

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

ELLIS KEYES,

Plaintiff,

v.

EDISON BANKS,

Defendant.

CIVIL NO. 7:18-CV-23-KKC

ORDER

*** **

In accordance with the June 15, 2021 order of the Sixth Circuit Court of Appeals, the Court hereby ORDERS that the complaint in this matter is DISMISSED for lack of subject-matter jurisdiction and this matter is STRICKEN from the Court's active docket.

Dated July 08, 2021



Karen K. Caldwell

KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF KENTUCKY

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No: 20-6034

Filed: July 07, 2021

ELLIS KEYES

Plaintiff - Appellant

v.

EDISON BANKS

Defendant - Appellee

MANDATE

Pursuant to the court's disposition that was filed 06/15/2021 the mandate for this case hereby issues today.

COSTS: None

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
KENTUCKY

ORDER

Section 100 of the Kentucky Constitution provides, “No person shall be eligible to the office of Commonwealth’s Attorney unless he shall have been a licensed practicing lawyer four years.” When Keyes tried to run for Commonwealth’s Attorney, Banks filed a petition in state court under Kentucky Revised Statutes § 118.176 to remove Keyes’s name from the ballot because he was not and has never been a licensed attorney. Keyes filed this suit in federal court, invoking

the Fourteenth Amendment's guarantee of due process and seeking an emergency order to stay or dismiss those proceedings or to grant any other proper relief. The state trial court ultimately granted Banks's petition and prohibited Keyes's name from appearing on the ballot.

The parties continued litigating this case in federal court and both filed motions for summary judgment. A magistrate judge recommended denying Keyes's motion and granting Banks's. *Keyes v. Banks*, No. 7:18-CV-23-KKC, 2020 WL 6494988 (E.D. Ky. Apr. 22, 2020) (recommended disposition). The magistrate judge determined that Keyes had not "shown that the removal of his name violated his procedural due process rights because he could not show a property or liberty interest in running for office as the Commonwealth['s] Attorney," and that he had not established a substantive-due-process violation because he "could not show that he was denied a fundamental right when his name was taken off of the ballot for not meeting the requirements set forth in Section 100 of the Kentucky Constitution." *Id.* at *7.

After Keyes filed objections, the district court adopted the magistrate judge's report and recommendation (except for a slightly erroneous statement about the timeline of events, which the district court corrected) and granted summary judgment to Banks. *Keyes v. Banks*, No. 7:18-CV-23-KKC, 2020 WL 5229160 (E.D. Ky. Sept. 2, 2020). In his objections, Keyes argued that he was pressing not just a due-process claim but also claims under "broad and universal concepts of constitutional law," including the right to vote under the Fifteenth Amendment, Article I's bar on letters of marque and reprisal, and the Fourteenth Amendment's guarantee of equal protection. The district court noted that it had reviewed an audio tape of a status conference held by the magistrate judge in which the judge tried to clarify what claims Keyes was raising, and Keyes confirmed that he was asserting violations of his substantive- and procedural-due-process rights. *Keyes*, 2020 WL 5229160, at *1. Keyes maintained that the state did not have the power to license the practice of law, that the right to hold office is a liberty interest protected by the Fourteenth Amendment, and that he suffered discrimination in violation of the Equal Protection Clause. But the district court held that he had failed to make sufficient allegations to assert a violation of the right to vote or the guarantee of equal protection. *Keyes*, 2020 WL 5229160, at *1.

On appeal, Keyes argues that “Contrary to Judgement [sic] that Appellant is not licensed, the Bar Certificate is not an exclusive License to practice law or we would have an unconstitutional aristocracy”; that the requirement in § 100 of the Kentucky Constitution was applied in violation of the Fourteenth Amendment; that the district court erred in refusing to enter default against Banks; and that his removal from the ballot violated the rights to vote, speech, association, and due process.

Although the issue of standing was not raised, because it concerns our subject-matter jurisdiction, we can address the issue on our own. *See Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 983 (6th Cir. 2012). To establish Article III standing, a plaintiff must show that he suffered an injury-in-fact, that there is a causal connection between his injury and the defendant’s conduct, and that his injury will be redressed by a decision in his favor. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

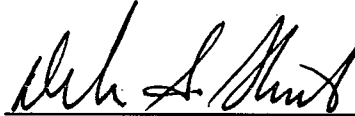
Keyes sued Banks, who filed the petition to have his name removed from the ballot. But the state court was the entity that enforced the state law that Keyes ultimately asserted was unconstitutional. And Banks’s petition sought an order enjoining the Kentucky State Board of Elections and the Secretary of State as well as the Letcher County Board of Elections and its chair in order to prevent Keyes’s name from appearing on the ballot and votes from being counted for him. Banks has no authority over the enforcement of the Kentucky constitutional provision or the state election. A favorable decision in this case against Banks, then, would not redress Keyes’s alleged injury. He “sued the wrong party.” *Binno v. Am. Bar Ass’n*, 826 F.3d 338, 345 (6th Cir. 2016). Therefore, Keyes lacks Article III standing, and the district court lacked subject-matter jurisdiction.

No. 20-6034

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Accordingly, we **VACATE** the district court's judgment and **REMAND** with instructions to dismiss the complaint for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

ELLIS KEYES,
Plaintiff,

v.

EDISON BANKS,
Defendant.

CIVIL NO. 7:18-CV-23-KKC

JUDGMENT

In according with the opinion and order entered on this date the Court hereby ORDERS and ADJUDGES as follows:

- 1) defendant Edison Banks' motion for summary judgment (DE 62) is GRANTED;
- 2) judgment is entered in favor of defendant Edison Banks on all claims asserted in this action;
- 3) this judgment is FINAL and APPEALABLE; and
- 4) this matter is STRICKEN from the Court's active docket.

Dated September 02, 2020



Karen K. Caldwell
KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF KENTUCKY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
PIKEVILLE

ELLIS KEYES,
Plaintiff,

v.

EDISON BANKS,
Defendant.

CIVIL NO. 7:18-CV-23-KKC

OPINION AND ORDER

The plaintiff and defendant have filed cross-motions for summary judgment. (DE 62, 63.) The magistrate judge has filed a recommended disposition, DE 66, in which he recommends that the motion by defendant Edison Banks be granted and that the motion by plaintiff Ellis Keyes be denied. Plaintiff Keyes has filed objections (DE 67) to the magistrate judge's recommendation. The Court will make a *de novo* determination of those portions of the recommendation to which Keyes makes specific objections. 28 U.S.C.A. § 636 (b)(1); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). A general objection to a magistrate's report is not treated as an objection at all. *Id.*

As background, Keyes asserts that he was seeking election to the office of Letcher County Commonwealth Attorney and that the incumbent Commonwealth Attorney – Defendant Edison Banks – attempted to have Keyes' name removed from the ballot because Keyes is not a licensed attorney. (DE 1, Complaint at 1-2.) The Kentucky Constitution provides, "No person shall be eligible to the office of Commonwealth's Attorney unless he shall have been a licensed practicing lawyer four years." Ky. Const. § 100.

Keyes concedes he is not a licensed attorney. He states he is "an ordinary person who practices law. . . a lay man of common law." (DE 1, Complaint at 3.) Keyes filed this action, asking for the Court to "stay. . . the removal of name from ballot dismissed," and "such other further relief deemed

just and proper.” (DE 1, Complaint at 9.) In a later filing, Keyes asked for a stay of “Letcher Circuit Court Order 2018-CI-32.” (DE 12, Demand.)

Keyes first objects to the magistrate judge’s determination regarding the claims that he asserts. The magistrate judge states in his recommendation that, at a status conference, Keyes “clarified that he is only asserting substantive and procedural due process violations against Banks for having his name taken off the ballot.” In his objections, Keyes states he never said this. He argues that he asserts “broad and universal concepts of constitutional law.” (DE 67 at 2.) He mentions the right to vote contained in the 15th Amendment to the U.S. Constitution and the Equal Protection Clause.

This objection is **OVERRULED**.

The Court has reviewed an audio recording of the December 9, 2019 status conference. (DE 58, Minute Entry.) The magistrate judge’s primary objective at the conference was to determine precisely what claims Keyes asserts. The magistrate judge noted that the United States Court of Appeals for the Sixth Circuit had determined that Keyes’ “raises a federal question under the Fourteenth Amendment.” *See* DE 14. The magistrate judge asked Keyes at the status conference not once, but twice, whether he was indeed asserting claims for substantive and procedural due process violations under the Fourteenth Amendment. Both times Keyes confirmed that these were the claims he was asserting. He never mentioned any other claim.

Further, Keyes has failed to make sufficient allegations to assert a violation of either the right to vote contained in the Fifteenth Amendment or of the Equal Protection clause. Thus, the magistrate judge correctly concluded that Keyes asserts only due process violations under the 14th Amendment.

Keyes also objects to the magistrate judge’s determination that Keyes verified at the status conference “that he is asserting a federal cause of action that has not yet been adjudicated.” DE 66 at 5. This objection is also **OVERRULED**. The statement was accurate. Keyes stated at the status conference that, with this federal action, he asserts that the defendant violated his substantive and

procedural due process rights. That claim had clearly not been adjudicated at the time of the status hearing. The magistrate judge made this finding in ruling in Keyes' favor on Banks' argument that Keyes' claims are barred under the doctrines of res judicata, collateral estoppel, and *Rooker-Feldman*. The magistrate judge was distinguishing this federal action from the claims that were litigated in state court.

Keyes objects to the magistrate judge's finding that, "[i]n response to striking his name from the ballot, Keyes filed this instant action and then also appealed the state trial court's ruling." (DE 66 at 6.) Keyes argues that this federal action was filed prior to the state court ruling. (DE 67 at 2.) This objection is SUSTAINED. Keyes filed this action on February 23, 2018. The Letcher Circuit Court order that prohibited Keyes' name from appearing on the ballot was not entered until March 13, 2018 (DE 24-1). This makes no difference, however, to the outcome of the case. Again, in making this finding, the magistrate judge was simply distinguishing this federal action from the state court action for purposes of rejecting Banks' argument that the *Rooker-Feldman* doctrine bars Keyes' claim.

Similarly, Keyes objects to the magistrate judge's finding that, "Keyes has opposed Banks' petition to have him removed from the ballot by appealing the state court's decision and filing a federal cause of action in federal court." (DE 66 at 8-9). Keyes argues that magistrate judge did not correctly state the "sequence of events." This objection is OVERRULED.

The magistrate judge made this statement in ruling in Keyes' favor on Banks' argument that the Court should find Keyes a vexatious litigator and prohibit him from filing any further complaints regarding the removal of his name from the ballot. With the statement in question, the magistrate judge was not attempting to recount the sequence of the federal and state court actions. Nor was the sequence of events relevant to the magistrate judge's point. Instead, the magistrate judge was merely explaining why he did not agree that Keyes had filed repetitive and frivolous actions relating to the

removal of his name from the ballot. The magistrate judge was noting that Keyes pursued relief only in this Court and in his appeal of the state-court ruling.

