

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

RUSS AIKEN,

PLAINTIFF

v.

No. 60CV-10-4334-3

Filed 07/28/10 09:27:41
Pat O'Brien Pulaski Circuit Clerk
By CR12

GOVERNOR MIKE BEEBE, and
STONE COUNTY ELECTION COMMISSION,

DEFENDANTS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW the Plaintiff, Russ Aiken, and for his Complaint for Declaratory and Injunctive Relief against Defendants Stone County Election Commission and Governor Mike Beebe, state and allege:

1. Plaintiff Russ Aiken is an individual and has at all times relevant herein been a citizen and resident of Stone County, Arkansas. He is a retired law enforcement official with more than thirty years of experience in the sworn duty of upholding the law and protecting the public. He is the duly certified nominee for the office of Stone County Sheriff, having received the nomination of the Republican party.

2. Defendant Stone County Election Commission is a county board of election commissioners, existing under Ark. Code Ann. § 7-4-101 *et seq*, and charged with the statutory duty of providing ballot boxes, election officials, and performing other actions to enable the conduct of orderly elections. The Defendant Commission also certifies election results pursuant to Ark. Code Ann. § 7-7-101 *et seq*. The Defendant Commission consists of Vernon Humphries, Republican Election Commissioner, Betty Allred, Democratic Election Commissioner, and Bob Turner. As such, the Defendant Commission, in concert with Defendant Governor Beebe, is the direct and proximate cause of the August 3 special Democratic primary which is the harm at issue herein.



3. Defendant Mike Beebe is the Governor of the State of Arkansas. As such, he is the chief executive of the State of Arkansas, and is charged with the faithful execution of its laws. As such, Defendant Governor Beebe through his Proclamation is, in concert with the Defendant Stone County Election Commission, the direct and proximate cause of the August 3 special Democratic primary which is the harm at issue herein.

4. This court has jurisdiction of the subject matter and the parties, and venue is proper in this case involving the official actions of the Defendant Governor, who is sued only in his official capacity.

FACTUAL BACKGROUND

5. On or about May 18, 2010, a general primary election was held in Stone County. This primary included nominations for the office of Stone County Sheriff, which office will be filled by general election on November 3, 2010. As a result of that general primary election, Aiken was nominated by the Republican party as its candidate for Stone County Sheriff.

6. In that general primary, three candidates stood for the nomination of the Democratic party to the office of Stone County Sheriff. None of these candidates achieved a majority of the vote, and as a result, the two candidates with the most votes, Todd Hudspeth, the incumbent, and Lance Bonds, faced one another in a runoff primary on June 8, 2010.

7. The result of the runoff primary was that Hudspeth and Bonds were tied at 1383 votes apiece.

8. A recount plagued by irregularities ultimately confirmed the vote count at a "dead tie" of 1383 votes for each of the two candidates in the Democratic runoff primary. The Defendant Stone County Election Commission was aware that "under Ark. Code Ann. § 7-7-104 there is no

provision to allow for another election.” Defendant Stone County Election Commission was aware that the Secretary of State has ruled that another election “is not an option.” The complete file of the Stone County Election Commission is attached hereto as Exhibit 1. A media report of this meeting which occurred on or about June 11, 2010, is attached hereto as Exhibit 2.

9. At a meeting held on or about June 14, 2010, the Defendant Stone County Election Commission again acknowledged that a further election was not an option under the law. No minutes of this meeting are currently available, and a media report of this meeting is attached hereto as Exhibit 3.

10. At a meeting held on or about June 18, 2010, the Defendant Stone County Election Commission certified the Democratic runoff primary as a tie. No minutes of this meeting are currently available, and media reports of this meeting are attached hereto as Exhibit 4.

