No. 18- 718

In The

SUPREME COURT OF THE UNITED STATES

GEOFFREY M. YOUNG,
Petitioner

vs.

SANNIE OVERLY, CLINT MORRIS, ANDY BESHEAR, ALISON LUNDERGAN GRIMES, JACK CONWAY, THE STATE CENTRAL EXECUTIVE COMMITTEE OF THE KENTUCKY DEMOCRATIC PARTY, AND THE EXECUTIVE COMMITTEE OF THE FAYETTE COUNTY DEMOCRATIC PARTY,
Respondents

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) If the decision in Rosenberg v. Republican Party of Jefferson County, 270 S.W.2d 171 (Ky. 1954) is not overturned, will the Republican and Democratic Parties in Kentucky forevermore be allowed by the courts to commit election fraud in their own primary elections?

2) If Democratic and Republican Party organizations in the Sixth District violate KRS 118.105 (1) and their most important bylaws, should they be immune from all lawsuits that could cause their violative practices to be reviewed and possibly overturned by the courts?

3) Do the Kentucky Attorney General and Secretary of State have permanent, absolute immunity from civil liability no matter what they do or fail to do?

4) In civil rights cases where the plaintiff alleges that a conspiracy violated one or more criminal statutes in addition to the plaintiff's constitutional rights, should this Court's decision in Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) overrule the plain language of 42 U.S.C. § 1983?

5) May a district court dismiss a complaint before discovery, with prejudice, for failure to state a claim, without fairly analyzing and discussing the specific factual allegations the plaintiff committed to writing in his or her complaint?

6) May a district court refuse to allow a plaintiff to file a second amended complaint when said refusal would violate Federal Rule of Civil Procedure 15?

LIST OF PARTIES

1) GEOFFREY M. YOUNG, Plaintiff and Petitioner

2) SANNIE OVERLY, Defendant

3) CLINT MORRIS, Defendant

4) ANDY BESHEAR, Attorney General of Kentucky, Defendant

5) ALISON LUNDERGAN GRIMES, Kentucky Secretary of State, Defendant

6) JACK CONWAY, Defendant

7) THE STATE CENTRAL EXECUTIVE COMMITTEE OF THE KENTUCKY DEMOCRATIC PARTY, Defendant; and

8) THE EXECUTIVE COMMITTEE OF THE FAYETTE COUNTY DEMOCRATIC PARTY, Defendant.

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OPINIONS BELOW

On August 27, 2018, the Sixth Circuit Court of Appeals denied Petitioner's petition for rehearing and rehearing en banc in Civil Action No. 17-6242. The text is reprinted in the Appendix hereto, p. 1a.

On July 2, 2018, a three-judge panel of the Sixth Circuit filed an order upholding the District Court's memorandum opinion and order. The panel's order, which was not recommended for full-text publication, was published by www.pacer.gov and is reprinted in the Appendix hereto, pp. 2a-11a.

The memorandum opinion and order in Case No. 3:16-cv-00062-GFVT, in the U.S. District Court for the Eastern District of Kentucky, Central Division, was filed on September 29, 2017. It denied the Respondents' three original motions to dismiss as moot, granted the Petitioner's motion to replace Complaint version 1 (R. 1) with version 2 (R. 19), granted the Respondents' three motions to dismiss Complaint version 2, denied the Petitioner's motions for sanctions, and dismissed the Petitioner's entire civil action with prejudice. See App., pp. 12a-25a. This Order was published by Casemine.com at the following web address: https://www.casemine.com/judgement/us/59df61c1add7b042cdefbc9a

JURISDICTION

On August 19, 2016, the Petitioner brought suit against Respondents in the U.S. District Court for the Eastern District of Kentucky, alleging that the Respon-

dents and other powerful Kentucky Democrats had entered into a conspiracy that violated his freedom of speech on March 13, 2014 by threatening to have him arrested for "trespassing" for exercising his freedom of speech in a non-disruptive manner at a previous meeting of the Fayette County Democratic Party ("FCDP"). See R. 1, page 17. Petitioner also alleged that the conspiracy rigged and stole the 2015 Democratic primary for Governor of Kentucky from him by violating the party's bylaws and state election laws. See R. 1, pp. 1-5, 23-26, 32-35, and 40-43. He also alleged that the conspiracy violated his due process rights every time he tried to appeal their actions. See R. 1, pp. 14-16. He also alleged that the Kentucky Young Democrats violated his freedom of speech by threatening to have him arrested for "trespassing" on April 30, 2016 if he didn't put away his antiwar sign. See R. 1, p. 16.

