

6/13/25

No. 25-346

In the

SUPREME COURT OF THE UNITED STATES

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

vs.

MORGAN McGARVEY, *Respondent*

Counsel for Respondent:

Katherine L. Crosby, Amy D. Cubbage,
and Marc G. Farris

Tachau Meek PLC

101 South 5th St, Suite 3600

Louisville, KY 40202-3120

E-mail: kcrosby@tachaulaw.com

Phone: (502) 238-9900

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

PETITION FOR WRIT OF CERTIORARI

Geoffrey M. Young, *pro se*

2430 Millbrook Drive

Lexington, Kentucky 40503

energetic22@yahoo.com, (859) 327-7218

QUESTIONS PRESENTED FOR REVIEW

1. Should this Court allow Kentucky's state courts and federal district courts to dismiss meritorious civil complaints before discovery "for failure to state a claim upon which relief can be granted" without ever applying the standard of review this Court established in *Bell Atl. Corp. v. Twombly*, 550 US 544, 555-56 (2007)?

2. Does any trial court in Kentucky have the discretion or power to change the wording of a duly-enacted statute for any reason?

3. Does the Supreme Court of Kentucky have the authority to violate Kentucky's ballot challenge law, Kentucky Revised Statute (KRS) 118.176, by seizing jurisdiction over a ballot challenge case even though the statute clearly and expressly prohibits it? Section (4) of the statute states, "...and the order of

the Court of Appeals or judge thereof shall be final."

4. Does the Kentucky Court of Appeals have the authority to add language to KRS 118.176(4) that gives the movant or respondent two different ways to appeal the circuit court's ruling when the statute provides for only one way to appeal: filing a "motion to set aside"?

LIST OF PROCEEDINGS

- 1) Jefferson Circuit Court, Division 5, No. 24-CI-2968, *Geoffrey M. Young v. Morgan McGarvey*
- 2) Kentucky Court of Appeals, No. 2024-CA-0910, *Geoffrey M. Young v. Morgan McGarvey*
- 3) Supreme Court of Kentucky, No. 2024-SC-0462, *Geoffrey M. Young v. Morgan McGarvey*

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TABLE OF CITED AUTHORITIES

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BASIS FOR JURISDICTION

The jurisdiction of this Court is established by 28 U.S. Code § 1257 because the Supreme Court of Kentucky entered a final order on March 26, 2025 that it was prohibited from entering by the clear language of Kentucky's ballot challenge statute, KRS 118.176, which states that "the order of the Court of Appeals or a judge thereof shall be final." Section (4).

The two decisions of the Supreme Court of Kentucky, included herein as Appendices 6 and 7, could not possibly have rested on an adequate, independent ground based on state law because that court lacked jurisdiction over the subject matter and lacked the discretion and authority to enter any orders at all. When the Supreme Court of Kentucky violated the clear provisions of KRS 118.176(4), it violated my right to due process under the 14th

Amendment. It also violated my right as a candidate to have my votes counted; and it violated the right of every registered Democrat who voted for me or Jared Randall (D) in the May 21, 2024 primary election in Kentucky's Third Congressional District to have their votes counted.

STATEMENT OF THE CASE

On April 26, 2024, I filed a ballot challenge pursuant to KRS 118.176, Kentucky's ballot challenge statute, against incumbent U.S. Representative Morgan McGarvey in Jefferson Circuit Court, Division 5, Hon. Judge Tracy E. Davis presiding. At the same time, I filed a tendered procedural order for the circuit court to read, consider, sign and enter. I had filed seven ballot challenges between 2015 and 2023, and the circuit

courts never followed the mandatory procedure set forth in KRS 118.176(2). They invariably violated the statute, waited for the respondent to file a motion to dismiss, and granted it. All eight dismissal orders failed to apply the standard of review that all courts in America are required to apply whenever a defendant files a motion to dismiss for failure to state a claim upon which relief can be granted, Federal Rule 12(b)(6): *Bell Atl. Corp. v. Twombly*, 550 US 544, 555-556 (2007).

When one reads KRS 118.176 as a whole, which is what all courts should do, it is clear that the Kentucky General Assembly intended that no ballot challenge should ever be dismissed by the circuit court without a decision on the merits. The statute never mentions motions to dismiss. Rather, it states, "The motion [*i.e.*, the ballot challenge] shall be tried

summarily and without delay." Section (2). Only one appeal by the movant or the respondent is allowed, a "motion to set aside" - not a regular appeal - to be heard and adjudicated by "the Court of Appeals or a judge thereof in the manner provided for dissolving or granting injunctions," and "the order of the Court of Appeals or judge thereof shall be final." No ballot challenge should ever be remanded to the circuit court. It is clear that if the trial court fails or refuses to decide the ballot challenge on the merits, the Court of Appeals or a judge thereof must do so.

In the tendered procedural order I filed on April 26, 2024 along with my ballot challenge, I wrote as follows:

The Court is keenly aware of its statutory duty to decide this ballot challenge on the relative merits "summarily and without delay." KRS 118.176(2). This Court therefore

ORDERS as follows:

1. The trial at which this ballot challenge will be decided on the relative merits SHALL BE HELD on Monday, May 6, 2024, starting at _____ sharp in Courtroom _____.

