

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

PETITIONER

COMMONWEALTH OF KENTUCKY
ATTORNEY GENERAL GREGORY D. STUMBO

VS. MOTION FOR SUMMARY JUDGMENT

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 his official capacity as

chair of the State Board of Elections and chief election officer of the Commonwealth of

Kentucky, and the Kentucky State Board of Elections ("State Board"), by counsel, and hereby

respectfully submit the following Motion for Summary Judgment pursuant to Amended Agreed

Scheduling Order entered August 8, 2006. The Respondents submit the attached Memorandum

in Support of the Respondent's Motion for Summary Judgment.

WHEREFORE, for all of the reasons stated in the Respondents' Memorandum in Support

of the Respondents' Motion for Summary Judgment, the Respondents respectfully request this

Court to deny each and every prayer for relief in the Petitioner's Second Amended Petition for a

Declaration of Rights and Injunctive Relief.

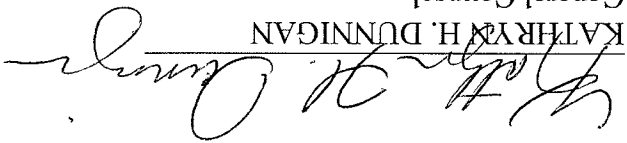
Judgment.

PLEASE TAKE NOTICE THAT the Respondents respectfully defer to the discretion of this Court regarding whether oral argument is necessary on the parties' Motions for Summary

NOTICE

STATE BOARD OF ELECTIONS
SECRETARY OF STATE AND
COUNSEL FOR RESPONDENTS,
(502) 573-4369 facsimile
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General Counsel

KATHRYN H. DUNNIGAN



Respectfully Submitted,

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Summary Judgment has been

served in the manner proscribed to the following this 21st day of August 2006:

VIA HAND-DELIVERY & U.S. Mail to:

HON GREGORY D. STUMBO

ATTORNEY GENERAL

HON ROBERT S. JONES

HON JENNIFER BLACK HANS

ASSISTANT ATTORNEYS GENERAL

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By U.S. Mail to:

HON. JULIUS RATHER

156 MARKET STREET

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HON THOMAS J SCHULZ

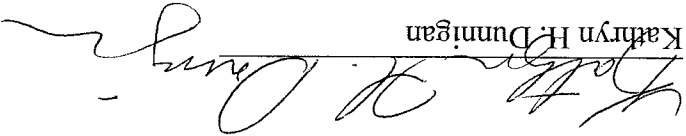
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COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 06-CI-610

PETITIONER

COMMONWEALTH OF KENTUCKY
ATTORNEY GENERAL GREGORY D. STUMBO

VS. RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

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 his official capacity as

chair of the State Board of Elections and chief election officer of the Commonwealth of

Kentucky, and the Kentucky State Board of Elections ("State Board" or "Board"), by counsel,

and hereby respectfully submit the following Motion for Summary Judgment pursuant to

Amended Agreed Scheduling Order entered August 8, 2006.

I. STATEMENT OF THE FACTS

The State Board of Elections is statutorily required to supervise the registration and

purgation of voters within the state. KRS 117.015(1). The county boards of election are

required to administer the registration and purgation of voters within the county. KRS

117.035(1). All election officials are required to "ensure that accurate and current voter

registration rolls are maintained." 42 U.S.C. §1973gg.

Since the enactment of the National Voter Registration Act (NVRA) in 1994, the states have striven to fulfill their duty to maintain an accurate and current voter roll. Many states revised their voter registration applications to include language requiring the voter to declare that he or she does not claim the right to vote in another state. Kentucky revised its card in 1995 to contain the language in the "Voter Declaration" section "I do not claim the right to vote anywhere outside of Kentucky." [See Kentucky Voter Registration Form, SBE 01(08/03), attached hereto as Exhibit 1].¹ Furthermore, many states request from the registrant information concerning his or her last place of voter registration.²

In the spirit of cooperation, many states and local governments use this information to send notices to a voter's former home state informing that state of the voter's new registration. As has been presented in previous court filings, the Kentucky State Board of Elections receives these notifications on a daily basis from a majority of the states. Pursuant to Kentucky law, state election officials conduct regular purges of the Voter Registration Database due to death, conviction of a felony, adjudication of incapacity, or at the request of the voter. KRS 116.113 and KRS 116.0452(3)(a).

As of January 1, 2006, with the enactment of the Help America Vote Act (HAVA), codified at 42 USC §15483, in 2002, the states were required to develop voter registration databases. Kentucky's Statewide Voter Registration Database, which was established in 1973, was used as a model for this legislation. Kentucky's database uses an individual's full social security number to register a voter. If an individual does not wish to give his or her social

¹ South Carolina's Voter Registration Application contains similar language: "the address listed above is my only legal place of residence, and I claim no other place as my legal residence." [South Carolina's Voter Registration Mail Application attached hereto as Exhibit 2].

² Tennessee's and South Carolina's voter registration applications request information concerning the registrant's previous registration. [See Exhibit 2; Tennessee's Mail-in Application for Voter Registration attached hereto as Exhibit 3].

security number, a unique number is assigned to the voter. Only five states—Tennessee, South Carolina, Georgia, Virginia, and Hawaii—use full social security numbers to register voters.³

In light of the requirements of NVRA and HAVA, election officials from the various states have discussed the possibility of matching databases from different states to compare voter rolls at conventions for the National Association of Secretaries of State (NASS) and the National Association of State Election Directors (NASSED). [Deposition of Sarah Ball Johnson, July 25, 2006 (“Johnson”), at p. 16, l. 25-p. 17, l. 23]. Kentucky was approached by the state election directors for the states of Tennessee and South Carolina to consider participating in such a state match due to the relative compatibility of the states’ databases due to the use of full social security numbers and the close proximity of the states.⁴ [Johnson at p. 16, l. 25-p. 17, l. 23]. On August 29, 2005, the states scheduled a telephone conference to occur on August 31, 2005, to discuss the details of participating in such a state data match (also referred to as the “pilot project”). [See Meeting Agenda, attached hereto as Exhibit 4].

