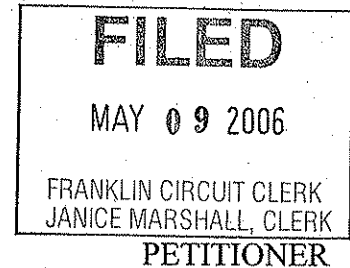


COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION 2
CIVIL ACTION NO. 06-CI-610



COMMONWEALTH OF KENTUCKY
ATTORNEY GENERAL GREGORY D. STUMBO

VS.

**ANSWER TO PETITION FOR A DECLARATION
OF RIGHTS AND INJUNCTIVE RELIEF**

COMMONWEALTH OF KENTUCKY
STATE BOARD OF ELECTIONS

and

COMMONWEALTH OF KENTUCKY
SECRETARY OF STATE

RESPONDENTS

Come the Respondents, Trey Grayson in his official capacity as Secretary of State for the Commonwealth of Kentucky ("Secretary of State" or "Secretary") and the Kentucky State Board of Elections ("State Board"), by counsel, and hereby respectfully submit the following Answer to the Petitioner's, Attorney General Gregory D. Stumbo ("Attorney General"), Petition for a Declaration of Rights and Injunctive Relief ("Petition").

As to the numbered paragraphs in the Petitioner's Petition:

1. The Respondents deny each and every averment contained in paragraphs 1, 2, and 3 of the Petitioner's Petition.
2. The Respondents admit the averments contained in paragraphs 4, 5, and 6 of the Petitioner's Petition.
3. The Respondents deny each and every averment contained in paragraphs 7, 8, and 9 of the Petitioner's Petition.

4. The Respondents admit the averments contained in paragraph 10 of the Petitioner's Petition.

5. The Respondents deny each and every averment contained in paragraphs 11, 12, 13, and 14 of the Petitioner's Petition.

6. The Respondents admit the averments contained in paragraph 15 of the Petitioner's Petition.

7. The Respondents admit only so much of the averments contained in paragraph 16 of the Petitioner's Petition that states that "filed herewith under seal to protect private voter information, and incorporated herein by reference as if repeated verbatim, is the open records response provided by the State Board of Elections, with attachments." The Respondents deny each and every remaining averment contained in paragraph 16 of the Petitioner's Petition.

8. Paragraphs 17, 18, 19 and 20 of the Petitioner's Petition merely contain the Petitioner's legal arguments and do not require an answer. However, to the extent that paragraphs 17, 18, 19, and 20 require an answer, the averments are hereby denied.

9. The Respondents deny each and every averment contained in paragraphs 21, 22, and 23 of the Petitioner's Petition.

10. The Respondents deny each and every averment contained in the Petitioner's Petition that is not expressly denied herein.

FIRST DEFENSE

The Petitioner's Petition fails to state a claim, in whole or in part, upon which relief may be granted against Respondents and, therefore, should be dismissed.

SECOND DEFENSE

The Petitioner's Petition should be denied because it wrongly relies on KRS 116.112. The primary election on May 16, 2006 involves federal primaries in four congressional districts

in the Commonwealth of Kentucky, and, therefore, federal law applies to the conduct of those elections and to who may be eligible to be registered to vote in those elections.

THIRD DEFENSE

The Petitioner's Petition should be denied because the proper venue is in federal court under federal question jurisdiction, pursuant to 28 U.S.C. §1331. The prevailing law is the National Voter Registration Act ("NVRA") and the United States District Court, affirmed by the Sixth Circuit, has determined that

[t]he Supremacy Claus, U.S. Const., Art. VI, Cl. 2. renders the NVRA binding on state officials even in the absence of any state legislative action. Any inconsistent state voter registration laws or state procedures for federal elections are simply preempted and superseded. Ex parte Siebold, 100 U.S. (10) 371, 392, 25 L.Ed. 717(1879).

Association of Community Organizations for Reform Now v. Miller, 912 F. Supp. 976 (W.D. Mich 1995) *affirmed by* 912 F3d 833 (6th Cir. 1997).

FOURTH DEFENSE

The Petitioner's Petition should be denied because the proper venue is in federal court under federal question jurisdiction, pursuant 28 U.S.C. §1331, based on the reliance of the Petitioner on federal law in paragraph 20 of the Petition.

FIFTH DEFENSE

The Petitioner's Petition should be denied because the Respondents may properly cancel the registration of a voter at the request of a voter, pursuant to the NVRA, 42 U.S.C. §1973gg-6(a):

(a) In general. In the administration of voter registration for elections for Federal office, each State shall—

(3) provide that the name of a registrant may not be removed from the official list of eligible voters *except--*

(A) *at the request of the registrant*;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

- (C) as provided under paragraph (4);
- (4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of--
 - (A) the death of the registrant; or
 - (B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d) of this section.

