



No. 21 - 864

In the
SUPREME COURT OF THE UNITED STATES

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

vs.

GARLAND "ANDY" BARR, *Respondent*

David Eric Lycan, *Lead Counsel of Record*
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On Petition for Writ of Certiorari to the
Supreme Court of Kentucky

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

On June 22, 2020, I filed a ballot challenge against U.S. Representative Andy Barr pursuant to KRS (Kentucky Revised Statutes) 118.176. It was never decided on the merits.

1. May any trial court in Kentucky dismiss a civil action for failure to state a claim without ever having construed the initiating pleading in the light most favorable to the plaintiff or movant?

2. If a circuit court dismisses a ballot challenge filed pursuant to KRS 118.176 for the sole reason that the definition of “a bona fide candidate” is not what the Legislature said it is in Section (1) of the statute, may the Kentucky Court of Appeals dismiss the Movant's motion to set aside and the Movant's regular appeal without ever reaching the merits?

PARTIES TO THE PROCEEDINGS

- 1) Geoffrey M. Young, *pro se*, Movant/Petitioner
- 2) Garland “Andy” Barr, Respondent

RELATED CASES AND DECISIONS

- *Young v. Barr*, Fayette Circuit Court, Division 7, No. 20-CI-01860. Judgments entered July 15, 2020, August 11, 2020, August 25, 2020, and July 16, 2021.
- *Young v. Barr*, Kentucky Court of Appeals, No. 2020-CA-0886. Judgments entered July 31, 2020, October 28, 2020, December 29, 2020, and May 11, 2021.
- *Young v. Barr*, Supreme Court of Kentucky, No. 2021-SC-0186. The judgment sought to be reviewed was entered October 20, 2021.

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BASIS FOR JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) because the Fayette Circuit Court, Division 7, dismissed my June 22, 2020 ballot challenge without a trial because the court insisted that the definition of “a bona fide candidate” is different than what the legislature set forth in KRS 118.176(1). In four orders, the Kentucky Court of Appeals upheld the circuit court's four nearly identical rulings, and the Supreme Court of Kentucky denied my motion for discretionary review on October 20, 2021.

No court may alter the wording of a duly-enacted statute, hence this petition for certiorari.

STATEMENT OF THE CASE

On June 22, 2020, I filed a ballot challenge against U.S. Representative Andy Barr, the Republican incumbent in Kentucky's Sixth Congressional District, for allegedly conspiring with the Republican Party of Kentucky ("the RPK"), other powerful Republicans, and Kentucky Educational Television ("KET"), a state agency, to rig the 2020 primary for the U.S. House of Representatives in Kentucky's 6th Congressional District against me and against a third Republican candidate named Chuck Eddy. The jurisdiction of the Fayette Circuit Court, Division 7, was established on June 22, 2020.

I alleged that rigging a primary is illegal in Kentucky because according to KRS 118.105(1), "[T]he governing authority of any political party shall have no power to nominate any candidate for

any elective office or to provide any method of nominating candidates for any elective office other than by a primary as provided in this chapter.” I alleged that the following individuals and institutions conspired to violate KRS 118.105(1) and thereby rigged the 2020 Republican primary in KY-6.

1) The Republican Party of Clark County and its chairman, Tim Janes, allowed Andy Barr's District Director, Tatum Dale, to sing the praises of Rep. Barr at the monthly meeting of the county party for ten minutes on January 4, 2020 but refused to let me speak to the group for even one second. Tim Janes again refused to let me speak for one second and present my platform to the group at the next meeting on February 1, 2020. I was, however, able to ask a question of Mac Brown, the chairman of the Republican Party of Kentucky (the RPK), but Tim

Janes interrupted his guest speaker and prevented Mr. Brown from answering my question.

2) My question to Mac Brown was whether I would be allowed the same number of minutes as the keynote speaker, Andy Barr, at the upcoming annual fundraising dinner on February 29, 2020. On February 11, 2020, I learned that the Republican Party of Clark County would allow me and Chuck Eddy only three minutes [180 seconds] each at the dinner to respond to Barr's keynote speech, and only on the condition that we each pay the entry fee of \$60.00. I wrote in my ballot challenge:

[T]hat arrangement was clearly in violation of Section 6 of the Kentucky Constitution, which reads in its entirety, "All elections shall be free and equal." To honor the incumbent as the keynote speaker and to give only three minutes each to his two challengers, and only on the condition that they pay the entry fee, ensured that the

upcoming primary election in Clark County would not be free or equal. Young's Ballot Challenge at 4.

