

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION
CIVIL ACTION NO. 3:15-CV-86-GFVT

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

ANSWER

* * * * *

Defendants Alison Lundergan Grimes (in her official capacities as Kentucky Secretary of State and Chair of the State Board of Elections), Maryellen Allen (in her official capacity as Executive Director of the State Board of Elections), and Joshua G. Branscum, John Hampton, Stephen Huffman, Donald Blevins, Albert B. Chandler, III, and George Russell (each in his official capacity as Members of the State Board of Elections) (together “Defendants”), state as follows for their Answer to the Verified Complaint for Declaratory and Injunctive Relief for Constitutional Violations (the “Complaint”) filed by plaintiffs The Libertarian Party of Kentucky (the “LPKY”), Libertarian National Committee, Inc. (the “LNC”), Ken Moellman, Jr., and the Constitution Party of Kentucky (the “CPKY,” and together, “Plaintiffs”):

ANSWER

1. The allegations set forth in paragraph 1 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants deny the allegations set forth in paragraph 1.

2. With regard to the allegations set forth in paragraph 2 of the Complaint, Defendants deny that they have deprived the LPKY of its constitutional rights. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 2, and accordingly, deny those allegations.

3. With regard to the allegations set forth in paragraph 3 of the Complaint, Defendants deny that they have deprived Mr. Moellman of his constitutional rights. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 3, and accordingly, deny those allegations.

4. With regard to the allegations set forth in paragraph 4 of the Complaint, Defendants deny that they have deprived the LNC of its constitutional rights. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 4, and accordingly, deny those allegations.

5. With regard to the allegations set forth in paragraph 5 of the Complaint, Defendants deny that they have deprived the CPKY of its constitutional rights. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 5, and accordingly, deny those allegations.

6. With regard to the allegations set forth in paragraph 6 of the Complaint, Defendants admit that Alison Lundergan Grimes serves as Secretary of State, Chairwoman of the State Board of Elections and Chief Elections Officer for the Commonwealth of Kentucky, and is sued in her official capacity only. The remaining allegations set forth in paragraph 6 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants deny the remaining allegations set forth in paragraph 6.

7. With regard to the allegations set forth in paragraph 7 of the Complaint, Defendants admit that Messrs. Branscum, Hampton, Huffman, Chandler, Russell and Blevins are Members of the State Board of Elections, and are sued in their official capacities only. The remaining allegations set forth in paragraph 7 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants deny the remaining allegations set forth in paragraph 7.

8. With regard to the allegations set forth in paragraph 8 of the Complaint, Defendants admit that Maryellen Allen is the Executive Director and the Chief Administrative Officer of the State Board of Elections, and is sued in her official capacity only. The remaining allegations set forth in paragraph 8 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants deny the remaining allegations set forth in paragraph 8.

9. With regard to the allegations set forth in paragraph 9 of the Complaint, Defendants deny that Jack Conway is the Attorney General for the Commonwealth of Kentucky. The remaining allegations set forth in paragraph 9 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants deny the remaining allegations set forth in paragraph 9.

10. The allegations set forth in paragraphs 10 through 13 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants deny the allegations set forth in paragraphs 10 through 13.

11. With regard to the allegations set forth in paragraph 14 of the Complaint, Defendants admit that on or about November 17, 2015, counsel for Plaintiffs sent a letter to Executive Director Allen and counsel for Secretary Grimes demanding that the LPKY and

CPKY be permitted “to nominate candidates for state and local office in the same manner as the Republican and Democratic Parties of Kentucky,” and that the LNC and Constitution Party National Committee be permitted to place their candidates “on the Presidential ballot.”

Defendants further admit that they did not respond to the letter by November 24, 2015.

Defendants deny that Plaintiffs or their counsel ever sought to place any identified candidates on the ballot or that Defendants declined to place any identified candidates on the ballot.

Defendants deny the remaining allegations set forth in paragraph 14.

12. The allegations set forth in paragraphs 15 through 18 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants state that the referenced statutes are the best evidence of their contents and deny the remaining allegations set forth in paragraphs 15 through 18.

13. With regard to the allegations in paragraph 19 of the Complaint, Defendants deny having made any determination regarding third party candidates apart from what is provided by Kentucky law. The remaining allegations set forth in paragraph 19 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants deny the allegations set forth in paragraph 19.

14. The allegations set forth in paragraph 20 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants deny the allegations set forth in paragraph 20.

15. With regard to the allegations set forth in paragraph 21 of the Complaint, no allegations have been asserted against Defendants and therefore, no response is required. Nonetheless, Defendants state that the official results of elections in Kentucky are a matter of public record and deny Plaintiffs’ allegations to the extent that they are inconsistent with the

official election results as certified by the Secretary of State. The remainder of the allegations set forth in paragraph 21 of the Complaint are legal conclusions to which no response is required.

16. With regard to the allegations set forth in paragraph 22 of the Complaint, no allegations have been asserted against Defendants and therefore, no response is required. Nonetheless, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 22, and accordingly, deny those allegations.

17. With regard to the allegations set forth in paragraphs 23 through 25 of the Complaint, no allegations have been asserted against Defendants and therefore, no response is required. Nonetheless, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraphs 23 through 25, and accordingly, deny those allegations.