Keyes makes no further specific objections to the magistrate judge's recommendation. Accordingly, the Court hereby ORDERS as follows:

- 1) the magistrate judge's recommended disposition (DE 66) is ADOPTED as the opinion of the Court with the exception of the magistrate judge's finding that, "[i]n response to striking his name from the ballot, Keyes filed this instant action and then also appealed the state trial court's ruling." (DE 66 at 6.) Instead, the Court finds that Keyes filed this action before the Letcher Circuit Court entered an order that prohibited Keyes' name from appearing on the ballot. That finding makes no difference in the outcome of the magistrate judge's recommendation;
- 2) Banks' motion to dismiss (DE 55) is DENIED;
- 3) Banks' motion for summary judgment (DE 62) is GRANTED; and
- 4) Keyes' motion for summary judgment and motion to set a trial date (DE 63) are DENIED; and
- 5) judgment will be entered consistent with this opinion.

Dated September 02, 2020



Karen K. Caldwell
KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF KENTUCKY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at PIKEVILLE

CIVIL ACTION NO. 7:18-CV-23-KKC

ELLIS KEYES,

PLAINTIFF,

v.

RECOMMENDED DISPOSITION

EDISON BANKS,

DEFENDANT.

* * * * *

There are three pending matters before the Court. First, Edison Banks filed a renewed motion to dismiss and bar prospective filings by Ellis Keyes. [R. 55]. Second, after this Court held a status hearing to clarify the issues and directed the parties to file dispositive motions within thirty days, Keyes and Banks filed cross-motions for summary judgment. [R. 62-63]. Third, in Keyes' cross-motion for summary judgment, he also asks the Court to set a trial date. [R. 63]. With the issues being fully briefed and ripe for review, this Court RECOMMENDS that: (1) Banks' motion to dismiss and bar prospective filings be denied; (2) Banks' motion for summary judgment be granted; and (3) Keyes' motion for summary judgment and request to set a trial date be denied.

I. FACTS AND PROCEDURAL HISTORY

The facts of this case are not in dispute. The Sixth Circuit summarized the pertinent facts of this case as follows:

Ellis Keyes, a pro se Kentucky litigant, was an aspiring candidate for the Office of the Commonwealth's Attorney for Letcher County, Kentucky. The incumbent Commonwealth's Attorney filed a motion in Letcher County Circuit Court to remove Keyes's name from the ballot, arguing that Keyes lacked the necessary qualifications because he was not a licensed attorney. In February 2018, Keyes filed a motion in the United States District Court for the Eastern District of Kentucky

asking that court to stay or dismiss his then-pending state-court proceeding, as well for “such other further relief deemed just and proper.” Invoking 28 U.S.C. § 2283, the district court dismissed Keyes’s action for lack of jurisdiction to provide the requested relief. On appeal, this court remanded the case to the district court for further proceedings. *Keyes v. Banks*, NO. 18-5213 (6th Cir. Sept. 26, 2018).

[R. 48 at p. 1]. As its opinion indicates, the Sixth Circuit first considered the District Court’s dismissal of Keyes’ claims for lack of subject-matter jurisdiction. [R. 7]. On September 26, 2018, the Sixth Circuit found that the District Court has subject-matter jurisdiction to consider Keyes’ claims, which it construed broadly as a federal question under the Fourteenth Amendment. [R. 14].

Before filing his Answer, Banks filed a motion to dismiss and bar prospective filings by Keyes. [R. 27]. Following the District Court’s denial of Banks’ motion to dismiss, he now renews his request. [R. 29, 55]. After carefully reviewing the arguments raised by Banks, the undersigned held a status hearing to clarify the basis of Keyes Fourteenth Amendment claim. [R. 58-59]. At the status hearing, Keyes clarified that he is only asserting substantive and procedural due process violations against Banks for having his name taken off the ballot. [R. 60]. The parties were then directed to file any dispositive motion within thirty days. [*Id.*] Both parties filed cross-motions for summary judgment and stand ripe for consideration. [R. 62-63]. In his cross-motion for summary judgment, Keyes also filed his fourth motion to set a jury trial.¹ [R. 63].

II. STANDARD OF REVIEW

“A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought.” FED.R.CIV.P. 56(a). “[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Such a

¹ See [R. 11, 15, 53, 63].

motion then “requires the nonmoving party to go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial.” *Id.* at 324 (internal quotation marks omitted). This is so because “[o]ne of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.” *Id.* at 323–24. To avoid summary judgment, the non-movant must come forward with evidence on which a jury could reasonably find in its favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). The following factors bear consideration by a court when entertaining a motion for summary judgment:

1. Complex cases are not necessarily inappropriate for summary judgment.
2. Cases involving state of mind issues are not necessarily inappropriate for summary judgment.
3. The movant must meet the initial burden of showing “the absence of a genuine issue of material fact” as to an essential element of the non-movant’s case.
4. This burden may be met by pointing out to the court that the respondent, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case.
5. A court should apply a federal directed verdict standard in ruling on a motion for summary judgment. The inquiry on a summary judgment motion or a directed verdict motion is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.
6. As on federal directed verdict motions, the “scintilla rule” applies, *i.e.*, the respondent must adduce more than a scintilla of evidence to overcome the motion.
7. The substantive law governing the case will determine what issues of fact are material, and any heightened burden of proof required by the substantive law for an element of the respondent’s case, such as proof by clear and convincing evidence, must be satisfied by the respondent.

8. The respondent cannot rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact, but must "present affirmative evidence in order to defeat a properly supported motion for summary judgment."
9. The trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.
10. The trial court has more discretion than in the "old era" in evaluating the respondent's evidence. The respondent must "do more than simply show that there is some metaphysical doubt as to the material facts." Further, "[w]here the record taken as a whole could not lead a rational trier of fact to find" for the respondent, the motion should be granted. The trial court has at least some discretion to determine whether the respondent's claim is "implausible."

Street v. J.C. Bradford & Co., 886 F.2d 1472, 1479-80 (6th Cir. 1989).

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a); *Celotex*, 477 U.S. at 324. When reviewing a motion for summary judgment, "this Court must determine whether 'the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Patton v. Bearden*, 8 F.3d 343, 346 (6th Cir. 1993) (quoting *Anderson*, 477 U.S. at 251-52). "[T]he existence of a mere scintilla of evidence in support of the non-moving party's position will not be sufficient; there must be evidence on which the jury could reasonably find for the non-moving party." *Sutherland v. Mich. Dept. of Treasury*, 344 F.3d 603, 613 (6th Cir. 2003) (citing *Anderson*, 477 U.S. at 251). The evidence, all facts, and any inferences that may permissibly be drawn from the facts must be viewed in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." *Id.* (citing *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288 (1968)).

In such a case, summary judgment is warranted. *Alabama v. North Carolina*, 560 U.S. 330, 344 (2010); *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 248.

III. ANALYSIS

Renewed Motion to Dismiss and Bar Prospective Filings:

In his renewed motion, Banks argues that Keyes's claims should be dismissed because: (1) Keyes is barred from re-litigating factual and legal issues already decided in state court; and (2) Keyes is denied under the doctrine of *Rooker-Feldman* by requesting a federal court, other than the United States Supreme Court, to directly review the state court decision. [R. 55]. Banks also asks this Court to bar Keyes from prospective filings concerning this matter. In response at the status hearing, Keyes verified that he is asserting a federal cause of action that has not yet been adjudicated. [R. 60].

1. *Res Judicata* and Collateral Estoppel

First, Banks argues that Keyes' claims are barred under theories of *res judicata* and collateral estoppel. [R. 55]. "Under *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Allen v. McCurry*, 449 U.S. 90, 94 (1980). In regard to collateral estoppel, "a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Migra v. Warren City Sch. Dist. Bd. of Edu.*, 465 U.S. 75, 81 (1984). However, a party may choose to reserve its federal claims for federal court, while pursuing state claims in state court. *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411 (1964). This will allow a plaintiff to pursue a federal action on only federal law claims without *res judicata* barring those claims, even though they could have

been heard in state court. *Id.*

Here, Banks argues conclusively that Keyes' federal claim should be barred because he is attempting to relitigate claims that have already been decided in state court. [R. 55 at p. 3]. This argument is unpersuasive because this action involves an independent assertion by Keyes, alleging that he was denied procedural and substantive due process guaranteed by the Fourteenth Amendment to the United States Constitution when his name was stricken from the ballot. [R. 1]. The facts show that Banks filed a petition to remove Keyes from the ballot alleging he did not meet the requirements, which led the Letcher Circuit Court to subsequently grant his request. [*Id.* at p. 1-2]. In response to striking his name from the ballot, Keyes filed this instant action and then also appealed the state trial court's ruling. [*Id.* at 2]. Although Keyes could have brought his claims of substantive and procedural due process to state court, his failure to assert this claim on appeal does not preclude him from asserting these claims in federal court now. *See e.g., Louisiana State Bd. of Medical Examiners*, 375 U.S. 411. Thus, Banks has not presented any evidence to show that the same claim or issue was litigated in state court. Therefore, Keyes' claims are not barred by *res judicata* or collateral estoppel.

2. The Rooker-Feldman Doctrine

Second, Banks argues that this Court does not have the authority to review Keyes' claim because federal courts, other than the United States Supreme Court, cannot sit in direct review of a state court's decision unless Congress grants this power. [R. 55 at p. 4-5]. The *Rooker-Feldman* doctrine creates a narrow exception that says a party aggrieved by a state-court decision cannot appeal that decision to a federal district court but must instead petition for a writ of certiorari from the United States Supreme Court. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *see also*

Marshall v. Bowles, 92 Fed.Appx. 283 (6th Cir. 2004).

In *Marshall*, the plaintiff pursued an action against a state domestic relations judge, asserting that the judge violated her due process rights through various orders and rulings during the proceedings. *Marshall*, 92 Fed.Appx. at 284. The Sixth Circuit held that “[a] fair reading of the complaint reveals that [the plaintiff’s] federal case is an impermissible appeal of state court judgments as it raises specific grievances regarding decisions of” the state court. *Id.* For this reason, the Sixth Circuit held that the district court lacked subject-matter jurisdiction under the *Rooker-Feldman* doctrine. *Id.*

Here, unlike *Marshall*, the facts do not support Banks’ conclusion that this is essentially an appeal of the Letcher Circuit Court. Instead, the facts show that after Keyes was denied the ability to be on the ballot, he filed this action in federal court, asserting violations of procedural and substantive due process stemming from this denial. Thus, Keyes’ request is not asking this Court to reconsider the Letcher Circuit Court’s denial based on the Kentucky Constitution; instead, it is asking this Court whether this denial violated his Fourteenth Amendment rights under the United States Constitution. Therefore, since Keyes is asserting an independent claim under the Fourteenth Amendment, Keyes’ federal claim is not barred under the *Rooker-Feldman* doctrine.

3. Banks’ Request to Bar Prospective Filings By Keyes Against Him

Third, Banks also requests that Keyes be barred from prospective filings concerning this matter. [R. 55 at p. 4-5]. He states that Keyes, as a pro se plaintiff, “can only be seen as repetitious and frivolous” because Keyes “has unsuccessfully attempted to litigate and re-litigate the matter in each and every court made available to him.” [*Id.*] In essence, it appears that Banks is asking this Court to find Keyes to be a vexatious litigator.