The Respondents filed three motions to dismiss. Petitioner filed three responses and then an amended complaint (version 2, R. 19) on October 28, 2016. On November 18, 2016, Petitioner filed a motion to replace version 1, R. 1, by the amended complaint, R. 19. Respondents filed three motions to dismiss the amended complaint, and Petitioner filed three responses.

The Petitioner filed three motions for sanctions against the Respondents and their counsel. See R. 28, R. 34 and R. 35.

On September 14, 2017, Petitioner filed a motion (R. 41) to amend and supplement his amended complaint to include alleged violations by the conspiracy that had

occurred after October 28, 2016. Petitioner tendered Complaint version 3, R. 41, Exhibit #7.

On September 27, 2017, Petitioner filed a motion, including five evidence exhibits, (R. 42) for an emergency temporary injunction to freeze the assets of two Respondents, the Kentucky Democratic Party ("KDP") and the FCDP, until the final adjudication of the case.

On September 29, 2017, the Honorable District Court Judge Gregory F. VanTatenhove issued his first and only Order, wherein he granted Petitioner's motion (R. 20) to replace Complaint version 1 by version 2; and dismissed version 2, with prejudice, on the grounds that it failed to state any claim upon which relief could be granted. See App., pp. 24a-25a. On October 18, 2017, the Petitioner appealed the dismissal of his complaint to the United States Court of Appeals for the Sixth Circuit.

On July 2, 2018, a three-judge panel – the Honorable Alice M. Batchelder, the Honorable Richard A. Griffin, and the Honorable Joan L. Larson – affirmed the district court's judgment and wrote that the decision was not for publication. See App., pp. 2a and 11a. On July 16, 2018, Petitioner filed a petition for rehearing and a suggestion for rehearing en banc, which were denied by the Sixth Circuit on August 27, 2018. See App., p. 1a.

The jurisdiction of this Court to review the Judgment of the Sixth Circuit is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

First Amendment To The U.S. Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment To The United States Constitution, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No 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; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983 – Civil Action for Deprivation of Rights

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

Federal Rule of Civil Procedure 15

Amended and Supplemental Pleadings.

KRS 11A.005 and 11A.020

Two foundational Kentucky ethics laws.

Kentucky Revised Statute 118.105 (1)

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

(1) Except as provided in subsections (3) and (4) of this section and in KRS 118.115, every political party shall nominate all of its candidates for elective offices to be voted for at any regular election at a primary held as provided in this chapter, and the governing authority of any political party shall have no power to nominate any candidate for any elective office or to provide any method of nominating candidates for any elective office

other than by a primary as provided in this chapter.

KRS 119.295 (1) Applicability of penalties for regular elections to primaries and to elections for United States Senator.

(1) Any act or deed denounced by the statutes concerning regular elections or concerning elections generally shall be an offense when committed in connection with a primary election held under KRS Chapter 118, and shall be punished in the same manner, and all the penalties for violation of the regular election laws shall apply with equal force to all similar violations of the provisions of the statutes relating to primary elections.

Bylaw I.D of the Kentucky Democratic Party

D. No Discrimination in Party Meetings:

All public meetings at all levels of the KDP are open to all members of the KDP regardless of age (if of voting age), gender, religion, economic status, sexual orientation, ethnic identity or physical disability.

No Democrat Committee governed by these By-Laws, or any Democratic Party Officer acting in his or her official capacity, shall

> endorse or support one Democratic candidate over another Democratic candidate in a Democratic Primary Election. No assets of the Democratic Party shall be used in a Democratic Primary Election unless they are made available equally to all Democrat Candidates in that specific primary election.

STATEMENT OF THE CASE

A. Facts Giving Rise To This Case

1. On March 13, 2014, Petitioner arrived early for the regular monthly meeting of the Executive Committee of a Respondent, the FCDP. As Petitioner, a registered Democrat, was coming in the back door, he saw Bob Layton, the Chair of the FCDP, coming in the front door. They met in the hallway outside the meeting room. "Stand right here," Layton ordered. Petitioner did so. Layton got two or three other large, scowling men to stand next to him and loudly said something along the lines of this: "You have been disruptive. We operate by Robert's Rules of Order, and you violated them. You are not a member of the Executive Committee. If you try to go into the meeting room tonight I will call the police and have you arrested." Layton then handed Petitioner a four-page document. Petitioner immediately left the premises. The document included the sentences, "You will be trespassing if you refuse to leave." Also: "Your disorders interfere with the business of the FCDP. This letter is to inform you that the above steps are effective immediately upon your receipt of this letter, and that the

police are being called now to respond to your refusal to leave." Petitioner does not know to this day if the police had actually been called and were on their way. See R. 19, pp. 17-18 or R. 41, Exhibit #7, p. 18.

