

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
Civil Action No. 19 -CI- 1043

THE KENTUCKY DEMOCRATIC PARTY

PLAINTIFFS

v.

COMPLAINT FOR INJUNCTIVE RELIEF
AND REQUEST FOR DECLARATION OF RIGHTS

STATE BOARD OF ELECTIONS FOR THE
COMMONWEALTH OF KENTUCKY,

DEFENDANTS

Serve: Hon. Andy Beshear, Attorney General,
700 Capitol Avenue, Suite 118
P.O. Box 718
Frankfort Kentucky 40601

State Board of Elections
140 Walnut Street
Frankfort Kentucky 40601

AND

ALISON LUNDERGAN GRIMES, in her official capacity
As Chief Election Official for the Commonwealth of Kentucky
Serve: Hon. Andy Beshear, Attorney General
700 Capitol Avenue, Suite 118
P.O. Box 718
Frankfort Kentucky 40601

* * * * *

NOTICE

Let the parties take notice that, pursuant to the Local Rules, this Motion for a Temporary Injunction will be heard on the 14th day of October 2019 at 9:00 AM or as soon thereafter as counsel may be heard in Franklin Circuit Court, 222 Saint Clair Street, Frankfort, KY 40601.

Come the Plaintiffs, Kentucky Democratic Party, by counsel, and for their Complaint and request for Declaration of Rights and injunctive relief pursuant to KRS 118.040, et seq. and Kentucky Rule of Civil Procedure 57, against Defendants State Board of Elections would show as follows:

JURISDICTION AND VENUE

1. Plaintiffs would show that an actual, justiciable controversy exists and this Court has subject matter jurisdiction over this action pursuant to KRS 118.040, and Rules of Civil Procedure 57 and 65.

2. Venue is appropriate in this Court pursuant to KRS 452.405, as the primary offices of the Parties Defendant are located in Frankfort, Kentucky, and the subject matter relates to interpretation and enforcement of various provisions of state law as enacted in statute and the Kentucky Constitution. This Court may properly exercise *in personam* jurisdiction over the Defendants.

NATURE OF ACTION

3. This Verified Complaint for a Declaration of Rights and Permanent Injunction is governed by the Kentucky Declaratory Judgment Act, KRS 418.010, *et seq.*, CR 57, and CR 65. The action is initiated by the Kentucky Democratic Party under Kentucky statute and the common law. KRS 418.040 provides this court with authority to “make a binding declaration of

rights, whether or not consequential relief is or could be asked” when a controversy exists. An actual and justiciable controversy regarding violations of the Kentucky Constitution and state laws clearly exists in this action.

3. CR 65 permits this court, in a final judgment, to issue a temporary and a permanent injunction which may restrict or mandatorily direct the doing of an act. The Plaintiff requests an expedited review pursuant to KRS 418.050 and CR 57 due to the immediate harm being caused by Defendants’ wrongful acts.

4. This justiciable controversy is capable of repetition but evading review as evidenced by the facts outlined herein. Under such circumstances, a request for a declaration of rights is an appropriate remedy in order to apprise the parties and the voters as to the effect of the law on the issues outlined herein.

PARTIES

5. The Plaintiff is identified by statute as a person or entity specifically entitled to the benefits of KRS 116.112, with a concomitant right to bring this action to vindicate those personal rights.

KDP is a corporate entity with its principle place of business being 360 Democrat Drive, Frankfort Kentucky 40601 and its registered agent being Bailey Roese, 101 S. Fifth Street, Suite 3500, Louisville Kentucky, 40202 and its designated representative for the purpose of this action being Ben Self, Chair.

6. The Defendant, Secretary of State Alison Lundergan Grimes, in her official capacity as the Chief Election Official of the Commonwealth of Kentucky and as a duly elected constitutional officer of the Commonwealth of Kentucky, vested with such powers as are afforded her by the Kentucky Constitution and related state laws.

7. The Defendant State Board of Elections is a Kentucky agency with its principal place of business being 140 Walnut Street, Frankfort Kentucky 40601 and its Agent for Service of Process being the Kentucky Attorney General.

SUMMARY

SBE's actions undermine the integrity of the electoral process.

- Standards of transparency and accountability are high in administration of elections. These standards ensure confidence in electoral outcomes for voters, candidates, and parties.
- SBE has illegally burdened core Constitutional rights.
- SBE has avoided the normal rule making process for administrative regulations.
- SBE staff has acted ultra vires without consent from the State Board of Elections.
- SBE staff continues to change and modify rules under which elections will be administered. **It is not clear what rules govern this election.**
- SBE has provided different explanations of the rules to different political parties and left many interested parties without any information at all.
- SBE's failure to provide clear rules denies third parties their statutory rights to observe elections and ensure fair administration.
- SBE's failure to provide clear rules guarantees disparate and unfair treatment of voters across the state.
- SBE acted at all times relevant hereto without formal written approval from the Board of Directors of the Agency. See: Exhibits 9 and 10, Email requests for such information, to which SBE refused to respond.

INTRODUCTORY ALLEGATIONS

I. REGISTERED VOTERS' CORE CONSTITUTIONAL RIGHTS ARE BEING VIOLATED

1. The Kentucky Constitution Section 147 sets out the basis for voting in Kentucky, as follows:

"The General Assembly shall provide by law for the registration of all persons entitled to vote persons registered shall have the right to vote. The mode of registration shall be prescribed by the General Assembly."

2. The General Assembly has provided by law for the creation of a "Master List" of all registered voters that shall be used for the administration of all elections in the state. KRS 117.025.

3. The General Assembly has provided by law a single, exclusive process by which voters may be removed from the Master List. See: KRS 116.112(8); KRS 116.0452(8).SBE has illegally stricken more than 175,000 Kentucky voters from the Master List of all registered voters required to be provided to each County Clerk for the upcoming election. See: KRS 117.025(3)(c). The sole reason for striking the voters is the return of a postal notice as "Undeliverable As Addressed" or the voter's failure to return a copy of the 8(D)(2) postcard.
5. SBE has segregated these voters on an "inactive list" which subjects each of these voters to burdensome and unlawful restrictions on their core Constitutional right to vote.
6. These unlawful burdens are being imposed on registered voters, not purged voters.
7. Kentucky law states SBE "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....has not appeared to vote and, if necessary, correct the registration records of the voters address [during the next two Federal election cycles]. KRS 116.112(4).
8. This basic voter protection forbids the premature action of SBE in removing voters from Kentucky's required single Master List. Id.; see also KRS 116.0452(3).
9. SBE has improperly instructed County Clerks to ignore this law and impose illegal burdens on these voters.
10. SBE's actions were taken without a vote of the SBE Board Members and without documenting any procedures in the SBE minutes or review by the Board, in violation of SBE's duties.
11. SBE has failed to clearly set forth voting procedures for these 175,000 registered voters in violation of law.
12. SBE has failed to create written and approved administrative policy and procedures to govern its creation of and use of any inactive voter list.
13. SBE has failed to use consistency in establishing the inactive voter list or determining how such voters will be treated in the upcoming General Election, which fast approaches.

