

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

THE LIBERTARIAN PARTY OF)
KENTUCKY, et al.,)
)
Plaintiffs,)
)
v.)
)
ALISON LUNDERGAN GRIMES, et al.)
)
Defendants.)

Case No. 3:15-CV-86 GFVT
Electronically filed

**ATTORNEY GENERAL ANDY BESHEAR’S REPLY MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

The Defendant, Andy Beshear,¹ in his official capacity as the Attorney General of the Commonwealth of Kentucky, (hereinafter “Attorney General Beshear”), by and through counsel, hereby submits the foregoing Reply Memorandum in Support of his Motion to Dismiss (Doc. 6), and in reply to the response (Doc. 8) of the Plaintiffs, The Libertarian Party of Kentucky, the Libertarian National Committee, Inc., Ken Moellman, Jr., and the Constitution Party of Kentucky (hereinafter “Plaintiffs”). The Attorney General’s general authority to enforce Kentucky election laws related to alleged violation of those laws is insufficient to make Attorney General Beshear a proper party. For the same reason, the *Ex Parte Young*, 209 U.S. 123 (1908), exception to Eleventh Amendment immunity does not apply to this action. Therefore, this Court should dismiss Attorney General Beshear pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted.

¹ Plaintiffs named Jack Conway, in his official capacity as Attorney General of Kentucky, when they filed the Complaint on December 4, 2015. On January 4, 2016, Andy Beshear assumed the office of Attorney General. Pursuant to Fed. R. Civ. P. 25(d), as the successor to former Attorney General Jack Conway, Attorney General Andy Beshear is automatically substituted as a party in this action. *Kentucky v. Graham*, 473 U.S. 159, 166 n. 11 (1985).

I. PLAINTIFFS ALLEGE NO VIOLATION OF ELECTION LAWS AND FAIL TO SHOW THAT ATTORNEY GENERAL BESEHAR IS A PROPER PARTY.

As the Plaintiffs concede in their Response memorandum, an alleged violation of election laws is not at issue. (*See* Plaintiffs' Memo. in Opp. to Defendant Hon. Jack Conway's Motion to Dismiss, Doc. 8, PageID #102.) Thus, the general enforcement authority of the Attorney General related to alleged violations of Kentucky election laws granted by KRS 15.242 and KRS 15.243, and under which the Plaintiffs named Attorney General Beshear as a party, do not apply. As a result, the Plaintiffs' Complaint (Doc. 1) fails to state a claim upon which Attorney General Beshear can grant relief, warranting the dismissal of Attorney General Beshear, with prejudice.

The Plaintiffs set forth nothing to suggest there is a realistic possibility that Attorney General Beshear will take legal or administrative actions against the Plaintiffs if they are barred from being placed on the ballot in an election. As the Plaintiffs point out, members of the Kentucky Board of Elections (hereinafter "Board"), including its Executive Director, and the Kentucky Secretary of State, who serves as the Board's Chair and the Chief Election Officer of the Commonwealth, are responsible for administering the election laws of Kentucky. (Plaintiffs' Memo. in Opp. to the KSBE Defs.' Motion to Dismiss, Doc. 9, PageID #111.) *See* KRS 117.015; KRS 117.025. *See also Russell v. Lundergan-Grimes*, 784 F.3d 1037, 1048 (6th Cir. 2015). The Board may adopt administrative regulations necessary to properly carry out its duties. KRS 117.015(1). *Russell*, 784 F.3d at 1048. The Board trains state and local personnel on how to implement Kentucky's election laws. KRS 117.187(1). *Russell*, 784 F.3d at 1048. Additionally, the Secretary of State must certify the names of candidates for office to the county clerks once they are nominated, and certificates of and petitions of nomination must be filed with

the Secretary of State and the Board. KRS 118.215; KRS 118.356. (*See also* Pls.’ Memo. in Opp. to the KSBE Defs.’ Motion to Dismiss, Doc. 9, PageID #103.)

