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IN THE CIRCUIT COURT
OF
MONTGOMERY COUNTY

DONALD CURTIS CASEY, et al.,
Plaintiffs,

vs.

Civil Action No.
CV-2014-430

SENATOR DEL MARSH,
Defendant.

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* * * * *

PROCEEDINGS held before the Honorable
William A. Shashy, Circuit Judge, in Courtroom 3-C,
Montgomery County Courthouse, on August 14 and
October 15, 2014, respectively.

* * * * *

APPEARANCES

FOR THE PLAINTIFFS:

Donald Curtis Casey, Pro se

FOR THE DEFENDANT:

Jeffery Long, Esq.

* * * * *

MARY R. KING, CCR-387, RMR

OFFICIAL COURT REPORTER

1 (August 14, 2014, the
2 following proceedings occurred:)

3 MR. CASEY: This is a situation where
4 we have filed a quo warranto, and it's not a
5 justiciable controversy.

6 THE COURT: Justiciable.

7 MR. CASEY: Thank you, sir.

8 Anyway --

9 THE COURT: Let me tell you something.
10 When you say it's not a justiciable
11 controversy, you're talking against your own
12 case.

13 MR. CASEY: Well, under 6-6-591, we
14 commenced this. And it says it may be brought
15 forward, and the respondent -- we're not the
16 plaintiff, and the -- Del Marsh is not the
17 defendant. He is the respondent in this.

18 THE COURT: Well, whatever you style
19 it.

20 MR. CASEY: Well, it's not whatever.
21 It is -- and we looked up the Supreme Court
22 cases that are annotated under 6-6-591, and
23 that's what it specifies.

24 THE COURT: So what are you asking me
25 to do?

1 MR. CASEY: Well, when the relators
2 bring the information to the Court, then, the
3 respondent, who is Del Marsh, would have to
4 come forward and respond to the very simple
5 question. We could have had this thing over
6 with. And we're actually -- since we're ex
7 rel, we're actually objecting to the State
8 coming in and defending Senator Del Marsh.

9 It is merely one question, present the
10 authority that the Legislature, and, hence, Del
11 Marsh has, through SJR-82 -- which is the
12 resolution that he sponsored back in 2011 --
13 has the authority to revise the Constitution.

14 THE COURT: Well, I don't think they
15 have that authority.

16 MR. CASEY: Well, we don't either.

17 FROM THE AUDIENCE: All he has to --

18 THE COURT: Hey, y'all have got to --
19 y'all can't -- this isn't -- y'all have got to
20 all be quiet.

21 MR. CASEY: In that case, all he has
22 to do is answer the question, and this will be
23 over with. And, then, we would expect a writ
24 of quo warranto in relationship to this.

25 THE COURT: Now, what's a quo

1 warranto?

2 MR. CASEY: A quo warranto is a writ
3 -- an extraordinary writ, different from
4 mandamus, demanding from the authority, an
5 officer of the state -- whatever that office
6 might be -- to come forward with his authority
7 to act.

8 MR. LONG: Your Honor, actually, a quo
9 warranto is to oust somebody from office, like
10 Thomas Reed. Remember that he got convicted,
11 and he still wanted to stay?

12 THE COURT: Thomas Reed from Macon
13 County?

14 MR. LONG: Yes.

15 THE COURT: Is he the one that had the
16 fried chicken -- where is my Macon County
17 person?

18 MR. DILLMAN: Right here, sir.

19 THE COURT: Where are you?

20 MR. DILLMAN: Right here, sir.

21 THE COURT: Is there a Reed's Fried
22 Chicken over there in --

23 MR. DILLMAN: I don't know, sir.
24 There is a Church's, though.

25 THE COURT: There used to be a Reed's

1 Fried Chicken.

2 MR. DILLMAN: There might very well
3 be. I don't know. There's a Subway and
4 others, but I don't know about Reed's Chicken.

5 THE COURT: Well, how long have you
6 lived in Macon County?

7 MR. DILLMAN: Since 1990, sir. I
8 moved up from Florida.

9 THE COURT: Who has been to Macon
10 County lately? Is there still a Reed's Chicken
11 over there?

12 MR. MADDOX: The Coop is over there.
13 I think Reed might own that.

14 THE COURT: It used to be Reed's.
15 What's wrong with you people? I know more
16 about Macon County than you do.

17 MR. LONG: May I respond, Your Honor?

18 THE COURT: No. Listen, I've heard
19 enough.

20 Mr. Long, let me tell you, he's going to
21 file something now, and we'll set it for a
22 hearing. If it's something on the -- we'll
23 take it. He has got his definite statement.
24 Now he says he can respond, so, now, we wait on
25 a response. That's, typically, the way it's

1 done. And, then, you respond to what he does,
2 and we may or may not have another hearing.

