

CLOSED

**U.S. District Court
Western District of Kentucky (Louisville)
CIVIL DOCKET FOR CASE #: 3:20-cv-00407-CRS**

Nemes et al v. Bensinger et al
Assigned to: Senior Judge Charles R. Simpson, III
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 06/08/2020
Date Terminated: 08/03/2020
Jury Demand: None
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: Federal Question

Plaintiff

Hon. Jason Nemes

*For themselves and on behalf of all other
similarly situated Plaintiffs*

represented by **Christopher D. Wiest**
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Plaintiff

James "Rich" Howland

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similarly situated Plaintiffs*

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Plaintiff

Ken Kearns

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Plaintiff

Aaron Gillum

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Plaintiff

Theodore Roberts

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Plaintiff

Tyson Hermes

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Plaintiff

Erik Hermes

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V.

Intervenor Plaintiff

Keisha Dorsey

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V.

Defendant

Carl Bensinger

*in their collective official capacities as
the County Clerks, County Sheriffs, and
County Board of Elections members of
Jefferson, Fayette, Kenton, Boone, and
Campbell Counties, for themselves and
under FRCP 23, on behalf of all other
county clerks and co*

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Defendant

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Defendant

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Defendant

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Defendant

Marilyn Dishman

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Defendant

Daniel Miller

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Defendant

Gabrielle Summe

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Defendant

Chuck Korzenborn

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Defendant

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Defendant

Sarah Rogers

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Jeffrey C. Mando

*under FRCP 23, on behalf of all other
county clerks and co*

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Defendant

Justin Crigler

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Jefferson, Fayette, Kenton, Boone, and
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county clerks and co*
TERMINATED: 06/16/2020

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Defendant

Michael Helmig

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County Board of Elections members of
Jefferson, Fayette, Kenton, Boone, and
Campbell Counties, for themselves and
under FRCP 23, on behalf of all other
county clerks and co*
TERMINATED: 06/16/2020

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Defendant

Emily Shelton

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Jefferson, Fayette, Kenton, Boone, and
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county clerks and co*
TERMINATED: 06/16/2020

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Defendant

Michael Howard

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county clerks and co*
TERMINATED: 06/16/2020

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Defendant

Jim Leursen

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Jefferson, Fayette, Kenton, Boone, and
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county clerks and co*
TERMINATED: 06/16/2020

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Defendant

represented by

Mike Jansen

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TERMINATED: 06/16/2020

Defendant

James Shroer

in their collective official capacities as the County Clerks, County Sheriffs, and County Board of Elections members of Jefferson, Fayette, Kenton, Boone, and Campbell Counties, for themselves and under FRCP 23, on behalf of all other county clerks and co
TERMINATED: 06/16/2020

Defendant

Jack Snoggrass

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TERMINATED: 06/16/2020

Defendant

Albert B. Chandler, III

in their official capacities as members of the State Board of Elections

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Defendant

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Defendant

George Russell
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Defendant

Katrina Fitzgerald
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Defendant

Deanna Brangers
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Defendant

represented by

Cory Skolnick
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Defendant

Dwight Sears
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Defendant

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Defendant

Michael Adams
*in his official capacity as the Kentucky
Secretary of State*
TERMINATED: 06/16/2020

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Defendant

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the Commonwealth of Kentucky
TERMINATED: 06/16/2020