On August 31, 2005, a telephone conference call occurred between Marci Andino and Donna Royson of South Carolina, Brook Thompson and Steve Griffy of Tennessee, Sarah Ball Johnson of Kentucky, and James Lee, Program Manager in South Carolina. [See Meeting Summary, attached hereto as Exhibit 4]. The states discussed the parameters required to conduct a multi-state database comparison. [Id]. According to the Meeting Summary, the states discussed data attributes needed for comparison including “social security number (SSN), name (last, first, mi), date of birth (DOB), date of registration (DOR), date last voted (DLV), two character state code.” [Id]. The states’ election officials also agreed that the “preliminary list of data attributes to return as a result of comparison: same as input plus state

³ Pursuant to 42 USC 405(r) of the Social Security Act, these states were exempted from the prohibition from using full social security number.
⁴ The state of Georgia was also initially approached about participating in the database match, but chose not to participate at this time.

and county code where match was found. DOR and DLV.” [Id]. The states also agreed that “states take whatever action they deem appropriate based on the comparison results.” [Id].

On September 20, 2005, Secretary Grayson, informed the State Board of Elections members, during a regularly scheduled, open meeting of the Board, about the conference call with South Carolina and Tennessee and the “proposal to participate in a matching of voter registration data with Tennessee and South Carolina.” [September 20, 2005 State Board of Elections Meeting Minutes attached hereto as Exhibit 5]. The board members were given copies of the Meeting Summary with the meeting agenda prior to this meeting and were aware of the parameters of the state database match that were discussed at the August 31, 2005 meeting. [Id].

After some discussion, the board members were in collective agreement about participating in the match and no member moved to hold a formal vote. [Id; Johnson at p. 22, l. 19- p. 23, l. 8].

In November 2005, subsequent to the Board meeting of September 20, 2005, upon the request of Secretary Grayson and Executive Director Johnson, Fielding Hodgkin, computer personnel with the State Board of Elections, prepared the information to be sent to the state of South Carolina to conduct the data base matching. [Deposition of Fielding Hodgkin, July 27, 2006, (“Hodgkin”), p. 9, l. 21-25]. To put the information into a format necessary to conduct the database comparison, Mr. Hodgkin extracted a copy of the Voter Registration Database into two files—creating one file of the five (5) largest counties and one (1) file of the 115 remaining counties—that Kim Bagwell, Production Coordinator with the State Board of Elections, imported into Microsoft Access. [Hodgkin at p. 31, l.22-p. 32, l. 13]. Then, using Microsoft Access, Ms. Bagwell formatted the fields as required by the South Carolina Election Commission in order to conduct the data comparison. [Deposition of Kim Bagwell, July 27, 2006, (“Bagwell”), p. 9, l. 15-p. 11, l. 16]. This file was saved onto a CD-Rom. [Bagwell at p. 11, l. 22-25].

On November 18, 2005, the State Board sent the CD-ROM to the South Carolina State Election Commission through UPS. The South Carolina State Election Commission was given the following information from the Kentucky Voter Registration Database based upon the agreement entered between Kentucky, Tennessee, and South Carolina on or about August 31, 2005: voter's last name, date of birth, full social security number, last date voted (if any), and date registered. [Hodgkin at p. 11, l. 13- p. 12, l. 12].

On February 21, 2006, Secretary Grayson, along with Ms. Johnson, informed the State Board of Elections members "on the progress of the voter registration data match with South Carolina and Tennessee to find duplicate registrations." [February 21, 2006, State Board of Elections Meeting Minutes attached hereto as Exhibit 6]. The board members were in collective agreement about participating in the match and no member moved to hold a formal vote. [Id.; Johnson at p. 27, l. 2- 11].

After receiving the information from Kentucky, the South Carolina State Election Commission conducted a matching program of the information comparing voter registration data from the three states. On March 22, 2006, South Carolina emailed the zip file containing the Kentucky voters who more recently registered to vote in Tennessee and South Carolina to Ms. Bagwell. [Bagwell at p. 14, l. 4-14]. Although information containing each voter's date last voted was sent to the South Carolina Election Commission, the information returned to the State Board of Elections did not match on this criteria. [Hodgkin p. 16, l. 5-19; Johnson p. 46, l. 19-p. 47, l. 9].

After receiving the data from South Carolina, the State Board of Election sent a request through the Commonwealth Office of Technology to obtain the services of Mike Goins, a programming specialist, to write a program to simultaneously compare the current Kentucky Voter Registration Database records with data comparison information sent from South Carolina.

On April 10 and 11, 2006, Mr. Hodgkin ran the compare and removal program using the match data supplied by the South Carolina Board of Elections of those voters more recently registered in Tennessee and South Carolina. [Hodgkin at p. 22, l. 9-18, Exhibit E]. Only voters

Hodgkin uploaded the data to the mainframe. [Hodgkin at p. 20, l. 2-16].
into a file that could be read by the mainframe. [Bagwell at p. 14, l. 12-p. 15, l. 17]. Finally, Mr. the data into Microsoft Access and then exported the data into a text file in order to get the data the data to be in Microsoft Excel format. [Bagwell at p. 14, l. 7-11]. Ms. Bagwell then imported 14, l. 7-11, Exhibits A & B]. Ms. Bagwell "unzipped" the data from the zip file and determined Kentucky registration records, showing more recent registrations in those states. [Bagwell at p. containing "zip" data files of the South Carolina and Tennessee records that exactly matched the Ms. Bagwell received an email from the programming personnel in South Carolina

removal program. [Johnson at p. 26, l. 15-p. 11].
results with Secretary Grayson and a decision was made to move forward with the compare and informed Ms. Johnson of the results of the testing of the program. Ms. Johnson discussed the accordance with the desired objectives. [Hodgkin at p. 16, l. 24-p. 17, l. 7]. Mr. Hodgkin Mr. Goins and Mr. Hodgkin tested the program and ensured that the program performed in progress of the program set-up. [Johnson at p. 25, l. 24-p. 27, l. 17]. After writing the program, 8-22; Johnson at p. 25 l. 7-23]. Ms. Johnson informed Secretary Grayson about the ongoing with Ms. Johnson to work out the objectives of the program. [Hodgkin at p. 15, l. 2-10, p. 21, l. Mr. Goins discussed the program with Mr. Hodgkin who in turn discussed the program

22, l. 25-p. 23, l. 8].
social security number, and date of birth. [Goins at p. 16, l. 5-11; Hodgkin at p. 15, l. 14-23 and p. the program to only purge a voter's registration when there was an "exact match" on name, full [Deposition of Mike Goins, July 21, 2006, ("Goins"), p. 14, l. 22-p. 16, l. 4]. Mr. Goins wrote

“Kentucky Blazes Path in New Voter Fraud Prevention Technique.” [Attached hereto as Exhibit 8].