14. Among the burdens imposed by SBE is an indiscriminate requirement that all 175,000 registered voters swear to an affidavit in an Oath of Voter form prior to receiving a ballot. Voters must also completely re-register, place a phone call to the County Clerk for instructions, and sign a paper supplemental roster before receiving a ballot, according to state vendors of electronic voting systems. See: SBE Memorandum 19-22, which was sent to all County Clerks on July 17, 2019, Exhibit 1; Email from Tenex Software to SOS staff of 10/3/19, Exhibit 2.
15. SBE is requiring that voters and local election officials be burdened with unauthorized hurdles to the electoral process. These actions pose a danger to the orderly administration of the 2019 General Election as well as for the 2020 elections, which traditionally have a higher voter turnout, and involve federally protected races.
16. SBE has replaced the standard voting process with a complicated and continuously changing substitute process, created and implemented without formal board review or approval, in violation of law.
17. The SBE's actions are plainly "null and void" because they burden a fundamental right under the Kentucky Constitution, and because the new procedures "limit a statutory right", in derogation of the Kentucky Administrative Procedures Act, KRS Chapter 13A. The risk of serious electoral disruption grows each day that these illegalities are permitted to continue.
18. Failure to correct SBE's violation of core Constitutional rights will expose the Commonwealth, its officers and employees, to legal liability, as SBE has been officially cautioned. See: Notice of Due Process Violation,

II. SBE STAFF VIOLATED STATUTORY DUTIES

19. SBE is plainly in violation of Kentucky law requiring the expiration of a minimum two federal election cycles before ANY action can be taken to remove the supposedly inactive voter from the Master List. This protection is so fundamental that it appears again in KRS 116.0452(3), as well as in Federal law.
20. SBE's own emails show that it was clearly advised that this course of action is illegal. SBE's outside counsel discussed this matter with SBE's General Counsel, Jenni Scutchfield, in an email of 5/28/19,

(Exhibit), stating: “Hi Jenni, I think it is incorrect to say that upon sending the second mailing the voter will automatically be marked inactive. KRS 116.112(5) states the process by which a voter becomes inactive.” See: Exhibit 3, at p.

21. SBE General Counsel Jenni Scutchfield replied that she preferred **stripping the voters from the Master List immediately because this is “[t]he easiest way from a developer standpoint.”** Id.
22. Counsel for the Secretary of State was also on this email discussion. Counsel replied within 24 hours as follows:

“I agree with Luke. KRS 116.112(5) only permits a voter to be designated as inactive if the voter fails to respond to the notice described in KRS 116.112(3) and fails to appear to vote for two federal general elections after the notice goes out. See: KRS 116.112(5). **Whether complying with the law is easy for the ‘developer’ is irrelevant. The law should be complied with, and the memo should be corrected as soon as possible. I have never agreed on any of the calls that we should not comply with the law.”**

Exhibit 3, attached hereto, emphasis supplied.

SBE General Counsel Scutchfield then replied by email and assured all parties that SBE would simply tag the voter record. Scutchfield wrote:

“We can move forward with not making the voters inactive but place a tag on their voter record so we can track whether they vote or update their record. Whether they are inactive or not doesn’t matter. It is being able to track them from the time we send the mailing.”

Id., emphasis supplied.

23. This explicit agreement to not strip voters from the Master List was made between SBE’s General Counsel, SBE’s outside counsel, the US Department of Justice, Civil Rights Division, Judicial Watch, and the Secretary of State. Id., Exhibit 3.
24. The agreement establishes that, as of May 29th of this year, SBE assured all concerned that the illegal plan to segregate suspected inactive voters would be abandoned, and replaced with the sensible and simple solution of “not making the voters inactive but place a tag on their voter record ...[because] [w]hether they are inactive or not doesn’t matter” with regard to their status as registered voters.

25. This agreement was immediately breached by SBE senior staff, including Executive Director Jared Dearing and SBE General Counsel Jenni Scutchfield. The written agreement to merely flag voters to “update an address if necessary” was altered to a facially illegal scheme to strip the more than 175,000 voters from the Master List, and to place multiple barriers between these voters and a ballot. See: KDP/SBE Meeting Transcript of September 25, at p. 62, Exhibit 4 , wherein SBE executive Director Jared Dearing states that the striking of voters from the Master List was triggered on July 1, 2019, one month after agreement was reached to do exactly the opposite.
26. SBE’s actions are a direct violation of KRS 117.025(3)(a), which requires SBE to “[m]aintain a complete roster of all qualified voters ... and institute appropriate safeguards to ensure there is no inappropriate use of the voter registration roster,” as well as subpart (c) which requires SBE to “furnish each county clerk with a master list of all registered voters in the county” at least five days before each regular election.
27. SBE cannot supply the mandated Master List to the statutory recipients because its staff illegally gutted that list, in direct violation of written assurances to the contrary.

III. SBE IMPROPERLY BLAMES THIS COURT FOR ITS ILLEGAL ACTIONS

SBE’s stripping of voters from the Master List was concealed and only came to light when the rolls sent to political parties under KRS 117.025(3) suddenly lost massive numbers of Kentucky voters.

28. This triggered an emergency demand from the Kentucky Democratic Party (KDP) on 9/16/19 to immediately reinstate all voters stripped from the Master List, Exhibit 5, as well as a Notice of Due Process Violation from attorney Anna Whites, dated 9/20/19, Exhibit 6.
29. Faced with these well founded legal objections, **SBE abruptly changed course and began to blame this Honorable Court for the systematic destruction of Kentucky’s voter protection laws.** At SBE’s last public meeting, on Tuesday, September 17, it was implausibly claimed that **“the 2006 Franklin Circuit Court Order “has just come up in the last 24 hours....”** SBE Meeting Transcript of 9/17/19, at p. 10, Exhibit 7, SBE’s outside counsel speaking, emphasis supplied.