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Intervenor – Pending

Amy McGrath for Senate, Inc.
TERMINATED: 06/16/2020

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Date Filed	#	Docket Text
06/08/2020	<u>1</u>	VERIFIED COMPLAINT against All Defendants, Filing fee \$400, receipt number 0644-3116135, filed by Ken Kearns, Jason Nemes, Tyson Hermes, Aaron Gillum, Theodore Roberts, James "Rich" Howland, and Erik Hermes. (Attachments: # <u>1</u> Summons Tendered, # <u>2</u> Cover Sheet) (DLW) (Entered: 06/08/2020)
06/08/2020	<u>2</u>	Case Assignment (Random Selection): Case Assigned to Judge Claria Horn Boom. (DLW) (Entered: 06/08/2020)
06/08/2020	<u>3</u>	Summons Issued as to All Defendants. Counsel for Plaintiff is responsible for printing and serving the attached issued summons(es). (DLW) (Entered: 06/08/2020)
06/09/2020	<u>15</u>	Case Assignment (Random Selection): Case Assigned to Judge Justin R. Walker. (ALS) (Entered: 06/11/2020)
06/10/2020	<u>4</u>	Emergency MOTION for Temporary Restraining Order , Emergency MOTION for Preliminary Injunction <i>for emergency relief related to the June 23, 2020 Kentucky primary election</i> by Plaintiffs Aaron Gillum, Erik Hermes, Tyson Hermes, James "Rich" Howland, Ken Kearns, Jason Nemes, Theodore Roberts (Attachments: # <u>1</u> Memorandum in Support Memorandum in Support, # <u>2</u> Proposed Order Proposed Order, # <u>3</u> Affidavit Declaration of Stephen Voss, PhD, and Report Exhibit, # <u>4</u> Affidavit Declaration of Hodgson, # <u>5</u> Affidavit Declaration of Heil) (Wiest, Christopher) (Entered: 06/10/2020)
06/10/2020	<u>5</u>	NOTICE of Appearance by Natalie Johnson on behalf of John Aubrey, Carl Bensinger, Bobbie Holsclaw, Linda Huber (Johnson, Natalie) (Entered: 06/10/2020)
06/10/2020	<u>6</u>	NOTICE of Appearance by Daniel L. Morgan on behalf of Albert B. Chandler, III (Morgan, Daniel) (Entered: 06/10/2020)
06/10/2020	<u>7</u>	NOTICE of Appearance by Taylor A. Brown on behalf of Albert B. Chandler, III (Brown, Taylor) (Entered: 06/10/2020)
06/10/2020	<u>8</u>	NOTICE of Appearance by Jeffrey C. Mando on behalf of Justin Crigler, Michael Helmig, Michael Howard, Mike Jansen, Jim Leursen, Emily Shelton, James Shroer, Jack Snogross (Mando, Jeffrey) (Entered: 06/10/2020)
06/11/2020	<u>9</u>	ORDER OF RECUSAL. Judge Claria Horn Boom recused. Case reassigned to Judge Justin R. Walker for all further proceedings. cc: Counsel, JRW-CM (ALS) (Entered: 06/11/2020)
06/11/2020	10	TEXT ORDER OF RECUSAL AND REASSIGNMENT by Judge Justin R. Walker on 6/11/2020. Judge Justin R. Walker RECUSES from this matter and the action is REASSIGNED to Judge Rebecca Grady Jennings for all further proceedings. Counsel shall change the case number to reflect the initials RGJ for all future filings. This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached. cc: Counsel, CM-Jennings (MEJ) (Entered: 06/11/2020)