According to the Sixth Circuit, when it is clear that a plaintiff is a vexatious litigant who has filed multiple complaints concerning the same incident, the district court can enter an order requiring leave before the plaintiff files further complaints. *See Filipas v. Lemons*, 835 F.2d 1145, 1146 (6th Cir. 1987); *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998). The district court can also restrain prospective filings when there is “a recognized pattern of repetitive, frivolous, or vexatious cases within that category.” *Feathers*, 141 F.3d at 269 (citing *Wood v. Santa Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1524 (9th Cir. 1983) (“[t]he general pattern of litigation in a particular case may be vexatious enough to warrant an injunction in anticipation of future attempts to relitigate old claims.”)).

Here, Banks does not present sufficient evidence to warrant imposing such relief. First, as this Court found in parts 1 and 2 above, while Keyes’ claim stems from his denial to be on the ballot to run for Commonwealth Attorney, this case involves the constitutionality of the state court’s decision pursuant to the United States Constitution. Banks’ mere assertion that Keyes has been unsuccessful in all of his attempts to litigate and re-litigate this issue fails to explain how principles such as *res judicata* and collateral estoppel would not serve as more appropriate avenues should Keyes seek to litigate this matter further. *See Wood*, 705 F.2d at 1525 (if injunctions against plaintiffs are used “too freely or couched in overly broad terms, injunctions against future litigation may block free access to the courts. Such access not only ensures protections of privately created commercial interests, it also serves as the final safeguard for vitally important constitutional rights.”). Unlike *Feathers*, there is no concern of multiple parties filing multiple meritless claims. *Feathers*, 141 F.3d at 269. Instead, the facts show that Keyes has opposed Banks’ petition to have him removed from the ballot by appealing the state court’s decision and filing a federal cause of

action in federal court. Therefore, the circumstances do not warrant barring Keyes prospective filings.

In sum, Banks presented no evidence to warrant dismissing this action for being litigated below or for being an appeal of the state court's decision. Nor has Banks provided a sufficient legal or factual basis for barring Keyes from filing any prospective claims against him concerning this action. Therefore, it is recommended that Banks' motion to dismiss be denied.

Cross-Motions for Summary Judgment:

Keyes's current claim is brought under 42 U.S.C. § 1983, raising a federal question under the Fourteenth Amendment, alleging he was deprived of procedural and substantive due process when his name was removed from the ballot. [R. 1, 14]. There is no dispute of facts between the parties. Thus, the only issue before this Court is whether either Keyes or Banks are entitled to judgment as a matter of law based on the undisputed facts.

The Fourteenth Amendment provides that "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law." U.S. CONST. amend. XIV, § 1. As the Sixth Circuit has explained, "substantive due process prohibits the government's abuse of power or its use for the purpose of oppression, and procedural due process prohibits arbitrary and unfair deprivations of protected life, liberty, or property interests without procedural safeguards." *Howard v. Grinage*, 82 F.3d 1343, 1350 (6th Cir. 1996).

Title 42, United States Code, Section 1983 does not create any substantive rights, but it instead provides a vehicle to seek redress for violations of constitutional rights, like the Fourteenth Amendment. *See Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 924 (1982). Specifically, Section

1983 authorizes “any citizen of the United States or other person within the jurisdiction thereof [to pursue] an action at law [or] suit in equity” against every person who under color of state law “causes. . . the deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]”

Construing his claims broadly, Keyes claims that Banks, acting as a state official under color of Kentucky law, deprived him of the Democratic nomination by having his name removed from the ballot for the office of the Commonwealth Attorney, in violation of the substantive and procedural due process components of the Fourteenth Amendment to the United States Constitution. [R. 63]. In response, Banks argues that Keyes does not meet the requirements set forth in the Kentucky Constitution for the position and he does not have a liberty or property interest to meet the requirements of the Fourteenth Amendment. [R. 62]; Ky. Const. § 100 (“No person shall be eligible to the office of the Commonwealth’s Attorney unless he shall have been a licensed practicing lawyer four years.”). Keyes does not dispute that he is not an attorney. *See* [R. 63 at p. 1]. Instead, he argues that the Fourteenth Amendment allows anyone to run for office without arbitrary limitations being imposed. [R. 63 at p. 2 (“Defendant by assuming that license excludes Plaintiff as qualified person fit by his power of attorney certificate is untrue, pure fiction and deceit.”)].

1. Procedural Due Process

“The requirements of procedural due process apply only to the deprivations of interests encompassed by the Fourteenth Amendment’s protection of liberty and property.” *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). Procedural due process claims require a two-step analysis. *Mitchell v. Fankhauser*, 375 F.3d 477, 480 (6th Cir. 2004). First, courts must

determine “whether the alleged deprivation is within the ambit of the Fourteenth Amendment’s protection of liberty and property.” *Shoemaker v. City of Howell*, 795 F.3d 553, 558-59 (6th Cir. 2015). Second, if the plaintiff does have a protected interest, the Court must determine how much process was due and whether the plaintiff was “afforded adequate process prior to and following the deprivation.” *Id.* at 559; *Michell*, 375 F.3d at 480.

Banks argues that Keyes cannot meet the first step of the analysis because Keyes did not have a liberty or property interest in running for an election. [R. 62 at p. 1]. Keyes argues that he has a liberty interest to have his name on the ballot because “liberty consist[s] [of] the power [to do] whatever does not injure another” and elections do not cause harm to people. [R. 63 at p. 1].

A government position, by itself, does not constitute a protected property interest. *Bailey v. Floyd Cnty. Bd. of Educ.*, 106 F.3d 135, 141 (6th Cir. 1997). “Government employment amounts to a protected property interest if the employee is ‘entitled’ to continued employment.” *Id.* (citing *Roth*, 408 U.S. at 577). A government employee asserting a protected property interest in his position must “point to some statutory or contractual right conferred by the state which supports a legitimate claim to continued employment.” *Id.* Keyes does not point to continuing employment, or any statutory or contractual authority to show that he had a legitimate claim of entitlement to keep his name on the ballot after it was determined that he did not meet the requirements of the Kentucky Constitution. Thus, there was no deprivation of his property interest.

Keyes also argues that since Kentucky is a right-to-work state, he is entitled to have his name on the ballot. [R. 63 at p. 5]. However, the Supreme Court has “determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause.” *Snowden v. Hughes*, 321 U.S. 1, 7 (1944) (citing *Taylor*

v. Beckham, 178 U.S. 548 (1900)). Like *Snowden*, Keyes' denial is one set by state law, and his deprivation from running comes from his "failure to obey state law." *Snowden*, 321 U.S. at 7. Accordingly, Keyes' claim concerning the Fourteenth Amendment "is so unfounded in substance that we are justified in saying that it does not really exist; that there is no fair color for claiming that his rights under the federal constitution have been violated." *Id.* at 13. Therefore, since Keyes cannot meet the first step by showing that he was deprived of a liberty or property interest, this Court does not need to determine whether he received sufficient process. Thus, Keyes has not established that Banks violated his procedural due process rights.

2. Substantive Due Process

The substantive component of the Due Process Clause protects fundamental rights created by the United States Constitution. Fundamental rights are those specifically guaranteed by the United States Constitution and those rights that are "implicit in the concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). These rights generally include "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (internal citations omitted).

Keyes argues that the Fourteenth Amendment does not permit placing restrictions on his right to run for office since he is not infringing on other people's liberties. [R. 63 at p. 1]. However, substantive due process rights have been specifically defined by the Supreme Court and it does not include the right to maintain employment, including the government placing restrictions on who may run for public office. *See Seal v. Morgan*, 229 F.3d 567, 574-75 (6th Cir. 2000). Moreover, the Supreme Court has already held that a person does not have a liberty or property interest in

running for public office. *Snowden*, 321 U.S. at 7. Therefore, he has not shown that his removal from the ballot violated his substantive due process rights under the Fourteenth Amendment. Thus, Keyes' substantive due process claim lacks merit as a matter of law.

In sum, Keyes has not shown that there is a genuine dispute to material facts or that he is entitled to judgment as a matter of law. Instead, it is recommended that Keyes' motion for summary judgment be denied for the reasons that Banks' motion for summary judgment should be granted. First, Keyes has not shown that the removal of his name violated his procedural due process rights because he could not show a property or liberty interest in running for office as the Commonwealth Attorney. Second, Keyes could not show that he was denied a fundamental right when his name was taken off of the ballot for not meeting the requirements set forth in Section 100 of the Kentucky Constitution. Therefore, it is recommended that Keyes' motion for summary judgment be denied and Banks' motion for summary judgment be granted.

Motion to Set Trial:

At the conclusion of Keyes' cross-motion for summary judgment, he also requests the Court to set a trial date in this matter. [R. 63 at p. 7-8]. However, having concluded that the undisputed facts show that Banks is entitled to judgment as a matter of law concerning Keyes substantive and procedural due process claims, Rule 56 permits the Court to enter judgment in favor of Banks. *See Celotex*, 477 U.S. at 323–24 (“[o]ne of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses.”); *see also Matsushita*, 475 U.S. at 587 (“[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.”). Thus, since this Court was waiting to schedule a trial date, if necessary, following the outcome of the dispositive motions,

there are no issues that need to be submitted to the jury. Therefore, it is recommended that Keyes' request to set a trial date be denied.

IV. RECOMMENDATION

Therefore, having considered the record and being advised,

IT IS RECOMMENDED that:

1. Banks' motion to dismiss [R. 55] be DENIED;
2. Banks' motion for summary judgment [R. 62] be GRANTED; and
3. Keyes' motion for summary judgment and motion to set a trial date [R. 63] be DENIED.

*** **

The parties are directed to 28 U.S.C. § 636(b)(1) for a review of appeal rights governing this Recommended Disposition. Particularized objections to this Recommended Disposition must be filed with the Clerk of the Court within fourteen days of the date of service or further appeal is waived. FED. R. CIV. P. 72(b)(2); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). A general objection that does not "specify the issues of contention" is not sufficient to satisfy the requirement of written and specific objections. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Poorly drafted objections, general objections, or objections that require a judge's interpretation should be afforded no effect and are not sufficient to preserve the right of appeal. *Howard v. Secretary of HHS*, 932 F.2d 505, 508-09 (6th Cir. 1991). A party may respond to another party's objections within fourteen days of being served with a copy of those objections. FED. R. CIV. P. 72(b)(2).

Signed April 22, 2020.



Signed By:

Edward B. Atkins *EBA*

United States Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
AT PIKEVILLE

ELLIS KEYES,
Plaintiff,

v.

EDISON BANKS,
Defendant.

CIVIL NO. 7:18-CV-23-KKC

ORDER

*** **

The plaintiff moved the Court to set this matter for a trial without further discovery or expert witnesses (DE 53). This was his third motion asking the Court to set this matter for trial. The magistrate judge correctly denied the motion, explaining that a trial date will be scheduled, if necessary, after the Court has ruled on any dispositive motions (DE 54). Plaintiff has filed an objection (DE 56) to the magistrate judge's order.

The Court must rule on dispositive motions before this matter may proceed to trial. Accordingly, the plaintiffs' objection to the magistrate judge's order is **OVERRULED**.

Dated December 17, 2019



Karen K. Caldwell

KAREN K. CALDWELL
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF KENTUCKY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at PIKEVILLE

CIVIL ACTION NO. 7:18-CV-23-KKC-EBA

ELLIS KEYES,

PLAINTIFF,

v.