11. On or about June 23, 2010, Defendant Governor Mike Beebe issued a proclamation setting a special primary election to determine the Democratic nominee for Stone County Sheriff on August 3, 2010. This proclamation also set candidate filing deadlines and procedures, and procedures for ordering the listing of candidates upon the ballot. A true and correct copy of this proclamation is included in the attached Exhibit 1. On information and belief, these preliminary deadlines and procedures have been satisfied, so that the August 3 special primary is imminent unless enjoined.

12. On or about July 8, 2010, the Stone County Quorum Court authorized and appropriated the expenditure of some \$32,000 from the general fund to be used to pay for the expenses incurred for this special election for the Democratic nominee for Stone County Sheriff. A media report of this meeting is attached hereto as Exhibit 5.

13. Unless enjoined, as a direct and proximate result of the actions of Defendants, Plaintiff Aiken as a candidate is forced to confront an illegal and improper competitor. As a voter, he is deprived of his vote which is now diluted among multiple candidates whereas under Arkansas law there properly should be only one candidate. As a taxpayer, he is forced to subsidize an illegal election which is being held for the sole purpose and with the result of depriving him of his lawful rights. As a citizen and resident of Stone County, he is deprived of representation and a voice in government, which is irreparable injury for which there is no adequate remedy at law. These losses are irreparable and no amount of money can compensate Aiken for these losses.

First Cause of Action: Ultra Vires Special Primary

14. All preceding paragraphs are incorporated by reference as if fully set forth herein.

15. No Arkansas official, including but not limited to the Governor, has statutory or constitutional authority to authorize a special primary in the case of tied vote in a primary election to fill a vacancy in nomination. Simply put, a political party is legally entitled to two, and only two, bites at the apple under Arkansas law. The party may nominate a candidate in the general primary. If that is unsuccessful, the party may nominate a candidate in a runoff primary. If the party is unable to nominate a candidate after these two attempts, the General Assembly has made the decision that Arkansas residents should not bear the cost of a party's third, or fourth, or fifth . . . attempt to nominate a candidate, unless the vacancy is due to specified reasons such as death, serious illness, moving out of state, or filing for another office.

16. Ark. Code Ann. § 7-7-104(b) provides that in the case of a tie vote for the same office at a general primary election, a vacancy in nomination for that office shall exist.

17. Ark. Code Ann. § 7-7-104 provides for methods to fill a vacancy in nomination that exists due to death or refusal of nomination due to serious illness, moving out of the state or filing for another office. However, neither Ark. Code Ann. § 7-7-104 nor any other statute provides for the filling of a vacancy in nomination in the event of a tie vote.

18. As a result, there is no legal authority for the special primary which has been directly and proximately caused by the Proclamation of the Defendant Governor and is being organized and orchestrated by the Defendant Stone County Election Commission.

19. These actions of the Defendants are the direct and proximate causes of the injuries of Aiken, which are irreparable and without adequate remedy at law, as stated herein.

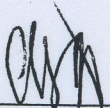
20. The Plaintiff demands a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray this Court to:

1. Grant the Plaintiffs a temporary restraining order and a preliminary and permanent injunction restraining the Defendants, their officers, agents, servants, employees, attorneys and persons in active concert or participation from conducting a special primary to fill the existing vacancy in the Democratic nomination for Stone County Sheriff on August 3, 2010, or any other date prior to the general election on November 3, 2010.
2. Grant the Plaintiff a declaratory judgment recognizing that a special primary to fill the existing vacancy in the Democratic nomination for Stone County Sheriff on August 3, 2010 or any other date prior to the general election on November 3, 2010 is not legal or authorized under Arkansas law.
3. Award the Plaintiff his reasonable attorneys' fees in this cause.

4. Award the Plaintiff his costs herein.
5. Grant the Plaintiff all other proper relief.

Respectfully Submitted,
RUSS AIKEN,
Plaintiff

By: 
Charles M. Kester
THE KESTER LAW FIRM
P.O. Box 184
Fayetteville, Arkansas 72702
479-582-4600
479-571-1671 (fax)