06/11/2020	<u>11</u>	NOTICE of Appearance by Steven P. Stadler on behalf of Don Blevins, Marilyn Dishman, Daniel Miller, Kathy Witt (Stadler, Steven) (Entered: 06/11/2020)
06/11/2020	<u>12</u>	NOTICE of Appearance by Jeffrey C. Mando on behalf of Richard Scott Kimmich, Chuck Korzenborn, Sarah Rogers, Gabrielle Summe (Mando, Jeffrey) (Entered: 06/11/2020)
06/11/2020	<u>13</u>	ORDER OF RECUSAL signed by Judge Rebecca Grady Jennings on 6/11/2020. Judge Rebecca Grady Jennings recuses from this matter. Case reassigned to Senior Judge Charles R. Simpson, III for all further proceedings. Counsel are requested to change the Civil action number to reflect the initials CRS on all further pleadings. cc: Counsel, CRS-CM (SMJ) Modified on 6/11/2020 to add text(SMJ). (Entered: 06/11/2020)
06/11/2020	<u>14</u>	NOTICE of Appearance by Michael R. Wilson on behalf of Michael Adams (Wilson, Michael) (Entered: 06/11/2020)
06/11/2020	<u>16</u>	NOTICE of Appearance by Steven T. Mayo on behalf of Andrew Beshear (Mayo, Steven) (Entered: 06/11/2020)
06/11/2020	<u>17</u>	ORDER SETTING CONFERENCE signed by Senior Judge Charles R. Simpson, III on 6/11/2020. Conference set for 6/12/2020 at 11:00 AM by way of a Zoom Videoconference before Senior Judge Charles R. Simpson III. Technical details to connect to the Conference will be provided by separate email. Counsel shall connect to the Conference no later than 10:45 AM.cc: Counsel (RLK) (Entered: 06/11/2020)
06/12/2020	<u>18</u>	Emergency MOTION to Intervene <i>as a Plaintiff</i> by Intervenor – Pending Amy McGrath for Senate, Inc. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Proposed Order, # <u>3</u> Exhibit A – Proposed Complaint) (Brammell, William) (Entered: 06/12/2020)
06/12/2020	<u>19</u>	Emergency MOTION to Intervene by Intervenor – Pending Keisha Dorsey (Attachments: # <u>1</u> Proposed Order Proposed Order, # <u>2</u> Exhibit Intervening Complaint) (Wiest, Christopher) (Entered: 06/12/2020)
06/12/2020	<u>20</u>	NOTICE of Appearance by Kayla M. Campbell on behalf of Amy McGrath for Senate, Inc. (Campbell, Kayla) (Entered: 06/12/2020)
06/12/2020	<u>21</u>	RESPONSE to Motion re <u>18</u> Emergency MOTION to Intervene <i>as a Plaintiff In Opposition</i> filed by Michael Adams. (Wilson, Michael) (Entered: 06/12/2020)
06/13/2020	<u>22</u>	MEMORANDUM OF CONFERENCE AND ORDER signed by Senior Judge Charles R. Simpson, III on 6/13/2020. Virtual Scheduling Conference was held on 6/12/2020 via Zoom. No motions for recusal were made by the 4:00 p.m. deadline on 6/12/2020. The Court determines that recusal was waived. Objections to the emergency motion of Amy McGrath for Senate, Inc. [R. 18] were to be filed NLT 5:00 p.m. on 6/12/2020. Objection was filed by Defendant Adams [R. 21]. Responses to Keisha Dorsey's emergency motion to intervene filed immediately following the conference <u>19</u> , shall be filed NLT 10:00 a.m. on 6/15/2020. Any requests by Plaintiffs to supplement their motion for injunctive relief and supporting witness declarations shall be filed NLT 8:00 a.m. on 6/15/2020. Responses to the motion to supplement shall be filed NLT 12:00 p.m. on 6/16/2020. Defendants' answers/dismissal motions, briefs responsive to the requests for injunctive relief and support witness declarations are due NLT 12:00 p.m. on 6/16/2020. An Evidentiary Hearing to be conducted by Zoom is set for 6/17/2020 01:30 PM before Senior Judge Charles R. Simpson III. (Court Reporter Dena Legg.) cc: Counsel (RLK) (Entered: 06/13/2020)
06/13/2020	<u>23</u>	REPLY to Response to Motion re <u>18</u> Emergency MOTION to Intervene <i>as a Plaintiff</i> filed by Amy McGrath for Senate, Inc.. (Brammell, William) (Entered: 06/13/2020)
06/14/2020	<u>24</u>	Proposed Agreed Order <i>settling case and dismissal without prejudice with conditions between Plaintiffs and Secretary of State Michael Adams (remainder of case and parties remain pending)</i> by Aaron Gillum, Erik Hermes, Tyson Hermes, James "Rich" Howland, Ken Kearns, Jason Nemes, Theodore Roberts. (Wiest, Christopher) (Entered: 06/14/2020)
06/14/2020	<u>25</u>	Proposed Agreed Order <i>settling case and dismissal without prejudice with conditions between Intervening Plaintiff Keisha Dorsey and Secretary of State Michael Adams</i>