30. SBE's outside counsel stated that SBE's General Counsel had provided him with this Honorable Court's Order in *Commonwealth v. SBE*, 06-CI-610, a case brought 13 years ago. Outside counsel explained: **"When I read ... KRS 116.112(5)... when they get the second postcard and then they fail to vote in two subsequent Federal elections, then they go on the inactive list.... But [SBE General Counsel Jenni Scutchfield] found a decision from Franklin Circuit Judge Wingate from 2006....so doesn't matter necessarily what I think. The Judge says...when they get this...notice, they go on this list."** Id., at pp.2-3, emphasis supplied.
31. SBE's outside counsel again stated that the law does not permit SBE to remove these 175,000 voters from the Master List. See: SBE Meeting Transcript of 9/17/19, as follows: "[Secretary of State] : So ... are you bringing this up to justify the actions that staff and State Board have taken so far in maintaining an active list?....[Outside Counsel]: Well...I had read this statute to say that you ...**wait two cycles, two federal cycles, and if...they don't vote, then they go on the inactive list.**" Id., at p. 9, emphasis supplied.
32. Outside counsel made clear that in his opinion SBE staff is clearly violating the law by placing these voters on an inactive list, regardless of the 2006 Order. Outside counsel states: **"That's what I believed then, and, frankly, now. In all due respect, I think that's the process, the person gets this notice, and then you'll wait two Federal elections, and then they go on the inactive list if they don't vote."** Id., p. 10.
33. The Secretary of State then immediately asked the following question: **"So your direction to our staff at that time was to follow the law as you perceived it which was to track, flag, in our system...and then wait two elections before they were ever put on an inactive list?"** Transcript, pp.10-11. Outside counsel replied: **"That's---that's my advice...."** Id., at p.11.
34. SBE Member George Russell called for the illegally segregated voters to be put on "the general list for this election". SBE outside counsel responded: **"I cannot advise you to go against the decision of a Court."** Transcript, p.31. Clearly, SBE seeks to excuse its flagrant lawbreaking by citing a 13 year old Order with no relevance to the present case. The 2006 Order was apparently not known or cited in July, 2019, at the time of the SBE's illegal actions.

35. SBE never referred to the 2006 case until it was trapped in an obvious and well documented violation of voter rights, and then tried to pretend that its actions were taken in order to comply with the old Order.
36. The clear language of the 2006 Order refutes SBE's claim. Contrary to SBE's assertions, this Court did not bless SBE's past illegal practices of purging and delisting voters. This Court expressly stated that it found SBE's practices unlawful, forbade their future use, and only declined to issue a permanent injunction "as we have full confidence Respondents will conform their future behavior to what the law requires...." Order of 10/2/06, at p. 8, Civil Action No. 06-CI-610.
37. The Court's confidence in SBE's ability to follow the law was misplaced. SBE has now disadvantaged 175,000 voters without formally purging them, and claims this Court requires this unprecedented action. This makes the present case dramatically different from the 2006 case, where it was found that "[t]here is no statute which provides for intentionally purged voters to have their voter registration reinstated." See: Civil Action No. 06-CI-610, Supplemental Memorandum of 9/18/06, at p.1.
38. In 2006 case, 8,100 voters were purged because of a suspected match to another state's database. SBE called this a "request of the voter" to be removed from the rolls. This Court ruled this action illegal, and ensured that these wrongly purged voters had a path to vote, despite no statute authorizing their immediate reinstatement to the Master List, as was requested. It should be noted that this was apparently the first case of its kind in the nation, and appears to be a forerunner of what is now known as the "Crosscheck" system. Even now, 13 years later, courts across the nation are still following the lead of this Court in striking down these unreliable and error ridden purges. See: *Appeals Court Upholds Freeze on Indiana Law That Would Cancel Voter Registrations Without Telling Voters*, August 27, 2019, Brennan Center press release; *See also; Purges: A Growing Threat to the Right to Vote*, July 20, 2018, Brennan Center Updated Report.
39. SBE has intentionally engaged in an identical offense to the one expressly forbidden by this Court in 2006, only this time imposing the illegal burdens upon 175,000 **registered** voters, rather than a mere 8,000 **purged** voters. Even more astonishing is the fact that SBE claims this Court is forcing them to do it.

IV. THIS COURT MUST AGAIN PROTECT VOTERS RIGHTS

40. Kentucky law requires the reinstatement of these wrongly disadvantaged, (but not yet purged), voters to the Master List. Kentucky law mandates that SBE “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...has not voted or appeared to vote and, if necessary, correct the registration records of the voters address [during the next two Federal election cycles]”. KRS 116.112(4).
41. SBE did not wait the required two federal election cycles required by law.
42. SBE made errors in the selection of voters who might properly be placed on an inactive voter list.
43. SBE’s own records reveal that it has uploaded and included invalid and incorrect information on the state’s list of registered voters.
44. The law protects voters from bureaucratic overreach. The law permits no segregated list, no Oath of Voter, no swearing of an affidavit, no filling out entirely new registration forms, none of the barriers imposed by SBE. Instead, procedures already in place provide that the voter simply tells the poll worker what his or her address correction is (if any), and then proceeds to vote. See: 31 KAR 3:010, setting out the regular procedure.
45. Kentucky law mandates this outcome, and this is exactly what SBE promised to do in its May 28 email, when its General Counsel assured the DOJ Civil Rights Division and the SOS that SBE was “**not making the voters inactive** but plac[ing] a tag on their so we can track whether they vote or update their record.”
46. If SBE had followed this pledged course of action, then existing Kentucky law would have taken over, and poll workers would simply make any needed address corrections.
47. Poll workers often know the voters they serve, and routinely update records of voters known to them. At most, a voter may be required to produce Proof of Eligibility before the address correction is made. Those procedures are outlined in Kentucky law, procedures and the training provided to the local poll workers by county clerks.

V. FURTHER MISUSE OF THIS COURT’S ORDER SHOULD BE PREVENTED

48. SBE's erroneous reliance on this Court's Order must be corrected. SBE's misuse of the Court's Order will be compounded if it is sued for violation of Federal voter protection laws in the upcoming 2020 election, which seems likely given the huge number of impacted voters. This Court should not allow its thoughtful resolution of a limited problem to be blamed for the massive violations now committed by SBE.
49. Presumably SBE will simply produce the old Order and ask the Federal Court to take notice of the law as declared by the Franklin Circuit Court, which SBE claims sweeps away voter registration protection. SBE will say then, as it says now, that its hands are tied by this Court, and so it should not be liable for the obvious Constitutional infringements upon Kentucky voters.
50. This matter clearly may not be removed to Federal Court, as it involves an interpretation of Kentucky law exclusively within the jurisdiction of Kentucky Courts.
51. Ant attempted Federal removal would clearly be taken in bad faith, as SBE itself has identified the Honorable Court's Order from 2006 as the authority under which it operates.
52. This expected future misuse of this Court's Orders in Federal Court may be precluded with a simple restatement of what this Honorable Court said in 2006: SBE is expected to follow the law scrupulously when performing Master List maintenance. This Court did not eliminate voter protections 13 years ago in a forgotten Order; no responsible public servant would think of claiming otherwise.

VI. SBE IS ONCE AGAIN BLAMING COUNTY CLERKS FOR THE PROBLEMS IT CREATED

53. This Honorable Court may recall that hundreds of voters were adversely affected in 2006 despite this Court's best efforts to minimize the fallout from SBE's illegal actions. Unfortunately, sixty- three (63) voters were determined to have been denied the right to vote, despite this Court's Order to the contrary. This deeply regrettable occurrence is sure to recur this coming Election Day, only on a massively larger scale.

54. SBE will again no doubt blame the County Clerks, as it did in 2006, stating: . **“if voters are disenfranchised at the polls, it is due to the negligent acts of the county officials and not the actions of [SBE].”** See: Respondent’s Motion for Summary Judgment of 8/26/06, at p. 24.

