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Kentucky Court of Appeals

COMMONWEALTH OF KENTUCKY
 COURT OF APPEALS
 2024-CA-0495
 FILED ELECTRONICALLY

DENNIS HORLANDER

APPELLANT

v.

**APPEAL FROM JEFFERSON CIRCUIT COURT
CIVIL ACTION NUMBER 24-CI-001903**

NIRUPAMA KULKARNI, *et al.*

APPELLEES

BRIEF FOR APPELLEE NIRUPAMA KULKARNI

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Brief for Appellee was served by electronic mail upon the Honorable Mitch Perry, Jefferson Circuit Court, Commonwealth of Kentucky; the Honorable Steven J. Megerle, counsel for Appellant Dennis Horlander, P.O. Box 2613, Covington, Kentucky 41012; the Honorable Jennifer Scutchfield, counsel for the Office of the Secretary of State, 700 Capital Avenue, Suite 152, Frankfort, Kentucky 40601; the Honorable Taylor Austin Brown, counsel for the State Board of Elections, 140 Walnut Street, Frankfort, Kentucky 40601; and Natalie Johnson and Kathryn Meador, Counsel for Jefferson Circuit Court Clerk Bobbie Holsclaw, Assistant County Attorneys, First Trust Centre, 200 South Fifth Street, Suite 200N, Louisville, Kentucky 40202. Pursuant to RAP 31(C)(1)(c), I certify that I did not check out the record in this case.

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INTRODUCTION

This is an appeal from a KRS 118.176 bona fides challenge filed by a defeated, former member of the General Assembly, Dennis Horlander, against his one-time election opponent and current incumbent Representative Nirupama (“Nima”) Kulkarni. “Bona fides” as used in KRS 118.176 “refers to the good faith, genuineness, and qualifications of a candidate to hold the office to which election is sought.” *Kentucky State Bd. of Elections v. Faulkner*, 591 S.W.3d 398, 403 (Ky. 2019). There is no question as to Representative Kulkarni’s “good faith, genuineness, and qualifications” to hold office. *Id.*

The Circuit Court’s holding is summarized in a single sentence on page three of its opinion: “In sum, Mr. Horlander’s Petition fails to establish the heavy burden required to disqualify a candidate from the ballot.” (Appx. 1 at 1) This holding was sound, supported by the arguments presented below, and should be affirmed. Further, because Mr. Horlander’s Petition was unsuccessful below, appellate review is limited by KRS 118.176(4), and the Court should dismiss this appeal.

STATEMENT CONCERNING ORAL ARGUMENT

Representative Kulkarni agrees with this Court’s May 6, 2024 Order and believes that oral argument would not assist the Court in deciding the issues presented.

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COUNTERSTATEMENT OF THE CASE

Representative Kulkarni does not accept the Statement of the Case submitted by Mr. Horlander pursuant to RAP 32(B)(3). Rather, she relies on the Circuit Court’s succinct and accurate recitation of this action’s underlying facts, contained in the first and second paragraphs of its Order. (Appx. 1 at 1) Mr. Horlander does not claim that they are incorrect or clearly erroneous. *See Ellington v. Becraft*, 534 S.W.3d 785, 790 (Ky. 2017) (noting that trial court’s findings of fact are reviewed under “clearly erroneous” standard).

Representative Kulkarni restates the Jefferson Circuit Court’s findings here:

The Plaintiff, former state Representative Dennis Horlander, has filed this lawsuit alleging that the incumbent state Representative for House District 40, Nirupama “Nima” Kulkarni, must be disqualified from the upcoming Democratic Primary Election because she did not have two members of the Democratic Party sign her Nominating Petition. One of the signatories, Sharon LaRue, was in fact a registered Republican when she signed the Nominating Petition on December 22, 2023, and when Ms. Kulkarni filed her paperwork with the Secretary of State on January 2, 2024. Apparently, Ms. LaRue’s partisan registration status was unknown to Ms. Kulkarni at the time. Ms. Kulkarni testified that she had no reason to believe that Ms. LaRue was not a member of the Democratic Party based on their extensive prior history and dealings.

On January 8, 2024, the issue of Ms. LaRue’s partisan registration was brought to Ms. Kulkarni’s attention by the Democratic Party Leadership. Ms. Kulkarni then took immediate steps to rectify the situation and Ms. LaRue did indeed change her party affiliation to the Democratic Party on January 8, 2024. The Secretary of State subsequently certified Ms. Kulkarni’s name on the primary election ballot on January 17, 2024.

(Appx. 1 at 1)

It is undisputed that by the time Mr. Horlander filed his bona fides petition on March 8 and by the time Secretary of State Michael Adams certified Representative Kulkarni’s Nominating Petition on January 17, Ms. LaRue was indeed a registered

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Democrat. *Id.* Solely because Ms. LaRue did not register as a Democrat until January 8, Mr. Horlander seeks Representative Kulkarni's disqualification from the ballot.

Mr. Horlander relies heavily on *Morris v. Jefferson County Clerk*, 729 S.W.2d 444 (Ky. 1987) to argue that, under the facts presented in this action, Representative Kulkarni's disqualification is inevitable. The facts in *Morris* are, admittedly, nearly identical to those in this action. But Mr. Horlander's "gotcha" moment fails for one simple reason: *Morris* was overruled by the legislature in 1990.

In *Morris*, former Jefferson Circuit Judge Geoff Morris was disqualified from running for Commonwealth Attorney because his signatories were not registered Democratic voters by the deadline imposed by KRS 118.125(3). The *Morris* Court seized upon the words "at the time of filing" and "are" from the former version of the statute, emphasizing them throughout its opinion, to remove Judge Morris from the ballot.

In direct response to *Morris*, the General Assembly removed the timing requirement from KRS 118.125 to prevent a similar outcome from happening again:

The declaration shall be administered and signed by the person filing the declaration to administer an oath.

(3) [At the time of filing his notification and declaration, the candidate shall file therewith an affidavit of two (2) reputable electors who are members of the party to which the candidate belongs. The affidavit shall be in the following form:

1990 SB 47. (Appx. 2 at 90 – 91) When *Morris* was decided, the statute contained an express timeliness provision. In response to the case, those words were removed. That simple legislative act overruled *Morris*.

These facts are confirmed by Senator Gerald Neal. He is a member of the Kentucky Senate, representing portions of the same district as Representative Kulkarni. He joined the legislature in 1988, shortly after the *Morris* decision. He then co-sponsored Senate Bill 47, which removed the words "at the time of filing" from KRS 118.125(3).

(Appx. 3) Neither his bill nor any other since that time has replaced those words or added any other such deadline or timeline to the Kentucky Revised Statutes. *Id.*

This legislative act leaves the Court with no option other than to affirm the Jefferson Circuit Court's decision. In cases such as the one pushed by Mr. Horlander, the legislature did not want the Courts to disqualify a candidate. The General Assembly's instructions were clear, as the Jefferson Circuit Court found:

The Court is now left with a basic exercise in statutory interpretation. The removal of a phrase from a statute sends just as clear a signal to the judiciary as the addition of a phrase. "Where a clause in an old enactment is omitted from the new one, it is to be inferred that the Legislature intended that the omitted clause should no longer be the law." *Inland Steel Co. v. Hall*, 245 S.W.2d 437, 438 (Ky. 1952). The General Assembly intentionally removed the timing component of KRS 118.125 in 1990. This removal must be presumed to effect a change in the law. *Eversole v. Eversole*, 185 S.W. 487, 489 (Ky. 1916). It is clear therefore that as long as the other requirements of KRS 118.125 are met, the paperwork is valid and can be properly certified by the Secretary of State. That is precisely what happened in this case.

(Appx. 1 at 4) Because the General Assembly told us that it wanted a different outcome than the one reached in *Morris*, Mr. Horlander's Petition seeking Representative Kulkarni's disqualification was correctly rejected below, and the Circuit Court's decision should be affirmed.

ARGUMENT

Representative Kulkarni is a popular incumbent who is running for re-election to House District 40. Mr. Horlander formerly held the seat, but he was defeated by Representative Kulkarni in both the 2018 and 2020 Democratic primaries. She was re-elected without opposition in 2022. Unable to beat Representative Kulkarni at the ballot box, Mr. Horlander resorts to litigation and asks this Court to strike her from the ballot. This Court should decline to do so.

