pancakes* **Puppet Master, Revealed! - YouTube**

*www.youtube.com/watch?v...*Share

Shared on Google+. View the post.

Jul 5, 2010 - 1 min - Uploaded by faithmouse
... funding Dan *Lacey's* paintings of *Orly Taitz* giving birth to delicious *pancakes*. ... The puppet master ...

2. More videos for *orly taitz soros lacey pancakes* »
3. *Orly Taitz* **to Subpoena** *Pancake* **Painter | Mother Jones**

*www.motherjones.com/.../**orly-taitz**-subpoena-**pancake**-painter*CachedShare

Shared on Google+. View the post.

Orly Taitz to Subpoena *Pancake* Painter. —By Stephanie Mencimer. | Wed Jun. 9, 2010 4:00 AM PDT. Tweet. Dan *Lacey*. Just because she's spent the past few ...

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→ Elections, Must Reads, Obama

Orly Taitz to Subpoena Pancake Painter

—By Stephanie Mencimer

| Wed Jun. 9, 2010 4:00 AM PDT

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-

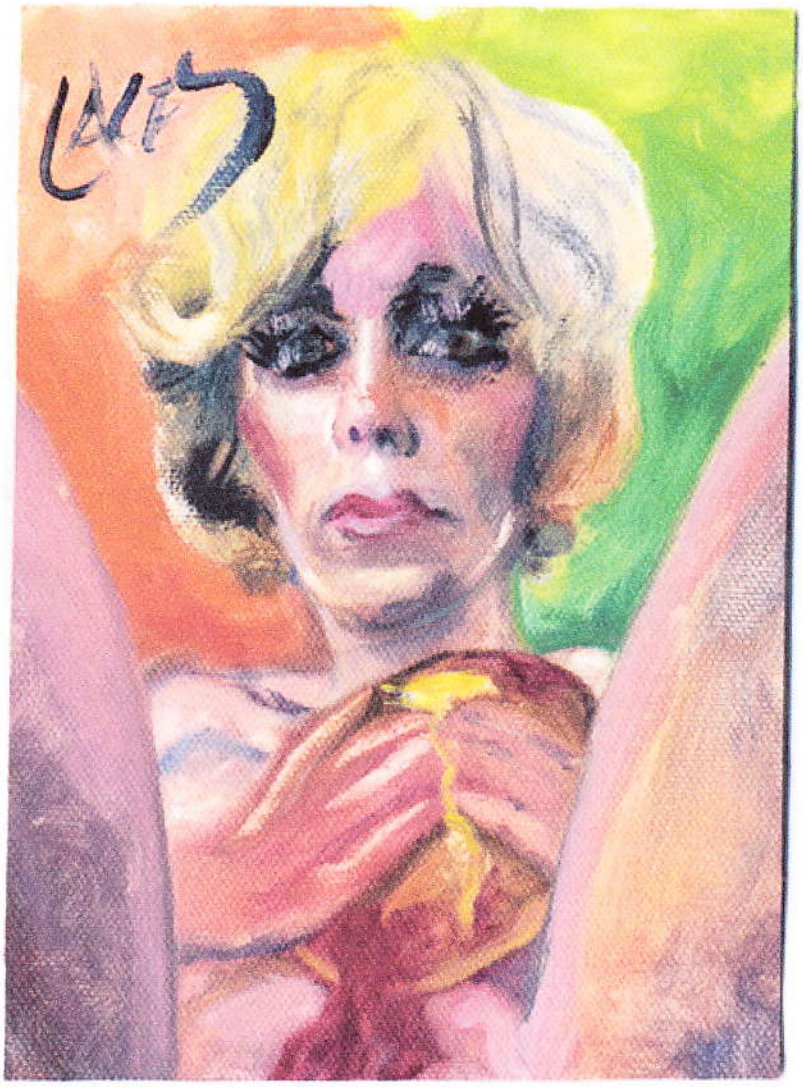
 Dan Lacey

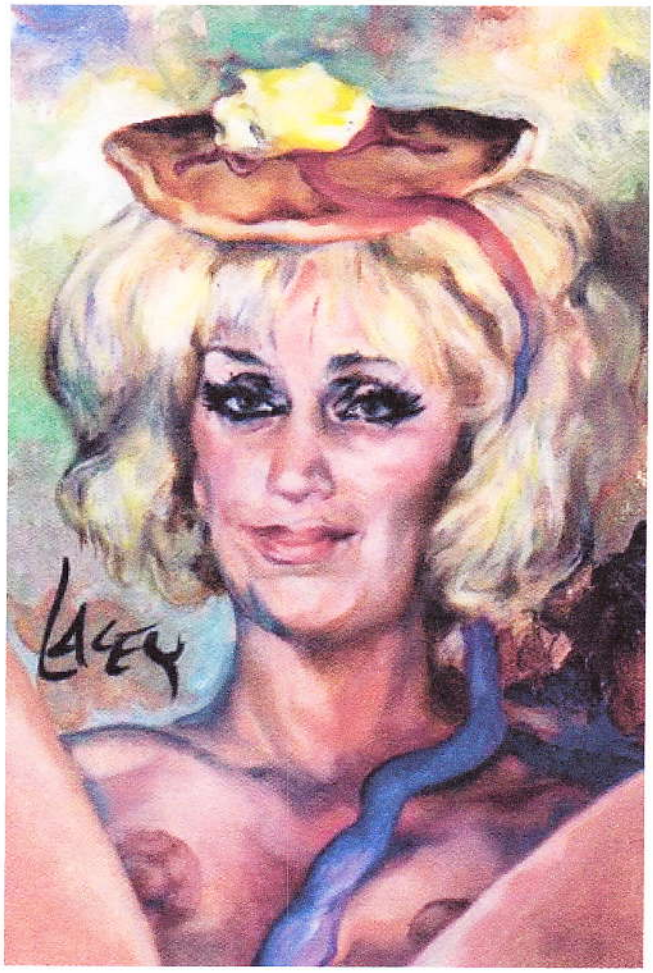
Just because she's spent the past few months campaigning to become California's next secretary of state doesn't mean that "birther" queen Dr. Orly Taitz has given up her many court battles seeking to prove that President Barack Obama is not an American citizen. On May 19, Taitz filed a "motion to reconsider" in her mostly failed lawsuit against Obama in DC federal court. And one basis for the motion was none other than a *Mother Jones* article! Yes, Taitz told the court that she has discovered new evidence of "intimidation and harassment" against her in my story on Dan Lacey, the Minnesota "Painter of Pancakes," who has painted some nude portraits of Taitz giving birth to a pancake.

Taitz told me in May that her opponents have sent copies of the painting to her children and family along with threatening emails in what she believes was an attempt to scare her into dropping her insurgent campaign to be the GOP's candidate for California's secretary of state. She suspects that one of Obama's powerful allies commissioned the painting. I asked Lacey about that and he was cagey on the subject. So Taitz wants to subpoena him to force him to out his benefactor. She writes:

"Recent article by Washington burro [sic] correspondent Stephanie Mencimer shows that "artist" Dan Lacey, who painted despicable art work series "Birther Orly Taitz", showing Taitz nude, with her legs spread, giving birth and holding bloody placenta, which were sent to her children, posted on the Internet and a local paper, did not work on his own accord. Dan Lacey admitted, that he was commissioned, paid by someone to do this, it was a clear attempt to intimidate Taitz and pressure her to withdraw as a candidate...Lacey refused to provide the reporter Stephanie Mencimer with the name of the person who hired him, who paid him, however during the depositions and upon subpoena this information will be available and will be provided to [the] court. At this time Taitz cannot state with certainty who paid Dan Lacey, however it is common knowledge, that Billionaire George Soros, one of the biggest backers of Obama, through his organization Moveon.org, has commissioned numerous artists to promote Obama and denigrate his opponents and critics."