2. The Movant, Geoffrey M. Young, and the Respondent, Morgan McGarvey, SHALL APPEAR IN PERSON to provide whatever evidence, proof, or testimony the Court requires.

3. If the Movant (*pro se*) or the Respondent (*pro se* or by counsel) wishes to present any evidence, proof, or testimony in writing before the trial begins, they may email said evidence, proof, or testimony to this Court's Staff Attorney,

_____,
at the following email address:

_____.
All of the evidence, proof, or testimony submitted by one party SHALL BE EMAILED TO THE OTHER PARTY or the other party's counsel at the same time it is emailed to the Court. The parties SHALL INCLUDE the case number, the words "Young v. McGarvey," and a certificate of service

in the text of the email or in the attached file. All such evidence received by the Court before 5:00 pm on Friday, May 3, 2024 will be included in the case record, but no evidence, proof, or testimony received after that will be included in the case record, except for evidence, proof, or testimony presented to the Court during the bench trial. The Court will announce its decision at the end of the trial on May 6, 2024 and will work with the prevailing party and Staff Attorney to write and enter a final and appealable Order as quickly as possible.

4. NEITHER THE MOVANT
NOR THE RESPONDENT MAY MAKE
ANY KIND OF WRITTEN MOTION
OR LEGAL ARGUMENT UNTIL
AFTER THE TRIAL HAS STARTED
ON MAY 6, 2024. Young's Tendered
Procedural Order at 2-3.

The circuit court probably read or skimmed my tendered procedural order at some time between April 26 and May 3, 2024, decided not to grant it, and decided to wait for the Respondent's inevitable motion to dismiss, which was filed electronically by

counsel on May 3, 2024.

At Motion Hour #1 on May 6, 2024, the judge was not present in the courtroom and participated from a different location. The sound quality was so poor in the courtroom that I could only hear about one-third of what the judge was saying. On the video recording of the motion hour, however, the court's words are quite audible and understandable.

At the end of the motion hour, the circuit court judge said, "I'm going to take all of this under submission, and the Court will get you out an Order as soon as possible...and the Court will work with counsel from both sides to get that hearing date scheduled." Videotape of Motion Hour #1, May 6, 2024, minute 17.

The circuit court never scheduled a hearing date. On May 9, 2024, the court issued an order,

Appendix 1, that concluded as follows:

WHEREFORE, based upon the foregoing, Mr. Young's motions are hereby **DENIED**, and Respondent's Motion to Dismiss pursuant to CR 12.02 (f) is hereby **GRANTED**.

IT IS FURTHER ORDERED The above-styled action is hereby **DISMISSED WITH PREJUDICE**.

This is a final and appealable Order and there is no just cause for delay. Appendix 1 at a11.

The only argument the circuit court made was as follows:

Movant makes *no* challenge to Congressman McGarvey's **qualifications**. There are no allegations that the Respondent is not at least 25 years of age, has not been a citizen of the United States for at least seven years, no that he is not an inhabitant of Kentucky. U.S. CONST. Art. 1, § 2; (2). *Id.* at a4, a6-a7.

On May 15, 2024, I filed a motion asking the circuit court:

to vacate its frivolous, totally unjust, null-and-void, May 9, 2024 Opinion and Order in its entirety and enter the tendered order I have attached to this Motion - before May 20, 2024. If the Court refuses to do that, a hearing to decide this Motion will take place on May 20, 2024, the day before Election Day, at 10:45 am in Courtroom 704.

**Memorandum in Support of this
Motion to Vacate**

I am filing this Motion to Vacate pursuant to CR 59.01(a), irregularity in an order of the court and abuse of discretion by which I was prevented from having a fair trial; and CR 59.01(f), that the verdict is not sustained by sufficient evidence and is contrary to law. I am not requesting a new trial. Young's First Motion to Vacate at 1.

I argued as follows:

The fact that Respondent McGarvey easily met the Constitution's minimum qualifications to be a US Representative does not mean or imply that he is a bona fide Kentucky candidate in 2024. *Id.* at 2-3.

My theory of the case from April 26, 2024 to today can be summarized as follows:

1) Respondent Morgan McGarvey conspired with the Kentucky Democratic Party, the Louisville Democratic Party, Governor Andy Beshear and KET to rig the entire 2024 Democratic Primary in KY-3 in McGarvey's favor and against Jared Randall (D) and me. *Id.* at 3.