ORDER

EDISON BANKS,

DEFENDANT.

* * * * *

This matter is before the undersigned on the District Court's referral and Order. [R. 39]. On February 23, 2018 Edison Banks filed a motion in Letcher Circuit Court requesting that Ellis Keyes's name be removed from the election ballot because he lacked the qualifications required by the Kentucky Constitution to run for the office of Commonwealth's Attorney. [R. 55 at 233]. Keyes then filed his Complaint in this matter, asking this court to stay or dismiss his then-pending state-court proceeding and to grant "such other relief deemed just and proper." [R. 1]. The District Court dismissed the action for lack of jurisdiction. [R. 4-5]. Thereafter, the Sixth Circuit reversed and remanded the case back to the District Court, construing Keyes's *pro se* Complaint as raising a federal question under the Fourteenth Amendment. [R. 14 at 79]; *Keyes v. Banks*, NO. 18-5213 (6th Cir. Sept. 26, 2018).

Before filing his Answer, Banks filed his first motion to dismiss and bar prospective filings on January 15, 2019. [R. 27]. Banks argued that Keyes's Complaint should be dismissed because the claims were already decided by the Letcher County Circuit Court. [R. 27 at 156]. The District Court denied the Motion without prejudice because Banks did not provide a legal argument to

support his claims and did not support his factual allegations with evidence of pleadings filed or orders entered in that matter. [R. 29]. Following some delay, Banks then filed his Answer in this matter. [R. 38, 40]. On October 21, 2019, Banks renewed his motion to dismiss and bar prospective filings. [R. 55]. This time, Banks provides some legal authority, but minimal evidence to support his factual allegations. [*Id.*] Plaintiff Ellis Keyes subsequently responded to Banks's motion, stating that Banks' motion to dismiss must be dismissed in the interest of justice. [R. 57].

A review of the record sheds little light on the basis of the Plaintiff's Fourteenth Amendment claim or the defenses, whether legal or factual, asserted by the Defendant in this action. Without more, it would seem that neither side likes what the other is doing, but neither provides a sufficient statement of the factual background of the underlying matter, or legal authority applicable to the present. Therefore, based on the difficulty of determining the claims and defenses being raised by both parties, this Court sets this matter for a status hearing. Accordingly, having considered the record and being advised,

IT IS ORDERED that Banks's Motion [R. 55] is SET FOR STATUS HEARING before the undersigned on FRIDAY DECEMBER 6, 2019 at 10:30 A.M. in PIKEVILLE, KENTUCKY to clarify the claims being asserted in this instant lawsuit by Keyes and the basis of the dispositive motion by Banks.

Signed November 25, 2019.



Signed By:

Edward B. Atkins EBA

United States Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at PIKEVILLE

ELLIS KEYES,

Plaintiff,

v.

EDISON BANKS,

Defendant.

Civil Action No. 7: 18-23-KKC

ORDER

On January 31, 2019, *pro se* plaintiff Ellis Keyes filed a "Motion for Summary Judgment." [R. 30] Defendant Edison Banks did not file a timely response. However, the Court granted his motion for a brief extension of time to do so. Defendant Banks, through counsel, filed his response - consisting of a single paragraph of conclusory argument - on the due date. [R. 34] This motion is therefore ripe for decision.

Keyes filed this civil action in February 2018. Although he failed to file a formal complaint as required by Federal Rule of Civil Procedure 3, the Court liberally construed his "Emergency Motion – for order for Stay of Removal & Affidavit" [R. 1] as such. Keyes's complaint wandered through a variety of topics, but at bottom he sought an injunction to prevent the Circuit Court of Letcher County, Kentucky from granting Banks's motion to remove Keyes from the ballot for the office of the Commonwealth Attorney for Letcher County. *Id.* While this federal action was pending, the Letcher Circuit Court removed Keyes from the ballot because he is not a licensed attorney as required by Kentucky law, and Banks subsequently prevailed in the election.

In his two-page motion for summary judgment, Keyes contends that the *Rooker-Feldman* doctrine does not deprive this Court of subject matter jurisdiction over his complaint and that Banks is not qualified for the position of Commonwealth Attorney. [R. 30] To prevail

on a motion for summary judgment, the movant must establish that there is no genuine dispute as to any material fact and, most relevant here, that he is entitled to a judgment in his favor as a matter of law. *Loyd v. St. Joseph Mercy Oakland*, 766 F.3d 580, 588 (6th Cir. 2014). Keyes's motion fails to satisfy the second requirement because his contentions only attempt to rebut arguments that Banks might make regarding this Court's jurisdiction or the viability of the complaint; they do not relate to or support his own entitlement to the relief he seeks in his complaint. Because Keyes's motion for summary judgment does not establish that he is entitled to the relief he seeks in his complaint, it must be denied.

Keyes has also filed a "Request for Entry of Default Rule 55." [R. 35] Although Banks did not timely file an answer to the complaint, that is not the basis for Keyes's motion. Instead, he complains that Banks did not send him a copy of his response to Keyes's motion for summary judgment. Banks counters that he did, in fact, send Keyes a copy of his response consistent with the averments in his certificate of service. [R. 36] Keyes's motion will be denied for two reasons. First, even if Banks did fail to send a copy of his response to Keyes, that might be grounds for disallowing the response, but it is not ground for entry of default. See Fed. R. Civ. P. 55(a). Second, Keyes himself failed to include the certificate of service required by Federal Rule of Civil Procedure 5(d)(1)(A). Keyes was expressly advised of this requirement at the outset of the case. [R. 3] Both parties are reminded that the failure to serve opposing parties or their counsel in compliance with Rule 5 constitutes grounds to strike the relevant document from the record or for other appropriate measures by the Court. In this instance, Keyes's motion for entry of default is unwarranted.

Finally, after Banks failed to file his answer by February 7, 2019 as required by Rule 12(a)(4)(A), on March 5, 2019, the Court entered an Order *sua sponte* extending his deadline to do so by ten days. Banks missed that deadline too, but has now filed a motion for an extension of time to file his answer. Banks explains that he attempted to electronically file

his answer prior to the deadline using CM/ECF, but was unaware until recently that his attempt was unsuccessful. [R. 37] He has now successfully tendered his proposed answer. [R. 38] The Court finds the requested extension warranted and will grant the request.

The defendant having filed his answer to the complaint, the Court will refer this matter to a magistrate judge pursuant to 28 U.S.C. § 636(b) for pretrial management.

Accordingly, it is **ORDERED** as follows:

1. Ellis Keyes's motion for summary judgment [R. 30] is **DENIED**.
2. Ellis Keyes's "Request for Entry of Default Rule 55" [R. 35] is **DENIED**.
3. Banks's motion for an extension of time to file his answer [R. 37] is **GRANTED**.
4. The Clerk of the Court shall **FILE** Banks's tendered answer [R. 38] in the record.
5. This matter is **REFERRED** to a United States Magistrate Judge to conduct all further proceedings, including preparing proposed findings of fact and conclusions of law on any dispositive motions. The Clerk of the Court shall **ASSIGN** this matter to a Magistrate Judge.

Entered: March 27, 2019.



Karen K. Caldwell

KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at PIKEVILLE

ELLIS KEYES,
Plaintiff,

Civil Action No. 7:18-23-KKC

v.

EDISON BANKS,
Defendant.

ANSWER

Comes now the Defendant, Edison Banks, by and through counsel, and for his Answer to the Plaintiff, Ellis Keyes' Complaint states as follows:

FIRST DEFENSE

The Plaintiff's Complaint fails to state a cause of action against this Defendant upon which relief may be granted, and therefore the Complaint should be dismissed.

SECOND DEFENSE

The Defendant is without sufficient information on which to form a basis of belief as to the truth of the allegations set forth in Plaintiff's Complaint, and therefore same are denied. All allegations of Plaintiff's Complaint not specifically admitted herein are denied.

THIRD DEFENSE

The Plaintiff's Complaint should be dismissed for failure to join indispensable parties.

FOURH DEFENSE

The Defendant further pleads each and every affirmative defense available to him under CR 8.03 and CR 12.02 as if fully restated herein and all other affirmative defenses

available to him under the laws of the Commonwealth of Kentucky, at common law or provided by statute;

FIFTH DEFENSE

The Defendant expressly reserves the right to amend his answer and the right to assert affirmative defenses should they become necessary or available in the future as additional facts become available to support additional defenses.

WHEREFORE, having answered, the Defendant, Edison Banks, hereby demands that the Plaintiff's Complaint against him be dismissed and that the Plaintiff take nothing therein; for its costs herein expended; for TRIAL BY JURY; and for any and all other relief to which it may appear properly entitled.

Respectfully submitted,

/S/ADAM P. COLLINS
ADAM P. COLLINS, ESQ.
COLLINS, COLLINS & CONLEY P.S.C.
P.O. BOX 727
HINDMAN, KENTUCKY 41822
PHONE (606) 785-5048
FAX (606) 785-3021

CERTIFICATE OF SERVICE

This is to certify that true and correct copy of the foregoing was filed via CM/ECF on Tuesday, March 6, 2019 and distributed to:

Ellis Keyes
P.O. Box 1073
Whitesburg, Kentucky 41858

/S/ADAM P. COLLINS

ADAM P. COLLINS, ESQ.

Supreme Court of the United States
Office of the Clerk
Washington, DC ~~20543-0001~~

Scott S. Harris
Clerk of the Court
(202) 479-3011

October 4, 2018

Mr. Ellis Keyes
P.O. Box 1073
Whitesburg, KY 41858-1073

Re: Ellis Keyes
v. Edison Banks
Application No. 18A365

Dear Mr. Keyes:

The application for a stay in the above-entitled case has been presented to Justice Kagan, who on October 4, 2018, denied the application.

Sincerely,

Scott S. Harris, Clerk

by 

Mara Silver
Advising Attorney/Emergency
Applications Clerk

APPENDIX A

No. 18-5213

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

[DATE STAMP]

FILED

Jun 01, 2018

DEBORAH S. HUNT, Clerk

ELLIS KEYES,
Plaintiff-Appellant,

v.

EDISON BANKS,
Defendant-Appellee.

Before: GUY, COOK, and DONALD, Circuit
Judges.

Pro se litigant Ellis Keyes appeals the district court's dismissal of his complaint asking to enjoin proceedings in the Letcher County Kentucky Circuit Court. On April 19, 2018, we denied his emergency motion to stay those proceedings. Keyes now petitions for rehearing. *See* 6th Cir. R. 27(g). Upon review, we conclude that his motion does not demonstrate that we overlooked or misapprehended a point of law or fact in denying his emergency stay motion. *See* Fed. R. App.

P. 40(a)(2).

Therefore, the motion for reconsideration is
DENIED.

ENTERED BY ORDER OF THE COURT

/s/

Deborah S. Hunt, Clerk

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION at PIKEVILLE**

ELLIS KEYES,
Plaintiff,

v. Civil Action No. 7: 18-23-KKC

EDISON BANKS,
Defendant.