On April 24, 2006, the Secretary of State’s office issued a press release entitled

[April 18, 2006 State Board of Elections Meeting Minutes attached hereto as Exhibit 8].

appeared that they had registered more recently in SC and 5,995 from the Tennessee match.”

reporting that 2,110 Kentucky voters were purged from the South Carolina match because it

“regarding the voter match project with the voter databases from South Carolina and Tennessee,

On April 18, 2006, Ms. Johnson informed the State Board of Elections members

officer to allow the voter, upon a showing of eligibility, to vote at the precinct.

when the individual was purged and the county board of elections can authorize the precinct

the County Clerk can view the Voter Registration Purge Inquiry screen and determine if and

officer contacts the county clerk’s office concerning a voter who does not appear on the roster,

attached hereto as Exhibit 7 (personal information redacted)]. On Election Day, once a precinct

of Voter Registration Purge Inquiry as displayed on the Kentucky Voter Registration Database

Registration Purge Inquiry Screen, which is produced from the year-to-date file. [See Example

22 and Johnson at p. 49, l. 12-25]. On Election Day, any county clerk has access to the Voter

registration record and five-year voting history. [Goins at p. 10, l. 24-p. 11, l. 2 and p. 17, l. 17-

Goins placed these names into a year-to-date file that includes the individual’s entire voter

Once removed from the active Voter Registration Database, the program written by Mr.

were left as active voter records.

Board only intended to purge exact matches. Any voter records that created an inexact match

effort made by the State Board of Election’s staff to investigate any inexact matches because the

Registration Database. [Goins at p. 16, l. 5-11; Hodgkin at p. 22, l. 25-p. 23, l. 8]. There was no

on name, full social security number and date of birth were removed from the active Voter

who had a more recent registration in either Tennessee or South Carolina and had an exact match

On May 12, 2006, the State Board of Elections sent Memorandum SBE 06-34 "Reminder on Procedures for When a Voter's Name is Not on the Precinct Signature Rosters on Election Day" [attached hereto as Exhibit 14] to all 120 county boards of election members. This "purge" anyone from the voter registration database within 90 days of an election.

The Petitioner relied on KRS 116.112(6) to argue that the Respondents may not under the "pilot project" to the active Voter Registration Data Base prior to the May 16, 2006 temporary and permanent injunctions compelling the Respondents to return the voters "purged" Franklin Circuit Court in Frankfort, Kentucky, requesting the Franklin Circuit Court issue both filed his initial Petition for a Declaration of Rights and Injunctive Relief (the "Petition") in the On May 5, 2006, the Petitioner, Gregory D. Stumbo, the Kentucky Attorney General,

II. STATEMENT OF THE CASE

matter before litigation was filed. announcing the filing of the present action. No effort was made by the Petitioner to resolve this Exhibit 13]. However, the Attorney General was involved in a press conference at 12:00 noon 2006. [May 5, 2006 Secretary of State's correspondence to Attorney General attached hereto at primary election." [Attached hereto as Exhibit 12]. The Respondents sent a response on May 5, elections will agree to return the purged voters to the active voter database for the May 16, 2006 "please advise my office in writing by 12:00 noon, Friday, May 5, 2006 if the State Board of of Elections requesting "[t]hose names removed should be restored to the voter database" and to On May 3, 2006, the Attorney General sent a letter to the Secretary of State and the State Board responded to the Attorney General's Open Records Request. [Attached hereto as Exhibit 11]. release. [Attached hereto as Exhibit 10]. On May 2, 2006, the State Board of Elections Board of Elections requesting all records concerning the state data match referenced in the press 9]. On April 27, 2006, the Attorney General's office sent an open records request to the State

memorandum details the safeguards established in Kentucky law to ensure that an eligible voter who may have been purged due to an error may not be disenfranchised. On May 15, 2006, prior to a hearing before this Court on the Petitioner's Motion for Emergency Injunctive Relief, the parties signed an Agreed Order detailing existing state law concerning the safeguards established by Kentucky law. On May 15, 2006, the State Board of Elections sent Memorandum SBE 06-35 "Agreed Order with the Attorney General" [attached hereto as Exhibit 15] detailing yet again the safeguards in voting to be followed on election day.

On May 24, 2006, the Respondents initiated a meeting between the Secretary of State and the Attorney General to discuss a resolution of this matter. [Proposal attached hereto as Exhibit 16]. The Proposal by the Respondents included terms of a settlement that the Respondents would agree to conduct all future matches ensuring that date last voted and last transaction date⁵ were used to ensure a more accurate match. The Respondents also agreed to send a single notice to all of the individuals purged to notify them of the purge and to inform them of the process of registering. During that meeting, the Attorney General and the Secretary of State agreed to resolve the matter and allow their respective counsel to discuss the details. However, prior to the meeting between counsels, Rob Jones, Assistant Attorney General, sent correspondence to the Respondents rejecting the entirety of the Proposal and attaching a proposed Agreed Order granting the Petitioner more than the prayer for relief requested in his original Petition. [May 30, 2006 correspondence, attached hereto as Exhibit 17].

On June 1, 2006, the undersigned counsel and Assistant A.G. Jones met to discuss the details. However, Petitioner's counsel continued to refuse to agree to any of the proposed solutions offered by the Respondents. During the meeting and through correspondence, the

⁵ "Last transaction date" includes any voluntary act by a voter to update or change his registration such as a change of address, change of party, name change, and receipt of voter credit for participating in an election. This date also includes any passive act by the county clerk's office that may appear on the voter registration database record for redistricting of precincts or 911 address updates.