As an initial matter, this Court must decide whether it has jurisdiction to hear Mr. Horlander's appeal. The General Assembly has the exclusive authority to establish the eligibility of its membership and how they are chosen: "Each House of the General Assembly shall judge of the qualifications, elections and returns of its members, but a contested election shall be determined in such manner as shall be directed by law." Ky. Const. § 38. Through a limited judicial process, the General Assembly delegated candidate challenges to the courts in the bona fides statute. The plain language of that statute, KRS 118.176(4), limits appellate review only to successful circuit court challenges. *Stephenson v. Woodward*, 182 S.W.3d 162, 167 (Ky. 2005). Because Mr. Horlander's bona fides petition was unsuccessful in Circuit Court, the statute prevents him from trying again in this Court. *Gibson v. Thompson*, 336 S.W.3d 81, 83 (Ky. 2011).

Regardless, Mr. Horlander cannot prevail here because the Circuit Court found correctly that he had not met his burden of proof pursuant to KRS 118.176(4). Mr. Horlander's challenge was based exclusively on the Kentucky Supreme Court's decision in *Morris v. Jefferson County Clerk*, 729 S.W.2d 444 (Ky. 1987) a case with remarkably similar facts to this case. However, shortly after *Morris* and in direct response to it, the General Assembly changed the nominating statute, KRS 118.125, to avoid the outcome in *Morris*. As a result, the Circuit Court held correctly that Mr. Horlander cannot meet his burden of proof under the statute as it is written today. For the reasons stated in its opinion, and for those that follow, this Court should affirm the Circuit Court.

A. Mr. Horlander has no right to appellate review under KRS 118.176.

Appellate review under the bona fides statute is governed by KRS 118.176(4). While interpreting that statute, the Supreme Court of Kentucky held that it may not

interpret it “at variance with its stated language.” *Stephenson v. Woodward*, 182 S.W.3d 162, 177 (Ky. 2005). The statute’s “stated language” provides that appellate review is limited to when “the [circuit] court finds the candidate is not a bona fide candidate.” *Id.* Because Mr. Horlander’s petition below was denied, he is not entitled to further review in this Court.

In *Gibson v. Thompson*, 336 S.W.3d 81 (Ky. 2011), the Supreme Court of Kentucky reviewed the statute in the context of a CR 65.09 motion filed by Jimmy Gibson. In that case, the Circuit Court never reached the merits, finding that Mr. Gibson had no standing under the statute. Mr. Gibson then filed a motion to set aside the Circuit Court’s order in the Court of Appeals, which was also denied on standing grounds. On discretionary review, the Supreme Court held that the “expedited appeal procedure set forth in KRS 118.176(4) applies only to orders disqualifying a candidate.” *Id.* at 83. Because “the trial court made no finding that Thompson was not a *bona fide* candidate,” no review by the Court of Appeals was authorized. *Id.*

This outcome is consistent with the special nature of pre-election proceedings and election contests. The Supreme Court held in *Stephenson* that, “[t]he courts of this Commonwealth have long recognized that the judicial branch has no inherent power to pass on the validity of elections or the eligibility of candidates, but only has such power as given by the General Assembly.” *Stephenson*, 182 S.W.3d at 167 (quoting *Noble v. Meagher*, 686 S.W.2d 458, 460 (Ky. 1985)).

One such power the General Assembly has reserved to the courts is the authority to hear bona fides challenges, codified in KRS 118.176. In these cases, the General Assembly proscribes specific procedures, including the manner in which the action must

be brought, by whom it must be brought, where it must be brought, and when outcomes of such proceedings may be reviewed. In this regard, “[a] bona fides challenge to a candidate is a special statutory proceeding.” *Rosen v. Hall*, 2014 Ky. App. LEXIS 146, *9 (Ky. App. June 4, 2014). Under Kentucky law, a “special statutory proceeding” is a scheme that is “complete within itself having each procedural detail prescribed.” *Swift & Co. v. Campbell*, 360 S.W.2d 213, 214 (Ky. 1962).

As a special statutory proceeding, the General Assembly, in enacting the bona fides statute, KRS 118.176, prescribed “by whom and under what conditions a contest may be maintained.” It provides that a qualified voter or an opposing candidate may bring a bona fides challenge in the county where the candidate seeks election. Moreover, it also provides the specific procedure required to seek review in the Court of Appeals. According to the Supreme Court in *Gibson*, this procedure is only available to candidates whom the Circuit Court has disqualified. The simple conclusion, therefore, must be that the General Assembly did not intend for unsuccessful challengers to have appellate rights.

In contrast, the General Assembly unmistakably established appellate rights in a separate special statutory proceeding, election contests. Such disputes are “a purely statutory proceeding, special and summary in nature.” *City of Pikeville v. Pike County*, 297 S.W.3d 47, 51 (Ky. App. 2009). Again, in *City of Pikeville*, the Court affirmed that “[i]t is without a doubt within the authority of the Legislature to prescribe by whom and under what conditions a contest may be maintained.” *Id.* (quoting *Payne v. Blanton*, 229 S.W.2d 438, 440 (Ky. 1950)). Appellate rights in such proceedings are spelled out in KRS 120.075: “any party may appeal to the Court of Appeals from a judgment entered

under KRS 120.065 [primary contests].” *Id.* The statute provides certain caveats thereafter but allows “any party” to appeal. *Id.* The same is true for general elections and KRS 120.175, which states “any party may appeal to the Court of Appeals from a judgment entered under KRS 120.155 [general election contests] in the same manner as provided in KRS 120.075.” *Id.*

There is no similar appellate language in the bona fides statute. There can be no doubt that if the General Assembly wanted to provide unsuccessful challengers with appellate rights under KRS 118.176(4), it could have. It provided full appellate rights to both parties in post-election challenges. But instead, it provided only limited review for bona fides challenges.

Pursuant to *Gibson*, unsuccessful bona fides petitioners cannot bring a motion to set aside in the Court of Appeals. No Kentucky court has held that a right to appeal exists for an unsuccessful challenger in a bona fides case. The General Assembly’s limited delegation is consistent with the Kentucky Constitution, which grants the General Assembly the exclusive authority to be the “judge of the qualifications, elections and returns of its members.” Ky. Const. § 38. Because the General Assembly could have provided Mr. Horlander an appellate right, but did not, Representative Kulkarni respectfully requests the Court dismiss Mr. Horlander’s appeal.

B. Standard of review.

Striking a candidate from the ballot and limiting voter choice is an extreme, disfavored outcome. That is why the General Assembly placed the burden squarely on the Petitioner in a bona fides case: “in any action or proceeding under this section the burden of proof as to the bona fides of a candidate shall be on the person challenging the bona

fides of a candidate.” KRS 118.176(3). Election statutes, such as KRS 118.176, are construed “liberally, especially in favor of citizens whose right to vote they tend to restrict.” *Greene v. Slusher*, 190 S.W.2d 29, 32 (Ky. 1945).

In the most recent bona fides challenge to come to the Court of Appeals from Jefferson Circuit Court, this Court emphasized the burden and discussed a recent trend in Kentucky away from upholding such challenges. The Court found that, “in addition to the statute’s imposing the burden of proof upon the party challenging the candidate’s bona fides, KRS 118.176(3), the qualifications of a candidate shall be interpreted ‘to prevent restriction of the rights of citizens to vote.’” *Witten v. Foster*, Case No. 2022-CA-1238-EL (Oct. 28, 2022) (quoting *Heleringer v. Brown*, 104 S.W.3d 397, 404 (Ky. 2003) (Appx. 4).

Because “the idea of liberal construction in favor of broad voter participation is deeply embodied in Kentucky law,” the Witten Court said that any doubt should be resolved in favor of allowing the candidacy to continue. *Id.* at 403. The Court applied those principles in *Witten* to overturn a Jefferson Circuit Court decision disqualifying a candidate from standing for election. When applied in this case, the same principles weigh in favor of denying Mr. Horlander’s requested relief and leaving Representative Kulkarni on the ballot.

C. *Morris v. Jefferson County Clerk and the 1990 amendments to KRS 118.125.*

Because Mr. Horlander’s arguments rely so heavily on *Morris v. Jefferson County Clerk*, 729 S.W.2d 444 (Ky. 1987), a discussion of it is warranted here. In 1987, KRS 118.125 contained a different subsection (3) that has since been stricken. The statute, quoted on the first page of the *Morris* opinion, provided at that time as follows: “at the

time of filing his notification and declaration, the candidate shall file therewith an affidavit of two (2) reputable electors who are members of the party to which the candidate belongs.” *Id.* Importantly, the words “at the time of filing” and “are” were removed from the statute by the General Assembly shortly after the decision.