3 Yes, sir.

4 MR. LONG: Do you want this back or
5 can I keep it?

6 THE COURT: That's a gift. Don't ever
7 say I never gave you anything.

8 MR. CASEY: And there were other
9 objections that we did have that we wanted to
10 bring forth. We put them in the record.

11 THE COURT: I've got to give them due
12 process.

13 MR. CASEY: Okay.

14 (End of proceedings.)

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1 (October 15, 2014, the following
2 proceedings occurred:)

3 THE COURT: Casey v. Del Marsh,
4 14-430.

5 Y'all are back again?

6 MR. CASEY: We sure are.

7 THE COURT: Oh, me.

8 All right.

9 MR. LONG: Your Honor, I have a motion
10 to dismiss. It's based on --

11 THE COURT: Wait a minute.

12 State your name.

13 MR. LONG: Jeff Long.

14 THE COURT: I've known you a long
15 time.

16 What's your name, sir?

17 MR. CASEY: Donald Curtis Casey.

18 THE COURT: And these are all parties?

19 MR. CASEY: Yes, sir.

20 THE COURT: All right. What's your
21 name, sir?

22 MR. HARTLINE: Philip Joe Hartline.

23 MR. ANTHONY: William Anthony.

24 MR. DILLMAN: Frank Dillman, sir.

25 MR. PATRICK: Marion Patrick.

1 MR. FREEMAN: Ken Freeman.

2 MR. PHILLIPS: Steve Philips.

3 THE COURT: Is that Anniston reporter
4 here today? Is that newspaper man here,
5 because he sure put a lot of quotes in there
6 last time. I've got to be careful what I say
7 today. All right. I'm going to pretend he's
8 here even if he's not. I bet he's in there
9 lurking somewhere amongst those people.

10 MR. LONG: He caught me out in the
11 hall, too.

12 THE COURT: Oh, he's here now?

13 MR. LONG: No, no, last time.

14 THE COURT: He's here. He's just
15 hiding.

16 Go ahead.

17 MR. LONG: I have a motion to dismiss
18 based on four reasons. Each reason you could
19 use as an independent grounds to dismiss their
20 quo warranto.

21 First is immunity. Second is the scope of
22 quo warranto only. You can only use it to
23 throw somebody out of office. You can't
24 contest their official actions.

25 The other one is there's indispensable

1 parties. They have sued one senator. That's
2 all.

3 The fourth one is they don't have a proper
4 security for cost.

5 So I'm going to go through shortly each
6 one of those grounds, and I'll give you cites,
7 but not the numbers, because the cites are in
8 my brief, and I don't want to bore you with
9 Southern Second and Southern Third numbers.

10 On the first one, legislative immunity is
11 found at Article IV, Section 56 of the
12 Constitution.

13 THE COURT: Can you hold one second?
14 Let me just refresh myself.

15 What are you claiming here, sir?

16 MR. CASEY: Is that the --

17 THE COURT: Let me get your name.

18 MR. CASEY: My name is Donald Curtis
19 Casey.

20 THE COURT: Okay. Go ahead.

21 MR. CASEY: And Senator Marsh is
22 required to respond to a quo warranto, which is
23 merely a question.

24 THE COURT: You can come on up here.

25 MR. CASEY: Yes, sir.

1 By what authority --

2 THE COURT: You can bring your bottle,
3 too. Just put it on that table right there.
4 These guys just took over my table. I don't
5 know who they really think they are, but they
6 took over my table.

7 MR. CASEY: By what authority has
8 Senator Marsh exercised his authority. And we
9 have Supreme Court cases that say that when the
10 question is asked he is required to respond.

11 He has not responded.

12 Counselor Long has put in 20 pages that
13 goes through various things about suit and
14 immunity. And there is no immunity, because we
15 have put in Supreme Court cases even from
16 Missouri that recognizes there is no immunity
17 in --

18 THE COURT: I know. But what are you
19 claiming?

20 MR. CASEY: He is revising the
21 Constitution through the amendment process
22 without putting the vote or the question before
23 the people of convention or no convention.