55. This attempt to blame County Clerks was disposed of in 2006 as follows:

May it please the Court:

On May 16, 2006, at least sixty three (63) individual voters were disenfranchised as a direct result of the unauthorized, arbitrary and capricious actions of the Secretary of State and the State Board of Elections. The Respondents’ admit this result (see: *Motion for Summary Judgment* at p. 23-24), but assign blame to the County Clerks. Kentucky’s County Clerks, however, had nothing to do with the April 2006 purge of over 8,100 registered Kentucky voters. Rather, it was the Respondents’ voter purge, which caused sixty-three (63) individuals to lose their most precious right – the right to vote. The Attorney General respectfully requests that this Court issue a binding declaration of rights and permanent injunction to prevent further voter disenfranchisement and deny Respondents’ motion for summary judgment.

See: Memorandum in Response to Respondents Motion for Summary Judgment, of 9/5/06, at p.1.

56. SBE must not be permitted to continue these illegal actions. An Order should issue mandating SBE to comply with the law.

57. SBE failed and refused to follow the Court’s 2006 decision. . SBE has now put the orderly conduct of the upcoming election at risk.

58. SBE’s actions disadvantage the more than 175,000 illegally culled Kentucky voters, as well as the entire electoral process.

59. Absolutely no legal authority allows the creation of these obstacles to voting. This Court’s Order did not purport to repeal multiple Kentucky laws granting voters protections, but only to resolve SBE’s illegal purging of a relatively few voters. SBE’s current claim that this Court stripped voter’s rights from the public for all time is a mere ruse which withstands no scrutiny.

60. This Court’s earlier Order did not repeal the state’s election laws; it simply made some limited concession for a small number of voters in that specific case. Rather than following statutes moving forward, as this Court directed, SBE has unlawfully and illegally culled **twenty times the number of voters involved in the 2006 case.**

VII. SBE HAS FAILED TO RESTORE 18,000 VOTERS TO THE MASTER LIST, DESPITE EACH OF THESE VOTERS CASTING A BALLOT IN 2018

61. SBE has failed to restore 18,000 voters to the Master List, despite being fully aware that these voters participated in the last election.
62. This matter was exposed when the SOS conducted a quick check “five minutes before coming here to this meeting [of September 17]” and found evidence that thousands of voters who had actually voted in recent elections were still segregated and faced unlawful burdens on their right to vote. Transcript, p.19. The SOS circulated an actual voter record showing that citizens who voted in November 2018 had been marked “inactive” by SBE staff. See: SBE Meeting of 9/17/19, Transcript, p. 17.
63. The objection from the SOS to those SBE errors in the state’s official voter records was met with an alarming admission by SBE that **18,000 voters who have voted in recent elections are still stricken from the Master List**. This shocking point was raised by SBE Member George Russell as follows:
- Next meeting, I would like to hear that the 18,000 people who voted in 2018 have been restored on the general voter list. They – I understood that once they – the 18,000 that voted, which surprised us all that that many voted, that they would go back onto the general voter registration list. **We have just been told that that did not happen.** I’d like to make sure that does happen by next meeting.
- Id., pp. 21-22, emphasis supplied.
64. Another SBE Member then asked the obvious question of why SBE did not simply “remove the inactive to active status?” Id., at p. 20, Mr. Lewis speaking.
65. SBE General Counsel Jenni Scutchfield then replied, “I might have to talk to our developers...because it would shut down the system. It’s going to have to be done after hours because it has to be when nobody else is on the system.” Transcript, p. 20.
66. The failure of SBE to maintain accurate voter records and to correct errors known to SBE violates the law.
67. SBE’s violation of law is well documented. SBE admits failing to properly register 18,000 voters who voted in November 2018, demonstrating SBE’s inability or unwillingness to carry out the basic functions

of their office. Notably, these failures were apparently wholly unknown to the SBE Board Members until the date of the last SBE Board meeting.

68. Immediate relief must be granted to voters and the Commonwealth in order to preserve the core Constitutional rights of voters. The voter registration because the registration books close on October 22nd, and must be corrected prior to this date. (SBE Meeting of 9/17/19, Transcript, p.30, Exhibit 7.
69. This Court should issue an Order directing that all voters be placed back on the Master List, (with a flag denoting possible address correction if needed), and that any address corrections be performed in accordance with existing law and procedures.

VIII. SBE CAN ADVANCE NO LOGICAL REASON FOR ITS ACTIONS

70. Astonishingly, SBE has advanced only one single reason for creating this segregated list with all of the attendant illegal impediments to casting a ballot. This reason was set forth in SBE's last public meeting as follows:

“This is really an opportunity of sorts for that voter to bring to the attention of the election officials in that precinct or in that county about updating that information to get off this list.” SBE Meeting of 9/17/19, Transcript at p. 3, SBE's Outside Counsel speaking.

71. SBE ignores the fact that **Kentucky law already gives voters the right to correct their address** under KRS 116.112(4).
72. SBE's Executive Director Jared Dearing claims that the voters were segregated **so that the political parties could “reach out and touch them....because the party has a hundred different data points that we don't have, including emails...phone numbers...[and] Facebook.”** KDP/SBE Meeting 9/25/19, Transcript at p. 31.
73. SBE admits, however, that it **failed to tell the political parties that that the segregated list even existed**, until it happened to be discovered months later.

74. Clearly SBE's claim that voters were segregated to facilitate party access to the voters is false. SBE concealed the existence of the list, rather than providing it to the political parties.

75. Political parties and candidates who requested a copy of the Master List of all registered voters were provided a list that was missing all 175,000 of the registered voters declared "inactive" in violation of law.

76. This constitutes a violation of KRS 117.025.

77. VIII. SBE ADMITS THE SYSTEM IT USES IS SUBSTANDARD

78. SBE admits that the inactive voter system has never "been in action" and "the system wasn't built for this." See: KDP/SBE Meeting of 9/25/19, Transcript at p. 59, quoting Executive Director Dearing.

79. SBE admits that the system it uses was not engineered correctly "when it comes to list maintenance, when it comes to voter registration, when it comes to tracking, when it comes to all of the things you want a normal database to be able to do." Id., at p. 60, quoting Executive Director Dearing.

80. The system was "built in a basement" using "spaghetti code." Id.

81. The system was not designed "to have a whole entire funnel of inactive voters to go through," Id., at pp.61-62, though that is what is happening.

82. SBE clearly admits that the system listing inactive voters is rife with error and prone to "constant break fix." Id.

IX. SBE IS MAKING UNTRACKABLE CHANGES TO THE VOTER REGISTRATION SYSTEM

On 9/20/19, the SOS sent an emergency notice to SBE Chair Branscum alerting him that SBE staff was making alterations to voter files without recording the change, the date or the individual making the undocumented alteration. The SOS strongly cautioned that this "is highly improper, against VRS [Voter Registration System] protocol and constitutes concealment." Id., emphasis in original, see Exhibit 8.