3) I alleged that I appealed to the RPK by sending an email, as specified in the bylaws, to the RPK's Sixth District Committee on February 12, 2020. I noted that rigging a primary violates KRS 118.105(1). Two weeks later, that committee emailed me back saying that there is no bylaw that prohibits county parties from having incumbents in contested primaries give speeches at events during the primary season and not giving their Republican challengers equal time. I appealed that email to the RPK itself, which never responded in any way. I wrote in my ballot challenge:

The decision of the 6th District Committee was completely meritless. There are countless unlawful and/or violative acts that the rules/bylaws of the RPK do not explicitly prohibit. I

was not able to find any mention of primaries in the RPK's official rules. There is no rule that requires all Republican candidates to conduct their primary campaigns in a lawful manner. There is no rule that prohibits a Republican incumbent from hiring some thugs to break the legs of anyone who dares to challenge him or her in the primary. There is no rule that prohibits the RPK and/or county parties from expending vast amounts of money or in-kind resources to support an incumbent's primary election campaign and zero dollars to support the campaigns of his two challengers. Where the official rules of the RPK are silent, the constitution and laws of the Commonwealth of Kentucky and the United States must be followed. Young's Ballot Challenge at 8.

In other words, I alleged that Andy Barr and the leadership of the RPK conspired to violate KRS 118.105(1), the duly-enacted statute that prohibits election-rigging during primaries, and I alleged that I was harmed by that illegal election-rigging. That is a cause of action upon which relief can be granted

pursuant to KRS 118.176 and Kentucky Civil Rule 8.

4) I alleged that the Federation of Kentucky Young Republicans held their 2020 convention in Lexington, Kentucky on the afternoon of February 29, 2020, invited Andy Barr to be the keynote speaker, and refused to allow me to speak to the group at all. Ballot Challenge at 9-10.

5) I alleged that Kentucky Educational Television (KET) scheduled a debate for the Republicans running for nomination in the Sixth District but mandated that to be in the debate, the candidate must have raised and/or spent more than \$25,000 by March 31, 2020. I alleged that that new requirement discriminated against Chuck Eddy and me and imposed a wealth requirement that Barr would easily be able to meet. Neither Mr. Eddy nor I were able to meet that wealth requirement, so KET

interviewed Andy Barr alone and ran that interview about six times before the primary, thereby depriving the voting public of any knowledge about Barr's two Republican primary opponents and our positions on the issues. I alleged that Barr and KET conspired to violate KRS 118.105(1) and Section 6 of the Kentucky Constitution, which reads, "All elections shall be free and equal." *Id.* at 10-15.

I filed my ballot challenge on June 22, 2020, Andy Barr (by counsel) electronically filed a response on July 7, 2020, I filed my response on July 9, 2020, and the circuit court held Motion Hour #1 on July 10, 2020. In summarizing my allegations orally, I said:

I alleged that KRS 118.105, Subsection 1, makes it unlawful for a political party, which in Kentucky means the Republican or Democratic Party, to rig its own primaries. The statute says that the leadership of both parties may not provide for any means of

nominating their candidate other than a primary that is administered according to law.

The circuit court replied as follows:

Circuit Judge Ernesto Scorsone: Okay. Mr. Young, I don't know whether you've watched the court here, but I've had an election challenge actually a couple years ago, that had to do with the Council race, and I did disqualify a candidate, uh, but I was very strictly looking at those qualifications and the requirements for that candidacy. And in that case it was an issue of number of signatures.

Young: Right.

Judge Scorsone: So we had to go down all those signatures and see whether we could verify, and at that time I think it was a hundred, a hundred valid signatures, and we literally had to go down, and we went through, and we had a hearing on some of the disputed signatures, and see whether they could be verified or not, and at the end of the day, there wasn't enough signatures, and I ruled that the candidate was not qualified to run, okay?

Young: Right.