		(<i>remainder of case and parties remain pending</i>) by Keisha Dorsey. (Wiest, Christopher) (Entered: 06/14/2020)
06/14/2020	<u>26</u>	Proposed MOTION for Preliminary Injunction <i>and</i> , MOTION for Temporary Restraining Order by Intervenor – Pending Amy McGrath for Senate, Inc. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Proposed Order, # <u>3</u> Exhibit A – Nickols Declaration, # <u>4</u> Exhibit B – Covid Daily Report, # <u>5</u> Exhibit C – May Declaration, # <u>6</u> Exhibit D – Adkins Declaration, # <u>7</u> Exhibit E – Cassell Declaration, # <u>8</u> Exhibit F – Holt Declaration, # <u>9</u> Exhibit G – Brown Declaration, # <u>10</u> Exhibit H – Bowman Declaration, # <u>11</u> Exhibit I – Bross Declaration, # <u>12</u> Exhibit J – O'Neal Declaration, # <u>13</u> Exhibit K – Leventis Declaration) (Brammell, William) (Entered: 06/14/2020)
06/15/2020	<u>27</u>	SUPPLEMENT re <u>4</u> Motion for TRO,,, Motion for Preliminary Injunction,, (Attachments: # <u>1</u> Affidavit Declaration of James Young, # <u>2</u> Affidavit Supplemental Declaration of Dr. Voss, # <u>3</u> Affidavit Declaration of Jason Nemes, # <u>4</u> Affidavit Declaration of Christopher Wiest, # <u>5</u> Exhibit Executive Order 2020–451, activating KY National Guard to assist with election, # <u>6</u> Proposed Order Revised Proposed Order) by Keisha Dorsey, Aaron Gillum, Erik Hermes, Tyson Hermes, James "Rich" Howland, Ken Kearns, Jason Nemes, Theodore Roberts. (Wiest, Christopher) (Entered: 06/15/2020)
06/15/2020	<u>28</u>	Proposed Agreed Order <i>settling case and dismissal without prejudice with conditions between Plaintiffs, Intervening Plaintiffs and Governor Beshear (remainder of case and parties remain pending)</i> by Keisha Dorsey, Aaron Gillum, Erik Hermes, Tyson Hermes, James "Rich" Howland, Ken Kearns, Jason Nemes, Theodore Roberts. (Wiest, Christopher) (Entered: 06/15/2020)
06/15/2020	<u>29</u>	MOTION for Leave to File Excess Pages by Defendants John Aubrey, Carl Bensinger, Bobbie Holsclaw, Linda Huber (Attachments: # <u>1</u> Proposed Order) (Mando, Jeffrey) (Entered: 06/15/2020)
06/15/2020	<u>30</u>	Proposed Agreed Order (<i>Amended order, due to a mistake in communication, the McGrath Campaign did not agree to the previous order RE#28</i>), <i>settling case between Plaintiffs and Intervening Plaintiff Keisha Dorsey, and dismissal without prejudice with conditions between Plaintiffs and Governor Beshear (remainder of case and parties remain pending)</i> by Keisha Dorsey, Aaron Gillum, Erik Hermes, Tyson Hermes, James "Rich" Howland, Ken Kearns, Jason Nemes, Theodore Roberts. (Wiest, Christopher) (Entered: 06/15/2020)
06/15/2020	<u>31</u>	Proposed Agreed Order <i>settling case and dismissal without prejudice with conditions between Plaintiffs, Intervening Plaintiffs, and the Boone and Campbell County Defendants (remainder of case and parties remain pending)</i> by Keisha Dorsey, Aaron Gillum, Erik Hermes, Tyson Hermes, James "Rich" Howland, Ken Kearns, Jason Nemes, Theodore Roberts. (Wiest, Christopher) (Entered: 06/15/2020)
06/16/2020	<u>32</u>	Proposed Agreed Order of <i>Dismissal</i> by Andrew Beshear. (Mayo, Steven) (Entered: 06/16/2020)
06/16/2020	<u>33</u>	RESPONSE to Motion re <u>4</u> Emergency MOTION for Temporary Restraining Order Emergency MOTION for Preliminary Injunction <i>for emergency relief related to the June 23, 2020 Kentucky primary election</i> , <u>26</u> Proposed MOTION for Preliminary Injunction <i>and</i> MOTION for Temporary Restraining Order filed by Albert B. Chandler, III. (Attachments: # <u>1</u> Exhibit declaration, # <u>2</u> Exhibit News report, # <u>3</u> Proposed Order) (Morgan, Daniel) (Entered: 06/16/2020)
06/16/2020	<u>34</u>	ORDER Signed by Senior Judge Charles R. Simpson III on 6/16/2020 – The motion of Keisha Dorsey to intervene (DN <u>19</u>) is GRANTED and the Intervening Complaint (DN 19–2) is ordered FILED OF RECORD. (KD) (Entered: 06/16/2020)
06/16/2020	<u>35</u>	Intervenor COMPLAINT, filed by Keisha Dorsey. (KD) (Entered: 06/16/2020)
06/16/2020	<u>36</u>	MOTION to Dismiss for Lack of Jurisdiction , MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Defendant Michael Adams (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Proposed Order) (Wilson, Michael) (Entered: 06/16/2020)