On its own accord, on August 9, 2006, the State Board of Elections sent a notice to all 8,105 individuals purged on April 10 and 11, 2006, informing them of the purge and the procedure to follow to reregister before the October 11, 2006 book closing deadline. [Notice attached hereto as Exhibit 20; See Also August 10, 2006 Press Release "Primary Turnout Data Now Available," attached hereto as Exhibit 21]. On August 10, 2006, the Respondents delivered information to the Petitioner concerning 196 individuals who were a part of the April 10 and 11, 2006, purge who the county board of election allowed to vote and were restored to the active Voter Registration Database by the county clerks based on information received by the

vote under the safeguards in voting established by Kentucky law.

Court and the entities who are required to ensure that any incorrectly purged voter is allowed to add the names of the voters purged to the Voter Registration Database if it were granted by this county boards of elections that would be required to carry out the mandate of the injunction to on the matter. In each of his petitions, the Petitioner failed to name the various 120 Kentucky conduct the pilot project and against the State Board of Elections for failing to hold a formal vote Secretary of State claiming that the Secretary acted outside of his authority in deciding to August 7, 2006, in which the Petitioner brought new allegations specifically against the project. Subsequent to discovery, the Petitioner filed a Second Amended Petition, entered on that the Respondents failed to follow all of the provision of KRS 116.112 in conducting the pilot Petition, entered on Jun 29, 2006, in which the Petitioner refined his argument to add allegations During the timeframe set for discovery, the Petitioner filed a subsequent Amended to conduct discovery. [June 2, 2006 correspondence, attached hereto as Exhibit 19].

Petitioner denied the Respondents request and notified the Respondents of the Petitioner's intent [June 1, 2006 correspondence, attached hereto as Exhibit 18]. However, on June 2, 2006, the Respondents requested the Petitioner consider participating in mediation with a neutral party.

Respondents. [Respondents' Supplement Answers to Petitioner's First Set of Interrogatories and Request for Production of Documents].

The Respondents maintain authority to ensure an accurate voter roll pursuant to the NVRA and HAVA, as well as Kentucky law established in KRS 117.015(1) and KRS 117.025(3). KRS 116.0452, KRS 116.113, and 42 U.S.C. §1973gg-6(a)(3)(A) allow for the immediate removal of a voter from a registration list based on the death, conviction of a disqualifying crime, adjudication of incapacitation or a request of the voter. The House of Representatives of the U.S. Congress has determined that a request of the voter can be notification of a new voter registration outside of the registrar's jurisdiction. The Secretary of State and the staff of the State Board of Elections acted properly in informing the members of the State Board of Elections at each step in the process of conducting the state data match and the members of the State Board of Elections were in agreement with the actions of its staff.

Pursuant to the Amended Agreed Scheduling Order, the parties agreed to file simultaneous Motions for Summary Judgment on all matters involved in the Petitioner's Second Amended Petition. The Respondents respectfully request this Court to deny the Petitioner's Second Amended Petition for a Declaration of Rights and Injunctive Relief on all grounds.

III. STANDARD OF REVIEW

The summary judgment standard in Kentucky is well-settled law. Pursuant to CR 56.03, a party may only be awarded summary judgment when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The Kentucky Supreme Court in *Steelvest, Inc. v. Scansteel Service Center, Inc.*, determined that

[u]nder the present practice of Kentucky courts, the movant must convince the court, by the evidence of record, of the nonexistence of an issue of material fact. *See, Chesser v. Louisville Country Club, Ky., 339 S.W.2d 194 (1960); Scheiber v. City of Louisville, Ky., 324 S.W.2d 822 (1959).*

807 S.W. 2d 476 (Ky., 1991). Indeed, a successful motion on summary judgment allows for a

judgment before a trial is had on the merits:

a ruling on a summary judgment is a more delicate matter and that its inquiry requires a greater judicial determination and discretion since it takes the case away from the trier of fact before the evidence is actually heard. *Payne v. Chenaull*, Ky., 343 S.W.2d 129 (1960); *Kowland v. Miller's Adm'r*, *supra*.

Id. at 482.

The Petitioner has petitioned this Court pursuant to KRS 418.040 for a declaration of rights on the issue of the duties and responsibilities of the parties as it relates to the state data match conducted by the Respondents. KRS 418.040 states the following:

[I]n any action in a court of record of this Commonwealth having general jurisdiction wherein it is made to appear that an actual controversy exists, the plaintiff may ask for a declaration of rights, either alone or with other relief; and the court may make a binding declaration of rights, whether or not consequential relief is or could be asked.

The Petitioner requests that this Court determine that (1) the pilot project constituted a voter registration purge program as described in KRS 116.112 and that the Respondents failed to comply with its requirements of KRS 116.112; (2) that the pilot project and purge were not carried out under the authority of the State Board of Elections, but instead at the direction of the Secretary of State and constitutes an *ultra vires* act which is void; and (3) that the purge was arbitrary and capricious because the State Board of Elections failed to give consideration to all the relevant facts in their possession and control.

The Petitioner has coupled his petition for a declaration of rights with a motion for temporary and permanent injunctive relief pursuant to CR 65. An injunction may be provided pursuant to CR 65.01 and 65.04:

A party may obtain injunctive relief in the circuit court by (a) restraining order, (b) temporary injunction, or (c) permanent injunction in a final judgment. A restraining order shall only restrict the doing of an act. An injunction may restrict or mandatorily direct the doing of an act.

specific course of events that the State Board must follow to conduct a program of purgation of

KRS 116.112 entitled "Voter registration purge program; inactive voter list" details a

A. THE STATE BOARD OF ELECTIONS CONDUCTED THE STATE DATA
MATCH WITH AUTHORITY GRANTED BY KENTUCKY AND
FEDERAL LAW.

IV. ARGUMENT

would justify a declaration of rights and injunction based on this specious argument.

the relevant facts in their possession and control, the Petitioner fails to cite any relevant law that

arbitrary and capricious because the State Board of Elections failed to give consideration to all

the members of the State Board of Elections. As to the argument that that the purge was

authority granted in KRS 117.015(1) and KRS 117.025(3) and with the collective agreement of

The Secretary of State and the staff of the State Board of Elections were working on the express

information" and not new voter registration information that was used in the state data match.

programs that are subject to the provisions of that statute are only based on "change of address

declaration of rights and injunction. From the plain language of KRS 116.112, voter purge

below, the Petitioner cannot meet his burden of proof to be successful in his pursuit of a

by the Petitioner. As the Respondents show through the statement of the facts and the argument

A declaration of rights on the allegations made by the Petitioner is not necessary as stated

CR 65.04.

