

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CASE NO.06-CI-610

FILED
JUN 22 2006
FRANKLIN CIRCUIT CLERK
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COMMONWEALTH OF KENTUCKY,
OFFICE OF THE ATTORNEY GENERAL
Ex rel. Gregory D. Stumbo in his official
capacity as Attorney General of the
Commonwealth of Kentucky

PETITIONER

V.

MOTION TO FILE AMENDED PETITION

STATE BOARD OF ELECTIONS et. al.

And

SECRETARY OF STATE, TREY GRAYSON

RESPONDENTS

* * * * *

Comes the Petitioner, the Commonwealth of Kentucky, Office of the
Attorney General, Gregory D. Stumbo, by counsel, and moves this Court pursuant to CR
15.01 for leave to file the attached Amended Petition.

WHEREFORE, the Petitioner respectfully requests that this Court to enter an
Order which grants the Petitioner leave to amend his pleadings.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL



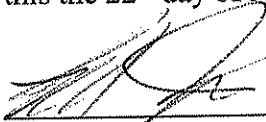
Robert S. Jones
Jennifer Black Hans
Assistant Attorney General
700 Capitol Ave., Ste. 118
Frankfort, KY 40601
(502) 696-5300
(502) 564-2894 (Facsimile)
COUNSEL FOR PETITIONER

NOTICE

PLEASE TAKE NOTICE THAT, on **Wednesday, June 28, 2006** at **9:00 a.m.** or as soon thereafter as the parties may be heard in the above-referenced Court, counsel for the Petitioner will present the foregoing Motion to file an Amended Petition and tender the proposed Order attached hereto.

CERTIFICATE OF SERVICE

I hereby certify that copies the foregoing Motion to File Amended Petition and Notice of Hearing have been served via regular United States mail, postage pre-paid, and by facsimile on **Hon. Kathryn H. Dunnigan**, General Counsel, State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601-3240, *Facsimile* (502) 573-4369; **Secretary of State Trey Grayson**, 700 Capital Ave., Suite 148, Frankfort, Kentucky 40601, *Facsimile* (502) 564-5687 on this the 22th day of June, 2006.



Robert S. Jones
Jennifer Black Hans

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CASE NO. 06-CI-610

COMMONWEALTH OF KENTUCKY,
OFFICE OF THE ATTORNEY GENERAL
Ex rel. Gregory D. Stumbo in his official
capacity as Attorney General of the
Commonwealth of Kentucky

PETITIONER

V. **ORDER GRANTING LEAVE TO FILE AMENDED PETITION**

STATE BOARD OF ELECTIONS et. al.

And

SECRETARY OF STATE, TREY GRAYSON

RESPONDENTS

* * * * *

This matter having come before the Court on the Petitioner's Motion for leave to file an Amended Petition pursuant to CR 15.01 and the Court being otherwise sufficiently advised;

IT IS HEREBY ORDERED that the Petitioner's motion for leave is granted and the Amended Petition tendered with the Petitioner's motion is filed of record as of the date of this order.

Entered this ____ day of June, 2006.

WILLIAM L. GRAHAM, JUDGE
FRANKLIN CIRCUIT COURT

Tendered by:

A handwritten signature in black ink, appearing to read 'R. Jones', is written over a horizontal line.

Robert S. Jones
Assistant Attorney General
Office of the Attorney General
700 Capitol Ave., Suite 128
Frankfort, KY 40601

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CASE NO.06-CI-610

COMMONWEALTH OF KENTUCKY,
OFFICE OF THE ATTORNEY GENERAL
Ex rel. Gregory D. Stumbo in his official
capacity as Attorney General of the
Commonwealth of Kentucky

PETITIONER

v.

**AMENDED PETITION FOR A DECLARATION
OF RIGHTS AND INJUNCTIVE RELIEF**

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS, and each of its
members:

Trey Grayson, in his official capacity as
Chair of the State Board of Elections;

Janie Bruce, in her official capacity as
a member of the State Board of Elections
6750 Ft. Campbell Blvd.
Hopkinsville, KY 42240

Charles W. Buchanan, in his official capacity as
a member of the State Board of Elections
207 Sycamore Drive
Barbourville, KY 40906-1138

John Caudill, in his official capacity as
a member of the State Board of Elections
80 Gardner Branch Rd
PO BOX 1099
Hindman, KY 41822-1099

David Disponett, in his official capacity as
a member of the State Board of Elections
1260 By-Pass South
Lawrenceburg, KY 40342

Hade Durbin, in his official capacity as
a member of the State Board of Elections
230 Roundtop Road
Elizabethtown, KY 42701

William Kirkland, in his official capacity as
a member of the State Board of Elections
P.O. Box 1100
Frankfort, KY 40602-1100

And

COMMONWEALTH OF KENTUCKY,
SECRETARY OF STATE, TREY GRAYSON,
in his official capacity.