18. With regard to the allegations set forth in paragraph 26 of the Complaint, no allegations have been asserted against Defendants and therefore, no response is required. Nonetheless, Defendants state that the official results of elections in Kentucky are a matter of public record and deny Plaintiffs' allegations to the extent that they are inconsistent with the official election results as certified by the Secretary of State. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 26, some of which appear to be legal conclusions to which no response is required, and accordingly, deny those allegations.

19. With regard to the allegations set forth in paragraph 27 of the Complaint, no allegations have been asserted against Defendants and therefore, no response is required. Nonetheless, Defendants are without sufficient knowledge or information to form a belief as to

the truth of the allegations set forth in paragraph 27, some of which appear to be legal conclusions to which no response is required, and accordingly, deny those allegations.

20. With regard to the allegations set forth in paragraph 28 of the Complaint, no allegations have been asserted against Defendants and therefore, no response is required. Nonetheless, Defendants state that the official results of elections in Kentucky are a matter of public record and deny Plaintiffs' allegations to the extent that they are inconsistent with the official election results as certified by the Secretary of State. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 28, which appear to be legal conclusions to which no response is required, and accordingly, deny those allegations.

21. The allegations set forth in paragraphs 29 through 31 of the Complaint are legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations set forth in paragraphs 29 through 31.

22. With regard to the allegations set forth in paragraph 32 of the Complaint, Defendants incorporate by reference their responses to paragraphs 1 through 31 of the Complaint.

23. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 33 of the Complaint, and accordingly, deny those allegations.

24. The allegations set forth in paragraph 34 of the Complaint are legal conclusions to which no response is required.

25. The allegations set forth in paragraph 35 of the Complaint are legal conclusions to which no response is required. Nonetheless, Defendants deny the allegations set forth in paragraph 35 of the Complaint.

26. The allegations set forth in paragraph 36 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants state that the United States Constitution is the best evidence of its contents and deny the remaining allegations set forth in paragraph 36.

27. The allegations set forth in paragraph 37 of the Complaint are legal conclusions to which no response is required. Nonetheless, Defendants deny the allegations set forth in paragraph 37 of the Complaint.

28. The allegations set forth in paragraphs 38 through 41 of the Complaint are legal conclusions to which no response is required. To the extent that any response is required, Defendants deny the allegations set forth in paragraphs 38 through 41.

29. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in paragraph 42 of the Complaint, and accordingly, deny those allegations.

30. Defendants deny the unnumbered paragraphs beginning “WHEREFORE” constituting Plaintiffs’ “Prayer for Relief.” Defendants further deny that Plaintiffs are entitled to a judgment, declaration, injunction, costs or attorney fees, or any other form of relief.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint fails to state a cause of action against Defendants for which relief may be granted.
2. Plaintiffs lack standing to assert any of the claims set forth in the Complaint, and therefore, the Complaint should be dismissed for lack of subject matter jurisdiction.
3. Plaintiffs' claims may be barred, in whole or in part, by the Eleventh Amendment and the doctrine of sovereign immunity.
4. Plaintiffs' claims present no justiciable case or controversy and are not ripe.
5. Plaintiffs' claims are barred by res judicata and collateral estoppel and should be dismissed.
6. Kentucky's ballot access framework does not violate the First Amendment or the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and has been upheld as constitutional by both this Court and the United States Court of Appeals for the Sixth Circuit.
7. Plaintiffs have failed to demonstrate a significant modicum of support for their political groups or candidates.
8. The relief sought by Plaintiffs would impair the Commonwealth's strong interest in maintaining the stability of its political system and ensuring that political groups and candidates have demonstrated a significant modicum of support before placing them on the general election ballot.

9. The relief sought by Plaintiffs would cause voter confusion and ballot overcrowding, encourage frivolous candidacies and frustrate the democratic process at the general election.

10. Plaintiffs have not been deprived of any federal or state constitutional right, or of any statutory right, arising from the actions or inactions of Defendants.

11. At all times identified in the Complaint, Defendants acted in accordance with their statutory duties.

12. Plaintiffs' injuries or damages, if any, were caused and brought about by intervening or superseding causes for which Defendants are not responsible.

13. Plaintiffs' injuries or damages, if any, were caused by their own acts or omissions or the acts or omissions of others.

14. Plaintiffs fail to state a claim supporting an award of costs, attorney fees and other unspecified relief, and therefore, those claims are barred as a matter of law.

15. Defendants assert all available protection and defenses under FED. R. CIV. P. 8(c) or other law that may be applicable to Plaintiffs' claims.

16. Defendants reserve their rights to amend this Answer and assert additional defenses, affirmative defenses or affirmative claims for relief.

DEMAND FOR RELIEF

Accordingly, Defendants demand as follows:

1. That the Complaint be dismissed with prejudice;
2. That a Judgment for Defendants be entered on all claims in the Complaint;
3. That Defendants be awarded their costs incurred in this litigation, including reasonable attorneys' fees; and

4. That Defendants be awarded all other relief to which they may be entitled.

Respectfully submitted,

s/ Jonathan T. Salomon

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of State of the Commonwealth of Kentucky and
as Chair of the State Board of Elections, and
the Executive Director and Members of the
State Board of Elections in their official
capacities*

CERTIFICATE OF SERVICE

I certify that on March 7, 2016, I electronically filed this Answer with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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