At the time, former Jefferson Circuit Court Judge Morris was running for Commonwealth Attorney. When he filed his nomination petition, one of his signers was J. Michael Smither. *Id.* The Court described the issues with Mr. Smither’s signature:

It is admitted before this court that Mr. Smither was not a registered Democrat voter at the time he signed the affidavit or at the time the nomination papers were filed. He had moved from his precinct in 1983, had not changed his registration, and had not voted since the November, 1984 election. He was purged from the list of registered voters by the Jefferson County Board of Elections, and without dispute was not a qualified voter or elector when he filed the affidavit.

Id. at 445. Noteworthy, and similar to Ms. LaRue in this case, “after the deadline for candidates to file for nomination had passed, Mr. Smither did register to vote.” *Id.*

The Supreme Court focused on two key phrases in KRS 118.125 to reach its conclusion. It quoted the phrase “at the time of filing his notification and declaration” early in the opinion. It further focused heavily on the word “are,” the second-person, present-tense form of the verb “be.” The Court said “the language of K.R.S. 118.125(3) is not ambiguous. It requires the affidavit of two reputable electors who *are* members of the party to which the candidate belongs.” *Id.* (emphasis in original). The Court relied on these phrases exclusively to resolve the challenge against Judge Morris. It struck him from the ballot, finding that he failed to comply with the statute as it was written then: “we interpret this to mean that at the time the affidavit is signed and the nomination papers filed, the affiant must be a voter registered to vote as a member of the party to

which the candidate belongs.” *Id.* at 445-446 (emphasis in original).

Admittedly, there are many similarities between the facts of Judge Morris’s case and Rep. Kulkarni’s. In this action, one of the witnesses to Representative Kulkarni’s Petition, Sharon LaRue, was a registered voter and member of the Republican Party on the day she signed the Petition. However, and unlike in *Morris*, Ms. LaRue changed her voter registration from Republican to Democrat. She did so nine days prior to Representative Kulkarni’s certification to the ballot by the Secretary of State on January 17, 2024. She was a registered Democrat as of that date, and as of the date Mr. Horlander filed his bona fides Petition on March 18. She remains so today. And, like Judge Morris in 1987, Representative Kulkarni “contends that in good faith (s)he thought the two affidavits were proper.” *Id.* at 446

The issue with Petitioner’s argument, however, is that *Morris* was, in fact, overruled, albeit by the Kentucky General Assembly. Our legislature changed the statute upon which *Morris* was based in 1990, and deliberately removed the exact language relied upon by the Supreme Court to remove Judge Morris from the ballot. Senate Bill 47 included this change to KRS 118.125(2):

(3) [At the time of filing his notification and declaration, the candidate shall file therewith an affidavit of two (2) reputable electors who are members of the party to which the candidate belongs. The affidavit shall be in the following form:

(Appx. 2 at 90 – 91) Further, the present tense verb “are” was completely removed from the statute.

The revision is discussed by Senate Bill 47’s co-sponsor, Senator Gerald Neal. He joined the legislature shortly after the *Morris* decision. In the bill, the General Assembly removed the words “at the time of filing” from KRS 118.125(3). (Appx. 3). This Act, and

no other bill since that time, has replaced those words in the Kentucky Revised Statutes or imposed any other deadline. *Id.*

D. As the Jefferson Circuit Court found, legislative intent must control.

A bona fides challenge similar to *Morris* has not been decided by a Kentucky appellate court since 1987, nor has any Kentucky appellate court addressed the 1990 amendments. However, other bona fides challenges have been reviewed. And in each case, Kentucky's Courts have reaffirmed that "the idea of liberal construction in favor of broad voter participation is deeply embedded in Kentucky law." *Heleringer v. Brown*, 104 S.W.3d 397, 403-404 (Ky. 2003). The *Heleringer* decision paved the way for former Governor Fletcher to remain on the ballot despite a residency challenge to his Lieutenant Governor running mate. The opinion restated and reaffirmed a series of appellate decisions over the years. For example, *Heleringer* cited *Napier v. Roberts*, and restated the principle that:

[W]hile it is the policy of the law to uphold and guarantee, as much as possible, fairness, honesty and purity in elections, it may be also considered a rule of equal public importance that the individual voter should not be deprived of the opportunity of choosing a public servant from among those who may seek the place, unless the plain or manifest purpose of the law demands it.

Id. at 403 (quoting *Napier v. Roberts*, 189 S.W. 206, 209 (Ky. 1916)). It further cited *Greene v. Slusher*, stating:

From the nature of things the interpretation of election laws, designed by secret ballot to register the public will, must be along sound and reasonable lines, and not so ultra technical as either to defeat the will of the public or to place an unnecessary burden upon the electors.

Id. (quoting *Greene v. Slusher*, 190 S.W.2d 29, 32 (Ky. 1945)).

With these principles of Kentucky’s election statutes in mind, the Circuit Court assessed the import of 1990 SB 47. The removal of the words “are” and “at the time of filing” so shortly after *Morris* must mean *something*. Before *Morris*, KRS 118.125 contained an express timing requirement. The Supreme Court conditioned its decision on that timing requirement. And, subsequently, the General Assembly removed that provision. This is what the Circuit Court found:

The Court is now left with a basic exercise in statutory interpretation. The removal of a phrase from a statute sends just as clear a signal to the judiciary as the addition of a phrase. “Where a clause in an old enactment is omitted from the new one, it is to be inferred that the Legislature intended that the omitted clause should no longer be the law.” *Inland Steel Co. v. Hall*, 245 S.W.2d 437, 438 (Ky. 1952). The General Assembly intentionally removed the timing component of KRS 118.125 in 1990. This removal must be presumed to effect a change in the law. *Eversole v. Eversole*, 185 S.W. 487, 489 (Ky. 1916). It is clear therefore that as long as the other requirements of KRS 118.125 are met, the paperwork is valid and can be properly certified by the Secretary of State. That is precisely what happened in this case.

(Appx. 1 at 3). This decision is legally correct, and it should be affirmed.

Ms. LaRue was a registered Democratic voter on the date that Secretary of State Michael Adams certified Representative Kulkarni’s name to be on the ballot and as of the date Mr. Horlander filed his Bona Fides Petition. In light of the 1990 amendment, the fact that Ms. LaRue did not register specifically with the Kentucky Democratic Party until January 8 should not disqualify Representative Kulkarni. If it did, the removal of the words “at the time of filing” and “are” in KRS 118.125 by 1990 SB 47 would be meaningless.

Under Kentucky’s rules of statutory construction, “where a clause in an old enactment is omitted from the new one, it is to be inferred that the Legislature intended

that the omitted clause should no longer be the law.” *Inland Steel Co. v. Hall*, 245 S.W.2d 437, 438, (Ky. 1952). *See also Eversole v. Eversole*, 185 S.W. 487, 489 (Ky. 1916):

Where a statute is amended or re-enacted in different language, it will not be presumed that the difference between the two statutes was due to oversight or inadvertence on the part of the Legislature. On the contrary, it will be presumed that the language was intentionally changed for the purpose of effecting a change in the law itself.

E. Sharon LaRue is a registered voter.

Mr. Horlander argues repeatedly that Ms. LaRue must have been a voter qualified to vote in the May 2024 primary to sign Representative Kulkarni’s Nominating Petition. That is not true. KRS 118.125(1) requires that the candidate meet this requirement, but KRS 118.125(2) does not require the same of signatories.

KRS 118.125(2) provides Representative Kulkarni’s Nominating Petition must be signed by a registered voter. The language in subsection two is distinct from that in subsection one, which provides that a candidate must be “qualified under the provisions of KRS 116.055 to vote in any primary for the candidates for nomination by the party at whose hands he or she seeks the nomination.” KRS 118.125(1). There is no descriptive or other language in subsection two regarding the primary or other specific voter registration status of the signatory, like there is for the candidate.

Because of this distinction, these arguments for reversal by Mr. Horlander are misplaced and should be rejected.

F. The circuit court did not commit reversible error in declining to hold Ms. LaRue in contempt.

Mr. Horlander argues that the Court erred when it refused to hold Ms. LaRue in contempt for failing to appear at the hearing on this matter. He alleges that Ms. LaRue was a necessary rebuttal witness. He is incorrect.

Initially, this Court reviews such a decision under the abuse of discretion standard. *Sidebottom v. Watershed Equine, LLC*, 564 S.W.3d 331, 333 (Ky. App. 2018). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000).