ORDER

Plaintiff Ellis Keyes has filed a "Motion to Set Jury Trial" requesting that this matter be scheduled for jury trial in September. [R. 11] However, the Court dismissed this action on February 26, 2018 [R. 4, 5], and Keyes' appeal remains pending before the United States Court of Appeals for the Sixth Circuit [R. 8]

Accordingly, Keyes' "Motion to Set Jury Trial" [R. 11] is DENIED AS MOOT.

Entered: September 5, 2018.

/s/
[SEAL] KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

APPENDIX C

No. 18-5213

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

[DATE STAMP]

FILED

Apr 19, 2018

DEBORAH S. HUNT, Clerk

ELLIS KEYES

Plaintiff-Appellant,

v.

EDISON BANKS,

Defendant.

ORDER

Before: GUY, COOK, and DONALD, Circuit
Judges.

Ellis Keyes appeals the district court's judgment dismissing his complaint. Keyes moves for an emergency stay, asking us to enjoin proceedings in the Letcher County Circuit Court.

We may grant a stay or injunction pending appeal using the same analysis that we use in

reviewing the grant or denial of a motion for a preliminary injunction. *Overstreet v. Lexington-Fayette Urban Cty. Gov 't*, 305 F.3d 566, 572 (6th Cir. 2002). This involves examination of four factors-likelihood of success on the merits, irreparable harm to the moving party, harm to other parties, and the public interest. *Serv. Emps. Int'l Union Local 1 v. Husted*, 698 F.3d 341, 344 (6th Cir. 2012) (citing *Overstreet*, 305 F.3d at 573). As the moving party, Keyes has the burden of showing that he is entitled to a stay. *Id.* at 343.

The Anti-Injunction Act, 28 U.S.C. § 2283, prevents us from granting Keyes the relief he seeks. We conclude that the relevant factors do not weigh in favor of granting a stay.

The emergency motion for a stay is DENIED.

ENTERED BY ORDER OF THE COURT

/s/

Deborah S. Hunt, Clerk

APPENDIX D

**Commonwealth of Kentucky
Court of Appeals**

NO. 2018-CA-000423-EL

ELLIS KEYES
APPELLANT

v.

EDISON G. BANKS, II
APPELLEE

ELECTION APPEAL FROM
LETCHER CIRCUIT COURT
ACTION NO. 18-CI-00032

ORDER

BEFORE: JONES, J. LAMBERT, AND NICKELL,
JUDGES.

The appellant, Ellis Keyes, filed a notice of appeal from an opinion and order of the Letcher Circuit Court that found Mr. Keyes was not a bona fide candidate for the office of Commonwealth's Attorney for the 47th Judicial Circuit. KRS 118.176(4) provides that review of an order disqualifying a candidate is initiated by filing in this Court a motion to set aside the circuit court order. On March 22, 2018, this Court

directed the appellant to show cause why this action should not be dismissed as improperly taken.

The Court has considered the parties' responses to the March 22 order. "Election contests must be practiced in strict conformity with the legislatively mandated procedures." *Stearns v. Davis*, 707 S.W.2d 787, 789 (Ky. App. 1985) (citing *Duvall v. Gatewood*, 500 S.W.2d 416 (Ky. 1973)). Having been otherwise sufficiently advised, the Court fails to find sufficient cause and ORDERS that this action be DISMISSED as improperly taken.

ENTERED: APR 16 2018

/s/

JUDGE, COURT OF APPEALS

APPENDIX E

**Commonwealth of Kentucky
Court of Appeals**

NO. 2018-CA-000423-EL

ELLIS KEYES
APPELLANT

v.

EDISON G. BANKS, II
APPELLEE

ELECTION APPEAL FROM
LETCHER CIRCUIT COURT
ACTION NO. 18

SHOW CAUSE ORDER

The appellant, Ellis Keyes, filed a notice of appeal on March 15, 2018, in the Letcher Circuit Court from the March 13, 2018 opinion and order of that court that found Mr. Ellis was not a bona fide candidate for the office of Commonwealth's Attorney for the 47th Judicial Circuit.

Statutes governing election contests are strictly construed and must be followed. *Stearns v. Davis*, 707 S.W.2d 787 (Ky. App. 1985) (citing *Duvall v. Gatewood*, 500 S.W.2d 416 (Ky. 1973)). KRS 118.176(4)

establishes the procedure to challenge a circuit court order disqualifying a candidate. *See Gibson v. Thompson*, 336 S.W.3d 81 (Ky. 2011). This statute provides that the disqualified candidate must file in the Court of Appeals a motion to set aside the order within five (5) days of the entry of the circuit court order. Instead of filing a motion to set aside the March 13 order in this Court, the appellant filed a notice of appeal in the Letcher Circuit Court.

The appellant is ORDERED to SHOW CAUSE why this action should not be dismissed as improperly taken. The appellant SHALL FILE with the Clerk of this Court five copies of a response to this order within ten (10) days of the date of entry of this order. Within five (5) days of the date of filing of the appellant's response, the appellee may file a response. Upon the expiration of the time given, this matter shall be submitted to a three-judge panel of this Court for review.

ENTERED: 03/22/18

/s/

CHIEF JUDGE, COURT OF APPEALS

APPENDIX F

**COMMONWEALTH OF KENTUCKY
LETCHER CIRCUIT COURT
CIVIL ACTION NO: 18-CI-00032**

[DATE STAMP]
ENTERED
LARRY D. ADAMS, CLERK
MAR 13 2018
LETCHER CIRCUIT DISTRICT COURTS
BY /s/

EDISON G. BANKS, II
PETITIONER

VS

ELLIS L. KEYES

And

ALLISON LUNDERGAN GRIMES, in her official
capacity as SECRETARY OF STATE OF THE
COMMONWEALTH OF KENTUCKY and
CHAIRPERSON OF THE STATE BOARD OF
ELECTIONS OF THE COMMONWEALTH OF
KENTUCKY

And

WINSTON MEADE, in his official capacity as

LETCHER COUNTY COURT CLERK and
CHAIRMAN OF THE LETCHER COUNTY BOARD
OF ELECTIONS
RESPONDENTS

THIS CAUSE, having come on for hearing on March 8, 2018, on the Petitioner's Motion Challenging the bona fides of the Respondent's qualifications to seek election for the Office of the Commonwealth's Attorney for the 47th Judicial Circuit and the Court having heard arguments of Counsel and having reviewed the record and Briefs filed herein and (he Court being otherwise sufficiently advised, hereby enter its Opinion and Order.

OPINION

1. This action is brought pursuant to KRS 118.176, which allows any opposing candidate to question the bona fides of an opposing candidate.

2. The Petitioner, Edison G. Banks, II, the current Commonwealth's Attorney for the 47th Judicial Circuit, has filed for re-election in the 2018 General Election. The Movant is a Republican.

3. The Respondent, Ellis L. Keyes, has also filed for the same office. The Respondent is a Democrat.

4. Section 100 of the Constitution of the Commonwealth of Kentucky sets forth the qualifications one must have to hold the Office of Commonwealths Attorney. The two issues to be

decided in this action are whether or not the Respondent, Ellis L. Keyes, is an attorney and if so, whether he has been licensed to practice law in the Commonwealth for the past four years.

5. The Movant produced evidence, in the form of a letter, from the Kentucky Bar Association, indicating that the Respondent, Ellis L. Keyes, is not a licensed practicing attorney in this Commonwealth. The Respondent, Ellis L. Keyes, admitted during the hearing of this matter, that he, in fact, is not now, nor has he ever been, a licensed practicing attorney within the Commonwealth of Kentucky.

6. That Section 100 of the Kentucky Constitution provides that "No person shall be eligible to the office of Commonwealth Attorney who is not at the time of his election, twenty-four years of age, citizen of Kentucky, and who has not resided in the state two years and one year next preceding his election in the county and district in which he is a candidate. No person shall be eligible to the office of Commonwealth's Attorney unless he shall have been a licensed practicing lawyer for four years."

7. The Constitution of the Commonwealth sets forth the requirements to hold this office, and the Respondent, Ellis L. Keyes, clearly does not meet the constitutional requirements to hold the office of the Commonwealth Attorney.

ORDER

Based upon the foregoing, the Court hereby orders as follows:

a. That the Petitioner's Motion for Removal from the Ballot and Injunctive Relief, pursuant to KRS 118.176, is hereby granted.

b. The Respondent, Winston Meade, in his official capacity as the Letcher County Court Clerk and as Chairman of the Letcher County Board of Elections, and the Respondent, Allison Lundergan Grimes, in her official capacity as Secretary of State of the Commonwealth of Kentucky and Chairperson of the State Board of Elections of the Commonwealth of Kentucky, are hereby enjoined and restrained from permitting or causing the name of Ellis L. Keyes from appearing on any ballot for the office of the Commonwealth's Attorney for the 47th Judicial Circuit for the May 22, 2018 Primary Election and/or the November 6, 2018 General Election.

c. IT IS FURTHER ORDERED AND ADJUDGED that the Respondents, Winston Meade and Allison Lundergan Grimes, in their official capacities, are enjoined and restrained from tabulating or certifying, any votes cast for the Respondent, Ellis L. Keyes, for the office of the Commonwealth's Attorney for the 47th Judicial Circuit in the May 22, 2018 Primary Election and/or the November 6, 2018 General Election.

This is a final and appealable Order and there being no just cause for delay, this matter is hereby

stricken from this Court's docket.

DATED this 13th day of March, 2018.

/s/

JAMES W. CRAFT, II
JUDGE, LETCHER CIRCUIT COURT

APPENDIX G

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION
AT PIKEVILLE**

ELLIS KEYES,
Plaintiff,

v.

CIVIL NO. 7:18-CV-23-KKC

EDISON BANKS,
Defendant.

JUDGMENT

In accordance with the order entered on this date the Court hereby ORDERS and ADJUDGES as follows:

- 1) this action is DISMISSED and STRICKEN from the Court's active docket; and
- 2) this judgment is FINAL and APPEALABLE.

Dated February 26, 2018.

[SEAL] KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

APPENDIX H

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
SOUTHERN DIVISION - PIKEVILLE**

ELLIS KEYES,
Plaintiff,

v. CIVIL NO. 7:18-CV-23-KKC

EDISON BANKS,
Defendant.

ORDER

This matter is before the Court on plaintiffs "emergency motion," (DE 1) in which he requests that the Court stay a certain action in Letcher Circuit Court. Plaintiff states that he is a candidate for Commonwealth Attorney in Letcher County, Kentucky and that his opponent has filed an action in Letcher Circuit Court to remove plaintiff's name from the ballot because he is not a licensed attorney. Plaintiff asks this Court to stay or dismiss his opponent's action in state court. (DE 1, Motion at 2, 3, 4, 9.) This is the sole relief plaintiff seeks in this Court.

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where

necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C.A. § 2283. None of those conditions applies here. Accordingly, this Court has no jurisdiction to render the sole relief requested, by plaintiff. For this reason, the Court hereby ORDERS that this matter is DISMISSED and STRICKEN from the Court's active docket.

Dated February 26, 2018.

[SEAL] KAREN K. CALDWELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

APPENDIX I

Supreme Court of Kentucky

2018-SC-000199-D
(2018-CA-000423)

ELLIS KEYES
MOVANT

V.