While KRS Chapters 117 and 118 provide specific authority to the Secretary of State, and the Board and its members to administer and enforce the election laws of Kentucky, they do not grant specific authority to the Attorney General. Rather, KRS 15.242 and KRS 15.243 provide general enforcement authority to the Attorney General related to alleged violations of election laws. The Attorney General has concurrent jurisdiction with the County and Commonwealth’s Attorneys to investigate and prosecute violations of election laws. KRS 15.242. Under KRS 15.243(1), the Attorney General “shall enforce all of Kentucky’s election laws by civil or criminal processes.” In outlining the processes the Attorney General must perform in enforcing the election laws, a reading of the statute in its entirety demonstrates that it contemplates enforcement relating to alleged violations of Kentucky election laws. KRS 15.243(1)-(5).²

These statutes provide the Attorney General with authority to investigate and prosecute alleged criminal violations of election laws. *See Democratic Party of Kentucky v. Graham*, 976 S.W.2d 423, 428-29 (Ky. 1998) (stating KRS 15.242 vests the Attorney General, and county and Commonwealth’s attorneys with authority to investigate and prosecute alleged criminal

² The processes that KRS 15.242 mandates the Attorney perform are: (a) devising and administering programs to observe the conduct of elections; (b) holding public hearings; (c) establishing a toll-free hotline for reporting election law violations; (d) initiating investigations or investigating alleged election law violations; (e) issuing subpoenas for the production of items and to compel the attendance of witnesses; (f) presenting evidence of alleged violations to a grand jury; and (g) filing appropriate complaints in any court of competent jurisdiction. KRS 15.243(2). The Attorney General must randomly select no fewer than five (5) counties within twenty (20) days after each primary or general election for an independent inquiry for any potential irregularities that may have occurred in each election, and report his findings to the grand jury and circuit judge of each county selected. KRS 15.243(3). The statute also requires the Registry of Election Finance to forward any matter giving rise to a probable-cause belief of a violation of election laws to the Attorney General for prosecution, and requires that certain public officials and agencies assist the Attorney General in the performance of his duties. KRS 15.243(4)-(5).

violations of election laws); *St. Clair v. Commonwealth*, 140 S.W.3d 510, 531 (Ky. 2004) (recognizing the authority of the Attorney General to prosecute criminal actions under certain circumstances, including enforcement of election laws under KRS 15.242-15.243).

As the Sixth Circuit wrote in *Russell v. Lundergan-Grimes*:

“General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law.” *1st Westco Corp. v. Sch. Dist. of Phila.*, 6 F.3d 108, 113 (3rd Cir. 1993). “Consistent with the *Young* requirement of action on the part of the state official, we note that the phrase ‘some connection with the enforcement of the act’ does not diminish the requirement that the official threaten and be about to commence proceedings.” *Children’s Healthcare is a Legal Duty v. Deters*, 92 F.3d 1412, 1416 (6th Cir. 1996). ... Enjoining a statewide official under *Young* based on his obligation to enforce a law is appropriate where there is a realistic possibility that the official will take legal or administrative actions against the plaintiff’s interests. *Cf. id.*; *1st Westco*, 6 F.3d at 114.

784 F.3d at 1048. The Court cited to KRS 15.242 and KRS 15.243 to show that the Attorney General had ample authority to prosecute the appellee criminally for violating KRS 117.235(3). *Id.* at 1047. That statutory provision prohibited electioneering within three-hundred (300) feet of a polling location, and carried a potential Class A Misdemeanor for violations of it. *Id.* at 1044; KRS 117.995(6).

Unlike in this case, the record in *Russell*, indicated that the Attorney General’s office “... repeatedly fielded and investigated complaints of impermissible electioneering, and promised the public that it would pursue possible criminal sanctions.” 784 F.3d at 1047. No such threat of enforcement by the Attorney General exists in this case, of KRS 117.015 or any other statute. Contrary to the Plaintiffs’ assertion, nothing in the record suggests that the Attorney General has enforced, continues to enforce, or threatens to enforce either KRS 118.015 or KRS 118.305. (*See* Pls.’ Memo. in Opp. to Def. Hon. Jack Conway’s Motion to Dismiss, Doc. 8, PageID #100.)

The general authority of Attorney General Beshear to enforce the election laws of Kentucky is not sufficient to make him a proper party in this action. While Attorney General Beshear has general authority under KRS 15.242 and KRS 15.243 to enforce election laws as it relates to alleged violations of those laws, KRS Chapter 118 prescribes him no specific authority to enforce KRS 118.015 or KRS 118.305 when no violation is alleged. The Secretary of State and the Board are afforded specific authority to administer elections in the Commonwealth under KRS Chapters 117 and 118, and are the parties that could grant the relief the Plaintiffs seek. As the Plaintiffs' Complaint fails to state a claim upon which Attorney General Beshear can grant relief, this Court should dismiss him from this action.