Lacey, for his part, has responded with a YouTube video in which he promises to reveal the identity of the "puppetmaster" behind the Pancake Birther series, pixel by pixel, as part of his new legal defense fundraising. He promises to enter the name of anyone who donates $2.37 to the defense fund into a drawing to win the new painting, which will be awarded at a "Colors of Orly" art show fundraiser in Minneapolis on July 4th. Watch the video here:


LIFE


LACEY

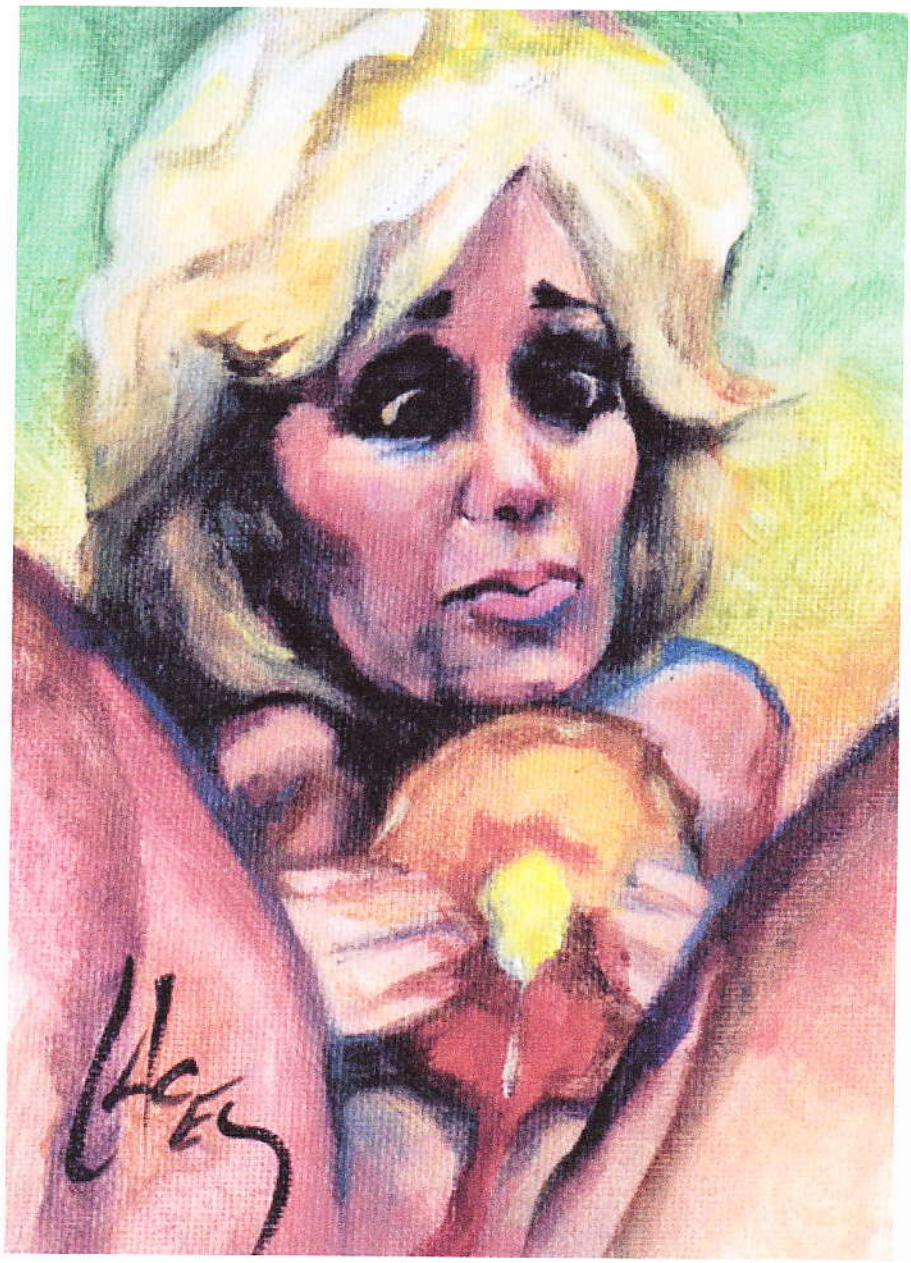


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EXHIBIT 2

AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF Lawrence

Personally came and appeared before me the undersigned Notary, the within named **Sandra Inman,** who is a resident of Pearl, Mississippi, and makes this her general affidavit and upon oath and affirmation of belief and personal knowledge that the following matters, things and facts set forth herein are true and correct to the best of her knowledge:

On or about ~~September 25, 2012~~ February 13, 2012, I called the Hinds County Circuit Clerk to ask a question regarding the computation of deadlines for filing court papers. The question I asked was "In computing the deadlines and counting the days, do you count *business days* or *calendar days*? I did not obtain the employee's name; however, she told me to use *business days*.