2. In January, 2015, Petitioner had filed to run for the Democratic nomination for Governor (along with Johnathan Masters for Lieutenant Governor). Respondent Jack Conway was the only other Democratic candidate, and Respondent Sannie Overly was his running mate for Lieutenant Governor. On February 9, 2015, the KDP held a "Unity Press Conference" at the KDP Headquarters building in Frankfort, where then-Governor Steve Beshear, Respondent Jack Conway, Respondent Alison Lundergan Grimes, and several other prominent Democrats expressed their unity with and support for each other. Before the speeches began, Petitioner asked the newly-appointed Chairperson of the KDP, Patrick Hughes, for permission to speak and was denied. Shortly after the "Unity Press Conference" ended, Mr. Hughes said to a reporter, "It's clear that Jack Conway's going to be our nominee for governor; it's clear that Alison Grimes is going to be our nominee for secretary of state." To name candidates is to nominate them; thus, the KDP officially nominated Respondents Conway and Grimes on 2/9/15, despite the fact that the primary election was still more than three months away, on May 19, 2015. The KDP then allocated a lot of in-kind resources to Respondent Conway and none to the Petitioner, thereby violating its own Bylaws. Petitioner alleged that the conspiracy thereby rigged the primary in violation of KRS 118.105 (1). See R. 19, pp. 25-26.

3. On April 30, 2016, Petitioner arrived an hour early at a conference center in Morehead, Kentucky for the scheduled hearing of one of his appeals to a Respondent, the State Central Executive Committee of the Kentucky Democratic Party ("KDP"). Respondent Sannie Overly had scheduled the hearing on the same date and at the same location at which the Kentucky Young Democrats and College Democrats organizations were holding their joint annual convention. Petitioner removed an antiwar sign from his backpack and stood outside the room where about 25 or 30 Young Democrats ("YDs") were listening to a lecture by an older Democrat. Petitioner never caused the slightest disturbance to the lecture and never entered the lecture room. Liz Fossett, one of the Vice Presidents of the YDs, and Josh Monroe, a former YD officer known to the Petitioner, immediately threatened to call the police if he didn't leave the entire building, not just the area outside the room the YDs were using. Several police officers happened to be attending their own conference down the hall, and the YD officers mentioned how easy it would be to call them over to arrest him. Petitioner said, "What about freedom of speech?" but immediately left the building for an hour. He then returned to the building without his antiwar sign and participated in the hearing.

B. The District Court Proceedings

All three versions of Petitioner's complaint sought damages from the alleged conspiracy, injunctive relief and declaratory relief from the Court. See R.1, R.19 and R. 41. The Respondents filed three motions to dismiss Complaint version 1 for lack of federal subject matter

jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and for failure to state a claim pursuant to Rule 12(b)(6). See R. 9, R. 10 and R. 11.

Without any guidance from the district court, the pro se Petitioner filed Complaint version 2, R. 19, which added references to 42 U.S.C. § 1983. Respondents again filed three motions to dismiss, pursuant to Rule 12(b)(1) and Rule 12(b)(6), alleging that nothing had changed.

After Petitioner tendered R. 41, i.e., Complaint version 3, and filed a motion that accompanied it, and filed R. 42, a motion to freeze the assets of the KDP and FCDP temporarily, the district court dismissed Complaint version 2 with prejudice. The district court never wrote anything about Complaint version 3, R. 41.

In its Memorandum Opinion & Order, the District Court wrote: "There are multiple avenues this Court could take to dismiss all of his claims, though no arguments in the alternative will be fully fleshed out here. As one example, many, if not all of Mr. Young's complaints are likely barred by *res judicata*." See App., pp. 12a-13a.

The district court summed up Petitioner's entire Complaint version 2 in one sentence: "Essentially, Young alleges that Defendants violated his Constitutional right to run for chairperson or vice-chair of the Kentucky Democratic Party and the Fayette County Democratic Party." See App., p. 13a.

In Section II.A, the court stated, "Though Young

makes several claims that his 'Constitutional rights' were violated, the only explicit reference to a right conferred by the Constitution is Young's third claim for relief. This is his claim that he was denied due process in violation of 42 U.S.C. § 1983." (emphasis added) See App., p. 16a. However, the court ignored the following facts Petitioner had alleged in Complaint version 2:

> 1. "'I want to ask this body to confirm [Neville Blakemore and Respondent Sannie Overly] by acclamation,' Steve Beshear said. There were some cheers. 'I'm not even going to ask for nays,' he concluded. Plaintiff stood up to nominate himself for the position of Chair of the KDP but was not recognized..." See R. 19, p. 7.
>
> 2. "Steve Beshear, who was standing in front of another microphone, immediately nominated someone named Nathan Smith to be the 'DNC Committee Man.' Plaintiff stood up to nominate himself but was not near a microphone and was not recognized. About one second later, Defendant Overly announced, 'Nominations are closed,' and Mr. Smith was immediately elected by acclamation, in malicious violation of *Robert's Rules of Order.*" See R. 19, p. 8.
>
> 3. "In the case of the most important decision of the day, the naming of the Chairperson and Vice-Chair of the KDP to four-year terms, no election was conducted at

all. Nominations were never open, candidacy statements were never asked for or distributed to attendees, no nominee other than Defendant Overly was allowed to speak to the decision-making body, no warning was given of the upcoming 'vote,' no actual vote was allowed, and no one but co-conspirator Steve Beshear was allowed to nominate and recommend anyone. A sham election had occurred, and Defendant Overly and (future witness) Neville Blakemore had been rammed down the throats of the KDP's highest authority – the Convention attendees assembled – using a type of procedure that could have been used in any dictatorship in the world." See R. 19, pp. 9-10.

4. "Plaintiff replied in support of his point of order, effectively appealing the ruling of the acting Chair, but about half the 'guests' were already on their way out the door. Plaintiff followed them under protest. The governing body" [i.e., Respondent KDP's State Central Executive Committee] "never debated or voted on his point of order, which constituted a willful and blatant violation of *Robert's Rules of Order*." See R. 19, p. 12.

5. "On Saturday, 1/30/16, Plaintiff was prepared to nominate himself to the position of Chair of the KDP, but he was never given any opportunity to do so. On that day, the unlawful use of a closed 'executive session' of

> the SCEC was maliciously used to prevent Plaintiff from exercising his constitutional right to nominate himself to a position for which he was otherwise legally and technically qualified." See R. 19, p. 13.

6. "Defendants are sued under 42 U.S.C. § 1983 for conducting a sham election for the extremely important position of Chair of the KDP in the days up to and including 1/30/16." See R. 19, p. 14.

7. "The entire 'hearing' on 4/30/16 was a farce, a sham, and a fraud that violated 42 U.S.C. § 1983 because it violated his due process rights to a fair hearing." See R. 19, p. 20.

8. "A secret, illegal election occurred on 4/16/16, and Defendant (Clint) Morris and (future witness) Andrea Ewen were rammed down the throats of the county's Democrats using a type of procedure that could have been used in any dictatorship in the world." See R. 19, p. 22.

> 9. "The farcical "hearing" on 4/30/16 was only slightly more violative of Plaintiff's due process rights than the one that took place on 9/17/16. Once again, Defendant Overly had failed and refused to provide a copy of Plaintiff's two-page accusation to each member of the SCEC. Once again, an open discussion was prevented, and once again, justice was denied, violating Plaintiff's due process rights and 42 U.S.C. § 1983. Defendant Morris has

> threatened Plaintiff with force (arrest for 'trespassing') on three more occasions since August 19, 2016, in the presence of many FCDP members." See R. 19, p. 24.

10. Sections 40 and 41 in their entirety, including the KDP's "Unity Press Conference," which Petitioner has frequently and publicly called "the worst election fraud in Kentucky's history." See R. 19, pp. 25-26.

> 11. Respondent Alison Grimes' and her attorney's "argument reduces to the frivolous assertion that violating KRS 118.105 (1) and participating in a conspiracy to commit the worst election fraud in Kentucky history cannot ***conceivably*** have also violated any provision of the Executive Branch Code of Ethics. In other words, conspiring to steal the contested 2015 primary election at which Secretary of State Grimes herself was nominated for reelection cannot ***conceivably*** have constituted a use of her 'public office to obtain private benefits.' [KRS 11A.005 and 11A.020]" (emphasis in original.) See R. 19, p. 33.

12. "In other words, even if Steve Beshear did conspire to steal the entire 2015 Democratic primary election on behalf of Jack Conway, that conspiracy must have been totally ethical and lawful." See R. 19, p. 34.

> 13. "Defendant Conway also refused to discuss the issue, or any other issue, with

> Plaintiff for the entire calendar year. His second term ended on 1/4/16 when Defendant Andy Beshear was sworn in as the new AG. Plaintiff immediately started asking for a meeting with the new AG to discuss his 64-page criminal complaint. Defendant Andy Beshear refused, but had two staffers meet with him. They told him flatly on 1/12/16 in Frankfort that no Democrat had violated KRS 118.105 (1) during 2015 and that no prosecutor would be able to convince any jury otherwise." See R. 19, pp. 34-35.