83. This failure to maintain records of changes to the VRS jeopardizes the ability of any court or investigative agency from documenting the improper actions of SBE, and is taken in direct violation of law requiring these records to be kept. See: KRS 116.112(8).
84. When questioned about the lack of audit tracking in the official voter files, SBE's Executive Director stated: "I don't want the public understanding how our log system works....if it becomes public, it's how bad actors hack in the system...." KDP/SBE Transcript of 9/25/19, at p. 83.
85. When asked directly whether SBE complied with its statutory responsibilities to track all changes it made to the VRS, Executive Director Dearing responded: "Well, guess what? You're not going to get an answer from me then." Id., at p.94.
86. SBE then closed the meeting. Counsel objected to the failure to answer, and SBE's Executive Director responded, "Oh good. I'm glad. Did you say it into the microphone?" Id., at p. 97.
87. SBE falsely claimed throughout the KDP/SBE meeting that it was being unfairly questioned. The transcript and audio show this to be wholly untrue. SBE's failure to keep its own record of the meeting, and attempts to mischaracterize the meeting, are clear evidence of bad faith on SBE's part.
88. SBE has failed to provide the public with the legally required assurance that SBE is formally tracking all of the changes it is making to the VRS, as required by Kentucky law. Any such untrackable and undocumented changes are a dire threat to the integrity of the Voter Registration System.

COUNT I

1. SBE had a duty to maintain a master list of all registered voters.
2. KDP is an entity which requires the master list of registered voters in order to fulfill its duties.
3. KDP requested the master list of registered voters in July, 2019.
4. SBE provided KDP with a shortened list of registered voters and did not provide the names of the registered voters that SBE had unlawfully placed on a segregated "inactive voter" list.

5. SBE did not apprise KDP of the fact that they had secreted over 175,000 voter identities from KDP and other similarly situated individuals.
6. The SBE actions were in violation of law.
7. An order must issue requiring that the illegally segregated voters be immediately placed back on the Master List of registered voters.

COUNT II

1. SBE has a duty under law to establish policies and procedures for the county clerks of each Kentucky county as to how to conduct the elections each year.
2. SBE has a duty under law to provide Precinct Worker education materials, a powerpoint and a handbook, to every county clerk across Kentucky.
3. SBE failed to include information about the segregated "inactive voter" list in the educational materials for county clerks and precinct workers.
4. SBE has implemented inconsistent processes and training across the Commonwealth.
5. The SBE instructions are not contained in the formal training materials for clerks.
6. . SBE failed to create and publicize instructions on how to handle voters who found themselves illegally moved to an inactive voter list on election day.
7. This Court should issue an Order mandating updated training for the County Clerks and a consistent practice of review of the Master List of registered voters and an updating of voter information as detailed in statute and in the official clerk training documents issued by the SBE.

COUNT III

1. SBE has a duty under state law to treat all registered voters equally
2. SBE has a duty to ensure that no improper burden is placed upon voters.
3. SBE intentionally, knowingly and willfully breached those legal duties and created a system that improperly burdens up to 175,000 registered voters.
4. SBE put these burdens on voters without Board vote and authorization.

5. SBE was not transparent with voters or the public about the disparate treatment of certain registered voters.

6. This Court must issue an Order requiring SBE to comply with state law and approved administrative procedures.

COUNT IV

1. SBE had a duty to act only on the direction of its Board of Directors, following a public meeting and a documented vote affirming any action.

2. SBE acted prior to any formal vote of approval on the process of moving registered voters to a segregated list.

3. SBE failed to obtain formal Board approval via vote for its disparate treatment of registered voters.

4. Upon information and belief SBE hid the flawed and inconsistent process used to “train” county clerks and precinct workers on handling of the segregated voters.

5. All of which is in violation of Board policy, generally accepted best practices, and Kentucky law and administrative regulations.

6. This Court must find that SBE’s attempted administrative changes are null and void due to failure to comply with Kentucky law.

DEMAND FOR DECLARATORY AND INJUNCTIVE RELIEF

DESCRIPTION OF JUSTICIABLE CONTROVERSY

The State Board of Elections (SBE) has certain duties as outlined in state law. The SBE has adopted and accepted certain duties as are detailed on the SBE website:

The Board’s day-to-day operations are carried out by an Executive Director, an Assistant Director and a bipartisan staff sufficient to carry out its duties.

The Board’s Duties:

- Ensure Kentucky's compliance with federal election law
- Ensure Kentucky's compliance with state election law
- Provide and maintain the statewide voter registration database

The SBE is charged with maintaining the integrity of elections and the protection of the voters. In derogation of these duties, the SBE determined, on or before July 1, 2019, to remove in excess of 175,000 registered voters from the voter rolls and the Master List of voters and to place those registered voters on an "inactive voter" list separately maintained and designated. That action was taken by the Executive Director and Assistant Executive Director of SBE without a Board of Directors vote requiring or affirming that action.

Similarly, SBE has a duty to "furnish each county clerk with a **Master List** of all registered voters in the county..." See: KRS 117.025, *SBE Executive Director and Assistant Director--Staff--Powers and Duties*, at paras. (3)(a)(b) and (c). The single Master List is the only official record of registered voters, and is relied upon by state officers in the discharge of their duties.*Id.* It is also relied upon by all political parties, candidates, and public interest groups and is the document provided to such individuals and entities when they request a list of all registered voters. *Id.*, at para (3)(h). In violation of this statutory duty, SBE provided KDP, candidates for public office, and other requesters with only a partial list of registered voters, hiding the fact that the SBE had placed over 175,000 voters on a segregated "inactive voter" list. This significantly and materially impeded the ability of KDP and similarly situated others to contact voters or to conduct their business.

Two (2) federal election cycles are required before a voter may be moved to an inactive voter list. The "two election cycle" language ensures that **no one is removed from the Master List prematurely** following any failure to respond to a notice from SBE. SBE simply ignored that directive completely.

Similarly, SBE was not transparent in notifying voters on the segregated list that they had been placed in “inactive” status even though they are registered voters entitled to be on the master list of registered voters. Voters who look themselves up on line see no notification that they are on an “inactive voter” list and thus have no warning to update their registration.

Without formal SBE Board vote or approval, SBE has directed all 120 County Clerks to join it in this wholesale deprivation of civil liberties by demanding that each of the more than 175,000 segregated voters now fill out a sworn Oath of Voter form, among other impediments to voting. See SBE Memorandum 19-22, describing the segregated list of deactivated voters and the bureaucratic hurdles imposed unlawfully by SBE. This disparate treatment of certain voters is a direct violation of applicable law.

In addition, SBE has failed to create uniform educational practices and materials that identify what method county clerks and precinct workers should use when faced with a registered voter who has unlawfully been placed on the segregated voter list. This leads to inconsistency and improper burdens upon some, if not all, of the segregated voters.