2) Primary-election-rigging is illegal because it defeats the whole purpose of having primaries at all; and also because Kentucky happens to have a law against it: KRS 118.105(1). *Id.*

3) When Morgan McGarvey conspired with the Kentucky Democratic Party, the Louisville Democratic Party, and KET to rig the entire Democratic Primary in KY-3 this year, he violated KRS 118.105(1). *Id.*

4) When McGarvey violated KRS 118.105(1), he turned himself into a non-bona fide candidate according to the definition set forth in KRS 118.176(1). *Id.*

5) Because McGarvey is not a

bona fide candidate this year, this Court MUST find and declare, based on a preponderance of the evidence presented by the Movant and the Respondent, that he is not a bona fide candidate; MUST deny Respondent Morgan McGarvey's motion for briefing schedule and hearing with prejudice; MUST deny McGarvey's Motion to Dismiss, in its entirety, with prejudice; MUST grant my Ballot Challenge; MUST order the Kentucky Board of Elections to strike Respondent Morgan McGarvey's name from the written designation of election officers filed with the Board of Elections; and MUST order the Board of Elections not to count any of the votes cast for Morgan McGarvey in the 2024 Democratic Party Primary for the US House of Representatives in Kentucky's Third Congressional District. KRS 118.176(4). *Id.*

I argued as follows:

On page 2 of its Opinion and Order, the Court wrote:

“FINDINGS OF FACT

...Without making further specific findings, given the standard of review applicable to

motions to dismiss under CR 12.02(f), the Court assumes all facts as alleged by Mr. Young in his Motion Challenging the Ballot Status of Morgan McGarvey are true, and the same are taken as true." Dismissal Order at 2, page a4 herein.

Okay, that means that the Court has supposedly taken all of the following allegations as true:

(True Fact #1:) My campaign team and I set up a debate on March 30, 2024 at the downtown Main Louisville Free Public Library, and I invited the Respondent to show up several dozen times on social media (True Fact #2), but he never responded (True Fact #3) and did not show up to have a civil discussion with Jared Randall and me (True Fact #4). The LDP and/or the KDP could have sponsored the March 30 debate without expending any resources whatsoever (True Fact #5), but both refused to do so (True Fact #6). Their refusal constitutes circumstantial evidence for the following allegations: *Id.* at 4.

I hereby allege that the KDP and the LDP both endorsed Morgan McGarvey for the 2024 Democratic Primary at some time between March 25, 2023 and today (True Fact #7). March 25, 2023 was the day when the KDP amended its bylaws so as to make it "legal" for the KDP to violate the most important election law in Kentucky governing primary elections: KRS 118.105(1) (True Fact #8). In 2023, the KDP used its brand new bylaw to "allow" itself to rig the Primary for Governor in favor of Andy Beshear and against Peppy Martin and me, Beshear's two Democratic Party opponents (True Fact #9). The KDP also used its new bylaw to "allow" itself to start providing in-kind and monetary resources to Governor Beshear before the 2023 Primary (True Fact #10), which violated KRS 118.105(1) (True Fact #11). In 2024, it seems extremely likely to me that the KDP used its nifty, new, illegal bylaw to rig the Primary for the US House of Representatives in favor of Morgan McGarvey, under color of state law and custom (True Fact #12). Why let a perfectly

good, illegal bylaw sit around unused? *Id.* at 4.

Kentucky's ballot challenge statute is KRS 118.176 (True Fact #13). Subsection (1) reads as follows: *Id.* at 4-5.

(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 (True Fact #14). *Id.* at 5.

When the LDP and KDP refused to schedule any three-way debates between Morgan McGarvey, Jared Randall and me during the 2024 Primary season, even though it could simply have informed us that it was the sponsor or a cosponsor without have had to invest any resources whatsoever, it violated KRS 118.105(1) (True Fact #15) and rigged the 2024 Primary in favor of the Respondent (True Fact #16). McGarvey played his assigned part in the conspiracy perfectly by never communicating with Jared Randall or me - ever - (True Fact #17) and by failing or refusing to

show up at the debate we held on March 30, 2024 (True Fact #18). The fact that McGarvey conspired with the LDP and KDP to rig the entire Primary and violate a state statute, KRS 118.105(1), means that he did not seek the 2024 nomination for the US House according to law. See KRS 118.176(1) (True Fact #19). *Id.*

When KET, a state agency, published its 2024 Candidate Invitation Criteria on December 22, 2023 that included a monetary criterion of \$50,000, Criterion #3, it violated KRS 118.105(1) (True Fact #20) and rigged the 2024 Primary in favor of the Respondent (True Fact #21). The fact that McGarvey conspired with KET to rig the entire Primary and violate a state statute, KRS 118.105(1), means that he did not seek the 2024 nomination for the US House according to law. See KRS 118.176(1) (True Fact #22). *Id.*

The fact that McGarvey did not seek the nomination according to law means that he is not a bona fide (True Fact #23) or constitutionally qualified

candidate for the US House of Representatives today (True Fact #24). The fact that he is not a bona fide or constitutionally qualified candidate means that this Court should quickly find and declare, in a written order, "summarily and without delay," that Morgan McGarvey is not a bona fide candidate (True Fact #25); and the Court should "certify the fact to the board of elections, and the candidate's name shall be stricken from the written designation of election officers filed with the board of elections (True Fact #26)." See KRS 118.176 (2) and (4). Young's Ballot Challenge at pages 9 to 11. *Id.*

If all 26 of those allegations are true, then this Court has admitted in writing that "McGarvey did not seek the nomination according to law" and that "he is not a bona fide or constitutionally qualified candidate for the US House of Representatives today." **The Court's central conclusion of law on page 5** - that "Mr. Young's Motion Challenging the Ballot Status of Morgan McGarvey fails to state a claim upon which relief can be granted under CR 12.02 (f)" - is **fatally undermined and totally**

contradicted by at least 26 of the Court's own findings of fact. The Court's entire Opinion and Order is a self-contradictory nullity. As such, it must be vacated in its entirety by this Circuit Court and replaced by an order that grants my Ballot Challenge, finds and declares that Respondent McGarvey is not a bona fide candidate in 2024, orders the Kentucky Board of Elections to strike his name from the ballot, and orders the Board of Elections not to count any of the votes cast for Respondent Morgan McGarvey in the 2024 Primary Election for the US House of Representatives in KY-3. *Id.* at 5-6.