Dated, this the 19th day of November, 2012.

Sandra Inman

AFFIANT, Sandra Inman

SWORN AND SUBSCRIBED BEFORE ME, this the 19th day of November, 2012.

CIRCUIT COURT OF LAWRENCE COUNTY MISSISSIPPI

James S. Buster by SLH (ex)

NOTARY PUBLIC

My Commission Expires:

MY COMMISSION EXPIRES JANUARY 1, 2016

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

JOE MILLER,

Plaintiff,

vs.

LIEUTENANT GOVERNOR CRAIG CAMPBELL, in his official capacity; and the STATE OF ALASKA, DIVISION OF ELECTIONS,

Defendants.

Case No. 3:10-cv-0252-RRB

ORDER REGARDING PENDING MOTIONS AND STAYING PROCEEDINGS

Before the Court, at Docket 13, is Plaintiff Joe Miller with a Motion for Preliminary Injunction in which he seeks to enjoin the Lieutenant Governor of Alaska, through the Division of Elections, from counting the votes cast in the race for United States Senator for Alaska. Defendants oppose at Docket 26 and Plaintiff replies at Docket 35. At Docket 33 Plaintiff seeks to file an Amended Motion for Preliminary Injunction and includes his arguments for this additional relief in his filing at Docket 35. In order to expedite this matter, the Court hereby **GRANTS** the Motion to Amend at **Docket 33** without seeking response from Defendants, for Plaintiff's request was certainly anticipated and implicit in his earlier filings.

The Court has federal question jurisdiction to hear this matter given the significant constitutional questions arising from the dispute between the parties as to whether the Division of Elections has, among other things, violated the Alaska Legislature's prerogative by counting votes in a manner contrary to the legislative directive.

As indicated by the Court in its Order at Docket 16, the process for counting votes and segregating disputed ballots appears to have been carefully thought out and provides ample protection for both parties. There simply is no just reason to delay or enjoin the counting of ballots. Plaintiff's Motion for Preliminary Injunction at **Docket 13** regarding the counting of ballots is therefore **DENIED.**

Plaintiff also asks the Court to enjoin the Defendants from certifying the results of the 2010 general election for the office of U.S. Senator and prohibit the Division from accepting as valid any write-in votes in which a candidate's name is misspelled or is not written on the ballot as it appears on the candidate's write-in declaration of candidacy. Plaintiff is asking this Court to order Defendants to count write-in ballots as set forth in AS 15.15.360(a)10, (a)(11) and (b), without deviation. In making this latter request, Plaintiff asks the Court to determine purely Alaska law, i.e. how this Alaska Statute should be applied to the

current dispute. More specifically, Plaintiff contends that if candidate Murkowski's name is misspelled on the write-in ballot or deviates in any way from the manner the name appeared on the declaration of candidacy, that ballot should not be counted. This is certainly one very possible interpretation of the disputed statute. Defendants contend, however, that if the spelling of "Lisa Murkowski" or "Murkowski" is such that the voter's intent to vote for candidate Murkowski is clear, that should be sufficient and the ballot should be counted for her. This too is a viable interpretation of the disputed statute. The issue now is who should properly determine the answer to this question, the Federal Court or the State Court? And the answer appears clear to the undersigned. This is a State-wide election, conducted under State law, involving State candidates and impacting State citizens. The Courts of the State of Alaska are in the best position, at least initially, to apply Alaska law and to determine who won this election. While it is not the role of the State Court to ignore or re-write the law, it certainly can interpret it when necessary.

Therefore, prudence, propriety, principles of judicial restraint, and a desire to avoid unnecessary constitutional adjudication lead this Court to abstain[1] from resolving the current

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[1] Railroad Commission v. Pullman Co., 312 U.S. 496 (1941); Burdick v. Takushi, 846 F.2d 587, 588-89 (9th Cir. 1988)

Certificate of Service

I, Orly Taitz, certify that per request of the defendants I served all parties to the case on 11.27.2012 via e-mail with foregoing supplemental brief

/s/ Orly Taitz

dispute and refer the parties to the appropriate State tribunal. The Court is confident that the Courts of Alaska can quickly address and resolve these matters. So long as the United States Constitution is not violated, this really is a State matter.