* * * * *

The Petitioner, Commonwealth of Kentucky, Office of the Attorney General, by and through the Attorney General of the Commonwealth, Gregory D. Stumbo ("Attorney General") hereby petitions the Court pursuant to KRS 418.040 *et. seq.* and Civil Rule 65 for a Declaration of Rights and Injunctive Relief against the State Board of Elections, and each board member in their official capacity, and Trey Grayson, in his official capacity as the Secretary of State, as follows:

NATURE OF THE ACTION

1. This is a civil action for declaratory and injunctive relief filed by the Commonwealth of Kentucky, by and through the Attorney General, pursuant to his authority under KRS 15.243 to enforce all election laws. This case arises from the action by the State Board of Elections which purged 8,105 people from the State's voter database on or about April 10 and 11, 2006 in a manner which failed to comply with KRS 116.112.

INTRODUCTION

2. During September of 2005, the Commonwealth of Kentucky became involved in a "pilot project" which allows the State Board of Elections to share voter databases with other states. The goal is to clean up Kentucky's voter rolls by removing those people who have registered to vote in other states. In theory this should help to prevent the practice of voting in two states, although no actual voter fraud of this type has been identified. Kentucky has a statute which allows for systematic purging of the Voter Registration data base. However, the State Board of Elections failed to comply with that statute because (1) the pilot project was completed and the purge of voters carried out within 90 days of a primary election, (2) the voters purged were not notified, and (3) the names of those purged were not placed upon the inactive voter register as required by statute. KRS 116.112. Therefore, the purge of 8,105 voters from the voter data base on April 10 & 11, 2006 was carried out in a manner which violated Kentucky election laws.

3. The 90 day limitation on systematic purges of the voter database is not a mere formality. It ensures that any person who may have been wrongfully stricken from the voting rolls will have sufficient opportunity to challenge or appeal that action prior to the next election. In this case the purge did not take place until 35 days before the primary election, and was not publicly announced until the Secretary of State issued a press release on April 24, 2006, less than 30 days before the primary election. Consequently, by the time the purge was made public the affected voters could no longer simply reregister to vote, severely limiting their opportunity to cast a vote in the upcoming primary election.

4. The statutory requirements to notify purged voters and to keep those voters on the inactive rolls work in tandem with the timing requirement, giving voters a meaningful opportunity to address an erroneous removal of their name from the statewide voter data base prior to an election.

PARTIES

5. The Attorney General is a duly elected independent constitutional officer of the Commonwealth of Kentucky serving as its chief law officer with full authority to initiate investigations or investigate alleged violations of election laws at the request of a registered voter or on his own motion and file appropriate complaints in any court of competent jurisdiction which are necessary to enforce the state's election laws. KRS 15.243(1) and (2).

6. The State Board of Elections is a statutorily created body whose duty is to administer the election laws of the state and supervise registration and purgation of the voters within the state. KRS 117.015(1).

7. The Secretary of State is a duly elected independent constitutional officer of the Commonwealth of Kentucky serving as the head of the Department of State as well as the chairman of the state board and the chief election official for the Commonwealth. KRS 117.015(2).

JURISDICTION AND VENUE

8. An actual and justiciable controversy exists and this court has jurisdiction of this matter pursuant to KRS 418.040 to make a binding declaration of relative rights, duties and responsibilities of the parties hereto under the Kentucky Constitution and related state laws.

9. The Petitioner seeks injunctive relief, pursuant to CR 65 and, therefore, this Court has jurisdiction pursuant to CR 65.03(2), as the Circuit Court in which an action is pending.

10. The Franklin Circuit Court is the appropriate venue for this action pursuant to KRS 452.405.

FACTUAL ALLEGATIONS

11. The State Board of Elections maintains the statewide roster of all registered voters within the state, also referred to as the Statewide Voter Registration Data Base.

12. On or about September 2005 the Board of Elections became involved in a "pilot project" to exchange voter data with the states of Tennessee and South Carolina which would allow each of the three states to systematically remove voters from their rolls.

13. On or about April 10 and 11, 2006 the State Board of Elections carried out a purge of the Voter Registration Data Base based upon confirmation from the states of Tennessee and South Carolina that voters registered in Kentucky had more recently registered to vote in those states. Over 8000 people were removed from Kentucky's database.

14. The Board failed to notify the voters purged on April 10 & 11, 2006, mentioned above, that they were being removed from the Statewide Voter Registration Data Base.

15. The Board's purge of voters based on matching voter data from other states removed those voters from the active voter data base and did not place them on an inactive voter list.

16. The "pilot project" constitutes a program the purpose of which is to systematically remove names of voters from the registration records based upon change of address information, and its date of completion was on or about April 11, 2006.

17. A primary election was held on May 16, 2006.

18. Voter information previously filed with the Initial Petition for Declaratory Relief is incorporated herein by reference as if repeated verbatim.

