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Tim O'Shaughnessy

From:

Peter Kramer

Sent:

Monday, 4 November 2013 1:03 PM

To: Cc: anthony@fels.com.au Tim O'Shaughnessy

Subject:

RE: Declaration of Senators for Western Australia [DLM=For-Official-Use-Only]

AECStatus:

process

For-Official-Use-Only

Dear Mr Fels

I refer to your email below and your subsequent email requesting that declare none of the candidates elected, in effect setting aside the election result.

There are two issues to deal with here.

Firstly, the option to request a recount has been exhausted through the previous request. The AEC is no longer able to consider requests for further recounts.

Secondly, the requirements of the Commonwealth Electoral Act 1918 only provide for the AEC to proceed with the declaration of the results of the election and then for the matter to be placed before the Court of Disputed Returns where there is evidence that that the results of the election was likely to have been affected. The relevant provisions in the Act are sections 355 and 362.

Paragraph 355(e)(ii) provides that a petition can only be filed in the Court of Disputed Returns after the last writ for the elections has been returned. Accordingly, unless the writ for the election of Senators in Western Australia is returned a petition to challenge the results of this election is unable to be lodged with the Court of Disputed Returns. Section 362 of the Act provides that the Court is unable to void the election unless the results of the election are likely to be affected. Paragraph 355(a) of the Act requires that such a petition must set out the facts that are relied upon to invalidate the election. As was indicated in the media release issued on Thursday, an option is that the AEC will consider is to lodge such a petition following its consideration of the results of the investigation from Mr Keelty.

The AEC has no legal power to invalidate or set aside an election and to call a new election. This can only be done by the Court of Disputed Returns. Accordingly any delay by the AEC in declaring the results of this elections will merely delay the possibility of a petition being lodged to void the election and for the Court to order the holding of a new election. This is the only available mechanism for the rights of the electors in Western Australia to be advanced if the results have been affected.

Yours sincerely

Peter KRAMER | Australian Electoral Officer &State Manager

Western Australia

Australian Electoral Commission

T: 08 63638020 | M: 0434326305| F: 08 63638017

For-Official-Use-Only

From: anthony@fels.com.au [mailto:anthony@fels.com.au]

Sent: Monday, 4 November 2013 11:54 AM

To: Peter Kramer

Subject: Declaration of Senators for Western Australia

Dear Peter

As discussed, I wish to request a recount of the votes in WA given the closeness of the result, and the loss of several hundred ballot papers.

In the absence of the several hundred ballot papers returned in the original official count, it is improper for the AEC to declare any result based on the recount until all of the original votes counted have been recounted.

The recount must be 100% complete before any ne result is established. To date the AEC have only conducted a partial recount, and disenfrachised hundreds of votes which were shown in the original count to have elected a different 6 Senators for WA than ill be elected without these.

If there is now a requirement for the AEC to make a Declaration on the Poll, it must be made on the basis of the only full count that has been conducted; - the original official count.

It cannot be declared on the recount when the AEC are aare that sufficient votes are missing which would affect the outcome, clearly.

Therefore I am requesting that the AEC conduct a ne fresh full recount in order to try to identify the missing votes during this process.

In the alternative, the AEC should declare the results of the original official count as the official result, which can then trigger the 40 day period for applications to the Court of Disputed Returns.

It is unfair that the two Senators originally elected and now not elected in the partial recount (ie Senator Louise Pratt & Dio Wang) should have to initiate any action in the Court of Disputed Returns.

The more equitable and just process is to declare the original count, and allow Senator Scott Ludlam and/or the Sports Party and/or any other candidate or elector to argue the case in the Court of Dispted Returns if they disagree.

They have the advantage of the partial recount statistics to support their claim if they wish to do so.

yours faithfully

Anthony Fels Senate Candidate for Katters Australian Party 0413 202 993