

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

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

DR. ORLY TAITZ, ESQ, KARL)
SWIHART, EDWARD KESLER,)
BOB KERN, FRANK WEYL, and)
VALERIA RIPLEY)

Plaintiffs,)

v.)

ELECTION COMMISSION,)
SECRETARY OF STATE OF)
INDIANA, DEPUTY ATTORNEY)
GENERAL JEFFERSON GARN,)
ASSISTANT ATTORNEY GENERAL)
KATE SHELBY, 1310 RADIO/WTLC)
AMOS BROWN, IN HIS CAPACITY)
OF THE TALK SHOW HOST OF THE)
1310 RADIO/WTLC)

Defendants.)

FILED

OCT 18 2012

223

Elizabeth K. White
CLERK OF THE MARION SUPERIOR COURT

STATE DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

Defendants the Indiana Election Commission, the Indiana Secretary of State, Deputy Attorney General Jefferson Garn, and Deputy Attorney General Kate Shelby (collectively, the "State Defendants") hereby move to dismiss Plaintiffs' Second Amended Complaint. In support of their Motion to Dismiss, the State Defendants show the Court as follows:

1. Plaintiffs filed a "Petition for Emergency Injunctive Relief/Petition for Declaratory Relief" on March 23, 2012. The Petition was dismissed on June 12, 2012.
2. Plaintiffs filed a Second Amended Complaint on September 4, 2012, after the Court granted Plaintiffs leave to file a second complaint on issues other than what had been dismissed on June 12, 2012.
3. Plaintiffs' Second Amended Complaint should be dismissed for multiple reasons.

4. Plaintiffs have failed to state a claim upon which relief may be granted. The Second Amended Complaint is, in essence, a challenge to an agency action; thus, it is merely an attempt to circumvent the requirements of the Administrative Orders and Procedures Act (“AOPA”), Indiana Code § 4-21.5 *et seq.*, which establishes the *exclusive* means for judicial review of an agency action. *See* Ind. Code § 4-21.5-5-1. The principles of collateral estoppel and *res judicata* apply, barring re-litigation of the same issue where that issue was necessarily adjudicated in a former suit and the same issue is presented in the subsequent lawsuit. *Adams v. Marion County Office of Family and Children*, 659 N.E.2d 202, 205 (Ind. Ct. App. 1995).

5. Plaintiffs have also failed to state any legally cognizable claim for fraud, negligence, breach of fiduciary duty, defamation of character, or for a violation of 14th Amendment/Declaratory Relief. Plaintiffs allege no facts, that, even if true, would constitute fraud, breach of fiduciary duty, or negligence on the part of the State Defendants.

6. In addition, this Court lacks subject matter jurisdiction over this matter as Plaintiffs are, in effect, requesting that this Court review the qualifications of the sitting President of the United States.

7. Plaintiff Orly Taitz, a resident of California, does not have standing, as she cannot demonstrate injury as required for standing purposes. *See Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995). Taitz is not a registered Indiana voter and does not have standing to challenge a candidate’s appearance on an Indiana ballot.

8. Plaintiffs cannot meet the requirements for injunctive or declarative relief.

9. Plaintiffs’ claim regarding alleged violations of the National Voter Registration Act is without merit, and Plaintiffs have failed to provide notice of an alleged violation, a requirement private parties must undertake pursuant to the NVRA prior to filing a lawsuit.

10. Plaintiffs also make a request for a writ of mandamus related to “citizenship verification.” As Plaintiffs made no argument in relationship to this request, this request should be summarily denied.

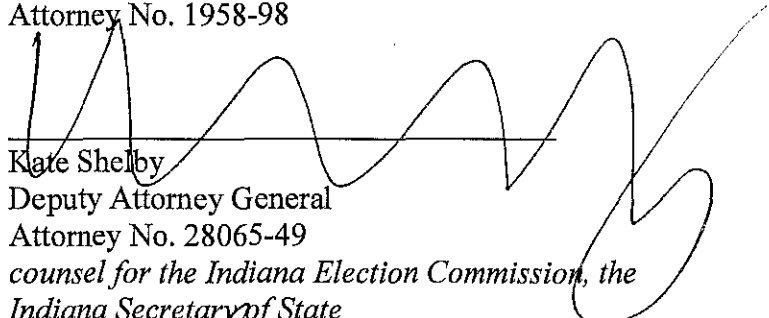
11. A memorandum in support of this Motion to Dismiss is attached.

WHEREFORE, State Defendants respectfully request that this Court dismiss the Second Amended Complaint and grant all other just and proper relief.

Respectfully submitted,

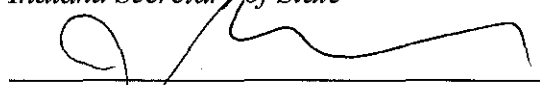
GREGORY F. ZOELLER
Attorney General of Indiana
Attorney No. 1958-98

By:



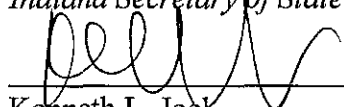
Kate Shelby
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Attorney No. 28065-49
*counsel for the Indiana Election Commission, the
Indiana Secretary of State*

By:



Jefferson S. Garn
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Attorney No. 29921-49
*counsel for the Indiana Election Commission, the
Indiana Secretary of State*

By:



Kenneth L. Joel
Deputy Attorney General
Attorney No. 30271-49
*counsel for the Indiana Election Commission, the
Indiana Secretary of State, and Deputy Attorneys
General Jefferson S. Garn and Kate Shelby*

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon all parties and/or counsel of record listed below, by United States mail, first-class postage prepaid, on October 19th, 2012.

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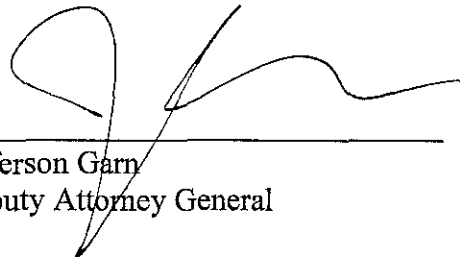
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Defendants.)

ORDER ON RESPONDENTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

Defendants the Indiana Election Commission, the Indiana Secretary of State, Deputy Attorney General Jefferson Garn, and Deputy Attorney General Kate Shelby (collectively, the "State Defendants"), moved this Court to dismiss Plaintiffs' Second Amended Complaint. And the Court, having reviewed the filings submitted by both parties, reviewed relevant authority, and heard argument from both parties, now finds that said Motion is **GRANTED** for the reasons set forth in Plaintiffs' Motion to Dismiss and Memorandum in Support thereof.

IT IS THEREFORE ORDERED that State Defendants' Motion to Dismiss the Second

Amended Complaint is granted and that all claims brought by the Plaintiffs are dismissed this

____ day of _____, 2012.

Honorable S. K. Reid
Judge, MARION SUPERIOR COURT 14

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