Judge Scorsone: Now I do believe, Mr. Lycan is correct in pointing out that, right now, there are limited categories that you can attack Mr. Barr as a candidate personally. I realize that you have all kinds of issues about how the election was run, but that is not within my purview in this kind of an action. If you have other claims of failure of Mr. Barr to be a legitimate candidate, I'll give you time to supplement your case, but, the way it stands right now, those are — while they're very serious allegations, I don't, I don't, I don't diminish the seriousness of what you're alleging, they are not going to the focus of what I have to deal with, which is those qualifications, the signatures, the residency and so forth, age, for a legitimate candidate, so my question to you, —

Young: May I respond, Your Honor?

Judge Scorsone: Yeah, but answer this question first: Do you have other claims other than what you've laid out in your Complaint that would challenge the legitimacy of Mr. Barr as a candidate?

Young: No, I don't have other claims. I

don't need them. In KRS 118.176, the definition, the definition of a candidate, of a bona fide candidate is spelled out in black and white, very succinctly, in Subsection 1. A bona fide candidate means one who is seeking nomination in a primary or election in a special or regular election according to law. So it is not a limited category of uh, constitutional failures to, for example, not enough signatures. The statute is much more broad than that, and Mr. Lycan is simply wrong about the law. It is not limited to the constitutional qualifications, as his motion to dismiss admitted, when it referred to the 2019 case in the Supreme Court of Kentucky. Okay. Bottom of page 3 of his motion to dismiss: "As used in KRS 118.176, bona fides refers to the good faith, genuineness, and qualifications of a candidate to hold the office to which election is sought." So that does not limit it to simply qualifications. It includes other factors – good faith and genuineness – and it seems to me that a candidate who has violated the law in order to be nominated has not demonstrated any good faith and is not a bona fide candidate because he did not seek nomination according to law.

Judge Scorsone: Okay.

Young: If this Court finds that Mr. Barr, with help from others, rigged the entire 2020 primary, then I suggest that this Court must find that he was not a bona fide candidate in 2020.

Judge Scorsone: Well, Mr. Young, my feeling is that if there was problems with the election, a rigged election or something like that, those are issues that I really can't address in this lawsuit. So, it's a legal issue, and you may be correct, I may be wrong, and the relief would be to quickly go to the Court of Appeals and see if they'll overturn my ruling, but at this juncture, given that you have no other claims other than what's been laid out in the Complaint, I think that the Defendant's motion is correct, in that this matter should be dismissed, because they don't address, you're not addressing this Complaint to the specific statutory requirements for candidacy, so like I said, I may be wrong, uh, Mr. Lycan, if you will submit an Order consistent with my ruling, very quickly, and then Mr. Young, if he wants to appeal my ruling, he can go up to the Court of Appeals as soon as possible, and try to get it overturned.

I have learned since 2014 that whenever a

circuit court judge starts talking about the Court of Appeals, he or she is about to dismiss my civil action without ever reaching the merits. In this case, my ballot challenge included a lot of factual allegations that plausibly implied that Andy Barr, the RPK, and KET conspired to violate a duly-enacted statute, KRS 118.105(1), and thereby rigged the entire primary in favor of Andy Barr. I pointed out that the clear wording of KRS 118.176(1) states that “A 'bona fide' candidate means one who is seeking nomination in a primary or election in a special or regular election according to law.” Barr and his lawyers never presented any evidence that would suggest that he sought the nomination in the 2020 Republican primary according to law. He merely demanded that the circuit court change the statutory definition of “a bona fide candidate,” which the

circuit court did in its order entered July 15, 2020.

See Appendix 1 at a2.

On July 18, 2020, I filed a motion in the Court of Appeals, pursuant to KRS 118.176(4), to set aside the circuit court's dismissal order of July 15, 2020. I asked the Court of Appeals or a judge thereof to reverse the circuit court's order because:

The circuit court never provided any legal reasoning whatsoever that would support its assumption that KRS 118.176 deals only with a challenged candidate's constitutional qualifications.

In fact, the statute is not that limited and limiting. Section 1 provides the legal definition of a bona fide candidate: "A 'bona fide' candidate means one who is seeking nomination or election in a special or regular election according to law." In fact, KRS 118.176 never uses the word "qualifications" or the term "constitutional qualifications." The definition has always been much more broad than the one asserted by the Circuit Court.