KRS 421.110 provides that a witness “may be punished as a contempt of the court” for failing to appear in response to a properly served subpoena. The use of “may” establishes that this is a permissive power committed to the discretion of the Court. *Ruby v. Ruby*, 2009 Ky. App. LEXIS 11, *8 (Ky. App. Jan. 23, 2009). Thus, the court was empowered to review the circumstances of Ms. LaRue’s failure to appear, including the likelihood that she had information relevant to the proceedings, in making its decision.

Mr. Horlander alleges Ms. LaRue’s testimony regarding her conversation with Ms. Kulkarni about her party affiliation was necessary rebuttal evidence. But there is no evidence that her rebuttal would have changed the outcome. The facts regarding Ms. LaRue’s party registration are uncontested: she was a member of the Republican party on January 2, 2024 and became a member of the Democratic party on January 8. (Appx. 1 at 1) The court below determined appropriately that the date by which Ms. LaRue had to be a member of the Democratic party was January 17, 2024, the certification date. These dates were stipulated below, and further testimony as to this point would be irrelevant. In light of the fact that Ms. LaRue’s testimony could not have changed these basic facts, it was not an abuse of discretion to deny Mr. Horlander’s motion to hold Ms. LaRue in contempt.

G. Mr. Ward’s attestation was valid.

Mr. Horlander further argues that the Circuit Court should have disqualified Representative Kulkarni because the Notary Public who attested her Nominating Petition, William Ward, is also the husband of Representative Kulkarni’s other signatory, Cathy Ward. The Circuit Court correctly rejected this argument, holding that the argument is “plainly deficient” because Ms. Ward “was not a party to the Nominating Petition, nor did she have a direct beneficial interest in it.” (Appx. 1 at 4) For the reasons below, Representative Kulkarni requests that the Circuit Court’s Opinion be upheld.

i. Cathy Ward is not a party to the Nominating Petition.

The General Assembly adopted the 2018 revised version of the Uniform Law Commission’s Law on Notarial Acts, including KRS 423.310(4), which provides that:

A notarial officer shall not perform a notarial act with respect to a record to which the notarial officer or the notarial officer’s spouse or other member of the notarial officer’s immediate family *is a party*, or in which any of those individuals *has a direct beneficial interest*. A notarial act performed in violation of this subsection is voidable.

Id. (emphasis added). In its Comment on this statute, the ULC states that it prevents a “circumstance in which performance of [a notarial] act might create a conflict of interest.” Revised Uniform Law on Notarial Acts (2021), available at <https://uniformlaws.org>.

This statute has not yet been interpreted by Kentucky appellate courts. But because the statute uses contract terms such as “party,” “beneficial interest,” and “voidable,” it is written with contract principles in mind and can be interpreted using Kentucky contract law. A “party” to a contract is someone to whom an obligation is owed under a contract or someone who owes an obligation. *See, e.g., Presnell Constr.*

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Managers, Inc. v. EH Constr., LLC, 134 S.W.3d 575, 579 (Ky. 2004) (describing the relationship of those to a contract as “allowing them to sue each other but preventing a third party from doing so” and noting that “the obligations arising out of a contract are due only to those with whom it is made”).

In this case, Ms. Ward was not a party to the Nominating Petition nor does she have any direct beneficial interest in the Petition. It is not Ms. Ward who is running for office in the Democratic primary for District 40. Moreover, Ms. Ward receives no direct beneficial interest from Representative Kulkarni’s Nominating Petition. The sole beneficial interest at stake belongs to Representative Kulkarni and her place on the ballot.

Moreover, all obligations arising from the Nominating Petition were Representative Kulkarni’s. She took the required oath wherein she swore to support the Democratic party’s principles and policies, to accept the nomination and not withdraw except for statutorily prescribed reasons, and to not knowingly violate any election law or any law relating to corrupt and fraudulent practices. In exchange for taking this oath, Representative Kulkarni received her name on the primary ballot.

On the other hand, Ms. Ward assumed no detriment and received no benefit as a result of signing the Nominating Petition. She was nothing more than a witness to this act and received nothing from it. Accordingly, Representative Kulkarni respectfully requests the Court find that KRS 423.310 does not dictate the result requested by Mr. Horlander.

ii. The Pennsylvania cases cited by Mr. Horlander demonstrate that Ms. Ward was not a party to the Nominating Petition.

In his Brief, Mr. Horlander cites to two Pennsylvania cases of *In re: Nominating Petition of Berg*, 973 A.2d 447 (Pa. Commw. Ct. 2009) and *In re: Nominating Petition of Cooper*, 643 A.2d 717 (Pa. Commw. Ct. 1994). His reliance on fifteen- and thirty-year-

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old Pennsylvania caselaw to strike a Kentucky elected official from the ballot belies the problems with his argument. Regardless, both of these cases demonstrate that Ms. Ward was not a party to Representative Kulkarni's Nominating Petition and that she had no beneficial interest in it.

In *Berg*, a candidate submitted over 250 signatures with affidavits, enough signatures as required by Pennsylvania law, with his nominating petition to stand for election. 973 A.2d at 448. However, 121 of those signatures were notarized by the candidate himself, which violated Pennsylvania that "[n]o notary public may act as such in any transaction in which he is a party directly or pecuniarily interested." *Id.* at 450. The Court found that these affidavits must be stricken because the candidate *himself* had notarized them. *Id.* There is no argument in the present case that Representative Kulkarni notarized the signatures.

Further, in *Cooper*, the Pennsylvania Court was asked to decide whether a candidate's niece, as a notary, had "a direct interest in the outcome of the campaign." 643 A.2d at 727. The Court held that she did not because, while she "wanted her uncle to win," she was not paid by her uncle or his election committee and performed no campaign work on his behalf. *Id.* at 727-728. The Court found the evidence "not sufficient" to "call into question the integrity of the notarization of the nominating petitions." *Id.* at 728.

The Pennsylvania Court's reasoning in *Cooper* is applicable to the present case with the caveat that the connection between Mr. Ward and Representative Kulkarni is even more attenuated. Mr. Ward is not related to Representative Kulkarni but, instead, is married to one of Representative Kulkarni's signatories. There is simply no evidence that

either Ms. Ward or her husband had any direct beneficial interest in Representative Kulkarni's Nominating Petition.

While Mr. Horlander cites two cases from Pennsylvania, he somehow missed another Pennsylvania case that is more relevant. In the case of *In re: Petrone*, 713 A.2d 1175 (Pa. Commw. Ct. 1998) (Appx. 5), a petitioner challenged a candidate's nominating petition on the grounds that "a notary may not notarize the signature of a family member," specifically alleging an elector's signature was notarized by a member of their family. *Id.* at 1176-77. The Pennsylvania Court refused to disqualify the candidate, holding that it would "not invalidate the petition because a member of the notary's family signed the petition as an otherwise qualified elector." *Id.* at 1177. The Court found that, much like Kentucky, Pennsylvania requires that election law "must be liberally construed so as not to deprive an individual of his right to run for office, or the voters of their right to elect a candidate of their choice." *Id.* (quoting *Nomination Petition of Ross*, 190 A.2d 719, 720 (Pa. 1963)).

The same is true in the present case. As demonstrated above, Ms. Ward was neither a party nor had a direct beneficial interest in Representative Kulkarni's Nominating Petition and Mr. Horlander's arguments are based purely on form over substance. Further, his claims are nothing more than an attempt to deprive District 40's voters of real choice based merely on technicalities.

iii. Mr. Horlander has made no argument in favor of voiding the Nominating Petition.

Mr. Horlander ignores the last sentence of the notarial statute, which states "[a] notarial act performed in violation of this subsection is *voidable*." KRS 423.310(4) (emphasis added). Mr. Horlander suggests that such acts are "void" instead of "voidable,"

and he never articulated below or in this Court why Mr. Ward's attestation should be voided.

The Uniform Law Commission's Comment on the statute is instructive. It states that "[i]f a notarial officer should perform a notarial act in violation of [the statute], the notarial act is not void *per se*." Revised Uniform Law on Notarial Acts (2021). Instead, it "may be voidable in an action brought by a party who is adversely affected by the officer's misdeed." *Id.*

In the Comment, the ULC cites to the case of *Galloway v. Cinello*, 423 S.E.2d 875 (W. Va. 1992). (Appx. 6) In *Galloway*, the West Virginia Supreme Court rejected a *per se* rule and instead used a two-step approach to determine if a document should be voided based on a familial connection between a notary and a party to the document. *See id.* at 879-80. The first step is to "determine whether the notary has a disqualifying interest." *Id.* at 879. If a disqualifying interest is found, a court must then determine whether "actual prejudice, unfair dealing, or undue advantage" resulted in an "improper benefit." *Id.* at 880.