EDISON G. BANKS, II
RESPONDENT

LETCHER CIRCUIT COURT
2018-CI-00032

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

Movant's motion to supplement the motion for discretionary review is here by denied as moot.

ENTERED: August 8, 2018.

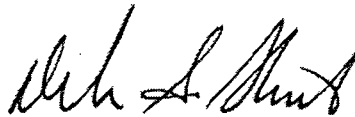
/s/
CHIEF JUSTICE

We review de novo a district court's judgment dismissing an action for lack of subject-matter jurisdiction. *Janis v. Ashcroft*, 348 F.3d 491, 492 (6th Cir. 2003). A district court must dismiss an action if it "determines at any time that it lacks subject-matter jurisdiction." Fed. R. Civ. P. 12(h)(3). Under the Anti-Injunction Act, "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. While the Act limits the availability of injunctive relief, it says nothing about the federal courts' subject-matter jurisdiction. *Chase Bank USA, N.A. v. City of Cleveland*, 695 F.3d 548, 557 (6th Cir. 2012). And the Supreme Court has recently admonished courts that statutory provisions are not jurisdictional unless Congress clearly states that they are. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 515 (2006). The Act is not, therefore, jurisdictional.

Construing Keyes's pro-se filing liberally, he raises a federal question under the Fourteenth Amendment. The district court therefore has jurisdiction over the case under 28 U.S.C. § 1331, which grants federal district courts jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States."

Because the district court improperly dismissed Keyes's action for lack of subject-matter jurisdiction, we **REVERSE** the district court's judgment and **REMAND** the case for further proceedings.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

~~APPEAL, CLOSED, NPP, R/R, REFER, REOPEN~~

U.S. District Court
Eastern District of Kentucky (Pikeville)
CIVIL DOCKET FOR CASE #: 7:18-cv-00023-KKC-EBA
Internal Use Only

Keyes v. Banks

Assigned to: Judge Karen K. Caldwell

Referred to: Magistrate Judge Edward B. Atkins

Case in other court: Sixth Circuit Court of Appeals, 18-05213

Letcher Circuit Court, 18-CI-00032

Sixth Circuit Court of Appeals, 19-05311

Cause: 42:1983 Civil Rights Act

Date Filed: 02/23/2018

Date Terminated: 09/02/2020

Jury Demand: Both

Nature of Suit: 440 Civil Rights: Other

Jurisdiction: Federal Question

Plaintiff**Ellis Keyes**represented by **Ellis Keyes**

P.O. Box 1073

Whitesburg, KY 41858-1073

PRO SE

V.

Defendant**Edison Banks**represented by **Adam P. Collins**

Collins, Collins & Conley PSC

161 W Main St

P.O. Box 727

Hindman, KY 41822-0727


606-785-5048

Fax: 606-785-3021

Email: admin@collinsconley.com

ATTORNEY TO BE NOTICED


Date Filed	#	Docket Text
02/23/2018	<u>1</u>	COMPLAINT (NO PROCESS REQUESTED). (Filing fee \$400; receipt number 7005086), filed by Ellis Keyes pro se . (Attachments: # <u>1</u> Order Overruling Keyes GJ Request, # <u>2</u> Amended Ntc of Hearing, # <u>3</u> Amended Petition, # <u>4</u> KY Bar Association Ltr, # <u>5</u> Notification and Declaration, # <u>6</u> Newspaper Article, # <u>7</u> Banks Certificate of Nomination, # <u>8</u> Keyes Certificate of Nomination, # <u>9</u> Petition for Removal from Ballot, # <u>10</u> Civil Summons, # <u>11</u> Petition for Removal from Ballot)(TDA) (Additional attachment(s) added on 2/23/2018: # <u>13</u> Filing Fee Receipt) (TDA). (Entered: 02/23/2018)

02/23/2018		<u>2</u>	(Court only) CASE ASSIGNMENT: (Attachments: # <u>1</u> Case Assignment)(TDA) (Entered: 02/23/2018)
02/23/2018		<u>3</u>	<u>IMPORTANT NOTICE to Pro Se Filer</u> : Information relating to pro se filings and F.R.Civ.P. 5.2 requiring personal identifiers be partially redacted from documents filed with the court. <u>Click here for more information on the rules</u> . It is the sole responsibility of counsel and the parties to comply with the rules requiring redaction of personal data identifiers. cc: pro se filer via hand delivery (Attachments: # <u>1</u> Sample Caption Page)(TDA) (Entered: 02/23/2018)
02/23/2018			Conflict Check run. (TDA) (Entered: 02/23/2018)
02/23/2018			***FILE SUBMITTED TO CHAMBERS of PSO for review: <u>1</u> Complaint (Emergency Motion). (TDA) (Entered: 02/23/2018)
02/26/2018		<u>4</u>	ORDER: Court ORDERS that matter is DISMISSED and STRICKEN from Court's active docket. Signed by Judge Karen K. Caldwell on 2/26/2018. (TDA) cc: Keyes via US Mail (Entered: 02/26/2018)
02/26/2018		<u>5</u>	JUDGMENT: Court hereby ORDERS and ADJUDGES as follows: 1) action DISMISSED and STRICKEN from Court's active docket; and 2) this judgment is FINAL and APPEALABLE. Signed by Judge Karen K. Caldwell on 2/26/2018. (TDA) cc: Keyes via US Mail (Entered: 02/26/2018)
02/28/2018		<u>6</u>	PROOF OF SERVICE re <u>1</u> Complaint (Emergency Motion), filed by Ellis Keyes pro se . (Attachments: # <u>1</u> Envelope Postmarked 2/26/18) (TDA) (Entered: 02/28/2018)
02/28/2018		<u>7</u>	NOTICE OF APPEAL as to <u>4</u> Order, <u>5</u> Judgment, filed by Ellis Keyes pro se . Filing fee \$505, receipt number 128946. cc: Mr. Keyes w/ docket sheet via hand delivery, 6CCA electronically. (TDA) (Entered: 02/28/2018)
03/01/2018		<u>8</u>	USCA Case Number 18-5213; Case Manager Amy Gigliotti for <u>7</u> Notice of Appeal filed by Ellis Keyes. (Attachments: # <u>1</u> Briefing Form) (TDA) (Entered: 03/01/2018)
04/19/2018		<u>9</u>	ORDER of USCA as to <u>7</u> Notice of Appeal; The emergency motion for a stay is DENIED. (Attachments: # <u>1</u> Cover Letter)(TDA) (Entered: 04/19/2018)
06/01/2018		<u>10</u>	ORDER of USCA as to <u>7</u> Notice of Appeal; motion for reconsideration is DENIED. (Attachments: # <u>1</u> Cover Letter)(TDA) (Entered: 06/01/2018)
08/20/2018		<u>11</u>	MOTION to Set Jury Trial, filed by Ellis Keyes pro se . Motions referred to PSO. (Attachments: # <u>1</u> Supreme Court Application for Stay) (TDA) (Entered: 08/20/2018)
08/20/2018		<u>12</u>	DEMAND for Jury Trial by Ellis Keyes pro se . (TDA) (Entered: 08/20/2018)

08/20/2018		***MOTION SUBMITTED TO CHAMBERS of PSO for review: re <u>11</u> MOTION to Set Jury Trial, filed by Ellis Keyes. (TDA) (Entered: 08/20/2018)
09/05/2018	<u>13</u>	ORDER: Keyes' "Motion to Set Jury Trial" <u>11</u> is DENIED AS MOOT . Signed by Judge Karen K. Caldwell on 9/5/2018. (RCB)cc: COR, Keyes via U.S. mail (Entered: 09/05/2018)
09/26/2018	<u>14</u>	INFORMATION COPY OF ORDER/JUDGMENT of USCA as to <u>7</u> Notice of Appeal filed by Ellis Keyes: REVERSED district court's judgment and REMAND the case for further proceedings. (Attachments: # <u>1</u> Cover Letter - Mandate to Issue)(MJY) (Entered: 09/26/2018)
09/28/2018	<u>15</u>	MOTION To Set Jury Trial and MOTION - Application for Stay by Ellis Keyes, Pro Se. Motions referred to P SO. (Attachments: # <u>1</u> Supplement-re 6CCA & Ky Supreme Court rulings)(MJY) (Entered: 09/28/2018)
09/28/2018		***MOTION SUBMITTED TO CHAMBERS of PSO for review: re <u>15</u> MOTION for Order To Set Jury Trial and MOTION - Application for Stay by Ellis Keyes, Pro Se by Ellis Keyes. (MJY) (Entered: 09/28/2018)
10/11/2018	<u>16</u>	ORDER: Pla Ellis Keyes's "Motion to Set Jury Trial" and "Application for Stay" <u>15</u> are DENIED WITHOUT PREJUDICE as premature. Signed by Judge Karen K. Caldwell on 10/11/2018. (RCB)cc: COR, Keyes via U.S. mail (Entered: 10/11/2018)
10/18/2018	<u>17</u>	MANDATE of USCA as to <u>7</u> Notice of Appeal; Appeal REVERSED district court's judgment and REMAND the case for further proceedings. (Attachments: # <u>1</u> Cover Letter) (TDA) (Entered: 10/18/2018)
10/22/2018		***FILE SUBMITTED TO CHAMBERS of PSO for review: <u>17</u> USCA Mandate; Appeal REVERSED and REMANDED for further proceedings. (TDA) (Entered: 10/22/2018)
11/08/2018		Clerk's Note: Blank summons form mailed to pro se plaintiff per his telephonic request. (RCB) (Entered: 11/08/2018)
11/09/2018	<u>18</u>	Summons Issued as to Edison Banks; Summons issued and returned to Mr. Keyes via pick-up from Office of Clerk. (TDA) (Entered: 11/09/2018)
11/09/2018	<u>19</u>	MOTION for Summary Judgment, file by Ellis Keyes pro se . Motions referred to PSO. (TDA) (Entered: 11/09/2018)
11/13/2018	<u>20</u>	ORDER: Pla Ellis Keyes's "Motion for Summary Judgment" (R. <u>19</u>) is DENIED WITHOUT PREJUDICE as premature. Signed by Judge Karen K. Caldwell on 11/13/2018. (TDA) cc: Keyes via US Mail (Entered: 11/13/2018)
11/26/2018	<u>21</u>	SUMMONS Returned Executed by Ellis Keyes via Certified Mail & Personal Service to Edison Banks served on 11/14/2018 & 11/19/2018, answer due 12/5/2018. (TDA) (Entered: 11/26/2018)