06/16/2020	<u>37</u>	ORDER Signed by Senior Judge Charles R. Simpson III on 6/16/2020 – The motion of the Jefferson County, Fayette County, and Kenton County defendants to exceed page limit (DN <u>29</u>) is GRANTED. (KD) (Entered: 06/16/2020)
06/16/2020	<u>38</u>	RESPONSE to Motion re <u>4</u> Emergency MOTION for Temporary Restraining Order Emergency MOTION for Preliminary Injunction <i>for emergency relief related to the June 23, 2020 Kentucky primary election</i> filed by Richard Scott Kimmich, Chuck Korzenborn, Sarah Rogers, Gabrielle Summe. (Attachments: # <u>1</u> Exhibit 03.06.20 Executive–Order 2020–215, # <u>2</u> Exhibit Declaration of Maryellen Allen (Jefferson Co.), # <u>3</u> Exhibit 03.16.20 Executive–Order 2020–236, # <u>4</u> Exhibit 04.24.20 Executive–Order 2020–296, # <u>5</u> Exhibit SBE Covid19 Emergency Regulation, # <u>6</u> Exhibit County Clerk FAQ 5–7–2020, # <u>7</u> Exhibit Declaration of Don Bevins (Fayette Co.), # <u>8</u> Exhibit Declaration of Gabrielle Summe (Kenton Co.), # <u>9</u> Exhibit Kenton County Application, # <u>10</u> Exhibit Fayette County Application, # <u>11</u> Exhibit Jefferson County Application, # <u>12</u> Proposed Order) (Mando, Jeffrey) (Entered: 06/16/2020)
06/16/2020	<u>39</u>	ORDER by Senior Judge Charles R. Simpson III on 6/16/2020 – Members of the public may request audio access to the virtual Evidentiary Hearing scheduled to take place on Wednesday, June 17, 2020 at 1:30 p.m. EDT through the following procedure. Please see Order for further details. (KD) (Entered: 06/16/2020)
06/16/2020	<u>40</u>	MEMORANDUM OPINION by Senior Judge Charles R. Simpson III on 6/16/2020 – The Court will deny the McGrath Campaign's motion to intervene. DN <u>18</u> . A separate order will be entered in accordance with this opinion. (KD) (Entered: 06/16/2020)
06/16/2020	<u>41</u>	ORDER Signed by Senior Judge Charles R. Simpson III on 6/16/2020 – Proposed Intervenor Amy McGrath for Senate Inc.'s motion to intervene, DN <u>18</u> , is DENIED. Defendant Secretary of State Michael Adams' motion to dismiss, DN <u>36</u> , is DENIED AS MOOT. (KD) (Entered: 06/16/2020)
06/16/2020	<u>42</u>	REVISED AGREED ORDER OF DISMISSAL WITHOUT PREJUDICE by Senior Judge Charles R. Simpson III on 6/16/2020 – Governor Beshear is hereby dismissed without prejudice under FRCP 41. The Court will retain jurisdiction to enforce this Agreed Order. Governor Beshear shall not further participate in this matter. Please see Order for further details. (KD) (Entered: 06/16/2020)
06/16/2020	<u>43</u>	CONSENT ORDER by Senior Judge Charles R. Simpson III on 6/16/2020 – The Court will retain jurisdiction to enforce this Agreed Order. (KD) (Entered: 06/16/2020)
06/16/2020	<u>44</u>	AGREED ORDER OF DISMISSAL WITHOUT PREJUDICE by Senior Judge Charles R. Simpson III on 6/16/2020 – Intervening Plaintiff Keisha Dorsey, by and through Counsel, and Defendant Michael Adams, in his official capacity as Kentucky Secretary of State, by and through Counsel, agree and stipulate to settle this matter. Secretary Adams is hereby dismissed without prejudice under FRCP 41. The Court will retain jurisdiction to enforce this Agreed Order. (KD) (Entered: 06/16/2020)
06/16/2020	<u>45</u>	AGREED ORDER OF DISMISSAL WITHOUT PREJUDICE by Senior Judge Charles R. Simpson III on 6/16/2020 – Plaintiffs Jason Nemes, James Howland, Ken Kearns, Aaron Gillum, Theodore Roberts, Tyson Hermes, and Erik Hermes (the "Original Plaintiffs"), by and through Counsel, and Defendant Michael Adams, in his official capacity as Kentucky Secretary of State, by and through Counsel, agree and stipulate to settle this matter. Secretary Adams is hereby dismissed without prejudice under FRCP 41. The Court will retain jurisdiction to enforce this Agreed Order. (KD) (Entered: 06/16/2020)
06/16/2020	<u>46</u>	NOTICE of Filing Substitute Exhibit by Richard Scott Kimmich, Chuck Korzenborn, Sarah Rogers, Gabrielle Summe re <u>38</u> Response to Motion,,, (Attachments: # <u>1</u> Exhibit Exh. 8 – Declaration of Gabrielle Summe (Kenton Co Clerk)) (Mando, Jeffrey) (Entered: 06/16/2020)
06/16/2020	<u>47</u>	NOTICE of Supplemental Authority by Keisha Dorsey, Aaron Gillum, Erik Hermes, Tyson Hermes, James "Rich" Howland, Ken Kearns, Jason Nemes, Theodore Roberts (Wiest, Christopher) (Entered: 06/16/2020)
06/17/2020	<u>48</u>	ORDER REMANDING VIDEO TELECONFERENCE signed by Senior Judge Charles R. Simpson, III on 6/17/2020. Evidentiary Hearing scheduled for 6/17/2020 is REMANDED. The Court will take the matter under submission.cc: Counsel (RLK) (Entered: 06/17/2020)