14. "Exactly as Defendant Overly did on 4/30/16, Defendant Grimes insisted on presiding over and dominating the 5/17/16 'hearing' about her own actions and omissions as Kentucky's highest election officer in 2015-16, thereby acting simultaneously as the defendant, defense attorney, and judge." See R. 19, pp. 35-36.

All fourteen of the foregoing allegations explicitly or implicitly claimed that at several different times, Petitioner's constitutional rights, including his freedom of speech and his right to due process, were violated by the alleged conspiracy. A plaintiff's allegations of constitutional violations are not required to be explicit at the motion to dismiss stage, especially if the plaintiff is proceeding pro se. See Soto v. Brooklyn Correctional Facility, 80 F.3d 34-37 (2d Cir. 1996)

The district court stated:

> "To assert a due process violation

> according to § 1983, Young must either demonstrate that he has been 'deprived of property as a result of established state procedure that itself violates due process rights'; or prove 'that the defendants deprived him of property pursuant to a random and unauthorized act and that available state remedies would not adequately compensate for the loss.'" See App., p. 17a.

However, in Johnson v. City of Shelby, 135 S. Ct. 346 (2014), this Court, per curiam, reversed the summary judgment of the district court in a § 1983 case in which the plaintiffs had charged violations of their Fourteenth Amendment due process rights after having been fired by the city's board of aldermen for allegedly bringing to light criminal activities of one of the aldermen. The District Court's interpretation of what the Petitioner must allege in his § 1983 Complaint in order to allege due process violations, without having those allegations dismissed, with prejudice and before discovery, for failure to state a claim, appears to be overly restrictive. If the District Court had been trying the Johnson v. City of Shelby case, it would have written, "There is no constitutional right not to be fired by a city's board of aldermen." See App., pp. 16a-20a. The Sixth Circuit would have written something similar. See App., pp. 6a-10a.

The same reasoning would apply to this finding by the District Court: "Young references the 'kangaroo court' on April 30, 2016, as a violation of his due process rights. However, there was no property or liberty taken

away from Defendant (sic); he merely thought the meeting was run poorly. This is not a violation of due process." See App., p. 17a. However, if a meeting is "run poorly" enough, by design, a dishonest chairperson can easily deprive a member of the right to a fair hearing and thereby violate the member's due process rights. The chairperson would have converted the hearing or the entire appeals process into an undemocratic sham.

The district court explicitly treated Petitioner's allegations that Respondent Grimes was a member of an ongoing conspiracy to defraud him in various ways in violation of several state laws and 42 U.S.C. § 1983 as a due process complaint and nothing more. See App., pp. 17a-18a. That was a misrepresentation of Petitioner's allegations because his central accusation is conspiracy to commit election fraud in violation of KRS 118.105 (1) and conspiracy to violate his rights to freedom of speech and due process.

Sections B, C, and E all focus exclusively on Petitioner's theory of the case and omit or misrepresent virtually all of Petitioner's detailed allegations of fact. See App., 18a-21a. The easiest way for a trial court to dismiss a case before discovery and trial is to refuse to mention or assess for plausibility almost all of the specific factual allegations that the plaintiff has made.

The court stated, "Young's first claim for relief is for violation of Young's alleged Constitutional right to run for chairperson or vice-chair of the Kentucky Democratic Party." See App., pp. 18a-19a. However, what the Petitioner actually claimed (on the next page of

his complaint v. 2, p. 37) was that the alleged conspiracy:

> "conducted a sham election to install Defendant Overly and (witness) Neville Blakemore at the Democratic Statewide Convention in Louisville on 6/4/16. In short, no election was ever held, so Plaintiff was deprived of the right to run for an office in a quasi-governmental organization, the KDP, for which he was otherwise qualified. Kentucky provides public funds to the KDP to help it conduct free and equal elections. The conspiracy to defraud has been described with particularity in Paragraphs 13 to 20 above. This intentional violation of Plaintiff's rights harmed his political career and entitles him to recover punitive damages in amounts to be proven at trial." See R. 19, page 37.

The court, however, found that "Though Young claims these are Constitutional violations, there is no Constitutional right to run for chairperson or vice-chair of a political party, no right to compete for the position of chair of a state political party, and no right to compete for chair of a county political organization." See App., pp. 18a-19a.

This type of legal reasoning is typical of the district court's entire Memorandum Opinion and Order. It reduces to the finding that no matter what specific actions and omissions the conspiracy may have committed for the purpose of converting party elections and primary elections into sham, fraudulent elections, no

Democrat may ever sue them for doing so. The court has ruled, in effect, that the Respondents may conspire to damage the Petitioner in any way that is not specifically and explicitly prohibited by the federal Constitution.