A temporary injunction may be granted during the pendency of an action on motion if it is clearly shown by verified complaint, affidavit, or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or the acts of the adverse party will tend to render such final judgment ineffectual.

CR 65.01.

The Petitioner relies on KRS 116.112 to argue that the Respondents should have followed the inactive process outlined in the statute before purging these individuals from the active Kentucky Voter Registration Database. However, the Petitioner conveniently ignores certain key terms within this statute. This statute and its included provisions outline the process for

KRS § 116.112 (1), (4) & (6). Basic rules of statutory construction hold that "all words and phrases shall be construed according to the common and approved usage of language;" KRS 446.080(4). Furthermore, "each section of a statute is to be construed in accord with the statute as a whole;" *Combs v. Hubb Coal Corp.*, 934 S.W.2d 250 (Ky. 1996).

(6) The State Board of Elections shall complete, not later than ninety (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.

If a county board of elections requests authorization from the state board to conduct purges of voters in its county in accordance with the provisions of this subsection, the state board shall grant the request.

2. Has not voted or appeared to vote and, if necessary, correct the registration records 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.

(b) 1. Has failed to respond to the notice described in subsection (3) of this section; and

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

(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:

(1) The State Board of Elections shall establish a voter registration purge program using the 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.

inactive status. KRS 116.112 states in pertinent part the following:

voters based on information provided by the United State Postal Service or other sources that a voter has moved, coupled with the voter's failure to respond to two mailings and a voter's

developing a voter 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." KRS 116.112(1). The Petitioner is attempting to apply this statute to the current situation in which the Respondents used *new voter registration information* supplied by the states of Tennessee and South Carolina. A new voter registration can only be established by the volitional act of the voter. Change of address data can be supplied to the Respondents through secondary sources such as the post office; therefore, there are specific circumstances in which the State Board of Elections must follow the inactive process.

The voters canceled pursuant to the pilot project were not "purged" from the Voter Registration Data as the Petitioner argues pursuant to KRS 116.112. These voters' registrations were cancelled pursuant to the authority granted to the State Board under Kentucky law through KRS 116.0452 and federal law through the NVRA as detailed below. KRS 116.0452 provides in pertinent part the following:

(3) 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.

KRS 116.0452 (3) (emphasis added). This language mirrors the language contained in 42 U.S.C. §1973 gg-6(a)(3). 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.*

House Report construing the NVRA specifically defined a "request" by a registrant to mean a [103rd Congress, 1st Session, Hse. Rpt., Section 8, page 16] (emphasis added). Therefore, the

The section [42 USC 1973gg-6(c)] requires that a State complete any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters at least 90 days before a primary or general election for Federal Office. This requirement applies to the State outreach activity such as a mailing or a door to door canvass and requires that such activity be completed by the 90-day deadline. This section does not prohibit a State during that 90-day pre-election day period from removing names from the official list of eligible voters on the basis of the request of the registrant, as provided by State law for criminal conviction or mental incapacity, death, or any other correction of registration records pursuant to the Act.

(emphasis added).

[103rd Congress, 1st Session, Hse. Rpt., Section 8, page 14-15, attached hereto as Exhibit "1"]

A "request" by a registrant would include actions that result in the registrant being registered at a new address, such as registering in another jurisdiction or providing a change-of-address notice through the driver's license process that updates the voter registration.

This section also provides that the name of a registered voter may not be removed from the official list of eligible voters except: at the request of the registrant; as provided by State law, by reason of criminal conviction or mental incapacity; or in accordance with the requirements of the Act, by reason of the death or a change in the residence of the registrant. Recognizing the essential need to maintain the integrity of the voter registration lists, the bill requires that states 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 death or by a change of residence.

day prohibition on voter purge programs does not apply:

42 U.S.C. §1973gg-6(c)(2)(B) allows for the immediate removal of a voter from a registration list based on the death, conviction of a disqualifying crime, or a request of the voter. The Congressional House Committee Report construing the provisions of NVRA specifically finds that when an individual registered in one state moves and registers in a new state, that new registration can be used by the original state to remove a voter from the voter rolls and the 90-

Similarly, the language in KRS 116.112(6) stating that any voter purge program must be complete before 90 days of an election, does not apply to this situation. In light of the fact that KRS 116.112 establishes limitations on the conduct of voter purge programs instituted as a result

- (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 licenses 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.

programs for removing inactive voter registrations does not apply:

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

Commission, attached hereto as Exhibit 22].

2006 correspondence from Juliet T. Hodgkins, General Counsel, Election Assistance NVRA consistent with the House Report and the Respondents' interpretation. [See May 11, new registration in another state. The Election Assistance Commission has interpreted the

of change of address information, the purges of voters as a result of the state data match were conducted due to new registration information and are covered by KRS 116.0452(3) and do not fall under KRS 116.112.

Furthermore, pursuant to KRS 119.025, it is a crime for any person to "knowingly or fraudulently causes himself to be registered in more than one (1) precinct, or to be registered more than once." By allowing individuals to remain registered in Kentucky with the knowledge that these individuals are also registered in another state would be aiding and abetting these individuals in a potential violation of KRS 119.025. Furthermore, removing individuals who are registered in multiple states ensures that these individuals are not able to vote in both states in the same election. However, these individuals will maintain their ability to vote in Kentucky upon a showing of eligibility if removed improperly as detailed in Section IV, C.

The purpose of referring to KRS 119.025 is to illustrate the need for the Petitioner and the Respondents to work together in ensuring an accurate voter roll. If any of these voters intended to remain on both Kentucky's and another state's voter rolls, then that voter would be violating KRS 119.025. On the other hand, these voters most likely never intended to remain on Kentucky's voter rolls when they registered to vote in another state. Therefore, it is imperative that the Respondents be able to share voter registration information with other states through database matches.

Therefore, pursuant to KRS 116.0452(3) the Respondents maintain authority pursuant to state and federal law to remove a voter from the voter registration database upon information of a registrant's new voter registration in another state and the Respondents are not required to follow the inactive process established by KRS 116.112.