In one SBE Memo to County Clerks (19-22) (7/17/2019) states as follows (emphasis supplied):

What is an “inactive” voter?

*IMPORTANT: Voters with an “Inactive” date are still registered voters and should be allowed to vote. The voter’s record has not been removed yet. **These voters will be listed on a separate list for the upcoming elections.** The separate rosters will be supplied to the counties along with the regular signature roster.*

Using two separate rosters for the administration of an election violates KRS 117.025(3)(c) because the Master List must be directly used for the administration of elections. KRS 117.025(3)(c):

*For each regular election, furnish each county clerk with a **master list of all registered voters** in the county, together with one (1) signature roster of all registered voters in each precinct of the county on which each voter's party affiliation is identified, and two (2) lists of all registered voters in each precinct of the county at least five (5) days prior to each regular election;*

The single Master List is crucial for fair election administration, and appears throughout Kentucky election law.

See, e.g., 31 KAR 3:010(1)(8) :

*“Statewide voter registration database” means a **complete roster of all qualified voters** within the state by county and precinct that the State Board of Elections is required to maintain pursuant to KRS 117.025(3)(a).*

Additional requirements are found in KRS 117.025(3)(a)(emphasis supplied):

(3) The board shall:

*(a) **Maintain a complete roster of all qualified registered voters** within the state by county and precinct, and institute appropriate safeguards to ensure that there is no inappropriate use of the voter registration roster. State and local election officials, including the Secretary of State, employees of the Secretary, and members of the State Board of Elections and their staff, shall only use the voter registration roster for purposes relevant to their prescribed duties of election administration. The Secretary of State, and two (2) employees of the Secretary, who may be designated by the Secretary with explicit written authority and notification to the board, shall have electronic access to the information contained within the voter registration roster, but **shall not correct, alter, or delete information from the voter registration roster, unless having obtained prior approval by a majority of the voting members of the board;***

Kentucky law explicitly protects voter registration from the tampering seen in this case. KRS 116.0452(3) provides as follows (emphasis supplied):

The name of a registered voter shall not be removed from the registration books except:

(a) Upon request of the voter;

(b) As provided by KRS 116.113, upon notice of death, declaration of incompetency, or conviction of a felony; or

(c) Upon failure to respond to a confirmation mailing sent pursuant to KRS 116.112(3) and failure to vote or appear to vote and, if necessary, correct the registration record of the voter's 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 that occurs after the date of the notice.

Kentucky law provides a process for a voter who needs to correct the voter information. SBE should be directed to following the existing procedure as outlined in 31 KAR 3:010.

31 KAR 3:010:

Section 2. Correction of Voter Registration Records.

(1) Each county clerk shall instruct the precinct election officers of the necessity for informing each voter that he or she shall correct any error existing in his or her address as it appears upon the precinct signature roster.

(2) Each precinct election officer shall instruct each voter to correct any error existing in his or her address as it appears upon the precinct signature roster.

(3) Each voter shall, when he or she signs the precinct signature roster, correct any error existing in his or her address as it appears upon the precinct signature roster.

(4) Each county clerk shall take all steps necessary to correct and update each voter's address upon the statewide voter registration database.

Instead of following this simple, time-honored process, which is known to all volunteer poll workers and is trusted and relied upon by voters, SBA has drastically changed the rules. SBA is in clear violation of law by presumptively requiring deactivated voters to swear an affidavit to be able to vote. **Kentucky law only requires voters who have an actual address mismatch to fill out an Oath of Voter affidavit.**

KRS 117.225(1)

Any person desiring to vote on election day shall give his name and address to the clerk of the election. If the person's name is listed on the precinct list furnished by the State Board of Elections as provided in KRS 117.025 and if no challenge is made, he shall sign his name on the precinct list in the space opposite his printed name. The voter's signature shall constitute his verification that he is a properly registered and qualified voter. The

voter shall then retire alone to cast his vote on the voting machine. The county board of elections may provide to each precinct the original registration form of each voter entitled to vote in that precinct. These forms shall be used to compare signatures in those precincts to which the forms are provided.

KRS 116.085(2)

When a registered voter changes his place of residence from one (1) precinct to another within the same county before the registration books are closed and fails to transfer his registration with the county clerk prior to the date the registration books are closed, the voter shall be permitted to update the voting records and to vote in the present election at the appropriate precinct for the current address upon affirmation of his current address and signing the precinct list as set forth in KRS 117.225. Before being permitted to vote, the voter shall also confirm his identity as required in KRS 117.227 and complete the affidavit which is required to be completed by a voter whose right to vote has been challenged. The subscribed oaths shall be delivered to the county clerk and investigated in accordance with KRS 117.245.

Standard Kentucky election processes are sufficient to deal with any issues attendant to deactivated voters. Every voter in the state is required to affirm their address and confirm their identity when they show up to vote. If, and only if, their address is incorrect do they have an obligation to inform the polling location and swear an affidavit.

By requiring all 175,000 individuals on the unlawful “inactive voter” list to fill out and swear an Oath of Voter affidavit, SBE has added a whole new layer of complexity and delay to voting process on election day. See: Memorandum to County Clerks (19-22) (7/17/2019), stating:

The State Board of Elections will be scanning undeliverable postcards into the Voter Registration System as they are received. You may start to notice voters' statuses changed to inactive. REMINDER: those marked inactive can still vote, but will be required to fill out an Oath of Voter when they present to vote. If they do not vote or update their voter record, after two federal elections, their voter registration will be canceled.

This new procedure completely ignores the statutes and regulations now in place to address this issue and so is null and void.

Kentucky statutes demand that the SBE act with transparency and with the oversight and formal approval of its Board of Directors. KRS 116.112(8)(a-b)

(8) (a) The State Board of Elections and county boards of elections shall maintain for at least two (2) years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of the registration records, except to the extent that the records relate to the declination to register to vote or the identity of a voter registration agency through which any particular voter is registered.

(b) The records maintained pursuant to paragraph (a) of this subsection shall include lists of the names and addresses of all persons to whom notices described in subsection (3) are sent, and information concerning whether each person has responded to the notice as of the date that inspection of the records is made.

The State Board of Elections is Creating Regulations through Internal Memoranda, in Violation of the Kentucky Procedures Act. SBE is creating procedures by Memoranda, which is a textbook violation of the Kentucky APA, which forbids such bureaucratic turf building. Kentucky law forbids that action. See: KRS 13A.130 (emphasis supplied), which states that:

Matters prohibited as subject of internal policy, memorandum, or other form of action

(1) An administrative body shall not by internal policy, memorandum, or other form of action:

*(a) **Modify a statute** or administrative regulation;*

*(b) **Expand upon or limit a statute** or administrative regulation; or*

*(c) Except as authorized by the Constitution of the United States, the Constitution of Kentucky, or a statute, expand or **limit a right guaranteed by the Constitution** of the United States, the Constitution of Kentucky, a statute, or an administrative regulation.*

*(2) Any administrative body memorandum, internal policy, or other form of action violative of this section or the spirit thereof is **null, void, and unenforceable**.*

Kentucky law explicitly protects voter registration from the tampering seen in this case. KRS 116.0452(3) provides as follows (emphasis supplied):

The name of a registered voter shall not be removed from the registration books except:

(a) Upon request of the voter;

(b) As provided by KRS 116.113, upon notice of death, declaration of incompetency, or conviction of a felony; or

(c) Upon failure to respond to a confirmation mailing sent pursuant to KRS 116.112(3) and failure to vote or appear to vote and, if necessary, correct the registration record of the voter's 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 that occurs after the date of the notice.