12/12/2018	<u>22</u>	MOTION for Entry of Default by Ellis Keyes pro se . Motions referred to PSO. (TDA) (Entered: 12/12/2018)
12/17/2018	<u>23</u>	ORDER: Keyes's "Motion for Entry of Default" (R. <u>22</u>) is DENIED WITHOUT PREJUDICE . Signed by Judge Karen K. Caldwell on 12/17/2018. (TDA) cc: Keyes via US Mail (Entered: 12/17/2018)
12/26/2018	<u>24</u>	MOTION for Reconsideration re <u>23</u> Order on Motion for Entry of Default, filed by Ellis Keyes pro se . Motions referred to PSO. (Attachments: # <u>1</u> Letcher Circuit Opinion and Order, # <u>2</u> USCA Sixth Circuit Order, # <u>3</u> Supreme Court of KY Notice, # <u>4</u> USDC Order entered 12/17/18) (TDA) (Entered: 12/26/2018)
12/26/2018		***MOTION SUBMITTED TO CHAMBERS of PSO for review: re <u>24</u> MOTION for Reconsideration re <u>23</u> Order on Motion for Entry of Default by Ellis Keyes. (TDA) (Entered: 12/26/2018)
01/02/2019	<u>25</u>	NOTICE of service by Ellis Keyes re <u>21</u> Summons Returned Executed (Attachments: # <u>1</u> Envelope Postmarked 12-27-18)(MJY) (Entered: 01/02/2019)
01/03/2019	<u>26</u>	ORDER: Keyes' motion for reconsideration <u>24</u> is DENIED . Signed by Judge Karen K. Caldwell on 1/3/2019. (RCB)cc: COR, Keyes via U.S. mail (Entered: 01/03/2019)
01/15/2019	<u>27</u>	MOTION to Dismiss, MOTION for Sanctions by Edison Banks <i>to Bar Prospective Filings</i> . Motions referred to PSO. (Attachments: # <u>1</u> Proposed Order)(Collins, Adam) Modified text on 1/16/2019 (TDA). (Entered: 01/15/2019)
01/17/2019	<u>28</u>	RESPONSE to Motion re <u>27</u> MOTION to Dismiss, filed by Ellis Keyes pro se . (TDA) (Entered: 01/17/2019)
01/24/2019	<u>29</u>	ORDER: Banks's "Motion to Dismiss and to Bar Prospective Filings" (R. <u>27</u>) is DENIED WITHOUT PREJUDICE . Signed by Judge Karen K. Caldwell on 1/24/2019. (TDA) cc: COR & Keyes via US Mail (Entered: 01/24/2019)
01/31/2019	<u>30</u>	MOTION for Summary Judgment, filed by Ellis Keyes pro se . Motions referred to PSO. (TDA) (Entered: 01/31/2019)
02/22/2019		***MOTION SUBMITTED TO CHAMBERS of Judge Caldwell for review: re <u>30</u> MOTION for Summary Judgment by Ellis Keyes. (TDA) (Entered: 02/22/2019)
02/22/2019	<u>31</u>	MOTION for Extension of Time <i>to file Response to Motion for Summary Judgment</i> by Edison Banks. Motions referred to P SO. (Collins, Adam) (Additional attachment(s) added on 2/25/2019: # <u>1</u> Proposed Order) (TDA). Modified text on 3/4/2019 (TDA). (Entered: 02/22/2019)
02/22/2019		NOTICE OF DEFICIENCY TO ADAM COLLINS re <u>31</u> MOTION for Extension of Time; attorney failed to submit a proposed order as an electronic attachment to the motion. Entry by attorney; <u>within 7 calendar days</u> , prepare a document entitled "Notice of Filing", file the Notice

		using the event "Notice of Filing," attach the proposed order, and create a link to the related docket entry. cc: COR (TDA) (Entered: 02/22/2019)
02/22/2019	<u>32</u>	NOTICE OF FILING by Edison Banks re <u>31</u> MOTION for Extension of Time by Edison Banks , Notice of Deficiency, (Attachments: # <u>1</u> Proposed Order)(Collins, Adam) (Entered: 02/22/2019)
02/28/2019	<u>33</u>	RESPONSE to <i>Motion for Summary Judgment</i> filed by Edison Banks. (Attachments: # <u>1</u> Proposed Order)(Collins, Adam) (Entered: 02/28/2019)
03/04/2019		***MOTION SUBMITTED TO CHAMBERS of PSO for review: re <u>31</u> MOTION for Extension of Time to file Response to Motion for Summary Judgment, by Edison Banks. (TDA) (Entered: 03/04/2019)
03/05/2019	<u>34</u>	ORDER: 1. Edison Bankss motion for an extension of time R. <u>31</u> is GRANTED . 2. Banks shall file an answer to the complaint on or before March 15, 2019 . This deadline will not be extended absent exigent circumstances. Signed by Judge Karen K. Caldwell on 3/5/19.(MJY) cc: COR & Keyes via U.S. Mail. (Entered: 03/05/2019)
03/18/2019	<u>35</u>	MOTION for Entry of Default, filed by Ellis Keyes pro se . Motions referred to PSO. (TDA) (Entered: 03/18/2019)
03/25/2019	<u>36</u>	RESPONSE to <i>Request for Entry of Default</i> filed by Edison Banks. (Attachments: # <u>1</u> Proposed Order)(Collins, Adam) (Entered: 03/25/2019)
03/26/2019	<u>37</u>	SECOND MOTION for Extension of Time to File Answer by Edison Banks. Motions referred to PSO. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Exhibit Answer)(Collins, Adam) Modified text on 3/26/2019 (TDA). (Entered: 03/26/2019)
03/26/2019	<u>38</u>	TENDERED ANSWER to Complaint by Edison Banks. (Collins, Adam) Modified text on 3/26/2019 (TDA). (Entered: 03/26/2019)
03/26/2019		NOTICE OF DEFICIENCY TO HON. ADAM COLLINS re <u>38</u> Answer: Error: This document was filed as an attachment to [#] motion for leave and filed as a separate document. Correction: the clerk tendered the Answer. An electronically submitted document requiring leave of Court shall be filed only as an attachment to the motion and not as a separate entry. No further action required by counsel. cc: COR (TDA) (Entered: 03/26/2019)
03/27/2019	<u>39</u>	ORDER: 1. Ellis Keyes's motion for summary judgment <u>30</u> is DENIED . 2. Ellis Keyes's "Request for Entry of Default Rule 55" <u>35</u> is DENIED . 3. Banks's motion for an extension of time to file his answer <u>37</u> is GRANTED . 4. Clerk shall FILE Banks's tendered answer <u>38</u> in the record. 5. This matter is REFERRED to USMJ to conduct all further proceedings, including preparing proposed findings of fact and conclusions of law on any dispositive motions. Clerk shall ASSIGN this matter to Magistrate Judge. Signed by Judge Karen K. Caldwell on 3/27/2019. (RCB)cc: COR, Keyes via U.S. mail (Entered: 03/27/2019)

03/27/2019	<u>40</u>	ANSWER to <u>1</u> Complaint with Jury Demand by Edison Banks. Filed pursuant to <u>39</u> Order. (RCB) (Entered: 03/27/2019)
03/27/2019	 <u>41</u>	(Court only) CASE ASSIGNMENT. (RCB) (Entered: 03/27/2019)
03/27/2019		***FILE SUBMITTED TO CHAMBERS of Judge Atkins for review: <u>39</u> Order, Case Referred to Magistrate Judge (RCB) (Entered: 03/27/2019)
03/28/2019	<u>42</u>	ORDER FOR MEETING AND REPORT: 1) w/in 30 days parties hold Rule 26 Meeting. 2) At time of meeting, parties exchange Rule 26(a)(1), and make supplemental disclosures required by Rule 26(e). 3) w/in 10 days after meeting the parties shall file a joint status report, <i>see items a-i</i> . 4. Parties advise Court of parent corporations, subsidiaries, affiliates, members and/or partners associated. Signed by Magistrate Judge Edward B. Atkins on 3/28/2019. (Attachments: # <u>1</u> AO 85 Consent Form) (TDA) cc: COR & Keyes via US Mail. (Entered: 03/28/2019)
03/28/2019	<u>43</u>	REPLY to Response re <u>35</u> REQUEST for Entry of Default, filed by Ellis Keyes pro se . (TDA) (Entered: 03/28/2019)
03/28/2019	<u>44</u>	NOTICE OF APPEAL as to <u>39</u> Order, filed by Ellis Keyes pro se . Filing fee \$505; Receipt #7005576. cc: COR, 6CCA & Keyes via hand delivery with docket sheet. (TDA) (Entered: 03/28/2019)
04/02/2019	<u>45</u>	USCA Case Number 19-5311; Case Manager Amy Gigliotti for <u>44</u> Notice of Appeal filed by Ellis Keyes. (TDA) (Entered: 04/02/2019)
04/19/2019	<u>46</u>	MOTION to Clarify by Edison Banks , MOTION to Stay by Edison Banks Motions referred to Edward B. Atkins. (Attachments: # <u>1</u> Proposed Order)(Collins, Adam) (Entered: 04/19/2019)
04/22/2019	<u>47</u>	ORDER: Dfts Motion for Clarification, (R. <u>46</u>), is GRANTED to extent that Court's Order for Meeting and Report, (R. <u>42</u>), is VACATED, PENDING THE APPEAL . Signed by Magistrate Judge Edward B. Atkins on 4/22/2019. (TDA) cc: COR & Keyes via US Mail (Entered: 04/22/2019)
04/22/2019	<u>48</u>	ORDER of USCA as to <u>44</u> Notice of Appeal; the appeal is DISMISSED . (Attachments: # <u>1</u> Cover Letter) (TDA) (Entered: 04/22/2019)
04/23/2019	<u>49</u>	ORDER FOR REPORT OF PARTIES' PLANNING MEETING: Court of Appeals dismissed appeal with no mandate to issue. <u>48</u> . Order to Meet and Confer will be reinstated in accordance with this Order. 1. NLT 14 days, conduct meeting of parties required by Rule 26(f). 2. At meeting, exchange disclosures required by Rule 26(a)(1), supp when required by Rule 26(e). 3. NLT 10 days after meeting, file written JOINT report outlining proposed discovery plan. This report conform to FRCP Appendix Form 52, and include: a-h; i) whether parties consent to jurisdiction of a magistrate judge. Consent forms attached and forms signed by all parties filed NLT date joint status report is due. Signed by Magistrate Judge Edward B. Atkins on