I argued as follows:

The Court is attempting to change the definition of "a bona fide candidate." The statutory definition established by KRS 118.176(1) is "one who is seeking nomination in a primary or election in a special or regular election according to law." This Court's new definition is "one who is at least 25 years of age, has been a citizen of the United States for at least seven years, and is, when elected, an inhabitant of Kentucky." However, no court in America has the power to change the wording of a duly-enacted statute. To

do so would constitute a massive abuse of discretion. *Id.* at 7-8.

I concluded my first motion to vacate as follows:

If this Court does not vacate its frivolous and completely unjust Opinion and Order of May 9, 2024, in its entirety, it will be guilty of violating the fundamental touchstone of statutory construction: the will or intent of the legislature. *Id.* at 8.

WHEREFORE, I respectfully move that this Court start following the law, vacate its Opinion and Order of May 9, 2024 in its entirety, deny the Respondent's frivolous Motion for Briefing Schedule and Hearing, deny the Respondent's frivolous Motion to Dismiss, grant my well-pleaded Ballot Challenge, and enter the tendered order I have included with this Motion as soon as possible, but in any case before May 20, 2024. *Id.*

On May 22, 2024, one day after Primary Election Day, the circuit court entered an order that included the following arguments:

As explained on the record, the Court perceives no manifest errors of law nor any manifest injustice in sustaining Congressman McGarvey's motion to dismiss under CR 12.02 (f). Page a15.

As the Court previously found, Mr. Young "makes *no* challenge to Congressman McGarvey's *qualifications*. There are no allegations that the Respondent is not at least 25 years of age, has not been a citizen of the United States for at least seven years, no that he is not an inhabitant of Kentucky." "Because Mr. Young does *not* allege that Congressman McGarvey does *not* meet the constitutional *qualifications* for office, the Court determines that Mr. Young's Motion Challenging the Ballot Status of Morgan McGarvey fails to state a claim upon which relief can be granted under CR 12.02 (f)." *Id.* at a16.

The circuit court merely asserted that it did in fact have the power to change the definition of "a bona fide candidate" and that it never made any errors serious enough to warrant vacating or even amending its dismissal order of May 9, 2024.

Two days later, I filed a second motion to vacate the court's May 9 and May 22 orders. At Motion Hour #3 on June 3, 2024 the court repeatedly interrupted me and didn't let me finish any of my legal arguments. Videotape of Motion Hour #3.

On June 10, 2023 the circuit court entered an order denying my second motion to vacate and argued as follows:

The Court entered a final and appealable Opinion and Order on May 09, 2024. Mr. Young filed a timely "Motion To Vacate" on May 15, 2024. Said Motion was resolved via the Court's Order entered May 22, 2024, which denied Mr. Young's motion. This matter has been fully and finally adjudicated. "The denial of [a 59.05] motion confirms the finality and enforceability of the original judgment." *Atkisson v. Atkisson*, 298 S.W.3d 858, 866 (Ky App. 2009), *citing Harris v. Stephenson*, 321 S.W.2d 399, 401 (Ky. 1959) and it is axiomatic that: "A court loses jurisdiction once its judgment is final." *Harris v. Camp Taylor Fire*

Protection Dist., 303 S.W.3d 479, 482 (Ky. App. 2009) *quoting Mullins v. Hess*, 131 S.W.3d 769, 774 (Ky. App. 2004). *See also* CR 52.02.

WHEREFORE, Movant's Second Motion to Vacate is hereby, respectfully, DENIED. Appendix 3, a19-a20.

The only problem with that argument is that my ballot challenge had never been fully and finally adjudicated. The court had dismissed it with prejudice on May 9, 2024 without ever reaching the merits or holding a trial. None of the court's three orders were final because all three were nullities.

On June 11, 2024, I filed a third motion to vacate all of the nullities entered so far, and Motion Hour #4 was held on July 15, 2024. What follows is excerpts from an unofficial transcript I made:

Motion Hour #4 - July 15, 2024, Monday morning, Jefferson Circuit Court, Division 5

Judge Tracy E. Davis (at minute 0:04):
All right. Mr. Young, this is motions for
you requesting sanctions, and Mr.
McGarvey, also requesting sanctions.

Geoff Young: Good morning, Your
Honor.

Judge Davis: Good morning, how are
you?