The "two election cycle" language ensures that **no one is removed from the Master List for at least four (4) years** following any failure to respond to a notice from SBE.

SBE indicates that voters on the inactive list may still vote, but additional barriers to voting are placed upon them. If the voter arrives at a polling place to vote, they will be told that they are not on the required single Master List or signature log for voters. At this point, as history shows, many voters will leave. A persistent voter will be informed that she is on the inactive list and if she fills out an Oath of Voter card, she will be allowed to vote. The Oath of Voter card states that the voter may be subject to criminal prosecution if the form is inaccurate. All Oath of Voter cards are provided to the Commonwealth's Attorney the day after the election for investigation.

In the discretion of the county clerk or precinct workers, the voter may also be required to appear before the County Board of Elections to request a ruling allowing her to vote. Voters who are blind or not fluent in English or who have English as a second language will have to contact the state's Public Protection and Advocacy Cabinet via phone to request assistance in

filling out the Oath of Voter form. The voting line will move slowly if only a handful of voters are put through this process.

Using two separate rosters for the administration of an election violates KRS 117.025(3)(c) because the Master List must be directly used for the administration of elections. KRS 117.025(3)(c):

*For each regular election, furnish each county clerk with **a master list of all registered voters** in the county, together with one (1) signature roster of all registered voters in each precinct of the county on which each voter's party affiliation is identified, and two (2) lists of all registered voters in each precinct of the county at least five (5) days prior to each regular election;*

The single Master List is crucial for fair election administration, and appears throughout Kentucky election law. Here are examples:

KRS 117.025(3)(a)(emphasis supplied):

(3) The board shall:

*(a) **Maintain a complete roster of all qualified registered voters** within the state by county and precinct, and institute appropriate safeguards to ensure that there is no inappropriate use of the voter registration roster. State and local election officials, including the Secretary of State, employees of the Secretary, and members of the State Board of Elections and their staff, shall only use the voter registration roster for purposes relevant to their prescribed duties of election administration. The Secretary of State, and two (2) employees of the Secretary, who may be designated by the Secretary with explicit written authority and notification to the board, shall have electronic access to the information contained within the voter registration roster, but **shall not correct, alter, or delete information from the voter registration roster, unless having obtained prior approval by a majority of the voting members of the board;***

Obviously the Board cannot approve an illegal deletion, as is seen here. As a matter of both law and common sense, no court order can justify the clearly illegal segregation of voters from the Master List.

This conclusion is required under Kentucky law. See: 31 KAR 3:010(1)(8) :

“Statewide voter registration database” means a complete roster of all qualified voters within the state by county and precinct that the State Board of Elections is required to maintain pursuant to KRS 117.025(3)(a).

Kentucky law is plain in disallowing the creation of rulemaking via memoranda. See: KRS 13A.130 (emphasis supplied), holding:

***Matters prohibited** as subject of internal policy, memorandum, or other form of action*

*(1) An administrative body **shall not** by internal policy, memorandum, or other form of action:*

*(a) **Modify a statute** or administrative regulation;*

*(b) **Expand upon or limit a statute** or administrative regulation; or*

*(c) Except as authorized by the Constitution of the United States, the Constitution of Kentucky, or a statute, expand or **limit a right guaranteed by the Constitution** of the United States, the Constitution of Kentucky, a statute, or an administrative regulation.*

*(2) Any administrative body memorandum, internal policy, or other form of action violative of this section or the spirit thereof is **null, void, and unenforceable**.*

Kentucky law does provide a procedure for removing voters from the rolls where appropriate. KRS 116.112(5) mandates the *deactivation* of voters by the SBE: “The State Board of Elections shall establish an inactive list...” After 8(d)2 notices are sent, voters are automatically deactivated after not appearing in two subsequent federal elections. Both KRS 116.112(4) and KRS 116.112(5) contemplate county boards of elections using these procedures.

The SBE Has a Statutory Grant of General Rulemaking Authority. Under KRS 117.015(1):

There shall be a State Board of Elections that is an independent agency of state government, which shall administer the election laws of the state and supervise registration and purgation of voters within the state. The board:

- (a) May promulgate administrative regulations necessary to properly carry out its duties; and
- (b) Shall promulgate administrative regulations establishing a procedure for elections officials to follow when an election has been suspended or delayed as described in KRS 39A.100.

In accordance with these guidelines, the SBE has promulgated rules for implementing State and Federal Election Law. For example, 31 KAR 3:010 “establishes the procedures for election officials and voters to follow to correct and maintain voter registration records and establishes standards for the State Board of Elections to follow when reviewing a request for a voter registration list” and 31 KAR 4:010 “establishes a procedure for documenting the confirmation of identity on precinct voter rosters.”

Similarly, rules for voter purgation are permitted and are “statement[s] of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public.” See: KRS 13A.100(1). This statute provides that:

Subject to limitations in applicable statutes, any administrative body which is empowered to promulgate administrative regulations shall, by administrative regulation prescribe, consistent with applicable statutes:

- (1) Each statement of general applicability, policy, procedure, memorandum, or other form of action that implements; interprets; prescribes law or policy; describes the organization, procedure, or practice requirements of any administrative body; or affects private rights or procedures available to the public;

KRS 13A.010(2) holds:

- (2) "Administrative regulation" means each statement of general applicability promulgated by an administrative body that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any administrative body. The term includes an existing administrative regulation, a new administrative regulation, an emergency administrative regulation, an administrative regulation in contemplation of a statute, the amendment or repeal of an existing administrative regulation, but does not include:

- (a) Statements concerning only the internal management of an administrative body and not affecting private rights or procedures available to the public;

SBE's actions complained of herein are in the nature of rulemaking, but were untaken without the formal and transparent public process, including comment and a Board vote, required of such regulations.

KRS 13A.130, "Matters prohibited as subject of internal policy, memorandum, or other form of action" states that:

(1) An administrative body shall not by internal policy, memorandum, or other form of action:

(a) Modify a statute or administrative regulation;

(b) Expand upon or limit a statute or administrative regulation; or

(c) Except as authorized by the Constitution of the United States, the Constitution of Kentucky, or a statute, expand or limit a right guaranteed by the Constitution of the United States, the Constitution of Kentucky, a statute, or an administrative regulation.

(2) Any administrative body memorandum, internal policy, or other form of action violative of this section or the spirit thereof is null, void, and unenforceable.