II. CASES THE PLAINTIFFS CITE HAVE NO BEARING ON ATTORNEY GENERAL BESHEAR'S DISMISSAL FROM THIS ACTION.

None of the cases that the Plaintiffs cite in their response in opposition establish that Attorney General Beshear is a proper party in this action. The cases the Plaintiffs cite are inapposite and distinguishable. Indeed, a review of the cases the Plaintiffs cite demonstrate that Attorney General Andy Beshear is not a proper party because of his general authority to enforce Kentucky election laws related to alleged violations of those laws, and the Plaintiffs do not allege any violation of those laws.

A. Attorney General Beshear's General Authority to Enforce Election Laws When Violations are Alleged Does Not Make Him a Proper Party Here.

In their memorandum in opposition, the Plaintiffs first cite to *Democratic Party of Kentucky*, 976 S.W.2d 423, to posit that the Attorney General actively enforces KRS 15.242 and KRS 15.243. (Pls.' Memo. in Opp. to Def. Hon. Jack Conway's Motion to Dismiss, Doc. 8, PageID #101.) That case does illustrate that the Attorney General has authority to actively enforce Kentucky election laws, when such enforcement is related to alleged violations of those

laws. There, the Attorney General assumed control of the Kentucky State Police's investigation into allegations of election law violations. 976 S.W.2d 423. In examining the issue of whether KRS 121.450 restricted the authority of the grand jury to return an indictment for a violation of a campaign finance law, the Court pointed to the enactment of KRS 15.242 regarding the duty of the Attorney General to investigate violations of statutes. 976 S.W.2d at 429. The Court recognized that the statute clearly vests the Attorney General, county attorneys and Commonwealth's attorneys with authority to investigate and prosecute violations of all election laws, including campaign finance laws. *Id.* The Court's reasoning is synonymous with Attorney General Beshear's argument: that KRS 15.242 grants the Attorney General authority to investigate and prosecute alleged violations of election laws, but does not apply where, as Plaintiffs admit here, no violation of election laws is alleged.

In *McNeilus Truck & Mfg., Inc. v. State ex rel. Montgomery*, the plaintiff sought to enjoin an Ohio statute governing the licensing of vehicle re-manufacturers. 226 F.3d 429, 435 (6th Cir. 2000). The Court found that the 11th Amendment to the United States Constitution does not bar an action seeking to enjoin enforcement of an allegedly unconstitutional statute through a suit against state officials charged with its enforcement. *Id.* at 437. There, the Attorney General helped enforce the non-criminal portions of the statute at issue, and the Ohio Bureau of Motor Vehicles ("OBMV") had threatened to withdraw the plaintiff's vehicle re-manufacturing license. *Id.* Although the Court ruled that the attorney general and the OBMV were proper parties, it acknowledged that the *Ex Parte Young*, 209 U.S. 123 (1908), doctrine does not apply when the defendant official has neither enforced nor threatened to enforce the statute the plaintiffs challenges as unconstitutional. *Id.* at 438. Here, Attorney General Beshear has neither enforced nor threatened to enforce KRS 118.015 or KRS 118.305.

Despite the Plaintiffs' claim in their response in opposition, *Green Party of Tenn. v. Hargett*, 767 F.3d 533 (6th Cir. 2014), is not an "almost identical case" to this one. (See Pls.' Memo. in Opp. to Def. Hon. Jack Conway's Motion to Dismiss, Doc. 8, PageID #103.) In *Green Party of Tenn.*, the plaintiff did not name the Tennessee Attorney General as a defendant. 767 F.3d 533. Instead, the plaintiff sued the Tennessee Secretary of State and the Coordinator of Elections for the State of Tennessee. *Id.* The defendants argued that the plaintiffs lacked standing to challenge the state's ballot-access and ballot-ordering statutes. *Id.* at 542.