Young (min. 0:21) Fine. This is my
Third Motion to vacate all nullities
entered so far, which was not heard at
the last motion hour because you were
in a trial, and, uh, I'm here to have that
heard today.

Judge Davis (min.0:44): Okay. So the
motion is based on what procedural
ground?

Young: On the grounds that all of the
orders that you have entered to date in
this case have been nullities. You have
not entered any final and appealable
orders yet, uh, and the reason is, the
first one is the main one, the order of
May 9th, 2024. If that was not a final
and appealable order, if that was a
nullity, Your Honor, then the two
subsequent orders denying my first and

second motions to vacate are also nullities.

Judge Davis (min. 1:36): Okay, so procedurally, if you request a court to alter amend or vacate an order, and the court denies that, then you have the right to take that up to the Court of Appeals, so long as it's not an interlocutory order. And I can make it final and appealable. I dismissed the case. I dismissed it with prejudice. That is a final and appealable order.

Young (min 2:01): No it isn't, Your Honor -

Judge Davis (interrupting): Mr. Young. I'm the judge. I'm telling you what it is, and I've told you a zillion times. I no longer have jurisdiction over this matter. I also warned you that you are within a certain timeline to have the right to appeal whatever decision that I have made...[356 more words].

Young (at min. 4:38): I understand that, Your Honor, but you have not entered any final orders in this case -

Judge Davis (interrupting): Well I'm telling you that the Order is final and appealable and I will write today that

the Order is final and appealable, but I will also caution that if this comes up before the Court, I will issue sanctions and attorneys' fees.

Young: Uh -

Judge Davis (interrupting): All right? And I have made it clearly clear, and (some inaudible words) to the Court of Appeals with regard to the statutory requirements for you to have the ability to appeal. So if there's anything procedurally that you've - any deadline or whatnot that you've missed with regard to your rights to appeal, this Court has warned you numerous times, so that you can preserve your right to appeal instead of continuing to come back here.

Young (min. 5:26): Uh -

Judge Davis (interrupting): So what I will do, I will graciously issue an order saying that I stand on all prior Orders, and that any Order that this Court has issued with regard to this matter is final and appealable so that you can go ahead and file an appeal if that is what you choose to do.

Young (min. 5:47): I cannot file a

nullity, uh an appeal in the Court of Appeals, either a motion to vacate under KRS 118.176 - four, or, -

Judge Davis (interrupting): So what you can do is file something saying that I denied you the right. I denied your motion to vacate or amend. And, because I've done that, it gives you the ability to go up to the Court of Appeals and say, "Hey, Judge Davis denied this, here's what it is, and here's this argument. And you can make all those nullity arguments to the Court of Appeals but not here, because the case is dismissed.

Young: (min. 6:32): The case is not dismissed, and -

Judge Davis (interrupting): Mr. Young, I -

Young: All of your orders so far have been interlocutory, -

Judge Davis (interrupting): I am telling you that every Order that I issued was to be final and appealable and I'm not trying to waste time or whatever the case may be. I'm not changing my rule, I'm not. You can file 50,000 new cases and new motions because, I dismissed

this case with prejudice. That means you can't bring it back. It's with prejudice. That means you have to file something totally new. Or you're gonna have to appeal this case. Okay?

Young (min. 7:15): The reason, the reason all these -

Katherine Crosby (interrupting at min. 7:19): If I may respond.

Judge: Go ahead, Miss - um,

Katherine Crosby: Crosby.

Judge: Crosby.

Crosby (min. 7:21): Thank you, Your Honor. We certainly object to any further effort to vacate the Court's May 9th Order, and with respect to this latest effort, Mr. Young has received a final and appealable Order on May 9th and again on May 22nd when the Court denied his first post-judgment motion. Any further motion after that is untimely. His time to appeal has expired. We would object to any revival or renewal of an appellate process. Um, the Congressman has been exceedingly patient, as this Court has, despite repeated ad hominem baseless attacks

on him, on the Court and on counsel. Um, obviously we have a system where a party may bring a case without fear of paying the prevailing party's fees, and that promotes justice and access to the courts but there is a limit. And that limit is Rule 11, and Mr. Young has clearly crossed that limit so we respectfully request denial of any further post-judgment motions and the denial of his motion for 60 million dollars in sanctions. And an award of sanctions in the form of the fees which the Congressman has had to incur in responding to his excessive post-judgment motions after the Court had denied the first post-judgment motion.

Judge: All right.

Young (min. 8:35): I've never violated Rule 11, Your Honor. Not in this case or any previous case. Rule 11 can be summarized in seven words: "Thou shalt not lie to the Judge. That's, that's the main message, the main content of Civil Rule 11. Since I filed this Ballot Challenge on April 26, 2024, Morgan McGarvey and his three attorneys have done nothing but lie to the Judge, lie to you, about the facts and the law. I have never told a lie in any of my pleadings or any of my motion hours. And those

lies have been serious, material lies, and it should be the main part of the job of the judge to determine who is lying and who is telling the truth.

Judge Davis (min. 9:37): So. What I will tell you is: My job as a judge is not to be a fact-finder in Circuit Court. I don't find facts unless you request a bench trial. Okay? It is the job of the jury to decide and to weigh the credibility of any witnesses to be called. It's not for the judge.