If applied here, the answer to both questions must be in the negative. Neither of the Wards had any disqualifying interest in Representative Kulkarni's Nominating Petition, Mr. Horlander was not adversely affected by Mr. Ward serving as notary, nor has Mr. Horlander asserted any ill-gotten benefit on behalf of the Wards.

In short, Mr. Horlander ignores the last sentence of KRS 423.310(4) and his arguments proceed as if there is no difference between the term "void" and "voidable." Because Mr. Ward's attestation was not "void" and there is no reason for this Court to void it, his appeal on this ground should be rejected.

CONCLUSION

Because the Circuit Court did not abuse its discretion, because its factual findings were not clearly erroneous or manifestly unjust, and because its legal conclusions were correct, Representative Kulkarni requests that this Court affirm the Circuit Court's Judgment.

WORD COUNT CERTIFICATE

I certify that the foregoing Brief is comprised of 6,512 words, excluding those portions excluded under RAP 31(G)(1), (2)(a) and (5).

Respectfully submitted,

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APPENDIX

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Received: 2024-CA-0495 05/13/2024

Kate R. Morgan, Clerk

Kentucky Court of Appeals

APPENDIX 1

Received

NO. 24-CI-1903

JEFFERSON CIRCUIT COURT
DIVISION THREE
JUDGE MITCH PERRY

DENNIS HORLANDER

PLAINTIFF

v.

NIRUPAMA KULKARNI

DEFENDANT

OPINION AND ORDER

This matter comes before the Court on the Plaintiff’s Petition to Disqualify pursuant to KRS 118.176. The parties have completed briefing, and the Court heard arguments from counsel. After careful consideration of the record and applicable law, the Court determines that the Plaintiff’s Petition should be denied.

Factual Background

The Plaintiff, former state Representative Dennis Horlander, has filed this lawsuit alleging that the incumbent state Representative for House District 40, Nirupama “Nima” Kulkarni, must be disqualified from the upcoming Democratic Primary Election because she did not have two members of the Democratic Party sign her Nominating Petition. One of the signatories, Sharon LaRue, was in fact a registered Republican when she signed the Nominating Petition on December 22, 2023, and when Ms. Kulkarni filed her paperwork with the Secretary of State on January 2, 2024. Apparently, Ms. LaRue’s partisan registration status was unknown to Ms. Kulkarni at the time. Ms. Kulkarni testified that she had no reason to believe that Ms. LaRue was not a member of the Democratic Party based on their extensive prior history and dealings.

On January 8, 2024, the issue of Ms. LaRue’s partisan registration was brought to Ms. Kulkarni’s attention by the Democratic Party Leadership. Ms. Kulkarni then took immediate steps to rectify the situation and Ms. LaRue did indeed change her party affiliation to the Democratic Party on January 8, 2024. The Secretary of State subsequently certified Ms. Kulkarni’s name on the primary election ballot on January 17, 2024.

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Legal Standard

The qualifications of a candidate to stand for election in Kentucky may be challenged through the process provided in KRS 118.176. “The bona fides of any candidate seeking nomination as the nominee of a political party ... may be questioned by any qualified voter entitled to vote for the candidate or by an opposing candidate by summary proceedings consisting of a motion before the Circuit Court of the judicial circuit in which the candidate whose bona fides is questioned resides.” KRS 118.176(2). In these proceedings, the burden of proof is on the person challenging the bona fides of a candidate. KRS 118.176(3). Election statutes, such as KRS 118.176, are to be construed “liberally, especially in favor of citizens whose right to vote they tend to restrict.” *Greene v. Slusher*, 190 S.W.2d 29, 32 (Ky. 1945).

Legal Analysis

At the outset, the Court must address the issue of standing. Kentucky courts have “the constitutional duty to ascertain the issue of constitutional standing ... to ensure that only justiciable causes proceed in court.” *Commonwealth, Cabinet for Health & Fam. Servs., Dep’t for Medicaid Servs. v. Sexton by & through Appalachian Reg’l Healthcare, Inc.*, 566 S.W.3d 185, 192 (Ky. 2018) (emphasis omitted). The Defendant has alleged that the Plaintiff does not have standing to bring this challenge because he does not actually reside in House District 40. The testimony on this issue established that the Plaintiff is registered to vote at an address in District 40. However, that address is zoned commercial and appears to be a commercial office space. The Plaintiff was firm in his testimony that he resides in that apparent office space. While that may raise collateral issues for the Plaintiff, it is sufficient to establish that he is indeed a qualified voter to bring this challenge.

Turning next to the merits of the Plaintiff’s Petition. The Plaintiff relies heavily upon *Morris v. Jefferson County Clerk*, 729 S.W.2d 444 (1987). That case is factually very similar to this. Former Circuit Court Judge Geoff Morris was running for election as Commonwealth Attorney. One of the signatories for Judge Morris’ petition was not a qualified voter when he signed the affidavit, nor when the nominating papers were filed. *Id.* at 445. Notably, just as Ms. LaRue did here, the signatory registered to vote after the candidate registration deadline had passed. *Id.* The Kentucky Supreme Court struck Judge Morris from the ballot, because the statute

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required that “at the time the affidavit is signed and the nomination papers filed, the affiant must be voter registered to vote as a member of the party to which the candidate belongs.” *Id.* 445-46.

Subsequently, KRS 118.125 was revised by the General Assembly in 1990. The General Assembly specifically removed the timing language, “at the time of filing” in KRS 118.125(3). The Defendant has tendered an Affidavit from Senator Gerald Neal who co-sponsored Senate Bill 47 that made this change, indicating that this change was made deliberately by the General Assembly and as a result of the Supreme Court’s decision in *Morris*.

The Court is now left with a basic exercise in statutory interpretation. The removal of a phrase from a statute sends just as clear a signal to the judiciary as the addition of a phrase. “Where a clause in an old enactment is omitted from the new one, it is to be inferred that the Legislature intended that the omitted clause should no longer be the law.” *Inland Steel Co. v. Hall*, 245 S.W.2d 437, 438 (Ky. 1952). The General Assembly intentionally removed the timing component of KRS 118.125 in 1990. This removal must be presumed to effect a change in the law. *Eversole v. Eversole*, 185 S.W. 487, 489 (Ky. 1916). It is clear therefore that as long as the other requirements of KRS 118.125 are met, the paperwork is valid and can be properly certified by the Secretary of State. That is precisely what happened in this case.

The Plaintiff also raised an issue in the briefing regarding the second signatory to the Defendant’s Petition. This was not plead in the initial Petition, but the Court will address it still as it too is plainly deficient. The Plaintiff argues that the second signatory, Mrs. Cathy Ward, is also deficient because her husband, Mr. William Ward, notarized the nominating petition. The Plaintiff cites to KRS 423.310(4) which provides that a notarial officer shall not perform a notarial act with respect to a record to which the notarial officer, their spouse or immediate family is a party, or in which any of those individuals has a direct beneficial interest. A notarial act performed in violation of KRS 423.310(4) is voidable.

KRS 423.310(4) is clearly not offended by the actions of the Wards here. Mrs. Ward was not a party to the Nominating Petition, nor did she have a direct beneficial interest in it. Ms. Kulkarni is the party and the only person to have a direct beneficial interest in the Petition. There is no colorable argument for Mrs. Ward falling under either branch. She was merely a witness, and therefore KRS 423.310(4) is not implicated in any way.

In sum, Mr. Horlander’s Petition fails to establish the heavy burden required to disqualify a candidate from the ballot. While it is true that Ms. Kulkarni should have been more diligent in

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preparing the paperwork, she also took immediate action to correct the issue when she learned of it. Notably, the issue was resolved shortly after Ms. Kulkarni’s discovery of it. All this occurred well before the Secretary of State’s certification. With the timing element removed from KRS 118.125, the Court views the Secretary of State’s certification date as the significant deadline in this process.

The Court is mindful too of Kentucky’s longstanding history and tradition that “liberal construction in favor of broad voter participation is deeply embedded in Kentucky law.” *Heleringer v. Brown*, 104 S.W.3d 397, 403 (Ky. 2003). Viewed in that permissive light, the Court cannot justify interfering in the electoral process on the inadequate grounds presented here. Accordingly, with the Court being sufficiently advised;

IT IS ORDERED that the Plaintiff’s Petition to Disqualify is **DENIED**.
THIS IS A FINAL AND APPEALABLE ORDER. THERE IS NO JUST CAUSE FOR DELAY.



