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For Himself

UNITED STATES DISTRIC COURT
DISTRICT OF ALASKA

JOE MILLER ,

Plaintiff ,

v.

LIEUTENANT GOVERNOR MEED TREADWELL, in his official capacity ;
And the STATE OF ALASKA,
DIVISION OF ELECTIONS,
Defendants.

Civil Action No.

3:10-cv-252 (RRB)

A FRIEND OF THE COURT FILING

This is a friend of the Court filing which raises issues that govern the adjudication of 3:10-cv-252 (RRB) but have not been properly or completely raised by the plaintiff. As the Court can tell I am not lawyer and I beg the Court indulgence and forbearance .

I was born and raised in Alaska, went through the battle for Statehood, was aware of the issues in the drafting of Alaska's Constitution as family member of one of the drafters. I never established residence anywhere else than Alaska and I voted in the last election thus I have standing. The State of Alaska cannot and does not represent me because my interest are diametrically opposed to that which the State is espousing and imposing on this passed election.

I did not vote for either of the remaining contestants in this election and do not see much effective difference between them thus I have little interest in the outcome only that the election be conducted within Alaska's law and Constitution.

Second, that the Executive and Judiciary act within their Constitutional limits and Alaska's law by hand counting all of the ballots because the machine optical vote counter cannot count the votes properly marked in compliance with Alaska Law Sec. 15.15.360.

My interest is seeing that all of the ballots be hand counted is because of the limitations of vote counting machine optical scanner to count the ballots in compliance with the law Sec. 1515.360 . Sec. 15.15.360. 1 which calls for " "X" marks, diagonal, horizontal, or vertical marks, solid marks, stars, circles, asterisks, check, or plus signs" to be counted.

Of the forgoing only the solid mark, provided it filled oval, would have a chance of being counted by the optical vote counting machines and the rest would not be machine counted as the defendants in this case are well aware and that is why Elections calls for the oval to fill in completely. Filling in the oval is not called for in the law.

Second, to see that this and subsequent elections comply with Alaska's Constitution and the law as written by the Legislature and not willful interpretation which can change from interpreter to interpreter, candidate to candidate and election to election. Not being a lawyer I will proceed as if it were mathematical rhetoric proof in writing.

Powers of the Alaska Court system:

Alaska's Constitution is different than that of other States in that the Alaska Court System is sole creature of the Legislature. Article IV of Alaska's Constitution gives the power to Legislature to provide for the Judiciary; it is permissive not obligatory. The Alaska Legislature has absolute power over the Alaska Court System and the Alaska Court System does not have domain over the Alaska Legislature except when not in compliance with Alaska's Constitution, if then.

The Alaska Court System serves at pleasure of the Legislature. The Legislature can abolish the Alaska Court System with 11 votes in Senate and 21 votes in the House.

The Alaska Legislature has never given the Alaska Court System jurisdiction over the Legislature thus the Alaska Court system has no jurisdiction over the Legislature because the Alaska Court System has no authority except that which the Legislature gives the Court System. Thus the Alaska Court system cannot amend the law as written by the Legislature for that would constitute power over the Legislature.

Neither the framers of Alaska Constitution nor the subsequent Legislatures wanted the Alaska Court system "making law". And the Alaska Supreme Court through the years has truculently but repeatedly admitted the Alaska Court System could not and cannot order the legislature to do anything.

Unlike other Courts the maximum jurisdiction the Alaska Court has, is to decide within the law, if that, in the case of the lack of clarity, not contravene nor amend the law regardless of how seemingly righteous the cause maybe. Thus the Alaska Court System cannot condone or give to Executive what the Court System does not possess.

The Powers of the Alaska Executive:

The power of Alaska Executive, like the Alaska Court system, is broad except when it comes to the Legislature. The Alaska Executive is strictly prohibited from exercising domain over the Alaska Legislature in Article III Section 16. However, the Alaska Legislature has domain over the Alaska Executive. Thus the Alaska Executive cannot contravene or amend the laws of the Alaska Legislature for the Alaska Executive is strictly prohibited from even so much as challenging the power of the Legislature in the court system in Article III Section 16.

Again the neither framers of Alaska Constitution nor the subsequent Legislatures wanted the Executive or the Court to be "making law" and that the making of Law was sole prerogative of the Legislature and not the Executive or the Court.

Alaska's Executive is the all powerful executive of the 50 states as is Alaska's the Judiciary the all powerful Judiciary of the 50 states but both are subservient to and within the domain the all powerful Legislature of the 50 states.

The Alaska Executive cannot take or assume the power that the Legislature did not give the Executive nor can the Alaska Court System give the power to the Executive that the Alaska Court System does not possess and was not given to the Court System and /or the Executive by the Legislature. Neither the Court system nor the Executive can singly or jointly contravene Article III Section 16 of Alaska Constitution.