The main problem with that argument is that all ballot challenges filed before the primary must be decided on the merits. There is no statutory provision for a jury trial in a ballot challenge case. It most certainly is the duty of the circuit court judge to decide all ballot challenges on the relative merits. KRS 118.176 [when read as a whole].

On July 23, 2024, the court entered its final denial order, Appendix 4. Three days later, I filed a motion to set aside in the Court of Appeals pursuant

to KRS 118.176(4). I was certain that the Kentucky Court of Appeals would violate KRS 118.176, refuse to decide my ballot challenge on the merits, cite *Gibson v. Thompson*, 336 S.W.3d 81 (Ky., March 24, 2011), find and declare that only the Respondent may file a motion to set aside, and uphold all of the unjust nullities entered by the circuit court. All of my predictions came true. See Appendix 5 herein. The Court of Appeals had done all of those things to me seven times before, starting in 2015.

Controlled experiments are rare outside of a laboratory, but Kentucky's 2024 elections provided one. On March 18, 2024, Dennis Horlander filed a ballot challenge pursuant to KRS 118.176 against Nirupama ("Nima") Kulkarni in Jefferson Circuit Court, Division 3, Case No. 24-CI-1903, seeking to disqualify her because she allegedly did not comply

with the requirement that two registered voters of the Democratic Party sign her nomination papers. The circuit court judge, Hon. Mitch Perry, tried the ballot challenge on the merits, which is what KRS 118.176 required him to do, and found in an opinion and order entered on April 25, 2024 that Kulkarni had sought the nomination according to law and was therefore a bona fide candidate in 2024.

Dennis Horlander, the movant, did not file a motion to set aside within five days, as required by KRS 118.176(4), but instead filed a regular notice of appeal. On May 15, 2024, the Kentucky Court of Appeals heard his appeal, reversed the circuit court's decision, and remanded it with instructions for the trial court to disqualify Representative Kulkarni.

That, however was a violation of KRS 118.176(4) because the Court of Appeals or a judge

thereof is supposed to review the circuit court's decision "in the manner provided for dissolving or granting injunctions...and [the motion to set aside] may be heard and tried upon the original papers..." The statute does not allow the Court of Appeals or a judge thereof to remand the case to the circuit court. KRS 118.176(4). The circuit court's decision was based on the relative merits of the evidence and arguments presented by the movant and respondent, but the Court of Appeals' decision was not.

Nima Kulkarni filed a motion for discretionary review in the Kentucky Supreme Court. Despite the clear wording of the statute that "the order of the Court of Appeals or judge thereof shall be final," the Supreme Court of Kentucky:

granted discretionary review and
allowed the Democratic primary
election to occur as scheduled on May

21, 2024. We further enjoined the Jefferson County Board of Elections, the Kentucky Board of Elections, and the Kentucky Secretary of State from certifying the results of the election pending further orders of this Court. Representative Kulkarni overwhelmingly won the primary election garnering seventy-eight percent of the vote. Order, Appeal No. 2024-SC-0215, August 22, 2024 at page 4 of 27.

The Supreme Court of Kentucky never had jurisdiction over Kulkarni's appeal and was prohibited from entering any order at all because "the order of the Court of Appeals or judge thereof shall be final." KRS 118.176(4).

When Dennis Horlander appealed the circuit court's April 25, 2024 order that denied his ballot challenge against Nima Kulkarni on the merits, the Court of Appeals ruled that Horlander was allowed to file a regular appeal. KRS 118.176(4), however, specifies that the only way to appeal the circuit

court's decision is by filing a motion to set aside within five days. The Court of Appeals unlawfully added language to the statute that provided Horlander another way to appeal the circuit court's decision. When the Court of Appeals wanted to overturn the circuit court's decision in Jefferson County Division 3, it allowed Horlander to file a regular appeal, but when it wanted to uphold the circuit court's (Jefferson County Division 5) unlawful dismissal order in my case, it refused to hear my motion to set aside, even though KRS 118.176(4) explicitly allows it and provides no other way to appeal a decision of the circuit court.

The Court of Appeals quickly granted Dennis Horlander's regular appeal and entered a 12-page order on May 15, 2024 that overruled the circuit court's (Division 3) order. Case No. 2024-CA-0495.

Both Nima Kulkarni (Supreme Court Case No. 2024-SC-0215) and I filed motion for discretionary review in the Supreme Court of Kentucky. The Kentucky Supreme Court quickly granted Kulkarni's motion for discretionary review and ruled against Kulkarni on June 7, June 11 and August 22, 2024.

In my appeal, however, the Supreme Court and its Clerk refused ever to file my motion for discretionary review at all. See Appendices 6 and 7. I first attempted to file my motion for discretionary review in person on September 5, 2024, but the assistant clerk stamped it "Received" instead of "Filed" and the Clerk mailed all ten copies back to me on September 11, 2024. I was forced to file a motion for a writ of mandamus on September 23, 2024 in which I asked the Kentucky Supreme Court to order the Clerk to file my motion for discretionary

review and to give it a case number.