Seal of the Commonwealth of Kentucky Court of Justice
/s/ HON. MITCH PERRY
electronically signed
4/25/2024 11:15:58 AM ET

HON. MITCH PERRY, JUDGE

CC: Hon. Steven Megerle
Counsel for Plaintiff

Hon. James Craig
Counsel for Defendant

Hon. Jennifer Scutchfield
Counsel for Secretary of State

Hon. Natalie Johnson
Hon. Kathryn Meador
Counsel for Jefferson County Clerk Holsclaw

Hon. Taylor Austin Brown
Counsel for State Board of Elections



Received: 2024-CA-0495 05/13/2024

Kate R. Morgan, Clerk

Kentucky Court of Appeals

APPENDIX 3

Received

NO. 24-CI-001903

JEFFERSON CIRCUIT COURT
DIVISION THREE (3)
HON. MITCH PERRY

DENNIS HORLANDER

PLAINTIFF

v.

AFFIDAVIT OF GERALD NEAL

NIRUPAMA KULKARNI, *et al.*


DEFENDANTS

* * * * *

The Affiant, Gerald Neal, having been duly sworn, swears and affirms the following:

1. My name is Gerald Neal and I am over the age of eighteen and competent to testify to the matters contained in this Affidavit.
2. I am a member of the Kentucky State Senate, having been elected for the first time in November 1988.
3. In 1990, I co-sponsored Senate Bill 47, which implemented wide-ranging changes to Kentucky's election laws.
4. In addition to other changes, Senate Bill 47 removed the words "at the time of filing" from KRS 118.125(3).
5. The bill did not replace those words in any of the provision of the Kentucky Revised Statutes, and no other timing requirement was placed in KRS 118.125 by Senate Bill 47 or, to my knowledge, any other bill since that time.

Further the Affiant sayeth naught.


Gerald Neal



Received: 2024-CA-0495 05/13/2024

Kate R. Morgan, Clerk

Kentucky Court of Appeals

APPENDIX 4

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Commonwealth of Kentucky

Court of Appeals

NO. 2022-CA-1238-EL

SUSAN TYLER WITTEN

MOVANT

ON MOTION FOR INTERLOCUTORY RELIEF
 ARISING FROM JEFFERSON CIRCUIT COURT
 v. HONORABLE ANNIE O'CONNELL, JUDGE
 ACTION NO. 22-CI-005228

SUE FOSTER;
 STATE BOARD OF ELECTIONS;
 AND MICHAEL G. ADAMS,
 IN HIS OFFICIAL CAPACITY
 AS SECRETARY OF STATE

RESPONDENTS

ORDER
GRANTING MOTION TO SET ASIDE

** ** * ** * ** *

BEFORE: CLAYTON, CHIEF JUDGE; GOODWINE AND MCNEILL,
JUDGES.

Pursuant to Kentucky Revised Statute (KRS) 118.176; Movant Susan
 Tyler Witten filed a motion to set aside an October 19, 2022, Opinion and Order of
 the Jefferson Circuit Court finding that she is not a bona fide candidate for the
 office of State Representative of House District 31 and disqualifying her from the

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November 8, 2022, general election ballot. Respondent Sue Foster moved to strike the motion to set aside on the ground it cites an unpublished order of this Court.

Having reviewed the record and being otherwise sufficiently advised; IT IS HEREBY ORDERED that the motion to strike shall be, and hereby is, DENIED. IT IS FURTHER ORDERED that Witten's motion to set aside the October 19, 2022, Opinion and Order shall be, and hereby is, GRANTED.

I. BACKGROUND

On January 19, 2022, Susan Tyler Witten (Witten) filed a Notification and Declaration of her intent to run for State Representative in the 31st District. Therein, Witten declared that she resided at a certain address and that she was a voter in Precinct E179. Witnesses Dwight Witten and Rebecca A. Tyler likewise averred that they “are from the district or jurisdiction from which the candidate seeks nomination[.]” Senate Bill 3 “redrew” District 31 effective January 20, 2022. *See* 2022 Ky. Acts ch. 8 (S.B. 3) (eff. Jan. 20, 2022). The residencies of Witten and her witnesses did not change, but the new legislation altered the number of their designated districts.¹ Witten maintains that had she re-filed her Notification and Declaration on January 20, 2022, it “would have been *exactly the same* and sufficient in all respects[.]” (Emphasis in original.)

¹ Dwight Witten's numbered district changed from District 32 to District 31 effective January 20, 2022. Rebecca A. Tyler's numbered district changed from District 33 to District 31.

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On October 7, 2022, Respondent Sue Foster (Foster) filed a petition in the Jefferson Circuit Court seeking to disqualify Witten from running in the general election. Specifically, Foster asserted that Precinct E179 was not in District 31 on January 19, 2022, and neither were the residences of Dwight Witten and Rebecca A. Tyler. Foster alleged that “[a]s a result of her failure to file two valid affidavits, Witten is not a bona fide candidate[.]” The circuit court agreed and disqualified Witten from the general election ballot.

II. ANALYSIS

We shall begin our analysis by addressing whether Foster’s petition seeking Witten’s disqualification was timely filed in the circuit court. KRS 118.176 provides, in relevant part:

- (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.
- (2) The bona fides of any candidate seeking nomination as the nominee of a political party or a nonpartisan or judicial nominee in a primary or election to an office as a member of a political organization, political group, or as an independent in a special or regular election may be questioned by any qualified voter entitled to vote for the candidate or by an opposing candidate by summary proceedings consisting of a motion before the Circuit Court of the judicial circuit in which the candidate whose bona fides is questioned resides. 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. An action regarding the bona

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fides for election to an office as a member of a political organization, political group, or as an independent may be commenced at any time prior to a special or regular election. The motion shall be tried summarily and without delay. Proof may be heard orally, and upon motion of either party shall be officially reported. . . .

The language “*may be commenced at any time prior to the primary*” was added by the General Assembly as part of statutory revisions effective June 29, 2021. *See* Ky. Acts ch. 197 (H.B. 574) (2021). The prior version of KRS 118.176(2), enacted in 2010, read, “An action regarding the bona fides of any candidate seeking nomination or election in a primary, special, or regular election may be commenced at any time prior to the regular election.” *See* Ky. Acts ch. 123 (H.B. 97) (2010). The circuit court found that the statute permits, but does not mandate, that an action regarding the bona fides of the nominee of a political party be commenced before the primary. We disagree.

“When a statute is amended, the presumption is that the legislature intended to change the law.” *City of Somerset v. Bell*, 156 S.W.3d 321, 326 (Ky. App. 2005). In other words,

[w]here a statute is amended or re-enacted in different language, it will not be presumed that the difference between the two statutes was due to oversight or inadvertence on the part of the Legislature. On the contrary, it will be presumed that the language was intentionally changed for the purpose of effecting a change in the law itself.

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Id. (citing *Eversole v. Eversole*, 169 Ky. 792, 185 S.W. 487, 489 (1916)). In *Stephenson v. Woodward*, 182 S.W.3d 162 (Ky. 2005), the Kentucky Supreme Court construed the version of KRS 118.176 effective in 2005, which provided that an action to challenge the bona fides of a candidate in a general election “may be commenced at any time prior to the general election.” *Id.* at 170. See 2011 Ky. Acts ch. 52 (H.B. 85) (2001). Noting that the statute was “clear and free of any ambiguity or uncertainty” and that the “terminology used in the statute is of common parlance,” the Court held:

The statute employs the very broad and expansive language that the action may be commenced at *any time* prior to the general election. . . . [I]t places no restrictions as to exactly how far in advance of the general election the motion may be filed, nor does it identify a **deadline other than** “the general election.” We need not resort to speculation or conjecture to discern the legislative intent of this portion of KRS 118.176: the only logical interpretation is that it authorizes challenges **up to the time** that the general election commences.

182 S.W.3d at 170 (some emphasis added).

Both the former and prior versions of KRS 118.176 utilize the term “may,” which is unextraordinary as actions challenging a candidate’s bona fides are never mandated. But, based on the foregoing case law, we conclude that with the 2021 amendments to the 2010 statute, the General Assembly changed the applicable deadline from “prior to the regular election” to “prior to the primary” for challenges involving a political party, nonpartisan, or judicial nominee.