		4/23/2019. (Attachments: # <u>1</u> Consent to Mag. Judge Form)(RCB)cc: COR, Keyes via U.S. mail (Entered: 04/23/2019)
04/23/2019	<u>50</u>	NOTICE, Consent, and Reference to a Magistrate Judge by Edison Banks (Collins, Adam) Modified text on 4/24/2019 (RCB). (Entered: 04/23/2019)
05/23/2019		***FILE SUBMITTED TO CHAMBERS of Judge Atkins for review: <u>49</u> Order For Meeting and Report. (TDA) (Entered: 05/23/2019)
05/24/2019	<u>51</u>	SCHEDULING ORDER: (1) All fact and expert discovery be completed by SEPTEMBER 20, 2019 ; (2) parties shall supplement disclosures and responses to discovery required by FRCP 26(e); (3) All dispositive motions, including Daubert motions, shall be filed by OCTOBER 21, 2019 . The response and reply time per LR 7.1(c); (4) Discovery Limitations: <i>see items a-c</i> . (5) parties shall observe the following directives regarding the filing of discovery materials: <i>see items a & b</i> . (6) Status Report - on or before SEPTEMBER 20, 2019 (close of discovery) parties file report re progress of case and status of settlement negotiations. Signed by Magistrate Judge Edward B. Atkins on 5/24/2019. (TDA) cc: COR & Keyes via US Mail (Entered: 05/24/2019)
06/03/2019	<u>52</u>	ORDER of USCA as to <u>44</u> ; DENYING appellant's petition for en banc rehearing. (Attachments: # <u>1</u> Cover Letter) (TDA) (Entered: 06/03/2019)
09/27/2019		***FILE SUBMITTED TO CHAMBERS of Judge Atkins for review: <u>51</u> Scheduling Order - nothing filed. (TDA) (Entered: 09/27/2019)
10/15/2019	<u>53</u>	MOTION for Trial, filed by Ellis Keyes pro se . Motions referred to Edward B. Atkins. (TDA) (Entered: 10/15/2019)
10/16/2019	<u>54</u>	ORDER: Keyes's Motion (R. <u>53</u>) is DENIED WITHOUT PREJUDICE as premature. Signed by Magistrate Judge Edward B. Atkins on 10/16/2019. (TDA) cc: COR & Keyes via US Mail (Entered: 10/16/2019)
10/21/2019	<u>55</u>	MOTION to Dismiss by Edison Banks Motions referred to Edward B. Atkins. (Attachments: # <u>1</u> Proposed Order)(Collins, Adam) (Entered: 10/21/2019)
10/23/2019	<u>56</u>	MOTION for Reconsideration re <u>54</u> Order, filed by Ellis Keyes pro se . Motions referred to Edward B. Atkins. (TDA) (Entered: 10/23/2019)
10/28/2019	<u>57</u>	RESPONSE to <u>55</u> MOTION to Dismiss, filed by Ellis Keyes pro se . (TDA) (Entered: 10/28/2019)
11/18/2019		***MOTION SUBMITTED TO CHAMBERS of Judge Atkins for review: re <u>55</u> MOTION to Dismiss by Edison Banks. (TDA) (Entered: 11/18/2019)
11/18/2019		***MOTION SUBMITTED TO CHAMBERS of Judge Caldwell for review: re <u>56</u> MOTION for Reconsideration <u>54</u> Order, by Ellis Keyes. (TDA) (Entered: 11/18/2019)

11/25/2019	<u>58</u>	ORDER: Banks's Motion (R- 55) is SET FOR STATUS HEARING before undersigned on FRIDAY DECEMBER 6, 2019 at 10:30 A.M. in PIKEVILLE, KY to clarify claims being asserted by Keyes and basis of dispositive motion by Banks. Signed by Magistrate Judge Edward B. Atkins on 11/25/2019. (TDA) cc: COR & Keyes via US Mail (Entered: 11/25/2019)
11/27/2019	<u>59</u>	ORDER: the status hearing is RESCHEDULED for MONDAY DECEMBER 9, 2019 at 10:30 A.M. in PIKEVILLE, KY. Signed by Magistrate Judge Edward B. Atkins on 11/27/2019. (TDA) cc: COR & Keyes via US Mail (Entered: 11/27/2019)
12/09/2019	<u>60</u>	MINUTE ENTRY ORDER FOR STATUS CONFERENCE: proceedings held on 12/9/2019 before Magistrate Judge Edward B. Atkins; Parties are given 30 days within which to file any additional briefs into the record, addressing the alleged procedural and substantive Due Process violations. Signed by Magistrate Judge Edward B. Atkins. (Tape #KYED-PIK_7-18-cv-23_20191209_095558) (TDA) cc: COR (Entered: 12/09/2019)
12/17/2019	<u>61</u>	ORDER re <u>56</u> : Court must rule on dispositive motions before matter may proceed to trial. Accordingly, plas objection to magistrate judge's order is OVERRULED. Signed by Judge Karen K. Caldwell on 12/17/2019. (TDA) cc: COR & Keyes via US Mail. (Entered: 12/17/2019)
12/27/2019	<u>62</u>	MOTION for Summary Judgment by Edison Banks Motions referred to Edward B. Atkins. (Attachments: # <u>1</u> Proposed Order)(Collins, Adam) (Entered: 12/27/2019)
12/30/2019	<u>63</u>	MOTION for Summary Judgment, MOTION to Set for Trial, by Ellis Keyes pro se . Motions referred to Edward B. Atkins. (TDA) (Entered: 12/30/2019)
01/03/2020	<u>64</u>	RESPONSE to Defendant's Motion re <u>62</u> MOTION for Summary Judgment, filed by Ellis Keyes pro se . (Attachments: # <u>1</u> Envelope Postmarked 12/31/19) (TDA) (Entered: 01/03/2020)
01/22/2020		***MOTION SUBMITTED TO CHAMBERS of Judge Atkins for review: re <u>62</u> MOTION for Summary Judgment by Edison Banks (TDA) (Entered: 01/22/2020)
01/23/2020		***MOTION SUBMITTED TO CHAMBERS of Judge Atkins for review: re <u>63</u> MOTION for Summary Judgment, MOTION to Set for Trial by Ellis Keyes. (TDA) (Entered: 01/23/2020)
03/23/2020	<u>65</u>	GENERAL ORDER 20-03 - COURT OPERATIONS RELATED TO COVID-19: 1. General Order does not apply to ongoing trials; 2. Continuation of civil & criminal trials per General Order 20-03 extended to civil & criminal trials set to begin 5/1/2020. 3. hearings in criminal cases through 5/1/2020, motion hearings, change of plea, & sentencings CONTINUED GENERALLY, subject to further orders. 4. Initial appearances & detention hearings proceed via remote attendance to

		<p>extent possible, appearances by summons cont. after 5/1/20. 5. Except TROs, prel. inj., & emergency matters, in-person hrgs in civil cases - through 5/1/2020 CONTINUED GENERALLY. Assigned judge may proceed by means not requiring personal appearance. 6. Absent exceptional circumstances, hrgs in emergency matters shall be conducted by means not requiring in-person attendance. 7. If a detention facility informs USM inmate is ill, inmate shall not be brought to Courthouse. 8. Naturalization ceremonies through 5/1/2020 are CONTINUED GENERALLY. 9. Settlement conferences through 5/1/2020 are CONTINUED GENERALLY. 10. Misd. & petty offense dockets through 5/1/2020 CONTINUED GENERALLY. 11. For complaints filed per False Claims Act, which remain under seal, US granted add'l 60 days to intervene or notify Court that it declines. 12. Courts remain open. Eff. 3/24/2020-5/1/2020 Courthouse open Mon-Fri 10 AM-2 PM. 13. Visitor restrictions apply & will be screened. 14. Gen. Order 20-02 remains in effect. 15. Court may issue further directives. Signed by Judge Danny C. Reeves on 3/23/2020. (TDA)cc: COR and Ellis Keyes by US Mail (Entered: 04/14/2020)</p>
04/22/2020	<u>66</u>	<p>RECOMMENDED DISPOSITION: 1. Banks' motion to dismiss (R. <u>55</u>) be DENIED; 2. Banks' motion for summary judgment (R. <u>62</u>) be GRANTED; and 3. Keyes' motion for summary judgment and motion to set a trial date (R. <u>63</u>) be DENIED. Objections must be filed w/in 14 days. A party may respond to another party's objections w/in 14 days. Signed by Magistrate Judge Edward B. Atkins on 4/22/2020. (TDA) cc: COR and Ellis Keyes by US Mail (Entered: 04/22/2020)</p>
04/29/2020	<u>67</u>	<p>OBJECTIONS to <u>66</u> Report and Recommendations, filed by Ellis Keyes pro se. (TDA) (Entered: 04/29/2020)</p>
05/14/2020		<p>***MOTION SUBMITTED TO CHAMBERS of Judge Caldwell for review: re <u>66</u> REPORT AND RECOMMENDATIONS (TDA) (Entered: 05/14/2020)</p>
09/02/2020	<u>68</u>	<p>OPINION & ORDER: 1) the magistrate judge's recommended disposition (DE <u>66</u>) is ADOPTED as opinion of Court with exception of magistrate judge's finding that, "[i]n response to striking his name from the ballot, Keyes filed this instant action and then also appealed the state trial court's ruling." (DE <u>66</u> at 6.) Instead, Court finds Keyes filed action before Letcher Circuit Court entered an order that prohibited Keyes' name from appearing on the ballot. That finding makes no difference in outcome of magistrate judge's recommendation; 2) Banks' motion to dismiss (DE <u>55</u>) is DENIED; 3) Banks' motion for summary judgment (DE <u>62</u>) is GRANTED; and 4) Keyes' motion for summary judgment and motion to set a trial date (DE <u>63</u>) are DENIED; and 5) judgment will be entered consistent with this opinion. Signed by Judge Karen K. Caldwell on 9/2/2020. (TDA) cc: COR and Ellis Keyes by US Mail (Entered: 09/02/2020)</p>
09/02/2020	<u>69</u>	<p>JUDGMENT: 1) Dft Edison Banks' motion for summary judgment (DE <u>62</u>) is GRANTED; 2) judgment is entered in favor of dft Edison Banks on all claims asserted in this action; 3) this judgment is FINAL and</p>

		APPEALABLE ; and 4) this matter is STRICKEN from the Courts active docket. Signed by Judge Karen K. Caldwell on 9/2/2020. (TDA) cc: COR and Ellis Keyes by US Mail (Entered: 09/02/2020)
09/09/2020	<u>70</u>	NOTICE OF APPEAL as to <u>68</u> Memorandum Opinion & Order and <u>69</u> Judgment, by Ellis Keyes, Pro Se. (SHORT RECORD MAILED). cc: COR, 6CCA (MJY) (Entered: 09/09/2020)
09/09/2020	70 <u>71</u>	MOTION for Leave to Appeal in forma pauperis by Ellis Keyes, Pro Se. Motions referred to Edward B. Atkins. (Attachments: # <u>1</u> Affidavit Accompanying Motion)(MJY) (Entered: 09/09/2020)
09/09/2020		***MOTION SUBMITTED TO CHAMBERS of Karen Caldwell for review: re <u>71</u> MOTION for Leave to Appeal in forma pauperis by Ellis Keyes, Pro Se. (MJY) (Entered: 09/09/2020)

WAIVER

SUPREME COURT OF THE UNITED STATES

Supreme Court Case No. 18-379

Ellis Keyes

(Petitioner)

v. Edison Banks, et al.

(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate boxes:

- ☒ Please enter my appearance as Counsel of Record for all respondents.
- ☒ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

Commonwealth of Kentucky

- ☒ I am a member of the Bar of the Supreme Court of the United States.
- ☒ I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member.

Signature /s S. Travis Mayo

Date: October 10, 2018

(Type or print) Name S. Travis Mayo

☒ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm Office of the Attorney General

Address 700 Capitol Ave., Suite 118

City & State Frankfort, Kentucky

Zip 40601

Phone (502) 696-5662

Email travis.mayo@ky.gov

A COPY OF THIS FORM MUST BE SENT TO PETITIONER'S COUNSEL OR TO PETITIONER IF *PRO SE*. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

CC: Ellis Keyes, Propria Persona, P.O. Box 1073, Whitesburg, KY 41858-1073

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

December 3, 2018

Mr. Ellis Keyes
P.O. Box 1073
Whitesburg, KY 41858-1073

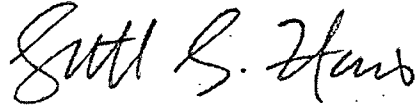
Re: Ellis Keyes
v. Edison G. Banks, II
No. 18-379

Dear Mr. Keyes:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott S. Harris", written in a cursive style.

Scott S. Harris, Clerk