On January 27, 2025, long after the November 2024 elections were over and certified, the Supreme Court of Kentucky entered an order dismissing my motion for a writ of mandamus against the Clerk. See Appendix 6 herein. I finally got a case number for my efforts, however: 2024-SC-0462.

The Supreme Court of Kentucky wrote as follows:

Young lost his ballot challenge in the Jefferson Circuit Court on July 23, 2024, when the trial court entered an order granting McGarvey's CR 12.02(f) motion to dismiss. Young subsequently filed a motion to vacate the circuit court's order in the Court of Appeals. The Court of Appeals treated Young's motion to vacate as a request for interlocutory relief made pursuant to KRS 118.176 and RAP 20(B). Young's motion was denied by order of the Court of Appeals, entered on August 20, 2024.

Pursuant to RAP 20(F), "Any

party adversely affected by an order of the Court of Appeals in a proceeding under sections (B) or (C) of this rule, may no later than 10 days from the date on which the order was entered move the Supreme Court to vacate or modify it." Any request for appellate review by this Court was required to be submitted for filing no later than August 30, 2024, through the filing of a motion to vacate or modify. Young hand-delivered a motion for discretionary review for filing on September 5, 2024. Appendix 6 at a50-a51.

Because Kentucky's ballot challenge law, KRS 118.176, is a special statutory proceeding, none of the Kentucky Rules of Appellate Procedure ("RAP") apply to ballot challenge cases if they were filed before the primary election. See Kentucky Civil Rule 1. Only the procedures specified in KRS 118.176 may be used. The Supreme Court of Kentucky ruled that my motion for discretionary review was tendered six days after the deadline imposed by rules

of appellate procedure [RAP] that are not applicable to ballot challenges.

On February 12, 2025, I filed a motion asking the Supreme Court of Kentucky to vacate its dismissal Order of January 27 on the following grounds:

All ballot challenges in Kentucky filed under KRS 118.176 are special statutory proceedings, so the procedural requirements of the governing statute, KRS 118.176, must prevail over any inconsistent procedures prescribed by Kentucky's Civil Rules and Rules of Appellate Procedure. CR 1(2). Young's Motion to Vacate at 2.

However, KRS 118.176 imposes only two time constraints on the movant, and both are jurisdictional. "An action regarding the bona fides of the nominee of a political party or a nonpartisan or judicial nominee may be commenced at any time prior to the primary." Section (2). "The motion [to set aside] shall be heard by the Court of Appeals or a judge thereof in the manner provided for dissolving or

granting injunctions, except that the motion shall be made before the court or judge within five (5) days after the entry of the order in the Circuit Court..." Section (4). I filed my ballot challenge on April 26, 2024 and the primary election was held on May 21, 2024. I filed my only motion to set aside, pursuant to KRS 118.176(4), in the Court of Appeals on July 26, 2024, which was only three (3) days after the circuit court filed its final nullity that purported to deny my last motion to vacate all of the circuit court's previous nullities. I therefore met both of the stringent time limits that the governing statute required me to meet.

However, KRS 118.176 imposes stringent time limits on Kentucky's circuit courts and the Court of Appeals in addition to movants. "The motion shall be tried summarily and without delay." Section (2). That clear mandate by the General Assembly applies to every circuit court judge in Kentucky once the circuit court has acquired jurisdiction over the ballot challenge. It is also clear in the context of KRS 118.176 as a whole that the circuit court must decide the ballot challenge on the relative merits. Jefferson Circuit Judge Tracy E. Davis, Division 5, however,

recalcitrantly refused to hear the merits of my ballot challenge and repeatedly and recalcitrantly refused to adjudicate it on the relative merits. She therefor knowingly and intentionally violated the clear mandate given by the General Assembly to try my ballot challenge summarily and without delay. Every order the circuit court entered was an unjust, frivolous nullity, which means that the circuit court never entered any valid, final or appealable orders at all.

The first stringent time limit imposed by KRS 118.176 – “The motion shall be tried summarily and without delay.” – applies to the circuit court and also to the Court of Appeals. The second stringent time limit applies only to the Court of Appeals after the movant has filed a motion to set aside: “The motion shall be heard by the Court of Appeals or a judge thereof in the manner provided for dissolving or granting injunctions...” Section (4). In this case, the Court of Appeals delayed from July 26 to August 20, 2024 – 26 days – before entering its totally unjust order upholding all of the nullities entered by the circuit court. The Court of Appeals knowingly and intentionally violated the clear instruction given by the General Assembly to try my ballot

challenge on the relative merits
“summarily and without delay.”

This Court attempted to create additional time limits out of thin air when it wrote, “Any request for appellate review by this Court was required to be submitted for filing no later than August 30, 2024...” Order at 2. No court in America is allowed to add words to a duly-enacted statute, not even the US Supreme Court. RAP 20(F) does not and cannot be applied to this ballot challenge because it is inconsistent with the time limits included in KRS 118.176. See CR 1(2), which reads as follows in pertinent part: “(2) These Rules govern procedure and practice in all actions of a civil nature in the Court of Justice except for special statutory proceedings, **in which the procedural requirements of the statute shall prevail over any inconsistent procedures set forth in the Rules...**” *Id.* at 2-4.