...When it asserted that the term “bona fides” cannot refer to anything other than the challenged candidate’s qualifications, the Circuit Court committed a reversible error. Young’s Motion to Set Aside at 9-10.

Between July 15, 2020 and today, the circuit court never deviated from its legally baseless opinion that a ballot challenge may only be brought for “those qualifications, the signatures, the residency and so forth, age, for a legitimate candidate” and that a ballot challenge that is brought for violating a fundamental statute that governs all primary elections in Kentucky, KRS 118.105(1), may be and must be dismissed instantly without ever being adjudicated on the merits. The circuit court has never stopped insisting that it has the authority to change the definition of “a bona fide candidate” that the Legislature clearly set forth in KRS 118.176(1).

The circuit court's four nearly identical orders of July 15, 2022 (App. 1 at a1-a3), August 11, 2020 (App. 3 at a7-a9), August 25, 2020 (App. 4 at a10-a13), and July 16, 2021 (App. 8 at a41-a43) also violated Kentucky Civil Rule (CR) 8.06 – "All pleadings shall be so construed as to do substantial justice." CR 8.06 is equivalent to Fed. R. Civ. P. 8(e) – "Pleadings must be construed so as to do justice." The same four orders also violated CR 52.01, which mandates, in pertinent part: "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment;..." CR 52.01 is equivalent to Fed. R. Civ. P. 52(a)(1): "In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state

its conclusions of law separately...” Finally, the circuit court, the Kentucky Court of Appeals, and the Supreme Court of Kentucky all knowingly violated a key provision of the governing statute, KRS 118.176: “The motion [*i.e.*, the ballot challenge] shall be tried summarily and without delay.” Subsections (2) and (4). All nine of the orders entered by Kentucky’s Judicial Branch in this case are therefore nullities.

Every court I have encountered since 2014 has chronically and more or less knowingly violated Civil Rules 8.06 and 52.01. No court has ever reached the merits of any of my ballot challenges or regular lawsuits. No court has ever construed my ballot challenge or civil complaint in the light most favorable to the pleader or assumed that all of the allegations are true [in the context of the inevitable motion to dismiss]. *See Gall v. Scroggy*, 725 S.W.2d

867, 869 (Ky. Ct. App. 1987). No court has ever made any good-faith findings of fact. *See Anderson v. Johnson*, 350 S.W.3d 453, 458 (Ky. 2011). Every trial and appellate court has dismissed my well-pleaded civil actions before trial and before discovery. Every order entered against me since March 2015 has therefore been a nullity.

On July 18, 2020, pursuant to KRS 118.176(4), I mailed five copies of a motion to set aside to the Kentucky Court of Appeals by overnight mail and that court filed it on July 22, 2020. The case number was 2020-CA-0886. Instead of addressing my argument that the circuit court had changed the definition of “a bona fide candidate” for the sole purpose of dismissing my ballot challenge without a trial, a three-judge panel entered a show cause order against me on July 31, 2020. See App. 2 at a4-a6. On

August 11, 2020, I timely responded to the show cause order and noted that the circuit court had unlawfully changed the definition of “a bona fide candidate” as set forth in KRS 118.176(1). On October 28, 2020, the Kentucky Court of Appeals entered an Order dismissing my motion to set aside. See App. 5 at a14-a24. That Order never reached the legal question of whether the circuit court had changed the definition of “a bona fide candidate.”

The general election was held on November 3, 2020 and Andy Barr got the most votes. On November 4, 2020, I filed a motion asking the Court of Appeals to reconsider the October 28, 2020 order of its three-judge panel on the grounds that no court in America is allowed to change the wording of a statute. The Court of Appeals refused ever to reach that question of law and denied my motion for

reconsideration on December 29, 2020. See App. 6 at a25-a27. The sole ground for denial was that “Under the Civil Rules, ‘[a] ruling granting or denying interlocutory relief will not be reconsidered.’ CR 65.07(8).” *Id.* at a27.