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Regardless, even if the challenge to Witten's bona fides were considered timely, we hold the circuit court erred in ordering her disqualified from the ballot because it is residency in a particular geographic area, and not in a district of a certain number, that is relevant and dispositive.

“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.” *Kentucky State Bd. of Elections v. Faulkner*, 591 S.W.3d 398, 403 (Ky. 2019). In addition to the statute's imposing the burden of proof upon the party challenging the candidate's bona fides, KRS 118.176(3), the qualifications of a candidate shall be interpreted “to prevent restriction of the rights of citizens to vote.” *Heleringer v. Brown*, 104 S.W.3d 397, 404 (Ky. 2003). “The idea of liberal construction in favor of broad voter participation is deeply embodied in Kentucky law.” *Id.* at 403. Thus, any “doubt should be resolved in favor of allowing the candidacy to continue.” *Id.* See also *Hoffman v. Waterman*, 141 S.W.3d 16, 18 (Ky. App. 2004) (accord).

We find the case of *McConnell v. Marshall*, 467 S.W.2d 318 (Ky. 1971), to be controlling.² There, the General Assembly had created a new

² Foster and the circuit court relied upon *Morris v. Jefferson County Clerk*, 729 S.W.2d 444 (Ky. 1987). *Morris* is distinguishable because there, the witness was not from the same political party as the candidate and was not a registered voter. The case did not turn upon the witness's residency in a particular district.

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legislative district, District 31, “composed solely of territory in Jefferson County that formerly was embraced in other-numbered districts[,]” effective March 24, 1971. *Id.* at 319. McConnell was disqualified as a candidate for nomination to state representative on the ground he would “not have resided in the geographical area embraced by the 31st Legislative District one year by the time of the regular election in November[,]” in violation of Section 32 of the Kentucky Constitution. He had moved into the area geographically comprising the new District 31 on March 11. Denying his petition for a writ of prohibition, the Court found unpersuasive McConnell’s contention that the applicable residency requirement was satisfied in his case because he had resided in some portion of Jefferson County “for much more than a year[,]” and the 31st District “was newly created . . . by legislation which did not become effective until March 24.” *Id.* at 319.

Instead, the Court reasoned:

The circuit court held that the purpose of [the constitutional residency requirement] is to insure that candidates for representative have acquired a familiarity with the people and area which they seek to represent, and that the geographical area of residence is the important consideration. We agree with that view. **Requiring a period of residence in the 31st District as an entity would serve no useful purpose. The district designations are merely conveniences in defining voting areas, and they have no intrinsic purpose such as would furnish a basis for requiring a candidate to be identified with a district as a numbered unit as distinguished from being identified with the**



Received: 2024-CA-0495 05/13/2024

Kate R. Morgan, Clerk

Kentucky Court of Appeals

APPENDIX 5

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In re Petrone

Commonwealth Court of Pennsylvania

April 7, 1998, Decided ; April 7, 1998, Filed

No. 283 M.D. 1998

Reporter

713 A.2d 1175 *; 1998 Pa. Commw. LEXIS 346 **

IN THE MATTER OF: THE NOMINATION PETITION OF THOMAS C. PETRONE, CANDIDATE FOR REPRESENTATIVE IN THE GENERAL ASSEMBLY FROM THE 27TH LEGISLATIVE DISTRICT; Objection of MICHAEL WATTICK, Petitioner

Subsequent History: **[**1]** Memorandum Opinion Redesignated Opinion and Ordered Published May 18, 1998.

Disposition: After hearing held on Petitioner, Michael Wattick's, Petition to Set Aside the Nomination Petitions of Thomas C. Petrone, it is hereby ordered that said Petition is DENIED. The Motion to Dismiss filed by Thomas C. Petrone is SUSTAINED. The Secretary of the Commonwealth is directed to certify the name of Thomas C. Petrone as for inclusion on the ballot for the May, 1998 primary election as a candidate for Representative of the 27th Legislative District of the General Assembly. Each party to bear his own costs.

Core Terms

notaries, nominating petition, circulator, notarize, candidate, Election, signatures, invalidate

Case Summary

Procedural Posture

Petitioner democratic candidate for the general assembly had filed a motion to set aside the nomination petitions of opposing candidate, on the basis that the petitions were not legally notarized under [57 P.S. § 165\(e\)](#), 1953 Pa. Laws 1323, because the notaries were objector's employees, had notarized other circulated petitions, and had notarized signatures of a family member. Opposing candidate objected to the motion, requesting dismissal.

Overview

Petitioner democratic candidate for the general assembly filed

a motion to set aside the nomination petitions of objector candidate on the grounds that the notarizations were illegal under [57 P.S. § 165\(e\)](#), 1953 Pa. Laws 1323, because the notaries were objector's employees, had notarized other circulated petitions, and had notarized signatures of a family member. Objector candidate had objected to the motion and the court treated the objection as a motion to dismiss the motion under 25 P.S. §§ 2600-3591, 1937 Pa. Laws 1333. The court granted objector's motion to dismiss and held that the notaries were actually employed by the democratic party and not the objector, that the notarization of another circulator's affidavit by a notary that also acted as a circulator for the same candidate was not improper, and notarization of a circulator's signature was proper even if it was a family member and consequently were valid under the notary law.

Outcome

The court dismissed the motion and held that absent allegations of fraud, the notarization of another circulator's affidavit by a notary that also acted as a circulator for the same candidate, in and of itself, was not improper, the notaries had worked for the democratic party only, and notarization of a circulator's signature was proper even if it was a family member.

LexisNexis® Headnotes

Governments > State & Territorial

Governments > Elections

[HNI](#) **State & Territorial Governments, Elections**

The Pennsylvania Election Code does not authorize preliminary objections to a petition to set aside a nomination for office and, therefore, this commonwealth court will treat them as a motion to dismiss. 25 P.S. §§ 2600-3591, 1937 Pa. Laws 1333.

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713 A.2d 1175, *1175; 1998 Pa. Commw. LEXIS 346, **1

Governments > State & Territorial
Governments > Elections

[HN2](#) [↓] State & Territorial Governments, Elections

Pursuant to 25 P.S. § 912.1, a candidate is required to obtain three hundred valid signatures on nomination petitions for Representative in the General Assembly. [25 P.S. § 2872.1](#).

Governments > Courts > Judges

[HN3](#) [↓] Courts, Judges

No notary public may act as such in any transaction in which he is a party directly or pecuniarily interested. [57 P.S. § 165\(e\)](#), 1953 Pa. Laws 1323.

Counsel: Michael Wattick, petitioner, for himself.

Samuel P. Kamin and Ann Marie Williams, Pittsburgh, for respondent.

Judges: BEFORE: HONORABLE JESS S. JIULIANTE, Senior Judge. OPINION BY SENIOR JUDGE JIULIANTE.

Opinion by: JESS S. JIULIANTE

Opinion

[**1176] ORIGINAL JURISDICTION

ORDER

AND NOW, this 18th day of May, 1998, it is ordered that the above-captioned opinion filed on April 7, 1998 shall be designated OPINION, rather than MEMORANDUM OPINION, and it shall be reported.

JESS S. JIULIANTE, Senior Judge

OPINION BY SENIOR JUDGE JIULIANTE

Before the Court is the Petition [**2] to Set Aside the Nomination Petitions of Thomas C. Petrone (Petrone) as candidate of the Democratic Party for the office of Representative in the General Assembly, 27th Legislative District. Objector is Michael Wattick (Wattick). Wattick is also a candidate for the Democratic nomination for the Office

of Representative in the General Assembly from the 27th District and thus, he has standing to object. *In Re: Nomination Petition of Smith*, 102 Pa. Commw. 180, 516 A.2d 797 (Pa. Cmwlth. 1986). The Court notes that the petition to set aside was timely and properly filed, and that the objections therein were sufficiently specific so as to put the candidate on notice of the challenges. *See In Re: Nomination Petition of Bishop*, 525 Pa. 199, 579 A.2d 860 (1990).

In response to Wattick's objections, Petrone filed preliminary objections to Wattick's Petition to Set Aside. However, [HNI](#) [↑] the Pennsylvania Election Code (Election Code) ¹ does not authorize preliminary objections and therefore, this Court has treated Petrone's preliminary objections as a motion to dismiss. On April 2, 1998, this Court held a hearing on Wattick's Petition to Set Aside the Nomination Petitions in Pittsburgh, Pennsylvania. [**3]

[HN2](#) [↑] Pursuant to Section 912.1 of the Election Code, a candidate is required to obtain three hundred valid signatures on nomination petitions for Representative in the General Assembly. [25 P.S. § 2872.1](#). Wattick challenges 1,164 of the 1,269 signatures appearing on Petrone's nomination petitions.