In *Russell*, the Court noted that the Attorney General had authority to prosecute the plaintiff criminally for violations of KRS 118.235(3). 784 F.3d at 1037. The Court pointed to his concurrent jurisdiction to investigate and prosecute violations of election laws, which were alleged there, as local law enforcement had previously removed political signs from his property. *Id.* at 1043-1047. The Court also noted that the record showed the Attorney General's office had repeatedly received and investigated complaints of impermissible electioneering, and had promised the public that it would seek possible criminal sanctions. *Id.* at 1047. The Plaintiffs raise no such alleged violation of Kentucky election laws in this action. In contrast to the statute in *Russell*, the statutes the Plaintiff challenge do not provide for possible criminal sanctions against individuals seeking access to the ballot. As such, Attorney General Beshear has no authority to prosecute the Plaintiffs criminally for violation of KRS 118.015 or KRS 118.305.

Moreover, the record does not show that Attorney General's office has fielded or investigated complaints related to the statutes, or that it has promised the public that it would seek any sanctions, criminal or civil. The Plaintiffs have not demonstrated the existence of a realistic possibility that Attorney General Beshear will take legal or administrative actions

against their interests. The general authority of Attorney General Beshear to enforce Kentucky election laws related to violations of those laws is not sufficient to make him a proper party.

B. Other Cases the Plaintiffs Cite Regarding Standing Have No Bearing on Whether or Not Attorney General Beshear is a Proper Party.

The Plaintiff also cite to several distinguishable cases where standing was at issue. Attorney General Beshear does not waive and reserves the right to raise the issue of standing in this action. However, his pending motion to dismiss is based on the Plaintiffs' failure to state claim for relief, because Attorney General Beshear is not a proper party.

In *Williams v. Rhodes*, 393 U.S. 23 (1968), the defendants did not contend that the general authority to enforce election laws their violation was alleged was insufficient to make them proper parties. Likewise, in *Storer v. Brown*, 415 U.S. 724 (1974), which did not involve the California Attorney General, the Court did not address whether the defendant was a proper party, or whether the plaintiffs had stated a claim for relief. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102-110 (1998), involved an environmental group and a steel manufacturer, and discussed the elements of standing, which the plaintiff did not meet. Standing was also at issue in *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967) (*abrogated on other grounds by Califano v. Sanders*, 975 S.Ct. 1507 (1977)), where drug companies and their association sued the Secretary of Health, Education, and Welfare and the Commissioner of Food and Drugs to challenge a regulation promulgated under the Food, Drug and Cosmetic Act.³

In *Pierce v. Society of Sisters of the Holy Names of Jesus and Mary*, 268 U.S. 510 (1925), the Court examined standing and the injury required for standing. The plaintiffs, private schools,

³ The Court pointed out that a possible financial loss alone is not a sufficient interest to sustain a judicial challenge to governmental action, but found the plaintiffs had standing to challenge the regulation that was directed at them in particular, and required them to make significant changes that, if they failed to observe, exposed them to the imposition of strong sanctions. *Abbott Laboratories*, 387 U.S. at 153-54. The Plaintiffs raise no such facts here.

sought to enjoin the Governor of Oregon and other officials from threatening or attempting to enforce a statute that required all children ages 8 to 16 to attend public schools. 268 U.S. at 571-72. Unlike Attorney General Beshear, the public officials had proclaimed their purpose strictly to enforce the statute. *Id.* at 572. Further, the injunctions the plaintiffs sought were not against the exercise of proper power, but to protect them from arbitrary, unreasonable and unlawful interference with their patrons and the destruction of their business and property. *Id.* at 574.

The Court found the plaintiff in *Brandt v. Village of Winnetka, Ill.*, 612 F.3d 647, 650-51 (7th Cir. 2010), had standing to challenge a village ordinance, but ruled that the pre-enforcement suit was pre-mature. In *520 Michigan Ave. Assocs., Ltd. v. Devine*, 433 F.3d 961, 962 (7th Cir. 2006), the Court found the plaintiffs had standing and noted that courts engage in pre-enforcement review of statutes based on the potential cost that compliance, or bearing a penalty, creates. In examining standing in *Cooksey v. Futrell*, which did not involve the North Carolina Attorney General, the record included evidence of specific and unsolicited correspondence from a state board explaining that the plaintiff's speech violated a statute. 721 F.3d 226, 237 (4th Cir. 2013). The plaintiff stopped engaging in his speech because of the correspondence and the state board's explicit warning that it would continue to monitor his speech in the future. *Id.* Attorney General Beshear has neither enforced nor threatened to enforce the statutes at issue in this case, which the Plaintiffs do not alleged have been violated.