06/18/2020	<u>49</u>	MEMORANDUM OPINION signed by Senior Judge Charles R. Simpson, III, on 6/18/2020. For the reasons set forth, it is apparent that Plaintiffs have not shown a likelihood of success on the merits and Plaintiffs' motion for injunctive relief <u>4</u> will be denied. A separate Order will be entered this date in accordance with this Opinion. cc: Counsel (RLK) (Entered: 06/18/2020)
06/18/2020	<u>50</u>	ORDER signed by Senior Judge Charles R. Simpson, III, on 6/18/2020. For the reasons set forth in the Memorandum Opinion <u>49</u> , Plaintiffs' Emergency Motion for Restraining Order and/or Preliminary Injunction <u>4</u> is DENIED. cc: Counsel(RLK) (Entered: 06/18/2020)
06/26/2020	<u>51</u>	MOTION to Dismiss by Defendants John Aubrey, Carl Bensinger, Don Blevins, Deanna Brangers, Albert B. Chandler, III, Marilyn Dishman, Katrina Fitzgerald, Bobbie Holsclaw, Linda Huber, Richard Scott Kimmich, Chuck Korzenborn, James Lewis, Daniel Miller, Sarah Rogers, George Russell, Dwight Sears, Cory Skolnick, Gabrielle Summe, Sherry Whitehouse, Kathy Witt (Attachments: # <u>1</u> Proposed Order) (Derouen, Jeffery) (Entered: 06/26/2020)
07/17/2020	<u>52</u>	NOTICE of Voluntary Dismissal by Ken Kearns, Jason Nemes, Tyson Hermes, Aaron Gillum, Keisha Dorsey, Theodore Roberts, James "Rich" Howland, Erik Hermes (Wiest, Christopher) (Entered: 07/17/2020)