Therefore, for the reasons articulated above and by Defendants in their Motion to Dismiss for Lack of Federal Question Jurisdiction or in the Alternative to Abstain at Docket 17, which Plaintiff responded to at Docket 20, this matter is hereby **STAYED** so that the parties may bring this dispute before the appropriate State tribunal. The Court shall retain jurisdiction pursuant to Pullman and will remain available to review any constitutional issues that may exist once the State remedies have been exhausted. In order to ensure that these serious State law issues are resolved prior to certification of the election, the Court hereby conditionally **GRANTS** Plaintiff's motion to enjoin certification of the election. If an action is filed in State Court on or before **November 22, 2010,** the results of this election shall not be certified until the legal issues raised therein have been fully and finally resolved.

IT IS SO ORDERED.

ENTERED this 19th day of November, 2010.

S/RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

EXHIBIT 4

McCarthy v. Briscoe, 429 U.S. 1317 (1976)

Supreme Court of the United States
Eugene J. McCARTHY et al., Petitioners,
v.
Dolph BRISCOE, Governor of Texas and Mark W. White, Jr., Secretary of State of the State of Texas.
No. A-247.
Sept. 30, 1976.
429 U.S. 1317, 97 S.Ct. 10, 50 L.Ed.2d 49

*1317 **11 Mr. Justice POWELL, Circuit Justice.
This is an application for injunctive relief,FN1 presented to me as Circuit Justice. The applicants, former Senator Eugene J. McCarthy and four Texas voters who support Senator McCarthy's independent candidacy for President, have asked that I order Senator McCarthy's name placed on the 1976 general election ballot in Texas. They sought relief without success from a three-judge District Court for the Western District of Texas D. C., 418 F.Supp. 816 and, on appeal, from the Court of Appeals for the Fifth Circuit 539 F.2d 1353.FN2 Upon consideration *1318 of the record before me, I have concluded that the courts below erred in failing to remedy a clear violation of the applicants' constitutional rights. I have therefore granted the requested relief.

FN1. Although the application is styled "Application for a partial stay of an order and judgment of the United States Court of Appeals, Fifth Circuit," the applicants actually seek affirmative relief. I have therefore treated the papers as an application for an injunction pursuant to 28 U.S.C. s 1651 and Rules 50 and 51 of this Court.

FN2. The applicants filed an initial application in this Court for a stay of the District Court order on September 8, 1976, before they had filed an appeal to the Court of Appeals. In my capacity as Circuit Justice, I denied that request on September 14 on the ground that this Court was without jurisdiction to entertain a direct appeal from the District Court under 28 U.S.C. s 1253. Ante, p. 1316. See MTM, Inc. v. Baxley, 420 U.S. 799, 804, 95 S.Ct. 1278, 1281, 43 L.Ed.2d 636 (1975). I specified that the denial

was without prejudice to the applicants' right to seek relief in the Court of Appeals. The applicants filed a notice of appeal in the Court of Appeals on September 16; the Court of Appeals denied their request for interlocutory relief on September 23; and the applicants renewed their application here the following day.

Effective September 1, 1975 Texas amended its Election Code so as to preclude candidates for the office of President from qualifying for position on the general election ballot as independents. Acts of 1975, c. 682, s 23, codified in Tex.Elec. Code, Art. 13.50, Subd. 1 (Supp.1976). Before that date independent candidates for all offices had been able to gain access to the ballot by submitting a prescribed number of voters' signatures by a deadline several months in advance of the general election. Tex.Elec. Code, Arts. 13.50, 13.51 (1967); see American Party of Texas v. White, 415 U.S. 767, 788-791, 94 S.Ct. 1296, 1309, 39 L.Ed.2d 744, (1974). Under the new law that method of qualifying for the ballot was carried forward for most offices, but not for the office of President.FN3 A Presidential candidate must now be a member of a political party as a precondition to securing a place on the ballot. An independent candidate can seek election as President only by joining or organizing a political party, Tex.Elec. Code, Arts. 13.02, 13.45 (Supp.1976), or by mounting a campaign to have his supporters "write in" his name on election day, Arts. 6.05, 6.06 (Supp.1976).