Also distinguishable from this action is *Briggs v. Ohio Elections Comm'n*, 61 F.3d 487, 490 (6th Cir. 2013), which did not include the Ohio Attorney General as a defendant and dealt with standing under Article III to the United States Constitution. The plaintiffs named only the California Secretary of State in *Libertarian Party of L.A. Cty. v. Bowen*, 709 F.3d 867, 872 (9th Cir. 2013), where the Court ruled plaintiffs met the "case or controversy" requirement for

standing in light of their concrete plan and the defendant's specific threat of enforcement. Again, the Plaintiffs set forth no evidence that Attorney General Beshear has threatened to enforce the statutes the Plaintiffs challenge, in any fashion whatsoever.

In another case the Plaintiffs cite to argue they have standing, *Constitution Party of Pennsylvania v. Aichele*, the Court dismissed the case for lack of standing under Fed. R. Civ. P. 12(b)(1). 757 F.3d 347, 350 (3rd Cir. 2014). The Court dismissed the Pennsylvania Attorney General, agreeing with the Commonwealth's argument that the Attorney General, who was named as the chief legal and law enforcement officer of Pennsylvania, did not have a discrete role in administering the Pennsylvania Election Code. *Id.*, n. 3. The state officials who remained – the Secretary of Pennsylvania and the Commissioner of the Pennsylvania Bureau of Commissions, Elections, and Legislation – were responsible for administering the election code and overseeing the code provisions at issue. *Id.* at 350, 367. Like the Attorney General in *Constitution Party of Pennsylvania*, Attorney General Beshear is not responsible for administering Kentucky election laws and should be dismissed from this action.

The plaintiffs in *Erum v. Cayetano*, 881 F.2d 689, 691 (9th Cir. 1989) (*overruling on other grounds recognized by Lightfoot v. Eu*, 964 F.2d 865, 868 (9th Cir. 1992)), sued the Hawaii Lieutenant Governor, the state's chief election officer, to challenge a statute that provided access requirements for non-partisan primary candidates. After finding the plaintiff had standing to sue, the Court affirmed the District Court's decision upholding the statute. 881 F.2d at 691, 695. Among other things, the chief election officer of Hawaii: supervises all state elections; is responsible for the maximization of registration of eligible electors in the state; maintains data concerning registered voters, elections, apportionment, and districting, and uses the data to help the reapportionment commission; is responsible for public education regarding voter registration

and information; and must adopt rules governing elections. Hawaii Revised Statute § 11-2. The chief election officer is responsible for the administration of elections in Hawaii.⁴ In stark contrast to the chief election officer of Hawaii, Attorney General Beshear is not responsible for administering the election laws of Kentucky and is not a proper party to this action.

In *Belitskus v. Pizzingrilli*, 343 F.3d 632, 635-36 (3rd Cir. 2003), where standing was at issue, the plaintiffs sued the Pennsylvania Secretary of State and the Commissioner overseeing Pennsylvania Bureau of Commissions, Elections and Legislation over a state law requiring candidates to pay a filing fee to be placed on the general election ballot. The plaintiffs in *Krislov v. Rednour*, 226 F.3d 851 (7th Cir. 2000), also did not sue the Illinois Attorney General, but did sue the Chair, Vice Chair and Executive Director of the State Board of Elections. There, the Court found the plaintiffs had standing to bring their suit. 226 F.3d at 857-58.

Neither *Krislov* nor *Belitskus* involved the Attorney General of a state or the issue of whether his general authority to enforce election laws made him a proper party. In another case distinguishable from the instant one, the Court in *McLain v. Meier*, after finding the plaintiffs had standing, ruled that North Dakota's ballot access laws were reasonable, but found that claims alleging violations of North Dakota election laws to go forward in state court. 851 F.2d 1045, 1051 (8th Cir. 1988). Here, the Plaintiffs do not allege any violation of Kentucky election laws.

C. Attorney General Beshear's Enforcement Authority for Alleged Violations of Kentucky Election Laws Differs from Authority Described in Other Cases.