B. THE SECRETARY OF STATE AND THE STAFF OF THE STATE BOARD OF ELECTIONS ACTED WITH THE AUTHORITY AND CONSENT OF THE STATE BOARD OF ELECTIONS.

The Petitioner argues that the state data match and the subsequent voter removals should be found null and void because the Secretary of State acted without the authority of the State Board of Elections. Petitioner specifically argues in his Petition:

Secretary Grayson, with the assistance [sic] Executive Director, exercised the discretionary and quasi-judicial authority of the SBE when they chose to involve the Board in an interstate compact, chose which criteria would be used, provided the data to TN and SC, accepted matching results from SC which did not use all criteria provided by SBE, then chose to use SC criteria to determine who would be purged.

[Second Amended Petition at paragraph 34]. However, the Secretary and the staff of the Board of Elections acted within the authority of the State Board and with its consent.

The State Board of Elections is statutorily required to supervise the registration and purgation of voters within the state. KRS 117.015(1). The Secretary of State "shall serve as the chairman of the state board and the chief election official for the Commonwealth." KRS 117.015(2). Pursuant to KRS 117.025, the Executive Director is "the chief administrative officer for the Board" to carry out the duties of the Board to "maintain a complete roster of all qualified registered voters within the state by county and precinct," pursuant to KRS 117.025(3)(a), and to "secure information from any source which may assist the board in carrying out the purposes of this section," pursuant to KRS 117.025(3)(g). It is the responsibility of the State Board of Elections to conduct list maintenance to ensure an accurate and current voter roll pursuant to the National Voter Registration Act. 42 U.S.C. 1973gg(b)(4).

As shown in the Statement of the Facts, the Secretary of State, in his capacity as chair of the State Board of Elections, informed the members of the Board on September 20, 2005, subsequent to the telephone conference on August 31, 2005 between the states, about the details

of the database matching with the states of Tennessee and South Carolina. After some discussion on the matter, the Board members collectively agreed to move forward with the project. No member decided to hold a formal vote on the matter. On February 21, 2006, the Secretary of State again informed the members of the Board about the progress with the state database comparison. The Board members discussed the matter and again collectively agreed to move forward with the project. Again, no member decided to hold a formal vote on the matter.

It was unnecessary for the State Board of Elections to hold a formal vote to conduct the state data match with Tennessee and South Carolina because conducting programs to ensure an accurate voter roll is a statutory duty of the chief election officer of the state, in Kentucky that role is filled by the Secretary of State along with the State Board of Elections pursuant to KRS 117.025(3)(a) and the NVRA. Furthermore, the Board collectively decided on two occasions to move forward with the project. If any member disagreed with the project they did not move against moving forward with the project as was their prerogative.

Pursuant to the Kentucky Open Meetings Act, a public agency must conduct its business in an open meeting:

All meetings of a quorum of the members of any public agency at which any public business is discussed or at which any action is taken by the agency, shall be public meetings, open to the public at all times.

KRS 61.810(1). Action taken by a public meeting is defined by KRS 61.805(3), which states as follows:

“Action taken” means a collective decision, a commitment or promise to make a positive or negative decision, or an actual vote by a majority of the members of the governmental body.

On both occasions in which the State Board of Elections was informed by the Secretary of State and the staff of the Board of Elections, the members of the Board were fully informed about the details of the state data match and acquiesced in the decision to move forward with the project.

These discussions were held in open and public meetings with meeting minutes recorded and approved by a majority of the Board at the following meeting. The State Board of Elections did "take action" at the September 20, 2005 and the February 21, 2006 Board Meetings by agreeing to move forward with the project. A formal vote, as argued by the Petitioner, was not necessary when a collective decision had been reached by the Board to proceed with a project that would further fulfill one of the Board's duties pursuant to KRS 117.025(3) and the NVRA.

C. KENTUCKY LAW PROVIDES SAFEGUARDS TO PROTECT A VOTER WHO HAS BEEN CANCELED DUE TO A CLERICAL ERROR

As previously outlined, a purged voter's information remains on the Voter Registration Database in a separate file, easily accessible by the county clerks through the Voter Registration Purge Inquiry Screen. If a purged voter shows up at the precinct to vote on election day, the precinct officer, after determining that the voter is not on the preprinted Precinct Signature Roster, must be trained by the county, pursuant to KRS 117.187, to contact the county clerk's office to determine whether the voter may be added to the supplemental precinct signature roster and allowed to vote at the precinct on Election Day upon proof of the voter's eligible status. KRS 116.113(4) applies to safeguard a voter's right to vote if their registration was canceled due to a clerical error:

(4) Following the purge of a name from the records of the State Board of Elections, the state board shall notify the clerk of the county in which the voter lived of the action; and the county clerk shall within ten (10) days update the county voter registration files to reflect the necessary change. If a protest is filed by the voter, the county board shall hear it at its next regular monthly meeting. If the county board decides in favor of the protesting voter, the voter's registration record shall be restored, including his voting record. If the protest is filed while the registration books are closed and the county board decides in favor of the protesting voter, the county board shall issue the voter an "Authorization to Vote" for the upcoming election and the voter's record shall be restored when the registration books open following the election.

⁶ Fayette and Jefferson Counties produce their own training materials. However, the State Board of Elections provides copies of the Guide to these counties prior to each election.

disenfranchised at the polls. ensure that a voter whose registration was canceled due to a clerical error will not be attached hereto as Exhibit 14]. Therefore, the Respondents have taken every reasonable step to been canceled due to a clerical error appears at the polls on election day. [See SBE 06-34, chairpersons of the boards of elections, of their actions required by the law when a voter who has further step of sending via facsimile a memorandum advising the county clerks, as the course of business in supervising the county boards of elections, the State Board has taken the Moreover, as a result of this action, and pursuant to the State Board of Elections' normal

when a voter does not appear on the precinct signature roster.⁶ Day, the precinct officers should be well trained by the counties about the procedure to follow State Board and provided to county clerks to supply to the precinct officers prior to Election to each election. As detailed in the Precinct Officers Quick Reference Guide produced by the concerning the process to follow when a voter is not listed on the precinct signature roster prior Pursuant to KRS 117.187, the counties are required to train the precinct officers will be corrected when the Voter Registration Database is reopened after the election.

the voter to complete an updated voter registration card and the voter's registration information oath of voter card and will be allowed to vote. The county clerk or the precinct officer will ask certifications as may be necessary." The voter, upon proof of eligibility, will be asked to sign an on questions regarding voter registration and may make to the election officers such county board of elections to "stay in session on election days to connect clerical errors and rule KRS § 116.113 (4). This statute workers in tandem with KRS 117.085(4) which requires the

- Thirty-three (33) individuals are currently not registered on the database because the county clerk's office failed to reinstate these individuals on the database for reasons unbeknownst to the Respondents.
- Thirteen (13) individuals were registered by the county clerks after voter credit was processed by the State Board of Elections on August 8, 2006. Again, the Respondents do not know why the counties waited until after August 8, 2006, to process these individuals.
- Three (3) individuals were given voter credit, but their names were changed by the voters on Election day, the clerk failed to update the new last name on the database.
- One (1) individual was purged for dying subsequent to Election Day but before voter credit was given.
- Three (3) individuals were listed on a supplemental precinct signature roster that was never provided by the county clerk to the State Board of Elections.
- Four (4) individuals were not listed on a supplemental precinct signature roster at all. These individuals completed an Oath of Voter card, however, the precinct

information:

The undersigned counsel received today correspondence from the Petitioner containing information concerning sixty-three (63) individuals who were not listed among the 196 voters provided to the Petitioner through the Respondents supplemental answers to the Petitioner's discovery requests. In order for a voter to receive credit for voting, the county clerks must ensure that the individual's registration be reactivated prior to voter credit being processed by the State Board of Elections after the election. Voter credit was processed by the State Board Election on August 8, 2006. Through a cursory investigation, the Respondents have determined that the sixty-three individuals listed in the Petitioner's correspondence were not processed properly by the county clerks. At this time, the Respondents can supply the following

party-defendant all 120 counties.

However, if a voter was disenfranchised on May 16, 2006, or is disenfranchised on the General Election day, such disenfranchisement was or will be caused by the local elections official's failure to follow the applicable statutes and procedures and not the conduct of the Respondents. This illustrates yet another reason why the Petitioner should have named as a

The Petitioner contends that he should be granted relief because “the purge was arbitrary and capricious because the State Board of Elections failed to give consideration to all the relevant facts in their possession and control.” The Petitioner cites to no authority in his Petition that would warrant temporary and permanent injunctions against the Respondent to require the Respondents to direct the counties to reactivate all 8,105 individuals, regardless of their current eligibility status, and prevent future database matches with other states. The Respondents have conceded through discussions with the Petitioner that the state data match was a pilot project, the

D. THE STATE DATA MATCH PILOT PROJECT WAS A NECESSARY EXPERIMENT TO MAINTAIN AN ACCURATE AND CURRENT VOTER ROLL AND WAS AUTHORIZED BY LAW.

Petitioner’s Petition should be denied.

The Respondents actions in conducting the state data match program were supported by the language and intent of the NVRA, as well as Kentucky law. The Respondents have taken every action required to ensure that voters who are eligible will not be disenfranchised at the polls. However, if voters are disenfranchised at the polls, it is due to the negligent acts of the county officials and not the actions of the Respondents. For all of the reasons stated above, the Petitioner’s Petition should be denied.

The Respondents are currently investigating the remaining four individuals and will provide the Petitioner this information as soon as possible. However, this information further illustrates the absolute necessity for naming the 120 county clerks and why an injunction issued by this Court against the Respondents will carry only so much weight as the State Board of Elections’ supervisory powers. The counties maintain the ultimate authority and responsibility for ensuring that a voter is not disenfranchised and that his or her information is processed properly.

- Two (2) individuals had an incorrect social security number listed on the supplemental precinct roster, which did not match the social security number on the database. officer failed to list these individuals on the supplemental signature roster, which is used to give voter credit.

first of its kind in the nation, and any future matches would require necessary adjustments to ensure an accurate match.

As the Respondents detailed in Section IV, A, the Respondents maintained authority to conduct this state data match pursuant to Kentucky and federal law. The details of how the match was conducted and the necessity for further refinements of the database matching process do not negate the Respondents authority to conduct such a match and purge program in the future. The Respondents failure to use date last voted as a criteria for the rematch and removal program written by Mr. Goins was an oversight that the Respondents have agreed needs to be corrected in future matches.

Indeed, the Petitioner refused the Respondents compromise proposal offering to adjust the parameters of the data match programming used by the State Board of Elections to rematch and remove the individuals on April 10 and 11, 2006, to include date last voted and last transaction date. [See Proposal at Exhibit 16. If the Petitioner had agreed to this offer by the Respondents, then his argument that the Respondents' actions were "arbitrary and capricious" would be moot. The Respondents submit to this Court that all future database matches with other states will include the match criteria of "date last voted" and "last transaction date" as outlined in the Respondents original proposal to the Petitioner. A temporary or permanent injunction on this issue would be superfluous.

E. THE PETITIONER CANNOT SHOW THAT THE COMMONWEALTH OR ITS CITIZENS WILL SUFFER IRREPARABLE HARM SUFFICIENT TO WARRANT A TEMPORARY OR PERMANENT INJUNCTION AGAINST THE RESPONDENTS.

The Court of Appeals in *Maupin v. Stansbury* set forth a three-part inquiry for reviewing a motion for a temporary injunction: (1) a showing by the plaintiff that an irreparable injury will occur absent the injunction; (2) a balancing of the equities in light of the public interest, harm to

The nature of the public interest in this case is well established—that of a citizens rights to vote. However, there is also the public interest of maintaining an accurate voter roll as required by the NVRA, HAVA, and Kentucky law through KRS 117.025(3). Considering that any voter who may be removed from the voter registration database through a clerical error will

Maupin at 698.

In balancing the equities, the Court must weigh the relative benefits and detriments to all concerned. *Kentucky High School Athletic Association v. Hopkins*, 552 S.W.2d 685 (Ky. App. 1977) *overruled on other grounds by National Collegiate Athletic Ass'n v. Lasage*, 53 S.W.3d 77 (Ky. 2001). This analysis entails a consideration of whether the public interest will be harmed by the issuance of the injunction or whether its effect will merely be to maintain the status quo.