FN3. Candidates for the offices of Vice Presidential and Presidential elector are similarly excluded from qualifying as independents. Art. 13.50, subd. 1 (Supp.1976). Although two of the applicants are candidates for the office of Presidential elector, they have not specifically sought relief with respect to their own candidacies. My order of September 27 (see n. 4, infra) is sufficiently broad to encompass such relief, to the extent necessary to perfect Senator McCarthy's qualification for general election.

On July 30, 1976, the applicants filed this suit in the District Court, claiming that Art. 13.50 of the Texas Election *1319 Code, as amended, violated the rights "secured to them under Article II, Section 1, Clauses 2 and 4, and Article VI, Clause 2 of the United States Constitution and the First, Twelfth and Fourteenth Amendments thereto." The applicants asked the court to order Senator McCarthy's name placed on

the ballot or, alternatively, to devise reasonable criteria by which Senator McCarthy might demonstrate support for his candidacy as a means of qualifying for ballot position. The applicants submitted affidavits that tended to show that Senator McCarthy **12 was a serious Presidential aspirant with substantial support in many States.

The defendants, the Governor and Secretary of State of the State of Texas, denied that the new law was unconstitutional and claimed that Senator McCarthy was barred by laches from obtaining the injunctive relief he requested. In support of the laches claim, the defendants presented the affidavit and later the live testimony of Mark W. White, Jr., the Secretary of State, to the effect that it would be impossible in the time remaining before the November election for the State to verify that Senator McCarthy had substantial support among Texas voters.

On September 3, 1976, the District Court held that the Texas law, as amended, was constitutionally invalid for failure to provide independents a reasonable procedure for gaining ballot access, but declined to enter injunctive relief. The court perceived its only choice to be one

"between standing by and permitting this incomprehensible policy to achieve its apparent objective or substantially burdening the entire general election at the behest of one who has at least dawdled over his rights . . . ." Memorandum Opinion, 418 F.Supp. at 818.

Believing it to be "too late for us to fashion meaningful relief without substantially disrupting the entire Texas election scheme," the court concluded that injunctive relief was not warranted. Ibid.
*1320 On September 23, 1976, the Court of Appeals, 5 Cir., 539 F.2d 1353, denied the applicants' request for emergency injunctive relief on the same basis:

"We are . . . regretfully constrained to agree with the District Court that because the

complaint was so lately filed there is insufficient time for the Court to devise a petition requirement for ascertaining whether McCarthy has substantial community support in Texas without disrupting the entire election process in that state. . . ."

The following day, September 24, 1976, the applicants presented this application to me as Circuit Justice.

The new Texas law precluding independent candidates for President from gaining access to the general election ballot as independents raises no novel issue of constitutional law. In Storer v. Brown, 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974), the Court flatly rejected the notion that an independent could be forced to seek ballot position by joining or organizing a political party:

"It may be that the 1% registration requirement is a valid condition to extending ballot position to a new political party. Cf. American Party of Texas v. White, 415 U.S. 767, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974). But the political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other. A new party organization contemplates a statewide, ongoing organization with distinctive political character. Its goal is typically to gain control of the machinery of state government by electing its candidates to public office. From the standpoint of a potential supporter, affiliation with the new party would mean giving up his ties with another party or sacrificing his own independent status, even though his possible interest in the new party centers around a particular candidate for a particular office. For the candidate himself, it *1321 would mean undertaking the serious responsibilities of qualified party status . . . such as the conduct of a primary, holding party conventions, and the promulgation of party platforms. But more fundamentally, the candidate, who is by definition an independent and desires to remain one, must now consider himself a party man, surrendering his independent status. Must he necessarily choose the political party route if he wants to appear on the ballot in the general election? We think not." Id., at 745-746, 94 S.Ct. at 1286.

And in Lubin v. Panish, 415 U.S. 709, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974), the Court

**13 characterized as "dubious at best" the intimation that a write-in provision was an acceptable means of ballot access:

"The realities of the electoral process . . . strongly suggest that 'access' via write-in votes falls far short of access in terms of having the name of the candidate on the ballot. . . . That disparity would, itself, give rise to constitutional questions . . . ." Id., at 719 n. 5, 94 S.Ct. at 1321.