In *Mobil Oil Corp. v. Attorney General*, 940 F.2d 74, 75-77 (4th Cir. 1991), a provision of the Virginia Petroleum Products Franchise Act, which included stiff civil remedies for

⁴ See 1995 Hawaii Laws 1st Sp. Sess. Act 27 (S.B. S7-95), which amended Hawaii Revised Statute § 11-1.6 to remove the lieutenant governor as the chief election officer of the state because of an appearance of possible conflicts of interest.

violations, gave the Attorney General authority to investigate an action for Virginia and enjoin any violation of the Act and three other statutes. The Court reversed the District Court's decision granting the Attorney General's motion under Fed. R. Civ. P. 12(b)(1) and found the action presented a "case or controversy." 940 F.2d at 75-77. In *Cornwell v. Joseph*, where the Court denied the California Attorney General's motion to dismiss an action challenging the state's cosmetology licensing requirement for hairbraiders, the Attorney General had statutory authority to seek an injunction whenever it appeared to the Director of the Department of Consumers Affairs that a violation of any state or federal law may harm consumers. 7 F.Supp. 1106, 1107-1109 (S.D. Calif. 1998).

In the instant action, Attorney General Beshear has general authority to enforce Kentucky election laws where a violation of elections is alleged. Although KRS 15.2432(g) provides the Attorney General authority to file appropriate complaints in court, such complaints would involve alleged violations of election laws. The statutes at issue in *Mobil Oil Corp.* and *Cornwall* granted injunctive authority for alleged violations of laws. Likewise, the Plaintiffs do not allege any violation of Kentucky election laws in this case.

The Court in *Federal Nat. Mortg. Ass'n v. Lefkowitz*, 383 F.Supp. 1294, 1296-1297 (S.D.N.Y. 1974), ruled that the New York Attorney General was a proper party under a state general executive law. That law gave the attorney general authority to seek injunctive relief against a person engaging in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in carrying on, conducting or transaction of business. 1294 F.Supp. at 1296. The plaintiff had announced its intention to defy the statute at issue and ignore its mandate. *Id.* at 1297. Again, the Plaintiffs do not allege any violation of Kentucky election laws, or any other state law.

In *Southern Wine & Spirits of Am., Inc. v. Heineman*, 534 F.Supp.2d 1001, 1012 (D. Neb. 2008), the Court relied on *Citizens for Equal Protection v. Bruning*, 455 F.3d 859, 864 (8th Cir. 2006), to find that the Attorney General had some connection with enforcement of the statute at issue. In *Bruning*, the Court pointed to a Nebraska statute requiring the governor to order the attorney general authority to bring an action to compel implementation of an act that the governor had determined the agency charged with implementing the act had failed to do so. 455 F.3d 859, 864; Neb. Rev. St. § 84-731. Here, the Plaintiffs point to no such statutory mandate.

The Court in *Baskin v. Bogan*, 12 F.Supp.3d 1144, 1152 (S.D. Ind. 2014), found that the Indiana Attorney General was a proper party because of his authority to assist in the prosecution of any offense if he decides it was in the public interest made him a proper party. The Court pointed to Indiana criminal laws preventing individuals from marrying in violation of the statute at issue that banned same-sex marriages. 12 F.Supp.3d at 1152. The Plaintiffs cite no such statutory provision in Kentucky with regard to KRS 118.015 or KRS 118.305 that would provide the special relation required under *Ex Parte Young*, 209 U.S. 123. See *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 331 (4th Cir. 2001). In addition, the Plaintiffs do not allege the violation of Kentucky election laws, and do not allege any criminal offense. Thus, Attorney General Beshear is not a proper party.

CONCLUSION

This Court should dismiss Attorney General Beshear from this action pursuant to Fed. R. Civ. P. 12(b)(6), because the Attorney General's general authority to enforce Kentucky election laws related to alleged violation of those laws is insufficient to make him a proper party. For the same reason, *Ex Parte Young*, 209 U.S. 123 (1908), does not apply to the Plaintiffs' action to remove Attorney General Beshear from the protection of Eleventh Amendment immunity.

Attorney General Beshear is not responsible for administering elections in Kentucky, and the statutes the Plaintiffs challenge do not give him specific enforcement authority. The Plaintiffs do not demonstrate the existence of a realistic possibility that Attorney General Beshear will take legal or administrative actions against the Plaintiffs if they are barred from being placed on the ballot in an election. Therefore, this Court should dismiss Attorney General Beshear for failure to state a claim upon which he can grant relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND NOTICE OF ELECTRONIC FILING

I hereby certify that a true copy of the foregoing Reply Memorandum in Support of the Motion to Dismiss was filed on this the 13th day of January, 2016 via the CM/ECF system.

/s/ S. Travis Mayo
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