Gregory v. Crain, 163 S.W.2d 289, 291 (Ky.App. 1942).

Equally clear and well settled is the proposition that neither class of injunctions will be granted for the protection of actual or alleged rights when the litigant seeking them has an adequate remedy at law, since in granting the relief the hands of the court are laid upon the violating litigant to compel him to do or not to do the act or acts which his opponent contends is required of him.

adequate remedy at law, then an injunction should not be granted:

Maupin v. Stansbury, 575 S.W.2d 695, 699 (Ky.App., 1978). Furthermore, if a petitioner has an

Therefore, in light of the above discussion, applications for temporary injunctive relief should be viewed on three levels. First, the trial court should determine whether plaintiff has complied with CR 65.04 by showing 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 presented. If the party requesting relief has shown a probability of irreparable injury, presented a substantial question as to the merits, and the equities are in favor of issuance, the temporary injunction should be awarded.

complaint presents a substantial question of law:

the defendant, and preservation of the status quo; and (3) a determining as to whether the

As to the maintenance of the status quo, by granting the Petitioner's request for a temporary injunction to reactivate the names of the 8105 individuals this Court will not be maintaining the status quo because these individuals were removed approximately five months ago. Since that time individuals have moved, died, changes their names, reactivated their registrations on their own. These people, the 8,105, do not exist as they did in April. By forcing

As to the maintenance of the status quo, by granting the Petitioner's request for a temporary injunction to reactivate the names of the 8105 individuals this Court will not be maintaining the status quo because these individuals were removed approximately five months ago. Since that time individuals have moved, died, changes their names, reactivated their registrations on their own. These people, the 8,105, do not exist as they did in April. By forcing

election laws, but whether the counties decide to follow this advise is ultimately up to the counties. The Respondents have repeatedly advised the counties to follow Kentucky's individual who is eligible is not allowed to vote. The safeguards in voting must be carried out by disenfranchisement will not be cause by the Respondents, but by the county clerks if an *Maupin v. Stansbury*, 575 S.W.2d 695, 698 (Ky.App., 1978). The immediate injury of voter

the element of "immediacy" contemplates that the parties show an urgent necessity for relief. *McCloud v. City of Cadiz*, Ky.App., 548 S.W.2d 158 (1977). This means that "(a)n injunction will not be granted on the ground merely of an anticipated danger or an apprehension of it, but there must be a reasonable probability that injury will be done if no injunction is granted." *Hamlin v. Durham*, 235 Ky. 842, 32 S.W.2d 413, 414 (1930). Although the above cases dealt with permanent injunctive relief, we believe that the reasoning of those cases is equally applicable to temporary injunctive relief.

opined that the Petitioner to name the county clerks and the Petitioner has failed to do so. The Maupin Court cause by the Respondents. The Respondents have repeatedly illustrated why it was necessary for The Petitioner has further failed to establish an immediate irreparable harm that will be

work to protect a voter who may be incorrectly purged pursuant to the process. by this Court by allowing the Respondents to carry out their duties of maintaining an accurate voter roll by conducting state data comparisons as long as the safeguards built into Kentucky law be allowed to vote under the safeguards established by Kentucky law, the equities are balanced

The Respondents agree to make the necessary adjustments to any future database comparisons with other states to ensure an accurate matching process. Furthermore, the Respondents agree to advise the counties on the safeguards in voting established by Kentucky parties to this action.

The Petitioner has failed to prove that he will suffer irreparable harm that is not protected by established Kentucky law safeguarding a voters right to vote. Furthermore, the Petitioner's requested relief can only be exercised against the county election officials who are not named by established Kentucky law safeguarding a voters right to vote. Furthermore, the Petitioner's State Board of Elections made a collective decision to move forward with the project.

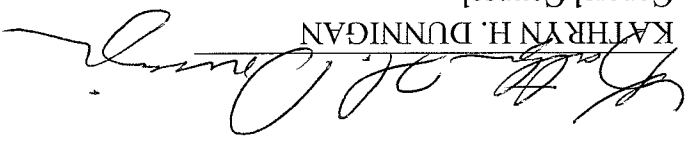
The Petitioner's Second Amended Petition for a Declaration of Rights and Injunctive Relief should be denied by this Court because the Petitioner has failed to fulfill his burden proof required for a permanent and temporary injunction and it is not necessary for a declaration of rights of the law as stated by the Petitioner. The State Board of Elections maintains the authority pursuant to KRS 117.025(3) to maintain an accurate voter roll by any source of information and pursuant to KRS 116.0452(3) a new registration in another state is a request of the voter to be removed from the voter roll. Furthermore, it was not necessary for the Respondents to follow the inactive process as outlined in KRS 116.112 because this statute is concerned with voter purge programs conducted pursuant to change of address information not with new registration information. The Secretary of State and the staff of the State Board of Elections acted properly informing the members of the Board of Elections of the details of the state data match and the State Board of Elections made a collective decision to move forward with the project.

V. CONCLUSIONS

the State Board of Elections to direct these counties to reactivate these voter records is ensuring an *inaccurate* voter roll. However, the safeguards established by Kentucky law, if followed by the counties will ensure that only eligible voters will be allowed to vote.

Law. The Respondents respectfully request this Court deny the Petitioner's Second Amended Petition.

Respectfully Submitted,



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COUNSEL FOR RESPONDENTS,
SECRETARY OF STATE AND
STATE BOARD OF ELECTIONS

I hereby certify that a copy of the foregoing Memorandum of Law in Support of Respondent's Motion for Summary Judgment has been served in the manner proscribed to the

following this 21st day of August 2006:

VIA HAND-DELIVERY & U.S. Mail to:

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

By U.S. Mail to:

HON. JULIUS RATHER

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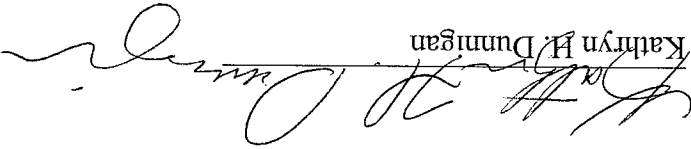
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CERTIFICATE OF SERVICE