24 THE COURT: He can't do that.

25 MR. CASEY: I agree with you, sir.

1 THE COURT: So how is he revising
2 the --

3 MR. CASEY: SJR-82, a resolution he
4 sponsored in 2011, set up a revision
5 commission. They pick and choose which article
6 of the Constitution they wanted to revise. And
7 that commission has been meeting now since the
8 beginning of their commencement of their
9 commission to determine what they want to
10 revise.

11 And they already have two pieces of
12 legislation that were approved by the voters.
13 And the Stanley -- State v. Manley says that if
14 in the beginning --

15 THE COURT: I just want to know what
16 you're claiming.

17 MR. CASEY: Okay. They are revising
18 and continuing to revise -- as a matter of
19 fact, during --

20 THE COURT: They can't get it changed
21 unless the people vote on it.

22 MR. CASEY: The thing is that the
23 amendment process is short and simple. And
24 they have 70 pages of -- pieces of legislation
25 that will change and alter the Constitution.

1 THE COURT: But doesn't it have to be
2 voted on by the people?

3 MR. CASEY: It does. But the revision
4 286 of the Alabama Constitution, specifically,
5 according to Attorney General Brown in 1901, to
6 the Alabama Convention, held in that year to
7 revise our Constitution, specifically states
8 that if the Legislature is allowed to pick and
9 choose what section of the Constitution they
10 want to revise, we'll soon have subservient
11 other branches of government, legislative and
12 judicial. And it won't be long before the
13 people in the judicial and executive branch
14 will be under the legislative branch. And
15 that's exactly what's going on.

16 The State v. Manley, along with the
17 Attorney General Brown of 1901, said that the
18 amendments are short and simple. Fifty pages
19 is not short and simple.

20 THE COURT: All right. Go ahead.

21 MR. LONG: Do you want me to respond
22 to that?

23 THE COURT: No. I want you to -- I
24 interrupted you, but go ahead with what you're
25 saying.

1 MR. LONG: Okay. I'm not going to
2 give cite numbers --

3 THE COURT: I don't want cite numbers.

4 MR. LONG: -- except in this initial
5 cite. Legislative immunity is found in Article
6 IV, Section 56 of the Constitution. And it's
7 been codified at 29-1-7. A legislative action
8 is an act generally done in the Legislature in
9 relation to the business before it. The speech
10 and debate clause prohibits inquiry into the
11 things said or done in the House or Senate in
12 the performance of official duties and then to
13 the motivation for their acts.

14 There's absolute immunity for state
15 legislators acting within legislative
16 authority. Everything they complain about
17 Senator Marsh is things he's done either as an
18 individual Senate member or president pro
19 tempore. They've had no complaints about
20 anything that's outside his legislative
21 authority.

22 And Ex Parte Simpson, a recent case, our
23 Supreme Court said legislative immunity is well
24 established and universal in nearly every
25 state.

1 Plaintiffs do not allege and cannot allege
2 that Marsh was acting outside of his
3 legislative authority.

4 In Ex Parte Marsh, which is the same
5 Senator, a citizen brought suit against the
6 certain legislators contesting the passage of
7 the Alabama Accountability Act, saying they
8 violated the Open Meetings Act.

9 Our Supreme Court would not even allow
10 discovery and said Alabama law has conferred
11 upon members of legislative bodies absolute
12 privilege from certain causes of action. And
13 legislative immunity prevents probes for
14 evidence to support challenge to a legislative
15 decision that's improperly motivated,
16 procedurally defective or otherwise infirmed.

17 And that's what he's trying to do, certain
18 actions of the Legislature are procedurally
19 defective or otherwise infirmed.

20 A quo warranto, in State v. Reed --

21 THE COURT: Hold on a second.

22 This is brought as a quo warranto --

23 MR. CASEY: Yes.

24 THE COURT: -- to remove him from
25 office?

1 MR. CASEY: The quo warranto is the
2 question. Should he not respond, the proper
3 order from the Court is to oust. We don't
4 necessarily want Del Marsh out of office; but
5 if he won't come forward with the authority to
6 act, which he's required to do, then there is
7 nothing to do but oust him.

8 As a matter of fact, on page 12 -- two
9 places on page 12 and page 14 -- Counselor Long
10 agrees with us that the proper exercise of
11 authority is a requirement. And when asked,
12 Senator Marsh has to respond.