In view of these pronouncements, the District Court was fully justified in characterizing the new Texas law enacted little more than a year after Storer and Lubin were decided as demonstrating an "intransigent and discriminatory position" and an "incomprehensible policy."
Despite this recognition of the clear constitutional infirmity of the Texas statute, the District Court refused to grant the requested relief. The District Court, and the Court of Appeals, apparently assumed that the only appropriate remedy was to order implementation of the former statutory procedure permitting independent Presidential candidates to demonstrate substantial support by gathering a prescribed number of voters' signatures a procedure still available to independent candidates for most other elective offices. Since the signature-gathering procedure involved not only a filing deadline which had long since expired but also a lengthy *1322 process of signature verification, both lower courts concluded that there was too little time to impose a signature-gathering requirement without undue disruption of the State's electoral process.

This Court will normally accept findings of a district court affirmed by a court of appeals, on factual considerations such as those underlying a determination of laches. But acceptance of findings of fact does not in this case require acceptance of the conclusion that violation of the applicants' constitutional rights must go unremedied. In assuming that a signature-gathering process was the only available remedy, the courts below gave too little recognition to the amendment passed by the Texas Legislature making that very process unavailable to independent candidates for the office of President. In taking that action, the Texas Legislature provided no means by

which an independent Presidential candidate might demonstrate substantial voter support. Given this legislative default, the courts were free to determine on the existing record whether it would be appropriate to order Senator McCarthy's name added to the general election ballot as a remedy for what the District Court properly characterized as an "incomprehensible policy" violative of constitutional rights. This is a course that has been followed before both in this Court, see Williams v. Rhodes, 89 S.Ct. 1, 21 L.Ed.2d 69 (1968) (Stewart, J., in chambers), and, more recently, in three District Court decisions involving Senator McCarthy, McCarthy v. Noel, 420 F.Supp. 799 (D.C.R.I.1976); McCarthy v. Tribbitt, 421 F.Supp. 1193 (D.C.Del.1976); McCarthy v. Askew, 420 F.Supp. 775 (D.C.Fla.1976).

In determining whether to order a candidate's name added to the ballot as a remedy for a State's denial of access, a court should be sensitive to the State's legitimate interest in preventing "laundry list" ballots that "discourage voter participation and confuse and frustrate those who do participate." *1323 Lubin v. Panish, supra, 415 U.S., at 715, 94 S.Ct. at 1319. But where a State forecloses independent candidacy in Presidential elections by affording no means for a candidate to demonstrate community support, as Texas has done here, a court may properly look to available evidence or to matters subject to judicial notice to determine whether there is reason to assume the requisite community support. See McCarthy v. Askew, supra.

It is not seriously contested that Senator McCarthy is a nationally known figure; that he served two terms in the United States Senate and five in the United States House of Representatives; that he was an active candidate for the Democratic nomination for President in 1968, winning a substantial percentage of the votes cast in **14 the primary elections; and that he has succeeded this year in qualifying for position on the general election ballot in many States. The defendants have made no showing that support for Senator McCarthy is less substantial in Texas than elsewhere.

For the reasons stated, I have ordered that the application be granted and that the Secretary of State place the name of Eugene J. McCarthy on the November 1976 general election ballot in Texas as an independent candidate for the office of President of the United States.FN4 I have consultedinformally *1324 with each of my

Brethren and, although no other Justice has participated in the drafting of this opinion, I am authorized to say that a majority of the Court would grant the application.FN5

FN4. The order granting the application was issued on September 27, 1976. The Texas Election Code does not appear to prescribe a deadline for the printing of ballots for the general election. The earliest date when printed ballots are required for any purpose is October 13, 20 days before the election, when the statutory period for absentee voting by mail begins. Art. 5.05, Subd. 4(a) (Supp.1976). Ballots are to be mailed to persons outside the United States "as soon as possible after the ballots become available, but not earlier than (October 3)," Art. 5.05, Subd. 4e, and to others intending to vote by mail on October 13 "or as soon thereafter as possible," Art. 5.05, Subd. 4(b). Political parties are not required to certify their nominees to the Secretary of State until September 28, Art. 11.04 (1967), and the Secretary of State is not required to certify the names of those who have qualified for ballot position to local election officials until October 3, Art. 1.03, Subd. 2 (Supp.1976). Thus there appears to be ample time to add Senator McCarthy's name.

FN5. Mr. Justice WHITE, Mr. Justice MARSHALL, Mr. Justice BLACKMUN, and Mr. Justice REHNQUIST have asked to be recorded as holding a different view.

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