Meanwhile, realizing that the Court of Appeals was never going to follow the procedures mandated by KRS 118.176(4), I filed a regular notice of appeal in the circuit court on September 1, 2020. The Court of Appeals filed my prehearing statement of appeal on September 2, 2020. That appeal was assigned the case number 2020-CA-1059. On September 25, 2020, the Court of Appeals denied my request for a prehearing conference. I filed my appellant's brief on November 17, 2020, Andy Barr missed the deadline to file an appellee's brief, and on February 2, 2021, Barr (by counsel) filed a motion

to dismiss my appeal or, in the alternative, a motion to file his brief out of time.

On May 11, 2021, a three-judge panel of the Court of Appeals entered an order dismissing my appeal. See App. 7 at a28-a40. Instead of judging whether the circuit court had erred by altering the definition of “a bona fide candidate” set forth in KRS 118.176(1), the panel merely reported that “On July 15, 2020, the circuit court dismissed the action because Young only made allegations regarding the conduct of the election and did not state proper grounds for a challenge, pursuant to Kentucky Revised Statutes 118.176, regarding Barr’s qualifications to appear on the ballot.” Order at a29-a30. The Court of Appeals ignored my central argument, which I had been making since June 22, 2020, that Barr was not a bona fide candidate and

was therefore unqualified to have his name on the ballot in November because he had conspired with the RPK, KET and others to rig the 2020 Republican primary in violation of KRS 118.105(1).

The Court of Appeals revealed its malicious policy of misrepresenting my arguments on appeal in the following single sentence: “In response, Young claims Barr was unqualified to have his name on the ballot in the general election because Barr did not seek the nomination in the 2020 Republican Primary.” *Id.* at a33. In reality, I had consistently argued that Andy Barr was unqualified to have his name on the ballot in the general election because he did not seek the nomination in the 2020 Republican primary **according to law**. KRS 118.176(1). To knowingly and crudely misrepresent the appellant's theory of the case is to do grave injustice, and that is

exactly what the Court of Appeals and the Supreme Court of Kentucky have been doing to me in every appeal I have filed since the summer of 2015 – without a single exception.

I filed a motion for discretionary review in the Supreme Court of Kentucky on May 25, 2021, and that court denied my motion on October 20, 2021. See Appendix 9 at a44.

On June 16, 2021, recognizing that the Court of Appeals and the Supreme Court of Kentucky had been violating KRS 118.176(2) and (4) for months – [“The motion shall be tried summarily and without delay.”] – I filed a motion in the circuit court to vacate its orders of July 15, 2020, August 11, 2020, and August 25, 2020 pursuant to CR 60.02, which is equivalent to Fed. R. Civ. Proc. 60(b). The circuit court denied that motion on July 16, 2021. See App.

8 at a41-a43. Once again, the circuit court knowingly violated CR 8.06 and 52.01 by refusing to support its conclusory statement about the law with any good-faith findings of fact. *See Anderson v. Johnson*, 350 S.W.3d 453, 458 (Ky. 2011).

REASONS WHY CERTIORARI SHOULD BE GRANTED

If the Kentucky Court of Appeals is allowed to refuse jurisdiction over motions to set aside whenever it wants to, KRS 118.176 will be nullified. Kentucky's circuit courts will never grant any ballot challenge I file because they know that the Court of

Appeals and the Supreme Court of Kentucky will always dismiss motions to set aside if the circuit court does not rule against the challenged candidate.

Kentucky's two appellate courts have created a moral hazard whereby circuit court judges know

no matter how meritorious, could be dismissed with prejudice before discovery or trial, and justice would become a matter of luck – whether the plaintiff happens to get an honest judge.

CONCLUSION

All nine of the dismissal orders included in the Appendix are nullities because all of them were entered before any court construed my ballot challenge in the light most favorable to the movant [see CR 8.06], none of them included any good-faith findings of fact [see CR 52.01], and all of them were premised on the false doctrine that circuit courts and state appellate courts may alter the definition of “a bona fide candidate” that was set down in KRS 118.176(1). This Court may wish to consider summary reversal of all of the orders included in the Appendix on the grounds that no court may alter the

words of a duly-enacted statute, no court may violate
the procedural provisions of a duly-enacted statute
[KRS 118.176], and no court may violate Civil Rule
8.06 or CR 52.01.

Respectfully signed on November _____,
2021,

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