13 It makes no sense to say that we can't ask
14 a question.

15 THE COURT: I'm not following what
16 you're saying he has to respond.

17 MR. LONG: Can I explain what I think
18 he's telling you?

19 THE COURT: I would like -- I don't
20 understand what you're saying.

21 MR. LONG: He served two documents or
22 gave them to Senator Marsh while the
23 Legislature was in session. They called them a
24 quo warranto. And on one of them, they
25 actually filed in the probate court. And he

1 seems to think by just handing a piece of paper
2 to Marsh that Marsh has to respond to it.

3 THE COURT: Respond to whom?

4 MR. LONG: Them.

5 MR. CASEY: We have several Supreme
6 Court cases that say that if a quo warranto is
7 presented to an elected official, they have to
8 respond with the authority under which they
9 act. And it goes back to the common law of
10 England, Statute of Anne in the 1700s.

11 We have cases that we have put in, in
12 rebutting what Counselor Long has said. And
13 Del Marsh could resolve this issue. All he has
14 to do is give us the chapter and versus of the
15 Constitution that allows the revision of the
16 Constitution without placing the vote --
17 question of convention or no convention before
18 the people.

19 MR. LONG: We codified quo warranto in
20 6-6-591. And there's two types. Somebody --

21 THE COURT: I don't want to hear any
22 more about it.

23 MR. LONG: Okay.

24 THE COURT: I mean, I -- okay.

25 All right.

1 MR. LONG: Are you ready for me to
2 continue or --

3 THE COURT: Get right to the point;
4 otherwise, he is going to get out his bottle of
5 water.

6 MR. LONG: I will be less than four
7 minutes, I know that.

8 In State v. Reed, a true quo warranto
9 involving Thomas Reed in, I think, the 70's --

10 THE COURT: Thomas Reed out of Macon
11 County?

12 MR. LONG: Yes.

13 THE COURT: He had that chicken thing.

14 MR. LONG: Had the chicken what?

15 THE COURT: You know, he didn't go to
16 Macon County. I bet Tommy Keene and them
17 know -- and Tabor and all of them know the
18 chicken joint over there.

19 MR. NOVAK: The Chicken Coop.

20 THE COURT: The correct name was Coop.

21 MR. LONG: Okay.

22 THE COURT: Was over there near the
23 square. They moved it down the street, but I
24 don't think it's the same. I thought I would
25 give you some useless information today.

1 Hey, one you guys is from Macon County.

2 MR. DILLMAN: I am, sir.

3 THE COURT: You know what I'm talking
4 about. I asked you about it last time.

5 MR. DILLMAN: You did, sir.

6 MR. LONG: It's well established that
7 the remedy lies to challenge a person's right
8 to hold office on the grounds of ineligibility.
9 There is three basic grounds of ineligibility:
10 Conviction of --

11 THE COURT: I know all of this.

12 Look, what constitutional provision has
13 Del Marsh passed without a vote of the people?

14 MR. CASEY: There are none. It is the
15 fact --

16 THE COURT: Well, then, how can you
17 get me to do something?

18 MR. CASEY: State v. Manley is the
19 first one -- first --

20 THE COURT: Do you have that case with
21 you?

22 MR. CASEY: Yes, sir, I do.

23 THE COURT: Let me see that case.

24 MR. CASEY: All right.

25 MR. LONG: I can tell you what --

1 THE COURT: Is that Manley out of
2 Demopolis?

3 MR. CASEY: Yes, it is.

4 MR. LONG: I can tell you what it
5 says, Your Honor.

6 THE COURT: What?

7 MR. LONG: Do you remember when Baxley
8 tried to revise the Constitution through one
9 amendment? It says you can't do that.

10 MR. CASEY: And, then, there's other
11 cases. 1993 was Guy Hunt.

12 THE COURT: Let me just see what
13 you're talking about. We've got to stick to
14 what we're talking about or I won't be able to
15 take it in.

16 Are they -- what are they trying to do
17 here on the Constitution?

18 MR. LONG: Do you remember in the
19 beginning of that quadrennium that he set up a
20 commission to study articles of the
21 Constitution to make, as I recall it,
22 recommendations to the Legislature.

23 And there's two ways to amend the
24 Constitution. One, in Section 284, where it
25 passes three-fifths of the total of each House,

1 of all of them -- not the quorum,
2 three-fifths -- if it passes that, then it goes
3 to the vote of the people.

