

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT FRANKFORT**

THE LIBERTARIAN PARTY)	
OF KENTUCKY, et. al.)	
)	
)	
Plaintiffs)	<i>ELECTRONICALLY FILED</i>
)	
v.)	
)	
ALISON LUNDERGAN GRIMES)	Civil Action No. 3:15-cv-86 GFVT
SECRETARY OF STATE OF THE)	
COMMONWEALTH OF KENTUCKY, et al.,)	
)	
)	
Defendants)	

MOTION TO DISMISS

Comes the Defendants, Alison Lundergan Grimes (in her official capacities as Kentucky Secretary of State and Chair of the Kentucky State Board of Elections); Joshua G. Branscum, John Hampton, Stephen Huffman, Donald Blevins, Albert B. Chandler, III, and George Russell (each in their official capacities as Board Members of the Kentucky State Board of Elections); and Maryellen Allen (in her official capacity as Executive Director, Kentucky State Board of Elections), (hereinafter “Defendants”) by counsel, and moves the Court to dismiss the Complaint of the Plaintiffs, the Libertarian Party of Kentucky, the Libertarian National Committee, Ken Moellan, Jr., and the Constitution Party of Kentucky (hereinafter “Plaintiffs”) pursuant to Federal Rule of Civil Procedure 12(b)(6). The Plaintiffs Complaint fails to state a claim upon which relief can be granted by the Defendants, as it does not allege that the Defendants violated Kentucky election laws that they are given statutory authority to administer.

WHEREFORE, the Defendants, respectfully requests that the Court dismiss, with prejudice, the Plaintiffs' Complaint.

Respectfully Submitted,

/s/ Noel E. Caldwell

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Grimes, in her official capacity as Secretary
of State of the Commonwealth of Kentucky,
and the Kentucky State Board of Elections*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed this 29 day of December, 2015. All parties indicated on the electronic filing receipt will be served via the Court's electronic filing system. All other parties will be served via hand delivery or U.S. Mail.

/s/ Noel E. Caldwell

Noel E. Caldwell

I. FACTS:

In Plaintiffs' Complaint (Doc. #1), they challenge the process under Kentucky law, specifically, KRS 118.015 and KRS 118.305, through which political parties gain access to election ballots. (Complaint, PageID #1, ¶ 1.) The Plaintiffs allege that the Defendants have deprived them of their First and Fourteenth Amendment rights. (*Id.*, Page ID #1, 12, ¶¶ 1, 35.) In the only count of their Complaint, the Plaintiffs allege that the Defendants sued in their official capacity have subjected themselves to prospective injunctive relief under 42 U.S.C. §1983 and to declaratory relief under 428 U.S.C. §§ 2201 and 2202. (*Id.*, PageID #12, 14, ¶¶ 35, 42.) The Plaintiffs challenge KRS 118.015 and KRS 118.305, claiming that the statutory provisions offer no method for a political group to obtain "blanket ballot access" other than through the results of a presidential election. (*Id.*, PageID #13, ¶ 39.)

The Plaintiffs sued the Defendants because they alleged that they, pursuant to KRS 117.015 "and other laws, is responsible for administering and enforcing the election laws of the state." (*Id.* PageID #6, ¶¶ 6, 7, 8.)

II. ARGUMENT:

This Court should dismiss, with prejudice, the Defendants from this action. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted, warranting dismissal under Fed. R. Civ. P. 12(b)(6).

In considering a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the Court must construe the complaint in a light most favorable to the Plaintiff and accept all factual allegations as true. *Prater v. City of Burnside, Ky.*, 289 F.3d 417, 424 (6th Cir. 2002). The Court may only dismiss the complaint if it appears "...beyond doubt that the Plaintiff can prove no set of facts in

support of his claim which would entitle him to relief.” *Id.* (quoting *Buchanan v. Apfel*, 249 F.3d 485, 488 (6th Cir. 2001)(internal citation omitted)).

In this action, the Plaintiffs sued the Defendants because they alleged throughout their Complaint that the Defendants enforce and administer Kentucky’s elections laws, including ballot access provisions. (Complaint, PageID #6, 7, ¶¶ 6,7,8, 10, 13, 14.) However, unlike the Attorney General, the Defendants possess no statutory authority to enforce the election laws of Kentucky. Pursuant to KRS 117.015, the State Board of Elections is charged with the authority to administer the election laws of the state and the Secretary of State serves as the chairman of the state board and chief election official. Pursuant to KRS 117.025, the Executive Director of the State Board of Elections shall be the chief administrative officer for the board. In this action, the Plaintiffs do not allege that the Defendants violated any of Kentucky’s election laws that they are charged with administering, specifically KRS 118.015 and KRS 118.305. By not alleging any violation of Kentucky election laws the Defendants administer, the Plaintiffs’ Complaint fails to state a claim upon which the Defendants can provide relief. Thus, the Court should dismiss the Plaintiffs’ Complaint as to the Defendants.

III. CONCLUSION:

Pursuant to Fed. R. Civ. P. 12(b)(6), this Court dismiss the Defendants, in their official capacity, from this action. The Plaintiff’s Complaint challenges the constitutionality of KRS 118.015 and KRS 118.305. However, Defendant, Attorney General Jack Conway, through counsel, filed a Notice of Intention Not to Intervene regarding the Plaintiffs’ challenge to the validity of KRS 118.015 and KRS 118.305. (Doc. #5). Further, Plaintiffs’ Complaint does not allege that the Defendants violated any of Kentucky’s election laws when administering them

pursuant to their authority under KRS 117.015. Therefore, the Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, the Defendants respectfully request that the Court dismiss him from this action, with prejudice.

Respectfully Submitted,

/s/ Noel E. Caldwell
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
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Plaintiffs)

v.)

ALISON LUNDERGAN GRIMES)
SECRETARY OF STATE OF THE)
COMMONWEALTH OF KENTUCKY, et al.,)

Defendants)

ELECTRONICALLY FILED

Civil Action No. 3:15-cv-86 GFVT

ORDER

This matter having come before the Court upon Motion of the Defendants Alison Lundergan Grimes (in her official capacities as Kentucky Secretary of State and Chair of the Kentucky State Board of Elections); Joshua G. Branscum, John Hampton, Stephen Huffman, Donald Blevins, Albert B. Chandler, III, and George Russell (each in their official capacities as Board Members of the Kentucky State Board of Elections); and Maryellen Allen (in her official capacity as Executive Director, Kentucky State Board of Elections), pursuant to Fed. R. Civ. P. 12(b)(6), and the Court being sufficiently advised, it is hereby ordered that the Defendants' Motion to Dismiss is GRANTED. The Plaintiffs' Complaint is dismissed, with prejudice, as to the Defendants above. The Plaintiffs shall bear their own costs and attorney fees incurred in this action.

This is a final and appealable order and there is no just cause for delay.

So ORDERED this _____ day of _____, 2015.

JUDGE GREGORY F. VAN TATENHOVE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY