19-1294

No. 20 - _____

In the

SUPREME COURT OF THE UNITED STATES

GEOFFREY M. YOUNG, pro se, *Petitioner*

vs.

AMY McGRATH and ANDY BESHEAR, *Respondents*. Patrick Hughes, Counsel for Amy McGrath. Christie Moore, Bailey Roese and Gina Young, Counsel for Andy Beshear

On Petition for Writ of Certiorari to the Kentucky Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Whether Kentucky's Judicial Department unlawfully enabled the names of Amy McGrath and Andy Beshear, who were shown by a preponderance of the evidence not to have been bona fide candidates, to appear on general election ballots in 2018 and 2019, respectively.

2) Whether Kentucky's Judicial Department has nullified the ballot challenge statute, Kentucky Revised Statute (KRS) 118.176, in violation of Section 15 of the Kentucky Constitution.

3) Whether the Kentucky Democratic Party ("KDP"), party elites, and candidates may conspire to rig their own primaries in violation of KRS 118.105 (1) and Section 6 of the Kentucky Constitution.

LIST OF PARTIES

1) GEOFFREY M. YOUNG, *pro se*, Petitioner

2) AMY McGRATH, Respondent in Petitioner's 2018 ballot challenge

3) ANDY BESHEAR, Respondent in Petitioner's 2019 ballot challenge

LIST OF PROCEEDINGS

1) Scott County Circuit Court, Division 1, Ballot Challenge No. 18-CI-00541

2) Court of Appeals Case No. 2019-CA-000590

3) Court of Appeals Case No. 2019-CA-000664-I

4) Supreme Court of Kentucky Case No. 2019-SC-000439-D (final order entered on 3/18/20)

5) Jefferson Circuit Court, Division 6, Ballot Challenge No. 19-CI-06292

6) Court of Appeals Case No. 2019-CA-001659-I (sic: there was nothing interlocutory about it)

7) Supreme Court of Kentucky, cover letter dated March 20, 2020.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

OPINIONS BELOW

On April 23, 2019, the Honorable Jeremy Mattox, Scott County Circuit Judge, Division 1, entered an order dismissing my ballot challenge against Amy McGrath, which I had filed and served on October 3, 2018. Appendix ("App.") at a2-a8

On July 11, 2019, the Kentucky Court of Appeals entered an order that dismissed my appeal of the circuit court's order. App. at a8-a23. On July 12, 2019, the Kentucky Court of Appeals entered an order that dismissed my motion to set aside the same circuit court order pursuant to KRS 118.176 (4) and my motion to recommend that the appeal be transferred to the Supreme Court of Kentucky. App. at a23-a31.

On March 18, 2020, the Supreme Court of Kentucky entered a final order denying my motion

for discretionary review of the two orders entered by the Court of Appeals. App. at a32.

On November 6, 2019, the Honorable Olu A. Stevens, Jefferson County Circuit Judge, Division 6, entered an Order dismissing my ballot challenge against Andy Beshear. App. at a33-a35.

On February 27, 2020, the Kentucky Court of Appeals entered an Order dismissing my motion to set aside the circuit court's order. App. at a35-a45.

On March 20, 2020, the Clerk of the Supreme Court of Kentucky sent me a letter, my check for the filing fee of $150.00, and one copy of my motion for discretionary review. App. at a46-a47.

JURISDICTION

The order denying discretionary review of Scott County ballot challenge No. 18-CI-00541 was entered by the Supreme Court of Kentucky on March

18, 2020. The cover letter stating that the Supreme Court of Kentucky would not consider my motion for discretionary review re Jefferson County ballot challenge No. 19-CI-06292 was dated March 20, 2020.

The jurisdiction of this Court is established by 28 US Code § 1257. The validity of Kentucky's ballot challenge statute, as interpreted by the Supreme Court of Kentucky since 2011, is in question because that court's interpretation of KRS 118.176 is repugnant to Sections 15 and 115 of Kentucky's Constitution. The Kentucky Court of Appeals has been using the decision in *Gibson v. Thompson*, 336 S.W.3d 81 (Ky. 2011) to avoid deciding any motion to set aside a circuit court's ruling [*See* KRS 118.176(4)] that it doesn't want to deal with. Every time the Court of Appeals does that, it violates and actually nullifies the governing statute.

28 U.S.C. § 2403(c) may apply; therefore this petition is being served on the Attorney General of Kentucky, the Honorable Daniel Cameron, 700 Capital Avenue, Suite 118, Frankfort, Kentucky 40601.

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

A. Starting in 2010, the Supreme Court of Kentucky and the Kentucky Court of Appeals have repeatedly nullified Kentucky's ballot challenge law, KRS 118.176. In the two ballot challenges that are the subject of this petition for certiorari, the two circuit courts knowingly and intentionally dismissed them without ever weighing the merits. They felt confident their decisions would not be overturned because the Court of Appeals has demonstrated since 2010 that it will never overturn a circuit court that

dismisses a ballot challenge, no matter how unlawful and frivolous the dismissal order might be. The Supreme Court of Kentucky refused to consider my two motions for discretionary review and refused even to file the second one, which violated the Petitioner's First Amendment right "to petition the Government for a redress of grievances."

B. KRS 118.176 requires the circuit court to try all ballot challenges "summarily and without delay." Section (2). The Kentucky Supreme Court's decision in *Stephenson v. Woodward*, 182 S.W.3d 162, 171-172 (Ky. 2006) instructs:

> However, if a court may accept these actions any time prior to the election, but loses jurisdiction once the polls open, there is nothing to prevent a recalcitrant judge from simply refusing to adjudicate a KRS 118.176 motion. The court might simply let the motion sit until after election day, at which point jurisdiction would evaporate. We

> are confident that the General Assembly did not intend such a result, but instead intended the judiciary to adjudicate the qualifications of candidates – even if, in rare circumstances, such adjudication actually occurs several days after the election has occurred.

In both cases that are the subject of this petition, the circuit court "simply let the motion sit until after election day" and then dismissed the ballot challenge without ever considering the merits.

STATEMENT OF THE CASE

1. Geoffrey M. Young v. Amy McGrath

On September 27, 2018, I filed a motion, pursuant to KRS 118.176, challenging the *bona fides* and good faith of Amy McGrath, who had won the Democrat nomination for the US House of Representatives in Kentucky's Sixth Congressional District. Six Democrats had run in the primary, and

I had been one of them.

My ballot challenge made the following allegations:

1. On August 14, 2017, Young checked the web site of the KDP and noticed a news item that had apparently been posted on 8/2/17, titled, "Dems Bid for Barr's Seat." The first paragraph read as follows:

> After Republican U.S. Rep. Andy Barr has failed to pass any legislation since taking office in 2012 and voted to take away healthcare from more than 500,000 Kentuckians, two Democrats seek to represent Kentucky's 6th Congressional District.

The "two Democrats" were Reggie Thomas and Amy McGrath. Geoff Young's (D) name was intentionally and pointedly omitted, even though I had been publicly and widely announcing my candidacy for the same seat since January, 2017. The official KDP news item was false because three

Democrats, not two, were seeking to replace Andy Barr (R) in November, 2018. The KDP news item included the web sites of Reggie Thomas' and Amy McGrath's campaigns, as well as the name of Ms. McGrath's campaign manager, Mark Nickolas. My name and campaign web site were not mentioned, and I alleged that the KDP did it intentionally to reduce my chances of winning the primary. Young's Ballot Challenge at 16-18.

I immediately and repeatedly contacted the KDP and informed them that their article constituted a form of primary election rigging, but they left the article up until the entire web site was redesigned early in 2017. Their refusal to modify that article to include my name constitutes evidence that the KDP's intent was malicious and criminal.

I alleged as follows:

Article I.D of the Bylaws of the KDP includes the following sentence: "No assets of the Democratic Party shall be used in a Democratic Primary Election unless they are made available equally to all Democrat Candidates in that specific primary election." It is undeniable that space on the KDP's web site is a valuable asset that began providing measurable and large financial and political benefits to Reggie Thomas and Amy McGrath on 8/2/17, and that said assets were never made available equally to Geoff Young.

It is obvious that the longer the conspiracy concealed the fact of Young's existence and candidacy from thousands of 6th District Democrats, the easier it was for the conspiracy's favored candidates, Thomas and McGrath, to raise funds and climb in name recognition polls, and the harder it was for Young to do the same. The monetary value of the violations that the conspiracy committed between 8/2/17 and 5/22/18, the date of the primary election, may have exceeded $300,000. The KDP later added Jim Gray to its list of favored candidates after Gray jumped into the race on December 5, 2017. Any of the three would have been acceptable to the KDP,

> but the Movant has been **absolutely unacceptable** to the conspirators since 2015. *Id.* at 17-18

2. On October 17, 2017, candidate Amy McGrath spoke to about 50 Democrats at the Lexington Public Library. A question and answer session followed her prepared remarks. At 7:01 pm, I asked her a question that referred to Article I.D of the KDP Bylaws:

> "In the past few years the Kentucky Democratic Party has started to get a reputation of corruption." (Reading from a piece of paper): 'Article One-D of the KDP Bylaws includes the sentence, "No assets of the Democratic Party shall be used in a Democratic Primary Election unless they are made available equally to all Democrat candidates in that specific primary election.'"
>
> (Young, looking up from the paper): "So on August second, the KDP put up on its web site a news article featuring yourself & Reggie Thomas, the third candidate. I had announced my campaign months before, in January

2017. It seems to me that is a prohibited use of KDP in-kind resources to support two candidates and pretend that I don't exist. I consider that election fraud. My question is, 'How is the KDP going to kick its reputation for corruption, which was mirrored on the national level by Crooked Hillary, if they keep playing little tricks like rigging primary elections?' Eventually, as far as I can tell, they intend to steal it."

Amy McGrath: "Well, my answer to that, sir, is that you'll just have to ask the KDP."

Young: "Since you know about it, have you asked them to change that news article to include my name also? Why not?"

McGrath avoided the question.

Young: "It seems to me that you and Reggie have an ethical obligation to tell the KDP that you want that fake news article changed."

7:03 pm - McGrath called on someone else. *Id.* at 24-25

My ballot challenge continued as follows:

This might be the incident that proves to this Court that Amy McGrath was aware of at least the general nature of the accusations of conspiracy and large-scale election fraud Young has been making against several influential Kentucky Democrats ever since March, 2015. Movant hereby requests that the Court subpoena Amy McGrath to appear at the hearing that may be scheduled pursuant to KRS 118.176 to testify, under oath, about whether Incident #16 happened. *Id.* at 25

I wrote:

Having been informed by Young that the KDP had allegedly been rigging and stealing primary elections since 2015, and that their web site was allegedly in violation of a critically important bylaw at that very moment, McGrath was under an affirmative obligation to check into whether any of the allegations might have been true. Instead, she took the easy way out and dodged all legal responsibility for the actions of the KDP. But that response opened her up to future impeachment by the Kentucky General Assembly because she ratified a set of violative "acts done by others with her authority." [Ky. Constitution, § 151] *Id.* at 26.

I alleged that no candidate who had conspired with others to rig her own primary can be considered a bona fide candidate in the context of KRS 118.176.

3. On Saturday, September 8, 2018, I attended the second annual Ideas Conference of the New Kentucky Project ("NKP") in Georgetown, Kentucky. I was a member of that organization, which had been founded by Democrats Adam Edelen and Matt Jones. The Respondent was to give the keynote speech. A man came over to the table I was sitting at, sat down, introduced himself as Mike Shugart, said he was a retired police officer from Louisville, and said he had come to the conference that day "to hear Amy McGrath."

I alleged that after about four minutes of McGrath's speech had passed, I reached under my chair, took a folded-up poster-like sign out of my

backpack, stood up, and took one or two steps toward the side of the room – not toward McGrath. It was folded into quarters, so neither side of the sign was legible at all. I was intending to stand there holding the sign silently for the duration of McGrath's speech. Before I could even unfold it, Mike Shugart jumped up and grabbed the sign away. I said something like, "Hey! What are you doing?" Instead of answering, Shugart grabbed my upper body from behind and started pushing me toward the door in the back of the room. I was totally shocked by Mike Shugart's physical aggression against me. I said at a volume that was slightly louder than my normal speaking volume, "You're a police officer! That is assault!" He hauled me out the door, through the lobby of the conference center, out the doors of the building, and onto the sidewalk outside. The

Respondent did nothing to stop him. *Id.* at 57-59.

I alleged that Shugart's act met the common-law definition of assault and battery; that McGrath had been told that something like that might happen; that Adam Edelen and the other leaders of the NKP had conspired with Mike Shugart to assault and batter me if I were to stand up with a sign in my hand; and that no candidate who had conspired with others to assault and batter one of her political opponents for the purpose of violating his freedom of speech can be considered a bona fide candidate in the context of KRS 118.176. *Id.* at 64-68.

4. My county party in 2018 was the Fayette County Democratic Party ("FCDP"). I alleged that on September 8, 2016, the Executive Committee of the FCDP unlawfully expelled me from their monthly meeting in Lexington and later sent me a

letter saying they would call the police every time I walked into the building. Whenever I showed up, they accused me of "trespassing." The Chair of the FCDP, Clint Morris, threatened to call the police on September 13, 2016, October 13, 2016, January 12, 2017, March 9, 2017, August 9, 2018; and threatened to and actually did call the police on May 11, 2017, January 11, 2018, February 8, 2018, April 12, 2018, May 31, 2018, June 24, 2018, July 4, 2018, and September 13, 2018. *Id.* at 4-15; 26-41; 46; 48-49; 51-56; and 67. I was not arrested on any of those occasions, but I wasn't able to attend any meetings.

I also alleged that the Kentucky Democratic Party ("the KDP") in Frankfort threatened to call the police on March 4, 2017; and threatened to and actually did call the Franklin County Sheriff's Office on March 22, 2018 and June 9, 2018. *Id.* at 11-12; 43-

46; and 49-50.

I alleged that all of these violations of my First Amendment rights by the FCDP and the KDP made it much more difficult for me to inform active Democrats about my positions on the issues and ask for their help in my campaign; that banning me from meetings I had every legal right to attend was discriminatory and therefore unlawful; that I was the only candidate running for the US House in KY-6 who was being threatened with arrest for walking into the headquarters buildings in Lexington and Frankfort; that the FCDP's and the KDP's actions constituted wholesale primary election fraud; and that no candidate who had conspired with others to rig her own primary can be considered to be a bona fide candidate in the context of KRS 118.176.

5. My ballot challenge of October 3, 2018

included descriptions of other violations of my civil rights committed by the Respondent and the alleged conspiracy. *Id.*, throughout.

Between September 27 and October 3, 2018, I attempted to mail copies of my ballot challenge to the Respondent at several different addresses: Amy McGrath, 119 Spring Bluff Dr., Georgetown, KY 40324 (by registered mail, return receipt to the Scott County Courthouse requested); Amy McGrath, P.O. Box 875, Georgetown, KY 40324; and Amy McGrath c/o Ben Self, KDP Chairperson, KDP, 190 Democrat Drive, Frankfort, KY 40601. I also uploaded my 70-page ballot challenge to Dropbox on September 27, 2018 and emailed a press release that included the URL to the media and many Democrats so anyone who was interested could read it. I also put the URL of my ballot challenge on Facebook on October 3.

There is no doubt in my mind that the Respondent and dozens of other Kentucky Democrats were aware that I had filed a ballot challenge against her.

On October 24, 2018, after receiving no documents or any other communications from the Respondent or any attorney, I filed a motion for default judgment in the Scott County Circuit Court, Division 1, and noticed it to be heard on November 1, five days before the general election. Between September 23 and November 1, 2018, the trial court and the Respondent did nothing. The registered mail and postcard had been returned to the Courthouse unclaimed on October 23, 2018. It is clear that if I hadn't filed a motion for default judgment and noticed it for November 1, 2018, the court would never have scheduled a hearing or entered a decision before election day, November 6,

2018.

At the hearing, no one appeared to represent the Respondent. After introducing myself, I said:

> This is a motion for default judgment because I have still not received anything in writing from the Defendant (sic: the Respondent) or – I don't even know if she has counsel.
>
> The Court: Okay. Um, and, if you file a lawsuit and the defendant does not respond to it, you're certainly, within the 20 days, you're certainly entitled to a default judgment. However, um, Ms. McGrath is not properly before the Court because she's not been served. And she, it looks like the certified mail has been returned unclaimed?
>
> Mr. Young: Yes.
>
> The Court: There's a way to effect constructive service, um, and that hasn't been done yet. I can't tell you how to effect constructive service across the bench, but you have to have her served either directly or constructively, um, in order to move for a default judgment. And then the statutory period of 20 days has to elapse before

you move that. So right now she's not properly before the Court. The lawsuit is in the, is before this Court.

Mr. Young: Yes.

The Court: But the Defendant is not served and before the Court, and so therefore I'm going to have to overrule your motion...

Mr. Young: It was unclaimed.

The Court: It was unclaimed, so therefore she's not properly before the Court. Now there are ways to constructively...

Mr. Young: ... I'd just like to note for the record that, it's, that would be the easiest way for a defendant to evade justice, especially in a case that requires, uh, prompt action, such as a ballot challenge pursuant to, uh, KRS 118.176. That's the easiest and cheapest way to avoid justice, I would suggest.

The Court: And here's the Court's response to that: Um, she's pretty easy to find. Um, in fact it's almost impossible to avoid hearing or seeing her. Um, so, you know, I think the

> options to have her personally served by a constable or a deputy sheriff in this county is on the table, um.

Later on November 1, 2018, I returned to the Scott County Courthouse with yet another copy of my ballot challenge, cover letter, and summons form, and paid a constable to serve Ms. McGrath. He did so on November 5, 2018, the day before the election.

The Circuit Court Violated KRS 118.176.

The circuit court's actions from September 27 to November 6, 2018 demonstrated contempt for the clearly-written provisions of KRS 118.176. As I pointed out in my motion to set aside the circuit court's order, "The trial court should have granted my motion for default judgment." I also wrote that the court should have scheduled one evidentiary hearing during the week of October 8 to October 12, 2018 because "the governing statute, KRS 118.176,

could hardly be more clear about the need for extreme speed, even haste, in deciding ballot challenges on their merits." Young's motion to set aside at 4-5.

Two full weeks after the election, Respondent submitted a motion to dismiss my ballot challenge – not a responsive pleading. It was clearly untimely and should have been overruled summarily. "Pleadings filed or tendered after the filing of a motion for default judgment are late, and this delinquent status will not be changed by the fact that the motion to dismiss is pending..." *Carnahan v. Yocom*, 526 S.W.2d 301, 304 (Ky. Ct. App. 1975).

I responded on November 28, 2018 by filing a motion to strike or summarily deny Respondent's motion to dismiss, and I noticed it to be heard on December 6, 2018. At that hearing, attorney Patrick

Hughes made his only appearance on behalf of the Respondent. I asked the court to set Respondent's vote total to zero "because every vote she received was illegitimate because she committed election fraud. She and a conspiracy of other powerful Democrats in Kentucky committed election fraud in May of 2018." The court said only, "I'm not a federal judge," and "I'll take this under submission and get you out a ruling." Judge Mattox concluded by saying, "The election is over, the results have been certified, and there's really nothing left for me to do." Videotape of Motion Hour #2, December 6, 2018.

The circuit court continued to do nothing. On January 29, 2019, I therefore renewed my motion for default judgment against the Respondent on the grounds that she had never submitted any evidence that would contradict my assertion that she had

conspired with others to rig the Democrat primary against me and was therefore not a bona fide candidate during 2018. I also described another violation allegedly committed by Clint Morris, Chair of the FCDP, on January 10, 2019. I noticed the motion to be heard on February 7, 2019 and renewed my request that the court set McGrath's vote total to zero. I also renewed my request for extensive declaratory relief. Ballot Challenge at 67-69; September 27, 2018.

At Motion Hour #3 on February 7, 2019, the Respondent was not represented by counsel. I asked whether the Court was going to set McGrath's vote total to zero, and the Court said, "I am probably going to rule for Ms. McGrath in this matter" and that I would receive a copy of the order. The court continued to "let the motion sit."

On April 23, 2019, I filed a motion asking the court to find the Respondent and her attorney in contempt of court for failing to appear at the motion hours on February 7 or April 4, 2019. I also renewed my motion to set her vote total to zero because her motion to dismiss was untimely and she had never made any defense on the merits. I noticed the motion to be heard on May 2, 2019, but on April 29 the court entered its final order, included in the Appendix at a2 to a8.

The trial court violated the governing statute from October 3, 2018 to April 29, 2019, a total of seven months. It never weighed the evidence presented by the Movant against the complete absence of evidence presented by the Respondent. Instead of scheduling a single hearing at which evidence would be heard during the week of October

8 to 12, 2018 or the week after that, the Court did nothing but wait for Amy McGrath, by counsel, to file a motion to dismiss. Instead of granting my motion for default judgment, the court denied it for the frivolous reason that although the ballot challenge was before the court, the Respondent was "not properly before the court." That conclusion of law was false. *Carnahan v. Yocom*, 526 S.W.2d 301, 304 (Ky. Ct. App. 1975).

When the motion to dismiss finally appeared, the court refused to find that it contained no counter-evidence at all but was merely an argument to the effect that the entire controversy had become moot. Instead of deciding the ballot challenge "summarily and without delay," as required by KRS 118.176 (2), the court wasted seven months for no legitimate reason. Instead of finding that the ballot challenge

had never become moot, *see Stephenson v. Woodward*, 182 S.W.3d 162, 168-173 (Ky. 2006), the circuit court considered Respondent's argument about mootness to be dispositive. Motion Hour #4; April 4, 2019, 9:24 am. See App. at a2-a8.

I timely filed a motion to set aside in the Kentucky Court of Appeals on April 29, 2019, on the grounds that the circuit court had violated KRS 118.176 in several specific ways. Instead of hearing and deciding the motion "in the manner provided for dissolving or granting injunctions," i.e., "summarily and without delay," the Court of Appeals refused to enter its final order until July 12, 2019. App. at a23-a31. That order avoided discussing the question of whether the circuit court had committed any reversible errors and violated KRS 118.176, as I had clearly alleged. Instead, it cited *Gibson v. Thompson*,

336 S.W.3d 81, 82 (Ky. 2011) and declared that I never had the legal right to file a motion to set aside the circuit court's dismissal order. App. at 23-31. The Court of Appeals nullified KRS 118.176, which violates Section 15 of the Kentucky Constitution.

On August 6, 2019, I timely filed a motion for discretionary review in the Supreme Court of Kentucky, in which I alleged that the Court of Appeals had violated and nullified KRS 118.176 by refusing ever to weigh my evidence against the Respondent's absence of evidence. I alleged that because the circuit court had never weighed the evidence presented – had never decided the ballot challenge on the merits – the Court of Appeals or a judge thereof had had a ministerial duty to do so, but it refused. And I argued that the Court of Appeals knowingly violated and nullified KRS 118.176 (4).

The Supreme Court did nothing until March 18, 2020 – a delay of seven and a half more months – at which time it entered an order denying my motion for discretionary review. It gave no reason. App. at 32. By March 18, 2020, Andy Barr (R) was running for reelection and Amy McGrath was running for the Democratic Party nomination for the U.S. Senate.

The circuit court violated KRS 118.176, which mandates that all ballot challenges be "tried summarily and without delay," for almost seven months; the Court of Appeals for two and a half more months; and the Supreme Court of Kentucky for seven and a half more months. Kentucky's Judicial Department openly nullified a valid state statute, KRS 118.176.

2. Geoffrey M. Young v. Andy Beshear

On October 8, 2019, I filed a motion, pursuant

to KRS 118.176, challenging the *bona fides* and good faith of Andy Beshear, who had won the Democratic nomination for governor of Kentucky. Four Democrats had run in the primary, and I had been one of them.

My ballot challenge made the following allegations:

1. In addition to violating every Kentucky statute that prohibits election fraud in primary and general elections, the KDP routinely violates its own bylaws. Section I.D. of the KDP Bylaws, as updated on June 1, 2019, reads as follows:

> **I.D. No Discrimination in Party Meetings:** All public meetings at all levels of the KDP are open to all members of the KDP regardless of age (if of voting age), gender, religion, economic status, sexual orientation, ethnic identity or physical disability.
>
> No Democrat Committee governed by

> these By-Laws, or any Democratic Party Officer acting in his or her official capacity, shall endorse or support one Democratic candidate over another Democratic candidate in a Democratic Primary Election. No assets of the Democratic Party shall be used in a Democratic Primary Election unless they are made available equally to all Democrat Candidates in that specific primary election...

I alleged that Governor Steve Beshear, Andy Beshear's father, helped rig the 2014 Democratic primary for the U.S. House of Representatives in Kentucky's Sixth District against me by endorsing my only primary opponent, Elisabeth Jensen, thirteen days before the primary. Young's Ballot Challenge at 2-4.

I alleged that the Governor's endorsement was a blatant violation of Article I.D of the Bylaws of the KDP. I alleged: "If it is illegal even for churches to violate their bylaws, it is certainly illegal for a

political party to do so for the purpose of rigging its own primaries, regardless of the preferences of Kentucky's registered Democrats." *Id.* at 6.

2. I alleged as follows:

> On Monday, February 9, 2015, the State Central Executive Committee ("SCEC") of the KDP held a "Unity Press Conference" at their Headquarters building in Frankfort, where then-Governor Steve Beshear, Andy Beshear, Jack Conway, Alison Lundergan Grimes, Adam Edelen, and several other prominent Democrats announced, in effect, that the 2015 nominees had been chosen by the Party Establishment. Before the speeches began, I asked the brand-new Chair-person of the KDP, Patrick Hughes, for permission to speak and was denied. Shortly after the Unity Press Conference ended, Mr. Hughes said to a reporter, "It's clear that Jack Conway's going to be our nominee for governor; it's clear that Alison Grimes is going to be our nominee for secretary of state."
>
> One of the meanings of the word "nominate" (from Latin) is to name someone. To name candidates is

had never become moot, *see Stephenson v. Woodward*, 182 S.W.3d 162, 168-173 (Ky. 2006), the circuit court considered Respondent's argument about mootness to be dispositive. Motion Hour #4; April 4, 2019, 9:24 am. See App. at a2-a8.

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The Supreme Court did nothing until March 18, 2020 – a delay of seven and a half more months – at which time it entered an order denying my motion for discretionary review. It gave no reason. App. at 32. By March 18, 2020, Andy Barr (R) was running for reelection and Amy McGrath was running for the Democratic Party nomination for the U.S. Senate.

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political party to do so for the purpose of rigging its own primaries, regardless of the preferences of Kentucky's registered Democrats." *Id.* at 6.

2. I alleged as follows:

> On Monday, February 9, 2015, the State Central Executive Committee ("SCEC") of the KDP held a "Unity Press Conference" at their Headquarters building in Frankfort, where then-Governor Steve Beshear, Andy Beshear, Jack Conway, Alison Lundergan Grimes, Adam Edelen, and several other prominent Democrats announced, in effect, that the 2015 nominees had been chosen by the Party Establishment. Before the speeches began, I asked the brand-new Chair-person of the KDP, Patrick Hughes, for permission to speak and was denied. Shortly after the Unity Press Conference ended, Mr. Hughes said to a reporter, "It's clear that Jack Conway's going to be our nominee for governor; it's clear that Alison Grimes is going to be our nominee for secretary of state."
>
> One of the meanings of the word "nominate" (from Latin) is to name someone. To name candidates is

therefore to nominate them; thus, the SCEC and the brand-new KDP Chairman officially ***nominated*** Jack Conway, Alison Lundergan Grimes, Andy Beshear, and Adam Edelen on 2/9/15, despite the fact that the primary election was still more than three months away, on May 19, 2015. For a political party to nominate its candidates three months ahead of the vote is to turn the entire primary election into an empty, anti-democratic exercise – a sham. Chairman Hughes and the other members of the conspiracy violated Kentucky law when they nominated Defendant Conway on 2/9/15, announced their decision to the public, and then made sure that the KDP promoted, supported, and allocated Party resources only to Conway and not to his opponent (me) from February 9, 2015 until May 19, 2015, the date of the primary election. KRS 118.105 (1) reads as follows:

Nominations by political parties -- Vacancy in candidacy -- Replacement candidates -- Exceptions -- Ineligibility of Senior Status Special Judge.

(1) Except as provided in subsections (3) and (4) of this section and in KRS 118.115, every political party shall

nominate all of its candidates for elective offices to be voted for at any regular election at a primary held as provided in this chapter, and **the governing authority of any political party shall have no power to nominate any candidate for any elective office or to provide any method of nominating candidates for any elective office other than by a primary as provided in this chapter.** (Emphasis added)

This is the Kentucky statute that specifies clearly and emphatically that no method of choosing Democratic (or Republican) nominees is lawful other than a "free and equal" primary, which is paid for by Kentucky taxpayers. [See Section 6 of the Kentucky Constitution and KRS 119.295, which states that all laws against election fraud apply to primaries as well as general elections] Most enabling statutes do not repeat themselves by stating that no other method to accomplish the specified goal is allowed, but free and equal elections are so important to the life of a democratic republic that the General Assembly felt that the inclusion of a slightly redundant clause – the last four lines – was necessary. The conspiracy developed an antithetical, facially unlawful process to nominate Jack

> Conway for Governor more than three months before the primary election and to sideline me, in complete contempt for the law and the freedom of Kentucky's 1.6 million registered Democrats to enjoy an election untainted by any type of "fraud, intimidation, bribery, or any other corrupt practice." [See Kentucky Constitution Section 151] The conspiracy committed what might have been the worst election fraud in Kentucky history (until the 2019 primary, which was an even worse crime): rigging and stealing the entire 2015 primary election for Governor by turning it into a sham election. Young's Ballot Challenge at 6-8.

3. I alleged that I tried to get former Attorney General Jack Conway and his successor, Respondent Andy Beshear, to investigate possible primary election-rigging by the KDP and FCDP.

> On November 3, 2015, Jack Conway lost the general election for Governor and Andy Beshear was elected Attorney General. He was sworn in on January 4, 2016. On the basis of my firm conviction that the KDP had just committed the worst election fraud in

Kentucky history, I contacted various state and federal law enforcement personnel. For a few months during 2015, a Special Agent for the FBI seemed somewhat interested, and he invited me to meet with him in Lexington. I did so, but nothing ever came of it. I also called the Kentucky Attorney General's Office and repeatedly asked for a meeting with outgoing Attorney General Jack Conway. Eventually, on December 17, 2015, I spoke over the phone with Barbara Whaley, an employee in the Office of Special Prosecutions, who advised, "You haven't sent us any facts. Put it into writing." In response to her demand, I wrote a 64-page criminal "information," signed it and had it notarized on December 28, 2015, and mailed it to Ms. Whaley and several state and federal law enforcement agencies. No one in law enforcement ever considered it to be worth their time to investigate what I believe was the worst case of election fraud in Kentucky's history. I continued asking for a meeting with the new Attorney General, Andy Beshear, but I was never allowed to meet with him (or his predecessor). Greg Copley and Barbara Whaley met with me in Frankfort, but they refused to recommend an

> investigation or the indictment of any Democrats. Greg Copley told me that no Democrat had violated any Kentucky election or ethics law and that no prosecutor would ever be able to prove otherwise. When he said that, he was inadvertently admitting that neither he nor anyone else in the Attorney General's Office was even slightly competent as a prosecutor. I asked for a meeting with their supervisor at that time, Shawna Kincer, but they told me that neither she nor Andy Beshear would meet with me. *Id.* at 11-12.

I concluded that Attorney General Andy Beshear "should have issued an Attorney General's Opinion to the effect that the enactment of KRS 119.295 completely invalidated the 1954 decision of Kentucky's highest court in *Rosenberg v. Republican Party of Jefferson County*, 270 S.W.2d 171." *Id.* at 12.

4. On August 19, 2016, I filed a civil lawsuit in the Federal Court for the Eastern District of Kentucky against the following alleged members of

the KDP primary-election-rigging conspiracy: Sannie Overly, Clint Morris, Andy Beshear, Alison Lundergan Grimes, Jack Conway, the State Central Executive Committee of the Kentucky Democratic Party, and the Executive Committee of the Fayette County Democratic Party. On page 40 (of 48) of my complaint, I alleged:

> Steve Beshear and Defendants Grimes, Conway, and Andy Beshear, moreover, actually held powerful positions in Kentucky's government when they participated in the conspiracy to commit the violations described herein. Every unlawful act and omission they committed was done under color of law. Young's Ballot Challenge at 13.

On page 42, I alleged:

> Defendant Andy Beshear should have appointed a special prosecutor upon taking office. Instead, he had two staff members tell Plaintiff that no powerful Democrat could ***possibly*** have violated any state election statute in 2015, specifically including KRS 118.105...

Nothing could be a clearer example of self-dealing than an Attorney General who categorically refuses to investigate and prosecute criminal actions committed by himself (Conway) or AG Andy Beshear's father (Steve Beshear). *Id.* at 13.

I alleged:

Defendants Conway, Andy Beshear, and Grimes, aided by certain Kentucky judges, have completely nullified KRS 118.105(1), which prohibits the Democratic (and Republican) Party from nominating any of its candidates except through a state-supported, state-regulated, and state-supervised primary election. Defendant Andy Beshear's Office made it clear that there is no way for any Democrat even to be accused of violating this statute as long as a primary election actually occurs. Beshear's staffers explicitly told Plaintiff that sham primary elections are perfectly lawful and acceptable. During the same meeting on 1/12/16, they told Plaintiff that while the Federal Code might have laws against obstruction of justice, Kentucky has none. If that is the case, Defendants should have referred Plaintiff's criminal complaint to the appropriate Federal

> prosecutor(s). They failed and refused to do so. If that is not the case, Defendants were intentionally making a false representation about the law in an effort to get the Plaintiff to drop all of his legitimate legal actions to defend his constitutional rights. *Id.* at 14.
>
> Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover exemplary and punitive damages from Defendants in amounts to be proven at trial. Young's Ballot Challenge at 14; October 8, 2019.

Andy Beshear, by counsel, filed a motion to dismiss for failure to state a claim upon which relief could be granted. He made several statements that were false on their face: (1) "The fact that the Attorney General is a 'powerful Democrat' essentially constitutes the entirety of Young's claim against the Attorney General." [Memorandum to

Dismiss at 1] (2) "The allegations made by Young concerning the AG, to the extent they are even deemed credible, bear no relation to any of his alleged causes of action, or to any causes of action whatsoever." [*Id.* at 6] (3) "Young's Complaint against the AG in his individual capacity claims only that the AG is a 'powerful Democrat' and makes vague allegations of conspiracy..." [*Id.* at 7] Anyone who reads my Complaint in an unbiased manner would consider those statements to be facially false arguments that had been submitted in bad faith.

In every civil action that I have filed against the Respondent, including the ballot challenge that is the subject of this petition, Andy Beshear has adopted the same strategy: file a motion to dismiss that contains nothing but false statements about what I had alleged in my complaint or ballot

challenge. So far, every court has believed his false statements and dismissed every civil action without ever reaching the merits. Andy Beshear's conduct since 2016 – defrauding one court after another – proves that he was not running for governor in good faith and was therefore not a bona fide candidate in 2019. KRS 118.176.

The Circuit Court Violated KRS 118.176.

The circuit court held a preliminary hearing on October 14, 2019, at which time counsel for the Respondent expressed an intention to file a motion to dismiss. The court made no decision that day except to "hear what the Respondent has to say."

On October 22, 2019, the Respondent, by counsel, filed 160 pages of material that listed all of my civil actions that had been dismissed in the past. It did not include any testimony or evidence that

would suggest that Andy Beshear was in fact a bona fide candidate in 2019 or that any of the specific allegations in my ballot challenge were false. Despite repeated requests, counsel for Mr. Beshear never mailed me a copy of their answer. I had to visit the Court of Appeals to look at the attachments.

On October 25, 2019, I filed a motion, pursuant to KRS 118.176, asking:

> that the Court hold a hearing on Monday, October 28, 2019 to decide this case in my favor. The governing statute requires the extremely expeditious resolution of all ballot challenges. Delay and obfuscation on the part of Andy Beshear and his defense attorney(s) should not be allowed by the Jefferson Circuit Court. Every word of Andy Beshear's Response, by Counsel, is irrelevant to the question of whether he is a bona fide candidate for Governor this year. It contained no evidence whatsoever. I am not the candidate on trial here; Beshear is.

The circuit court never ruled on that motion.

On October 31, 2019, I filed a motion asking:

> that this Court decide this ballot challenge in my favor, without another hearing, on or before Monday, November 4, 2019. I also move that the Court enter said Order in writing and inform the Kentucky Board of Elections that no votes for Andy Beshear shall be counted because the Court has determined, based on a preponderance of the evidence presented, that Andy Beshear is not a bona fide candidate for Governor in 2019.

As justification for that motion, I wrote:

> I have presented evidence of Andy Beshear's contempt for democracy in "Democratic" primaries in my ballot challenge, over which this Court acquired jurisdiction on October 8, 2019. Attorney General Beshear has had plenty of time to present evidence that would tend to show that he is a bona fide candidate, but he failed and refused to do so. Instead, he filed an Answer that is either completely irrelevant to that question or actually supplements the evidence I presented to the effect that he has not been a bona fide candidate at any time during the primary campaign or the current

> general election campaign. In effect, he put forth no defense at all.

The circuit court waited until after the election before entering its final order. The Supreme Court of Kentucky's decision in *Stephenson v. Woodward*, 182 S.W.3d 162, 171-172 (Ky. 2006) calls a judge who does that "a recalcitrant judge."

KRS 118.176 includes no provision that would allow a motion to dismiss to be filed by the challenged candidate or would allow the circuit court to dismiss a ballot challenge without reaching the merits. The statute, read as a whole, places a very high priority on the speedy resolution of all ballot challenges, and motions to dismiss can easily add six months or a year or more to the duration of any civil action. I am confident that the General Assembly did not intend that the public be compelled to wait

that long before finding out whether the election was legitimate or would have to be done over without the challenged candidate's name on the ballot.

The circuit court dismissed my ballot challenge the day after the election, writing that my ballot challenge was "devoid of any allegation that the Respondent is not at least thirty years old or has not resided in the Commonwealth for at least six years preceding the general election of November 5, 2019." The court declared that all of the allegations in my ballot challenge were "irrelevant." App. at a33-a34. The circuit court implied that the only grounds on which a voter may challenge a candidate's *bona fides* are that he or she is not old enough or has not resided in Kentucky long enough. But that is not what KRS 118.176 says.

I immediately filed a motion to set aside in the

Court of Appeals on November 8, 2019. I wrote:

The Circuit Court failed and refused to apply the governing statute, KRS 118.176.

> What did the Court do when the case was assigned to it on October 8, 2019? The answer is now quite clear: the Court failed and recalcitrantly refused to apply the governing statute, KRS 118.176.
>
> There was plenty of time between October 9 and November 5, 2019, the date of the general election, for the Circuit Court to decide the ballot challenge on its merits...
>
> The Circuit Court did not address ANY of the allegations in my ballot challenge and summarized above. Instead, the erroneous and frivolous Order addressed an allegation that I never made... (emphasis in original)
>
> The recalcitrant Circuit Court did mention the word "conspiracy" in one of its frivolous findings: "The Movant's claims regarding a conspiracy are irrelevant to his claims under KRS 118.176." Why is that, I wonder? Are all allegations of a civil conspiracy irrelevant, even if the allegations are

> true? The Court didn't explain it, and Section 151 of Kentucky's Constitution is incompatible with any such finding... Young's Motion to Set Aside at 9-10

I addressed the court's comment about *res judicata* as follows:

> The last frivolous finding the Circuit Court included in its Order was, "To the extent Movant asserts the same (i.e., a conspiracy), those claims have been previously adjudicated and are barred by the doctrine of res judicata." That finding is false for three reasons: (1) None of my previous lawsuits have ever been adjudicated on their merits; (2) there was no identity of parties, as noted above; and (3) I have never before filed a ballot challenge against Andy Beshear for the cause of action of being a primary-election-rigging, primary-election-stealing, not-yet-indicted felon. That's zero for three, and all three conditions must be met for the doctrine of *res judicata* to be applicable: identity of parties, the same cause of action, and a previous case that was adjudicated on its merits. *Id.* at 11.

The Court of Appeals improperly gave my

motion to set aside a new case number with an "I" at the end, which stands for "Interlocutory." There was nothing interlocutory about the circuit court's order, however; it was clearly marked "final." App. at a34.

On November 14, 2019, the Chief Judge of the Court of Appeals, the Honorable Denise G. Clayton, mailed me a show cause order that cited only one authority: *Gibson v. Thompson*, 336 S.W.3d 81, 83 (Ky. 2011). The order included a sentence that indicated to me that the Court of Appeals had no intention of weighing the evidence presented by the Movant and Respondent: "The circuit court found that Mr. Young did not meet his burden of proving that Andy Beshear is not a *bona fide* candidate for governor and dismissed the challenge to Mr. Beshear's qualifications." Order at 1.

On November 25, 2019, I timely filed my

response, which made the following arguments:

1. That there had never been a valid legal reason to send me a show cause order; it only delayed the decision.

2. That the Court of Appeals should have decided the ballot challenge in my favor because I had presented evidence, Respondent had presented none, and the circuit court had recalcitrantly refused ever to reach the merits of my ballot challenge.

On February 27, 2020, the Court of Appeals entered an order that concluded:

> In the case *sub judice*, the circuit court did not find that Mr. Beshear was "not a bona fide candidate." KRS 118.176(4). Therefore Mr. Young may not invoke this Court's jurisdiction through the expedited appeal procedure set forth in KRS 118.176(4). *Gibson*, 336 S.W.3d at 82-83. App. at a43.

The Court of Appeals did not analyze any of

the allegations I made in my ballot challenge of October 8, 2019. It never took up the question of whether the Jefferson Circuit Court had violated KRS 118.176 and used a fallacious straw-man argument to dismiss the ballot challenge on the day after the general election. If the primary duty of an appellate court is to identify and correct errors made by the court(s) below, the Kentucky Court of Appeals knowingly refused to do its duty. Its entire dismissal order of February 27, 2020 was reversible error.

Civil Rule 76.20 (2)(b) states that "A motion for discretionary review by the Supreme Court of a Court of Appeals decision shall be filed within 30 days after the date of the order of the order or opinion sought to be reviewed..." I hand-delivered ten copies of my motion for discretionary review to the Supreme Court of Kentucky on March 18, 2020,

which was fewer than 30 days after the entry of the dismissal order entered by the Court of Appeals on February 27, 2020. On March 20, 2020, however, the Supreme Court mailed one copy of my motion and my uncashed check for $150.00 back to me because I had missed the five-day deadline specified in CR 65.09 (1), which applies only to interlocutory orders. It finally became clear to me why the Court of Appeals had labeled my motion to set aside the circuit court's dismissal order "NO. 2019-CA-001659-I," where the "I" at the end stood for "Interlocutory." Its motive was to cut my allowable time limit from 30 days to five. The Supreme Court of Kentucky played its part by refusing to file my motion for discretionary review, which had never in reality been interlocutory. See App. at a33-a35, a35-a45, and a46-a47. The Jefferson Circuit Court's dismissal order

was clearly final, not interlocutory.

The circuit court violated KRS 118.176, which mandates that all ballot challenges be "tried summarily and without delay," from October 8 to November 6, 2019; the Court of Appeals from November 8, 2019 to February 27, 2019; and the Supreme Court of Kentucky from March 18, 2020 to the present day. Kentucky's Judicial Department again nullified a valid state statute, KRS 118.176.

Certiorari should be granted because two unqualified candidates were allowed to keep their names on the ballot in the 2018 general election for the US House of Representatives and the 2019 general election for Governor of Kentucky.

The two Respondents got my two ballot challenges dismissed before trial without ever submitting any counterevidence that would have

undermined or contradicted my allegation that neither Amy McGrath nor Andy Beshear was a bona fide candidate in 2018 or 2019, respectively.

Certiorari should be granted because the Kentucky Court of Appeals has set up a legal environment in which circuit court judges have a strong incentive to violate Kentucky's ballot challenge statute.

Ever since 2015, the Court of Appeals has made it clear that if the circuit court dismisses a ballot challenge, the challenger's motion to set aside will be dismissed as well. It doesn't matter how many reversible errors the circuit court commits, how long the court lets the ballot challenge sit before entering an order, or how meritless the final dismissal order is. The Court of Appeals will cite *Gibson v. Thompson*, 336 S.W.3d 81, 83 (Ky. 2011)

and find that the challenger has no right of appeal. The circuit court may also feel confident that the Supreme Court of Kentucky will deny discretionary review if the Court of Appeals' dismissal order cited the *Gibson v. Thompson* decision.

If a trial judge's highest priority is to apply the law as written, he or she will try the ballot challenge before the election occurs, ***on the merits***, "summarily and without delay." KRS 118.176 (2). In my four ballot challenges to date, however, the circuit court judge has invariably chosen the "safer" course: to let the ballot challenge sit until after the election and then dismiss it without ever weighing the evidence pro and con. The cause of justice has not been served, and the intent and clear provisions of KRS 118.176 have been defeated four times since 2015.

In the end, several candidates who were not

bona fide candidates have been allowed to have their names appear on the ballot. Respondent Andy Beshear is now the Governor of Kentucky, but he should never have been allowed to take the oath of office. A new election should have been held in December 2019 or January 2020 without his and his running mate's names on the ballot.

Certiorari should be granted because the underlying controversy is whether the KDP and the Republican Party of Kentucky ("RPK") may rig their own primaries in the future.

Primaries have been held in Kentucky for approximately the last 120 years. The main purpose of holding primary elections has always been to reduce the influence of party elites and enhance the influence of voters who are members of that party. Since March, 2015, however, the KDP's lawyers have

claimed that primaries are not elections and therefore do not have to be free and equal. However, *compare* the Kentucky Constitution, Section 6; KRS 119.295; and *Rosenberg v. Republican Party of Jefferson County*, 270 S.W.2d 171. Kentucky's Judicial Department has not yet found and declared that that defense is frivolous.

My response has always been that it would be better to hold no state-funded primaries at all than to falsely represent to the voters that they have some say over who will represent them in the general election.

The doctrine that the elites of the KDP and RPK may rig their own primaries without running afoul of KRS 118.105 (1), cited on pages 34-35 above, contradicts Article I, § 2 of the Constitution. This Court's decision in *United States v. Classic*, 313 U.S.

299, 316-317 (1941) instructs as follows:

> We cannot regard it as any the less the constitutional purpose, or its words as any the less guarantying the integrity of that choice, when a state, exercising its privilege in the absence of Congressional action, changes the mode of choice from a single step, a general election, to two, of which the first is the choice at a primary of those candidates from whom, as a second step, the representative in Congress is to be chosen at the election.

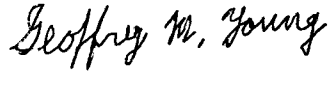
In sum, when party elites rig an entire primary in a state such as Kentucky which has laws such as KRS 118.105 *et seq.*, they are violating a provision of the Constitution as well as KRS 118.105 (1). They are attacking democracy itself. Unfortunately, Kentucky's Judicial Department has been helping the KDP destroy democracy in Kentucky since 2015 by placing everything the KDP does, no matter how violative, beyond the reach of

review by any court.

CONCLUSION

Petitioner submits that this Petition for Writ of Certiorari should be granted. This Court may wish to consider summary reversal of the decisions of the Supreme Court of Kentucky and the Kentucky Court of Appeals that are reproduced in the Appendix.

Respectfully submitted,



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Signed on May 6, 2020.