STATEMENT OF APPLICABLE LAW

19. KRS 116.112 provides:

(1) The State Board of Elections shall establish a voter registration purge program using change-of-address information supplied by the United States Postal Service through its licensees or *other sources to identify voters whose addresses may have changed.*

* * *

(3) If it appears from information provided by the postal service or other sources that a voter has moved to a different address not in the same county the state board of Elections shall *send to the address from which the voter was last registered, by forwardable mail, a notice on a form prescribed by the State board of Elections, with a postage prepaid and pre-addressed return card on which the voter may state his current address...*

(4) The state or county boards of elections shall not remove the name of a voter from the registration records on the ground that the voter has changed his residence unless the voter:

(a) Confirms in writing that the voter has changed residence to a place outside the county; or

(b) Has not voted or appeared to vote, and, in necessary, correct the registration records of the voters address in an election during the period beginning on the date of the notice and ending on the day after the date of the second

general election for federal office the occurs after the date of the notice...

(5) The State Board of elections shall establish an inactive list of *all* voters who fail to respond to the notice described in subsection (3) of this section and do not appear to vote in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for federal office the occurs after the date of the notice...

(6) The State board of Elections shall complete, *not later than 90 days prior to the date of a primary or general election*, any program the purpose of which is to systematically remove the names of ineligible voters from the registration records.
(emphasis added)

20. Section 145 of the Kentucky Constitution provides:

Every citizen of the United States of the age of eighteen years who has resided in the state one year, and in the county six months, and the precinct in which he offers to vote sixty days next preceding the election, shall be a voter in said precinct and not elsewhere but the following persons are exempted and shall not have the right to vote.

1. Persons convicted in any court of competent jurisdiction to treason, or felony, or bribery in an election or of such high misdemeanor as the General Assembly may declare shall operate as an exclusion from the right of suffrage, but persons hereby excluded may be restored to their civil rights by executive pardon.
2. Persons who, at the time of the election, are in confinement under judgment of some penal offense.
3. Idiots and insane persons.

21. Section 147 of the Kentucky Constitution provides:

The General assembly shall provide by law for the registration of all persons entitled to vote in cities and town having a population of five thousand or more: and may provide by general law for the registration of other voters in the state. Where registration is required, only persons registered shall have the right to vote. The mode of registration shall be prescribed by the general assembly...

22. The right to vote is "central to the protection and exercise of the other rights guaranteed in our society." *Bell v. Marinko*, 367 F.3d 588 (6th Cir. 2004)(citing

Association of Community Organizations for Reform Now (ACORN) v. Miller, 129 F.3d 833 (6th Cir. 1997). Federal and state voter registration laws seek to guarantee the rights of qualified citizens to vote “by reducing the restrictive nature of voter registration requirements and by setting limits on the removal of registrants from the voter registration rolls.” *Id.* at 591.

STATEMENT OF JUSTICIABLE CONTROVERSY

23. As a direct and proximate consequence of the actions identified in paragraphs 11-18 of this complaint voters will be disenfranchised in violation of the law and without having had a reasonable opportunity to challenge the action of the State Board of Elections. The State Board of Elections has justified this action by claiming that the fact that a voter is registered in another state is *per se* proof the voter is not qualified to vote in Kentucky. That position is factually and legally incorrect. The Board overlooks the probability that its actions have mistakenly removed eligible voters from the active voter data base. Moreover, it is the opinion and belief of the Attorney General that such mistakes were made and were in evidence during the primary election held on May 16, 2006. Additionally, the Kentucky statute which addresses the legal significance of voter registration, KRS 117.245(1), limits that significance to establishing “only *prima facie* evidence” of a voter’s qualifications. There is no legal basis for Kentucky to give greater legal effect to registration in other states, *per se* proof the voter is not qualified, than that which attaches to registration in Kentucky, only *prima facie* evidence the voter is qualified.

24. As a direct and proximate consequence of the actions identified in paragraphs 11-18 of this complaint both the Commonwealth of Kentucky and its citizens

will be irreparably injured by an elections which are not be conducted in accordance with the election laws of the state.

WHEREFORE, the Attorney General respectfully requests as follows:

1. That the Court advance this case on its docket for an expedited hearing pursuant to KRS 418.050.

2. That the parties hereto be required to answer this First Amended Petition for a Declaration of Rights forthwith and assert their interests or claims which would be affected by the declaration of rights sought herein.

3. That the Court adjudicate the relative rights, responsibilities and duties of the parties and enter into a binding declaration of rights as follows:

A. That the Court find that the "pilot project" described in paragraph 12 of this petition constitutes a voter registration purge program as described in KRS 116.112(1), and that the Respondents failed to comply with the requirements in KRS 116.112 when this purge was carried out by the Respondents.

B. That the Court enter both temporary and permanent injunctions which compel the Respondents to return the voters purged under the "pilot project", as specifically identified in the attachments hereto, to the active Voter Registration Data Base, or alternatively, to notify all affected voters and place their names on the inactive voter data base for two federal election cycles.

4. For any and all other relief to which the Attorney General may be entitled.

Respectfully submitted,

By:



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