Thus the Executive even with Court blessing cannot act to amend or interpret the law outside of the law as proscribe by the Legislature no matter how seemingly "righteous" it may appear. Both the Executive and the Court could have gone, singly or together to the Legislature and asked the Legislature to amend the law if either felt the need. They did not approach the legislature because the Legislature would not have allowed the law to be interpreted willfully and made that abundantly clear in Sec. 15.15.360

The decisions of the Alaska Court System:

The lower Court decision was hastily based on case law not the law as the law was written nor in compliance with Alaska's Constitution. The hasty lower Courts case law decision was hastily up held by Alaska's Supreme Court and not based on Alaska's law or Alaska's Constitution.

Both the Executive and the Judiciary are trying and have been trying to extend their authority beyond that permitted by Alaska's Constitution. The fact that unconstitutional extension of power of the Executive and Judiciary has gone unchallenged to date and has become "case law" does not make the case law Constitutional and above challenge in State or federal court.

The State Court will do and has done whatever the State Court can do to protect and defend the Court's new claimed authority. This intervener has filed an action 3 AN -10-12501ci in State court raising the same issues but has been ignored.

The case law, which the Court System used, was contrivance to expand the Court System's jurisdiction in contravention of Alaska's Constitution under the guise of being righteous.

Neither the Court nor the Executive, singly or together, can override Alaska Constitution or the Legislature's law. Case law does not supersede the Constitution in any jurisdiction, Federal or State. Nor can 'case law' violate or supersede the express and clearly written law regardless of how long "case law' may be deemed to have been in effect.

The operation of the Vote counting Machines.

The vote counting machines are for the convenience of the Executive and give only an approximation of the vote count provided the oval is completely filled in but machine counts are not the vote counts because the optical scanning vote counting machines will not count the ballots properly marked in compliance with Sec. 15.15 360. 1 That is why the Executive requested that the ballots have the oval filled in. Again, that is the Executives request for the Executives benefit not the law as proscribed in Sec. 15.15. 360. 1

Only a hand count can comply with Sec. 15.15.360.1 because the optical scanner will not read properly marked ballots, which comply with Sec. 15.15. 360. 1 It is theoretically possible to have 100,000 ballots properly marked in compliance with Sec. 15.15.360. 1 and not have a single ballot counted by the optical vote counting machine.

Thus a hand count must be made of all ballots because the voting counting machine will not count the votes properly marked and in compliance Sec. 15.15.360 and second will not count any rejected ballot that incorrectly marked in another election contest and not the one of interest.

From personal experience having served as an election worker in an election precinct in charge of the vote counting machine and have had ballots rejected for no other reason other than the machine did not like the ballot. Voting machines can be fickle. Vain men and women have nothing on vote counting machines.

The Executive is well aware of the vote counting machines limitations.

What is it the Executive expects to gained by refusing to hand count the ballots knowing the severe limitations of the vote counting machines with respect to the law, Sec. 15.15.360. and just plain fair play?

This refusal by the State of Alaska to properly count the ballots should be referred the proper federal authorities outside of the Federal Court System for criminal investigation and prosecution. The deliberate and willful manipulation of an election by saying the ballot are counted when counted by a machine that cannot count the ballots according to the law, Sec. 15.15.360, is not to be taken lightly.

The Executive has had more than enough time to have had conducted a hand count of all the ballots many times over thus the delay is at the hands of the Executive and the insistence of Senator Lisa Murkowski. Why would Murkowski not want a hand count to be completed and thus be done with the election if Murkowski believes Murkowski is ahead by as many ballots as Murkowski alleges.

Because of the forgoing and despite the fact that Plaintiff is willing to let the election be certified, I do not believe the stay should be lifted until the ballots all of the ballots are hand counted. Murkowski and the Executive have knowingly brought a delay in the certification of the election upon themselves by trying to foist a bums rush on the election and the refusal to take timely hand count action. A hand count which would long since been over and the election decided.

The only way the public will know that Alaska Executive and Court System acted outside of their Constitutional authority is if the certification is delayed for a hand count to be completed otherwise the press will paper over any hand count unless that hand over turns the election certification. That is real risk because of the failure of the optical machine counter ability to count lawful marked ballots according to Sec. 15.15.360.1

Murkowski pleads the lost of seniority, however there is some question about that from the US Senate. Also Seniority passes from the House to the Senate when a former Representative is elected to the Senate. The Senate Republicans make their own rules and exceptions and if the Republicans do not want to recognize Murkowski's seniority when the Senate is so closely balanced and every vote is needed, is difficult to imagine.

I consider the manipulation of an election the most serious of all felonies and a example should be set that the manipulation of an election under the guise legal authority will not be tolerated. An example should be set for future conduct of elections, courts and candidates that they should play by the rules, the law and stay with the Constitutional limits.

I thank the Court for the Court's time and indulgence.

Dated this 28th day of December 2010

Respectfully submitted,

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Jerry McCutcheon
For Himself

Certificate of Service
on
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On
Lieutenant Governor
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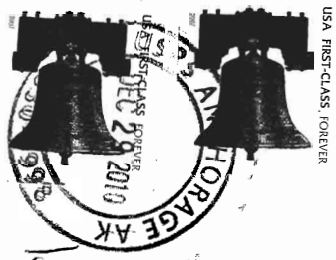

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