13A.120(6):

No administrative body shall issue standards or by any other name issue a document of any type where an administrative regulation is required or authorized by law.

For this reason, all actions by the SBE so taken must be held null and void as a matter of law.

Plaintiff requests that this Honorable Court grant DECLARATORY JUDGMENT

holding the actions of SBE null and void as a matter of law.

MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to Kentucky Rules of Civil Procedure ("CR") 65.01 and 65.04, Plaintiff moves the Court to enter an Order temporarily enjoining the Defendants from segregation of voters from the Master List of registered voters and from imposing any burdens not specifically outlined in statute and formally approved by the SBE Board with regard to the 2019 General Election.

SUPPORTING FACTS

Plaintiff incorporates all prior assertions of fact herein as if fully recited below. As shown in the Introductory Allegations in this Pleading, injunctive relief and a temporary restraining order are necessary to protect the public interest. Entry of the TRO will reinstate the status quo and ensure that all registered voters are on the master list and able to vote without additional unlawful burdens being placed upon them.

STATEMENT OF THE LAW REQUIRING RELIEF

CR 65.04 sets out the substantive elements for temporary injunctive relief. A party is entitled to injunctive relief where, as here, the Plaintiff's rights will suffer immediate and irreparable injury unless immediate action is taken by the court. Injunctive relief ensures that a party's rights are preserved pending the trial of the merits.

The Plaintiff herein are at serious risk of having their right to vote abridged or infringed upon. The actions of Defendants have a severe chilling effect on the electorate. The right to vote is one of the most sacrosanct rights that an American can have. Defendants have impeded that right and made it much more complex for thousands of validly registered voters to cast a ballot. This claims rises to the level required by a grant for an immediate injunction. *Morrow v. City of Louisville*, 249 S.W.2d 721 (Ky, 1952). *Maupin v. Stansbury*, 575 S.W.2d 695, 698 (Ky. Ct. App., 1978).

CR 65.04 requires a clear showing that the parties' rights will be immediately impaired unless the Defendants are restrained from taking action. In the present case Defendants have engaged in a concerted effort to exceed their duties and have taken illegal actions in derogation

of the advice of outside counsel, the Department of Justice and other interest parties. Those actions infringe on voter rights and treat 175,000 valid registered voters in a manner that is distinct and less advantageous than other similarly registered voters. This is not the remote possibility of some feared wrong in the future, rather, it is an immediate harm to voter rights supporting an award of a temporary injunction. *McCloud v. City of Cadiz*, 548 S.W.2d 158 (Ky. App. 1977). There is a real and concrete probability that irreparable injury will be done if no injunction is granted." Under such circumstances, an injunction must issue. *Hamlin v. Durham*, 235 Ky. 842, 32 S.W.2d 413, 414 (1930).

Kentucky law is clear in holding regulations or actions cannot be taken so as to deny the voting privilege, either directly or by rendering its exercise so difficult and inconvenient as to amount to a denial. *Wilkinson v. Queen*, 269 S.W.2d 223 (Ky. 1959). In the present case, this is exactly what Defendants have done. They have created a system that makes it far more difficult to vote for thousands of voters, and one that will make the voting process difficult for not just voters, but precinct workers and county clerks. The Defendants must be restrained from causing this probable injury and enjoined from maintaining the current separate and illegal voter list. All registered voters must be placed back on one master list for purposes of equity and fairness.

Courts hold that an election is free and equal within the meaning of the Constitution only when it is public and open to all qualified electors alike; when every voter has the same right as any other voter; when each voter under the law has the right to cast his ballot and have it honestly counted; when the regulation of the right to exercise the franchise does not deny the franchise itself or make it so difficult as to amount to a denial; and when no constitutional right of the qualified elector is subverted or denied him. See: *Queenan v. Russell*, 339 S.W.2d 475, 477 (Ky, 1960), citing *Asher v. Arnett*, 280 Ky. 347, 132 S.W.2d 772. No remedy at trial will

undo the harm caused by Defendants' actions if they are not restrained. There is no "second election", or ability to add or subtract votes after trial. What happens on election day is the result that carries the Commonwealth through the next four years. This Court cannot sit idly by and let Defendants damage the right of registered voters to make their voices heard. A temporary injunction must issue to restrain the ongoing separate of registered voters by Defendants.

In this Commonwealth, there exists a strong public policy "in favor of broad voter participation" in elections, thus requiring any doubt in statutory interpretation to "be resolved in favor of allowing the candidacy to continue." *Heleringer v. Brown*, 104 S.W.3d 397, 403 (Ky. 2003). Defendants actions are in direct violation of this longstanding public policy. More than one hundred years ago the high Court held that "Elections which are not free and equal on the whole invalidate the results." *Taylor, & C., v. Beckham, & C.*, 108 Ky. 278, 56 S.W. 177 (Ky. 1900). This Court must uphold that strong mandate and issue a temporary restraining order that prohibits Defendants from engaging in such improper and damaging actions.

An injunction must issue where, as here "it is clearly shown that a party's rights will suffer immediate and irreparable injury pending trial." *Maupin v. Stansbury*, 575 S.W.2d 695, 698 (Ky.App.1978). A court faced with a request for injunctive relief must analyze three factors. First, the trial court should determine whether plaintiff has proven that it will suffer irreparable injury. This is a mandatory prerequisite to the issuance of any injunction. Secondly, the trial court should weigh the various equities involved. Although not an exclusive list, the court should consider such things as possible detriment to the public interest, harm to the defendant, and whether the injunction will merely preserve the status quo. Finally, the complaint should be evaluated to see whether a substantial question has been present.

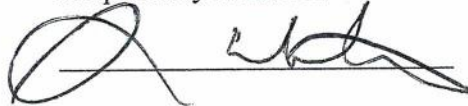
For these reasons, an Order should issue directing SBE to follow existing laws and cease the practice of segregating and deactivating voter from the Master List. The full and complete Master List must be provided to County Clerks in a single roster format, as required under KRS 117.025(3)(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- A. That a temporary restraining order be issued, preventing separation of voters into a master list and a segregated list; That all registered voters be immediately returned to the single Master List with their registration flagged to alert poll workers to confirm the voters' address, as required by law;
- B. That SBE direct County Clerks and poll workers to make needed corrections, if any, to voter addresses pursuant to the longstanding Kentucky laws that have always been employed for this purpose. See: KRS 116.112(4); 31 KAR 3:010.
- C. That all attempts to impose further illegal impediments upon the 175,000 registered voters cease and desist.
- D. Its costs and fees herein expended, including a reasonable attorney fee;
- E. Any and all other relief to which this Honorable Court finds it entitled.

Respectfully submitted



ANNA STEWART WHITES
PIERCE WHITES
327 Logan Street
Frankfort, KY 40601
(502) 352-2373
Fax (502) 352-6860
Annawhites@aol.com
COUNSEL FOR PLAINTIFF