By completing a voter registration card in either South Carolina or Tennessee subsequent to registering to vote in the Commonwealth of Kentucky, a voter is confirming that the voter is no longer a qualified voter in the Commonwealth of Kentucky and is, therefore, ineligible to vote in Kentucky elections. *See Bell v. Marinko*, 367 F.3d 588, 592 (6th Cir. 2004)

SIXTH DEFENSE

The Petitioner's Petition should be denied because the Respondents may properly cancel the registration of a voter when the voter confirms in writing that he or she is now registered to vote in another jurisdiction, pursuant to the NVRA, 42 U.S.C. §1973gg-6(d):

- (d) Removal of names from voting rolls
 - (1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence *unless the registrant--*
 - (A) *confirms in writing* that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered.

By completing a voter registration card in either South Carolina or Tennessee subsequent to registering to vote in the Commonwealth of Kentucky, a voter is confirming in writing that the voter has changed residence to a place outside of the jurisdiction of Kentucky.

SEVENTH DEFENSE

The Petitioner's Petition should be denied because the NVRA specifically provides that when a voter's registration may be canceled pursuant to 42 U.S.C. §1973gg-6(a)(3)(A), the 90-day prohibition against implementing programs for removing inactive voter registrations does not apply:

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) of this section by establishing a program under which--

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that--

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) of this section to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude--

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a) of this section; or

(ii) correction of registration records pursuant to this subchapter.

EIGHTH DEFENSE

The Petitioner's Petition should be denied because the Petitioner has failed to name indispensable parties to this action. In the event this Court were to grant the Petitioner's Petition, the only parties who can perform under the injunction would be the 120 County Clerks of the Commonwealth of Kentucky who would be required to add each and every restored individual's name to the Supplemental Precinct Signature Rosters for each precinct prior to Election Day and restore the voter's record to the Voter Registration Database when the books are reopened subsequent to the election. However, the county clerks will be logistically unable to perform the restoration prior to the election because a majority of the supplemental precinct signature rosters will be packed with all election day materials and segregated into precincts by the close of

business on the date of filing of this pleading and stored until election day.

NINTH DEFENSE

The Petitioner's Petition should be denied because the Petitioner misstates to this Court the specifics of the pilot project. The individuals whose information matched in either Tennessee or South Carolina were not "purged" from the Kentucky Voter Registration Database. To the contrary, the registrations of these individuals were canceled and placed into a separate file. This separate file may be accessed by each of the 120 County Clerks of the Commonwealth of Kentucky at any time on or before Election Day. If a voter whose registration was cancelled under the pilot project can show that he or she remains a qualified voter in the Commonwealth of Kentucky, the appropriate county board of elections must add that voter to the county's supplemental precinct roster, and must allow the voter to vote at that precinct. This may be done by the voter at the county clerk's office or the precinct on election day.

TENTH DEFENSE

The Petitioner's Petition should be dismissed for failure to state any genuine issue as to any material fact.

ELEVENTH DEFENSE

In the alternative, if this Court determines that the State Board improperly canceled the registrations of the voters involved in the pilot project, then the Petitioner's Petition should be dismissed because the State Board's action resulted in harmless error. A canceled voter whose registration was canceled under the pilot project may still vote in the May 16, 2006 Primary Election. The voter may either contact his or her local county clerk's office at any time before the election or appear at the precinct on Election Day and request to be placed on the supplemental precinct roster if the voter can prove he or she remains a qualified voter. The voter

may then vote on the voting machine at his precinct and will be restored to the Voter Registration Database after the election by the county clerk.

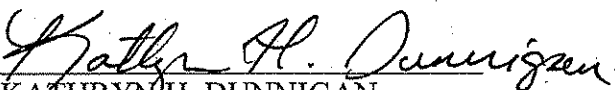
TWELTH DEFENSE

The Respondents reserve the right to assert additional defenses subject to what discovery may reveal.

WHEREFORE, the Respondents, the Secretary of State of the Commonwealth of Kentucky and the Kentucky State Board of Elections, hereby respectfully request the following relief:

1. For removal of this action to federal court, the just and proper jurisdiction to adjudicate a cause of action preempted by federal law;
2. In the alternative, for a denial of the Petitioner's Petition for a Declaration of Rights and Injunctive Relief with prejudice;
3. For an order that Petitioner shall take no relief from his Petition for a Declaration of Rights and Injunctive Relief herein;
4. For an award of the Respondents' costs and attorney's fees herein incurred; and
5. For such further and other relief the Court deems fair and just.

Respectfully Submitted,



KATHRYN H. DUNNIGAN

General Counsel

Kentucky State Board of Elections

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(502) 573-7100

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COUNSEL FOR RESPONDENTS,

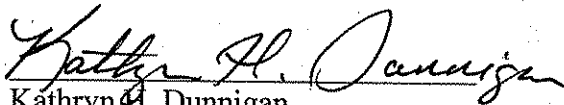
SECRETARY OF STATE AND

STATE BOARD OF ELECTIONS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Petition for a Declaration of Rights and Injunctive Relief has been served via hand-delivery to the following this 9th day of May 2006:

HON GREGORY D. STUMBO
ATTORNEY GENERAL
HON ROBERT S. JONES
HON JENNIFER BLACK HANS
ASSISTANT ATTORNEYS GENERAL
700 CAPITOL AVENUE, SUITE 118
FRANKFORT, KENTUCKY 40601


Kathryn H. Dunnigan