4 The other one is with the majority of both
5 Houses, all of them, they can call a
6 convention. And, then, the people have to even
7 vote on whether the convention is held.

8 THE COURT: All right.

9 MR. CASEY: Your Honor, here is copies
10 of this report from the Alabama Law Institute.
11 And here is the original, 2002. This says that
12 State v. Manley has got to be overturned in
13 order for the revision of the Constitution by
14 amendment.

15 THE COURT: Let me have what you're
16 saying there.

17 MR. CASEY: Well, I think that's what
18 I just gave you.

19 THE COURT: I need the Manley case.

20 MR. CASEY: Oh, the Manley? Here is
21 Manley. And I've highlighted sections that
22 relate to the issues before the Court.

23 THE COURT: All right.

24 MR. CASEY: And, then, here is --

25 THE COURT: Can I keep this?

1 MR. CASEY: Sure. Here is a 2013
2 case. This is Prichard Water Works Board v.
3 The City of Mobile. The same issue is brought
4 up in this particular case.

5 And, then, here is Guy Hunt from 1990 --

6 THE COURT: Wait a minute. What has
7 this got to do with the Constitution?

8 MR. CASEY: They get into the same
9 issue.

10 THE COURT: All right.

11 MR. CASEY: And I marked that, also.
12 And here is Guy Hunt from 1993.

13 THE COURT: All right. What else?
14 I'm going to have to read these.

15 MR. CASEY: May I say something, sir?

16 THE COURT: Certainly.

17 MR. CASEY: We would think that
18 Senator Marsh would think this of such
19 importance and that he should be here. And we
20 are objecting to Counselor Long. Everybody
21 has -- that's in public office has an oath of
22 office to the Constitution. And that's the
23 first premise on which we are basing this, is
24 that the Constitution has to be protected in
25 order for government to continue on as it is.

1 THE COURT: All right. Well, I will
2 look at all of this, and I'll get y'all
3 something out.

4 MR. CASEY: All right.

5 MR. LONG: Do you want me to finish my
6 grounds or -- it's in my brief.

7 THE COURT: No, I don't want to hear
8 any more from you.

9 MR. LONG: Okay. That's fine.

10 THE COURT: I feel like you're reading
11 to me.

12 MR. CASEY: Thank you, sir.

13 THE COURT: I'll meet y'all at the
14 Reed's Co-op.

15 AUDIENCE: I'll buy you dinner.

16 THE COURT: Hey, let me ask you folks
17 something. Tell me where you're from.

18 (Off-the-record discussion)

19 MR. CASEY: This is the letter from
20 Attorney General Brown of 1901, 12 pages.

21 THE COURT: Now, you know they don't
22 have any effect on us, AG opinions?

23 MR. CASEY: Well, this did have an
24 effect on the convention.

25 THE COURT: A lot of times, they do

1 those -- where is Troy King -- for political
2 reasons.

3 MR. CASEY: Well, his is well versed.

4 THE COURT: Who, Troy King?

5 MR. CASEY: No, no, Attorney General
6 Brown. I have no opinion of somebody else
7 here.

8 THE COURT: Oh, well.

9 Wait a minute. Where are you from, again?

10 MR. HARTLINE: I'm Phil Hartline,
11 Marshall County.

12 MR. ANTHONY: Bill Anthony from Elmore
13 County.

14 MR. DILLMAN: Frank Dillman, Macon
15 County.

16 MR. PATRICK: Marion Patrick from
17 Tallapoosa County.

18 MR. FREEMAN: Ken Freeman, Morgan
19 County.

20 MR. PHILLIPS: Steve Phillips,
21 Lauderdale County.

22 THE COURT: All right. Y'all have a
23 safe trip back.

24 (End of proceedings.)

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CERTIFICATE

STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, Mary R. King, Official Court Reporter and Registered Merit Reporter for the 15th Judicial Circuit for the State of Alabama, Montgomery, Alabama, do hereby certify that I reported in machine shorthand the foregoing proceedings as stated in the caption hereof; that my shorthand notes were later transcribed by me or under my supervision, and that the foregoing pages contain a full, true and correct transcript of said proceedings and testimony set out herein; that I am neither kin nor of counsel to any parties in this proceeding, nor in any way interested in the results thereof.

Dated the 21st day of November, 2014.

/s/ MARY R. KING, CCR, RMR
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