On February 12, 2025 I once again drove to Frankfort and tried to file the ten copies of my September 5, 2024 motion for discretionary review, but the assistant clerks once again stamped it

"Received" instead of "Filed."

On March 26, 2025, five justices of the Supreme Court of Kentucky entered a two-sentence order that denied my motion to vacate. See Appendix 7 at a53-a54. The court had succeeded at getting rid of my motion for discretionary review without ever allowing it to enter the case record.

WHEREFORE, I respectfully request that this Court review and overturn the circuit court's four dismissal and denial orders, Appendices 1-4, on the grounds that: (1) the circuit court refused to decide my ballot challenge on the relative merits and thereby violated the clear intent of the General Assembly when it enacted Kentucky's ballot challenge statute, KRS 118.176; (2) the circuit court changed the definition of a bona fide candidate set forth in Section (1) of KRS 118.176; and (3) the

circuit court failed and refused to apply the standard of review that all courts in America are required to apply whenever a defendant (or in this case a respondent) files a motion to dismiss for failure to state a claim upon which relief can be granted, Federal Rule 12(b)(6) [equivalent to Kentucky Civil Rule 12.02(f)]: *Bell Atl. Corp. v. Twombly*, 550 US 544, 555-56 (2007).

I respectfully request that this Court review and overturn the Kentucky Court of Appeals' denial order, Appendix 5, on the grounds that: (1) the Court of Appeals added language to KRS 118.176(4) that gave the movant or respondent a second way to appeal a decision by the circuit court in addition to filing a motion to set aside as described in the statute; and (2) the Court of Appeals falsely claimed in its denial order that: (a) the circuit court's

disposition of the case was not based on a ruling under KRS 118.176; (b) all of the allegations in my ballot challenge amounted to an election contest; (c) I was not entitled to move the Court of Appeals to set aside the circuit court's order pursuant to the appeal procedure set forth in KRS 118.176(4); (d) I did not properly invoke the Court of Appeals' jurisdiction; and (e) my motion to set aside filed pursuant to KRS 118.176(4) was not timely.

I respectfully request that this Court review and overturn the Kentucky Supreme Court's two orders denying my motion for a writ of mandamus that would have required the clerk of that court to file my motion for discretionary review, Appendices 6 and 7, on the grounds that the Supreme Court of Kentucky never had a right to enter any orders at all in this case because the clear language of KRS

118.176(4) - "the order of the Court of Appeals or judge thereof shall be final." - prohibited it from taking jurisdiction over my appeal.

I am not requesting a *per curiam* decision but rather respectfully asking this Court to put this appeal on its merits docket.

REASONS WHY CERTIORARI SHOULD BE GRANTED

None of the eight ballot challenges I have filed between 2015 and today have been decided justly by the circuit [trial] court, the Kentucky Court of Appeals, or the Supreme Court of Kentucky. Every circuit court changed the definition of "a bona fide candidate" set forth clearly in Section (1) of KRS 118.176 and granted the respondent's motion to dismiss for failure to state a claim upon which relief

can be granted, without ever applying the standard of review this Court established in 2007 in *Bell Atl. Corp. v. Twombly*, 550 US 544, 555-56. No circuit court realized that KRS 118.176, read as a whole, requires the circuit court to decide all ballot challenges on the merits and thus prohibits all Kentucky Civil Rule 12.02(f) [Federal Rule 12(b)(6)] motions to dismiss from being granted in ballot challenge cases. No one can prevent a respondent from filing a motion to dismiss, but KRS 118.176, read as a whole, prohibits every circuit court in Kentucky from granting it.

The Kentucky Court of Appeals violated KRS 118.176(4) eight times by refusing to decide any of my eight ballot challenges on the relative merits after the circuit court failed or refused to do so. It also created out of thin air a second method of

appealing the decision of the circuit court to the Court of Appeals other than the "motion to set aside" described by the Legislature in KRS 118.176(4).

The Supreme Court of Kentucky unlawfully seized jurisdiction over the ballot challenge I had filed against Morgan McGarvey on April 26, 2024 for the sole purpose of keeping my motion for discretionary review out of the public case record.

Between 2010 and today, Kentucky's Judicial Branch has not only nullified KRS 118.176, but has weaponized it to enable the Judicial Branch to decide the outcome of any election in which a ballot challenge is filed. If this Court doesn't reverse the orders in Appendices 1 to 7, every candidate who thinks he or she might lose a contested primary will have an incentive to file a ballot challenge on the off chance that the circuit court or the Court of Appeals

will remove their opponent from the ballot. No voters will have any assurance that their votes will be counted if a ballot challenge is filed in that race before primary election day, even if the candidate they voted for gets the most votes.

Respectfully signed on September _____,

2025 by:

Geoffrey M. Young, *pro se*
 2430 Millbrook Drive
 Lexington, KY 40503
 (859) 327-7218
 Email: energetic22@yahoo.com