The district court repeatedly cited Linda R.S. v. Richard D., 410 U.S. 614, 619 (1973) and its finding that "[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." See App., p. 18a. However, that finding, if applied to civil rights cases, would eviscerate 42 U.S.C. § 1983 and all case law arising therefrom. Section 1983 complaints should not be banished from the federal courts solely because the defendants were alleged to have violated federal criminal statutes in addition to state statutes, the plaintiff's rights to freedom of speech, fair elections in which he was a candidate, and due process.

42 U.S.C. § 1983 is the civil counterpart of 18 U.S.C. § 241, a criminal statute. See Monell v. Department of Soc. Svcs., 436 U.S. 658, 663-66 (1978). The district court appears to have applied the ultimate sanction – dismissal of Petitioner's entire complaint before trial and with prejudice, solely because Petitioner mentioned § 241 and other federal criminal statutes in addition to 42 U.S.C. § 1983, election fraud, freedom of speech, and due process. See App., pp. 18a-20a.

The District Court echoed a state court decision, Young v. Beshear, No. 2015-CA-000669-MR, 2016 WL 929653, at 3* (Ky. Ct. App. Mar. 11, 2016), which was "not to be published". See App., p. 20a. The Kentucky Court of Appeals instructed that the decision in Rosenberg v.

Republican Party of Jefferson County, 270 S.W.2d 171 (Ky. 1954) means that: (1) The Republican and Democrat Parties cannot be compelled by any court to follow their own bylaws; and (2) Primary elections do not need to be free and equal, despite the plain language of Section 6 of Kentucky's Constitution. See Young v. Beshear at 6*. However, the enactment of KRS 119.295 (1) in 1974 overruled the Rosenberg decision by stating that all election law violations apply equally to primary and general elections. The text is provided on p. 6 above.

The Kentucky Court of Appeals also found that KRS 118.105 (1) "merely directs that political parties nominate all of their candidates." See Young v. Beshear at 6* and App., pp. 7a and 20a. However, the statute explicitly does much more; it prohibits either political party from nominating its candidates in any other way, for example, by holding a "Unity Press Conference" three months before the primary election and violating the party's bylaw that requires party resources to be provided equally to all primary candidates or withheld equally from all of them. See Complaint ver. 2, pp. 25-26. The finding in Young v. Beshear was therefore error, and the federal district and Sixth Circuit courts should not have adopted it in this case without qualification.

Finally, the district court never mentioned the word "conspiracy," which has always been the Petitioner's central allegation. See his Complaint, all versions.

C. The Appellate Court Proceedings

On October 18, 2017, Petitioner filed a notice of appeal from the District Court's Order. He filed his pro se appellant's brief on November 7, 2017, in which he stated:

> "In all three versions of his complaint, Young argued that a conspiracy that included all of the named Defendants (and others not named as Defendants) violated his right to freedom of speech and peaceable assembly by repeatedly threatening him with arrest and jail for setting foot in two party headquarters buildings where he had a right to go, as a member of the Fayette County and Kentucky Democratic Parties; and his freedom to petition the State Board of Elections and two Kentucky Attorneys General (Jack Conway and Andy Beshear) for redress of his legitimate grievances (1st Amendment). Young also argued that the conspiracy intentionally and repeatedly violated his due process rights by conducting sham hearings or refusing to hear his appeals at all (14th Amendment). Young therefore has a private right of action against the conspiracy. [42 U.S.C. § 1983]"

> "Young also argued that by rigging and stealing a number of Democratic primary and party elections, in violation of state laws and regulations, the conspiracy, under color of state law and custom, intentionally deprived

> him of the right to run in elections that were 'free and equal' [Kentucky Constitution § 6]; and free of fraud, the unlawful use of money or other things of value, and corrupt practices [Ky. Constitution § 151]. By aiding his opponent in the 2015 Democratic primary for Governor, Defendant Jack Conway, and by refusing to aid Young in any way, in violation of what is arguably the most important Bylaw of the Kentucky Democratic Party ("KDP"), the conspiracy made it literally impossible for Young to win the primary without spending millions of dollars that he has never had. In Complaint v.3 [R. 41; Page ID# 1145-1245], Young cited facts that indicate that the conspiracy and its violations of his federal constitutional rights (First and 14th Amendments) are continuing **today**, and that they are gradually bringing in more conspirators." See Appellant's Brief, pp. 1-2.

The Sixth Circuit panel cited Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164, 190 (1994) in order to imply that Petitioner may never cite a criminal statute in conjunction with 42 U.S.C. § 1983, but that case was not a civil rights action. The panel also claimed that the decision in United States v. Oguaju, 76 F. App'x 579, 581 (6th Cir. 2003) implies that if Petitioner made the fatal mistake of citing 18 U.S.C. §§ 241 and 242 anywhere in his complaint, it must be dismissed with prejudice. See App., pp. 6a-7a. However, that legal reasoning contradicts this Court's decision in Johnson v. City of Shelby, 135 S.Ct. 346 (2014) and a long

line of prior decisions that instruct that the federal rules "do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted."

Respondents Alison Lundergan Grimes and Andy Beshear have consistently claimed absolute Eleventh Amendment immunity from civil liability. See, e.g., Appellees' Briefs in Case No. 17-6242, Documents 12 and 13, both filed on January 8, 2018. However, in *Monroe v. Pape*, 365 U.S. 167, 171-72 (1961) this Court instructed:

> "There can be no doubt at least since Ex parte Virginia, 100 U.S. 339, 346-347, that Congress has the power to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it. See Home Tel. Tel. Co. v. Los Angeles, 227 U.S. 278, 287-296. The question with which we now deal is the narrower one of whether Congress, in enacting § 1979, meant to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position. Cf. Williams v. United States, 341 U.S. 97; Screws v. United States, 325 U.S. 91; United States v. Classic, 313 U.S. 299. We conclude that it did so intend."

The Sixth Circuit ratified and even extended Grimes' and Beshear's conclusion when it wrote, "To the

extent Young sued Beshear and Grimes in their official capacities for damages, his suit is barred by the Eleventh Amendment, and the district court lacked jurisdiction over those claims." See App., p. 5a. It was impermissible overreach for the Sixth Circuit to use the Eleventh Amendment to bar the Petitioner's entire lawsuit and remove the jurisdiction of the district court over two of the alleged members of the conspiracy at the motion to dismiss stage. In Harlow v. Fitzgerald, 457 U.S. 800, 815 (1982), this Court instructed:

> Referring both to the objective and subjective elements, we have held that qualified immunity would be defeated if an official "*knew or reasonably should have known* that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], *or* if he took the action *with the malicious intention* to cause a deprivation of constitutional rights or other injury. . . ." Wood v. Strickland, 420 U.S. 308, 322 (1975). (emphasis added)." See Petitioner's Petition For Rehearing And Request For Rehearing En Banc, signed and mailed on July 13, 2018, page 9 of 12.

On July 2, 2018, the Sixth Circuit issued an order of a three-judge panel that was not recommended for publication. See App., pp. 2a-11a. The order was not responsive to the issues Petitioner had raised in his brief dated November 7, 2017. See Petitioner/Appellant's brief and his petition for rehearing and suggestion for rehearing en banc. The latter were summarily denied by

the Sixth Circuit on August 27, 2018. See App., p. 1a.

It was an abuse of discretion for the Sixth Circuit panel to have found, without having analyzed R. 41 and all seven exhibits attached to it, that:

> Young's proposed second amended complaint, addressing a separate political campaign, would have added new allegations and new defendants, but not new claims. Because Young's first amended complaint was subject to dismissal and his proposed amendments would not have changed that outcome, amendment would have been futile and therefore improper." See App., p. 10a.

If the district court or the Sixth Circuit had considered Petitioner's Complaint version 3 and applied the correct standard of review, they would have found that it was a well-pleaded complaint as defined by this Court. Johnson v. City of Shelby, 135 S.Ct. 346 (2014); Ashcroft v. Iqbal, 556 U.S. 662 (2009); and Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007).

When the district and Sixth Circuit courts refused to allow Petitioner to file his tendered second amended complaint, R. 41, they violated Fed. Rule Civil Proc. 15.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

Review is Warranted Because The Opinion By The Sixth Circuit Conflicts With A Long Line Of Cases That Define A Well-Pleaded Civil Complaint.

The Sixth Circuit panel cited Total Benefits Planning v. Anthem Blue Cross, 552 F.3d 430, 433 (6th Cir. 2008), which instructs that in order to state a claim upon which relief may be granted, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). See App., p. 5a.

All three versions of Petitioner's complaint contained many alleged facts that were combined into valid, plausible claims, but the District Court and the Sixth Circuit panel ignored or misrepresented virtually all of them. Instead, the courts below focused, laser-like, on certain phrases that were part of the Petitioner's theory of the case. This Court, however, instructed as follows in Johnson v. City of Shelby, 135 S.Ct. 346 (2014):

> "Charging violations of their Fourteenth Amendment due process rights, they sought compensatory relief from the city. Summary judgment was entered against them in the District Court, and affirmed on appeal, for failure to invoke 42 U.S.C. § 1983 in their complaint.

> We summarily reverse. Federal pleading rules call for "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. Rule Civ. Proc. 8(a)(2); **they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted.**" (emphasis added) See Petitioner/Appellant's Brief, p. 4.

In Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007), this Court instructed that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions." The fourteen allegations cited above, plus additional allegations the Petitioner included in Complaint version 3 and the motion accompanying it, met this obligation. See R. 41.

Similarly, this Court instructed in Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009): "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." Also: "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Id. All three versions of Petitioner's complaint contained many facts, cogently set forth, and drew reasonable legal and factual inferences.

If trial and appellate courts are to be permitted to ignore plaintiffs' most pertinent factual allegations and

to state or imply that they were never made, they could dismiss literally any civil action before discovery. Such dismissals would be particularly egregious if ordered with prejudice. See App., pp. 10a and 24a.

II.

Review is Warranted Because The District And Circuit Courts' Decisions Would Allow The Democratic And Republican Parties To Violate Their Own Bylaws And State Election Laws At Will.

Neither the District Court nor the Sixth Circuit panel mentioned the word "bylaws" in their decisions. If the published decision of the district court and the unpublished decision of the Sixth Circuit were to become settled law, any state Democratic or Republican party or party organization in the Sixth District would be allowed to violate its own bylaws at will, and any member who wanted to challenge their actions in federal or state court would find his or her complaint immediately dismissed with prejudice. The wronged party member would then be billed for the legal costs incurred by the defendants. All political organizations connected to the Republican and Democratic Parties would be granted free rein to operate ultra vires and violate the civil rights of their members indefinitely. No other voluntary organizations, not even churches, have the legal right to violate their own bylaws without fear of review by the courts.

The KDP would be completely free to approve a resolution or new bylaw directed at Petitioner stating, for example, that:

> "If any Democrat sues the Party or fails to support any of its nominees in any general election, past or present, that Democrat shall be permanently barred from attending any function held at the state or county Party offices. If the person walks into any Democrat building or function, the police should be called, or loyal Democrats should forcibly remove him or her without serious injury. All organizations and political groups allied with the KDP shall also be encouraged to bar the disloyal Democrat from all of their functions."

The KDP and the FCDP would also be free to conduct their meetings as if such a resolution or bylaw had been approved but never committed to writing or recorded in any minutes.

The KDP and FCDP would be free (or would remain free) to choose their nominees more than three months before the primary election, thereby depriving the Commonwealth's 1.7 million registered Democrats of their sacred right to choose the Party's nominees in fair primary elections. In effect, large-scale election fraud would become (or remain) the norm in KDP primaries. See R. 41, Exhibit #7, pp. 25-27, 33-35, and 37-48.

III.

Review is Warranted Because If The Democratic And Republican Parties Are Widely Seen As Corrupt, Fewer People Will See Any Reason To Vote In Primaries.

The Democratic Party has been been widely ridiculed from October 2016 through the present day as a result of its argument, by counsel, in Case No. 0:16-CV-61511-WJZ in the U.S. District Court in the Southern District of Florida, also known as the "DNC Fraud Lawsuit." "We could have voluntarily decided that, 'Look, we're gonna go into back rooms like they used to and smoke cigars and pick the candidate that way,'" Bruce Spiva, lawyer for the DNC, said during a court hearing in *Carol Wilding, et al. v. DNC Services Corp.* The defendants argued that any claims the DNC might have made about being neutral and fair to all candidates in the 2016 presidential primary were nothing but "political promises" and are unenforceable by law. They claimed that there was no expectation that they would actually be evenhanded in their treatment of candidates Bernie Sanders and Hillary Clinton.

That claim is a self-fulfilling prophesy, however. If one of America's dominant political parties keeps announcing that no voter should expect its primaries to be fair and honest, sooner or later the American people will believe it. The result could be a significant loss of faith in the political process, which could only depress voter turnout in Democratic Party primaries and thereby undermine the republic.

Statutes such as KRS 118.105(1), which Petitioner cited in all three versions of his complaint, were enacted in the late 1800s and early 1900s for the express purpose of enhancing the influence of rank-and-file Democrats and Republicans at the expense of party bosses who had long been accustomed to choosing their parties'

nominees in back rooms. The laws requiring unbiased primaries were passed to enhance democracy in America, and they worked. Now the Sixth Circuit is proposing to wipe away more than a century of progress toward democracy in primaries by dismissing a well-pleaded complaint about election fraud by relying on the central conclusion expressed in Rosenberg v. Republican Party of Louisville & Jefferson Cty., 270 S.W.2d 171, 172 (Ky. 1954): "Courts do not interfere with internal party matters."

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted. This Court may wish to consider summary reversal of the decision of the Sixth Circuit Court of Appeals.

Dated: November 20, 2018.

Respectfully submitted,

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