Wattick alleges that 1,164 of the signatures on Petrone's petitions are invalid because 1) two of the notaries that notarized Petrone's nomination petitions are aides in his district office and as such, violated Section 19(e) of the Notary Public Law ²; 2) a notary that acted as a circulator of petitions may not notarize another circulator's affidavit; and 3) a notary may not notarize the signature of a family member.

[**4] Wattick first maintains that notaries Susan P. Kaczorowski and Mary Lou Finello violated Section 19(e) of The Notary Public Law which states that [HN3](#) [↑] "no notary public may act as such in any transaction in which he is a party directly or pecuniarily interested." [57 P.S. § 165\(e\)](#). Ms. Kaczorowski and Ms. Finello are currently members of Petrone's district office staff. Wattick argues that because the notaries are employed by Petrone, they have a direct and pecuniary interest in Petrone's re-election; that being, their continued employment.

However, Ms. Kaczorowski credibly testified that although she works in Petrone's district office, she is employed by the Democratic Party. Indeed, Ms. Kaczorowski's employment contract provides that she is to be paid with funds from the Democratic Party and that the Democratic Party may

¹ Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. §§ 2600-3591.

² Act of August 21, 1953, P.L. 1323, *as amended*, [57 P.S. § 165\(e\)](#).

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terminate her employment at any time. *See* Petrone Exhibit A. Wattick stipulated that Ms. Finello's testimony would be the same.

Additionally, Petrone testified that Ms. Kaczorowski's and Ms. Finello's employment might very well continue with the Democratic Party in the event that he is not re-elected. Petrone stated that his district office staff members may be [**5] reassigned to other Democratic legislators or that they may become staff members of the incoming representative should his bid for re-election fail. From the Court's personal observations, this testimony is found to be true and is accepted as credible.

Although Wattick tried to establish otherwise, it became evident that Ms. Kaczorowski's and Ms. Finello's employment status is determined not by the outcome of the primary election, but rather by the Democratic Leadership of the House of Representatives. Therefore, a direct or pecuniary interest of the notaries in the May, 1998 primary election is not evident from the record and thus, any nomination petitions notarized by them will not be invalidated.

Wattick further challenges those petitions that were notarized by a notary [**1177] that also acted as a circulator for Petrone. The notaries *did not* notarize their own circulating affidavits. Wattick does not cite to, nor can the Court find, any case law that holds that a circulator of a nomination petition may not notarize a nomination petition circulated by another individual. It is quite clear that a circulator may not notarize his own signature. *See In Re: Nomination Petition of Kersten, [**6] 525 Pa. 65, 575 A.2d 542 (1990)*. However, in this instance, the notaries notarized another circulator's affidavit, not their own. In doing so, the notaries merely attested to the circulator's affidavit and not to the actual signatures contained in the nomination petitions. Absent allegations of fraud, we find that the notarization of another circulator's affidavit by a notary that also acted as a circulator for the same candidate, in and of itself, is not improper.

Finally, Wattick challenges the notarization of a nomination petition by Ms. Kaczorowski because one of her family members signed the nomination petition. In *Wolfe v. Switaj, 106 Pa. Commw. 1, 525 A.2d 825 (Pa. Cmwlth. 1985)*, we held that a notary's signing of a nomination petition as an elector did not invalidate her notarial act on that petition because she was only notarizing the circulator's affidavit and not the individual signatures contained thereon. Here, Ms. Kaczorowski attested to the signing of the circulator's affidavit by the circulator. Thus, where we would not invalidate the nomination petition of a candidate because a notary signed the petition as an elector, we will likewise not invalidate the petition [**7] because a member of the notary's

family signed the petition as an otherwise qualified elector. *See Nomination Petition of Ross, 411 Pa. 45, 48, 190 A.2d 719, 720 (1963)*(seminal case holding that "Election Code must be liberally construed so as not to deprive an individual of his right to run for office, or the voters of their right to elect a candidate of their choice.").

Accordingly, Wattick's Petition to Set Aside the Nomination Petitions of Petrone is DENIED and Petrone's motion to dismiss is SUSTAINED.

JESS S. JIULIANTE, Senior Judge

ORDER

AND NOW, this 7th day of April, 1998, after hearing held on Petitioner, Michael Wattick's, Petition to Set Aside the Nomination Petitions of Thomas C. Petrone, it is hereby ordered that said Petition is DENIED. The Motion to Dismiss filed by Thomas C. Petrone is SUSTAINED.

The Secretary of the Commonwealth is directed to certify the name of Thomas C. Petrone as for inclusion on the ballot for the May, 1998 primary election as a candidate for Representative of the 27th Legislative District of the General Assembly.

The Chief Clerk is directed to notify the parties hereto and their counsel and also to certify a copy thereof [**8] to the Secretary of the Commonwealth.

Each party to bear his own costs.

JESS S. JIULIANTE, Senior Judge

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Kate R. Morgan, Clerk

Kentucky Court of Appeals

APPENDIX 6

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Galloway v. Cinello

Supreme Court of Appeals of West Virginia

September 8, 1992, Submitted ; October 23, 1992, Filed

NO. 21226

Reporter

188 W. Va. 266 *; 423 S.E.2d 875 **; 1992 W. Va. LEXIS 198 ***

WILLIAM E. GALLOWAY, Plaintiff V. ROSE ANN CINELLO, Defendant

Prior History: [***1] Certified Questions from the Circuit Court of Brooke County. Honorable Callie Tsapis, Judge. Civil Action No. 92-C-16-Ts**Disposition:** Answered and Dismissed

Core Terms

notary, trust deed, acknowledgment, disqualifying interest, deed, bankruptcy court, void, notary public, notarized, invalid, cases, secured creditor, proximately, signature

Case Summary

Procedural Posture

Plaintiff lawyer filed an action for declaratory judgment as to whether he was liable to defendant beneficiary-creditor when a bankruptcy court held, based upon a prior state supreme court case, the deed of trust void due to the lawyer acting as both the trustee and notary to the instrument. The Circuit Court of Brooke County (West Virginia) certified the issue to the West Virginia Supreme Court, pursuant to [W.Va. Code § 58-5-2](#) (1967).

Overview

The court addressed the lawyer's liability by first observing that as a notary he authenticated the execution of documents. Next, the court noted that its prior rationale for invalidating a deed of trust acknowledged by a trustee was based upon the act being of a judicial nature that required disinterested fidelity, and that the rule regarding the disqualifying interest of a notary was contained in [W.Va. Code § 29C-3-102](#) (1985) of the Uniform Notary Act. The court found that the lawyer clearly had a disqualifying interest because he notarized the deed of trust to which he was a party. The court held that,

prospectively, where there was a disqualifying interest, and a suggestion of actual prejudice, unfair dealing, or undue advantage was raised, the notary or any party that sought to support the challenged document had to demonstrate that no improper benefit was obtained and no harm occurred as a result of the disqualified act.

Outcome

The court held that the lawyer, when he acted as a trustee-notary on a deed of trust, was liable to the beneficiary-creditor because the lawyer was negligent in acting in that dual role when it was apparent under existing case law that such a defect in acknowledging the deed of trust voided the deed and caused the beneficiary-creditor to lose her status as a secured creditor in bankruptcy.

LexisNexis® Headnotes

Civil Procedure > Appeals > Appellate
Jurisdiction > Certified Questions

[HNI](#) [] **Appellate Jurisdiction, Certified Questions**

See [W.Va. Code 58-5-2](#).

Evidence > Authentication > General Overview

Real Property Law > Deeds > Validity
Requirements > Enforceability

[HN2](#) [] **Evidence, Authentication**

An acknowledgment is a formal declaration before an authorized public official, i.e., a notary public, by a person who has executed an instrument that the instrument is his free act or deed. An acknowledgment has three functions: to

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188 W. Va. 266, *266; 423 S.E.2d 875, **875; 1992 W. Va. LEXIS 198, ***1

authenticate the instrument; to permit the instrument to be introduced into evidence without proof of execution; and to entitle the instrument to be recorded. An acknowledgment is a prerequisite to recording an instrument. [W.Va. Code § 39-1-2](#) (1933).

Torts > ... > Elements > Causation > General Overview

Torts > ... > Causation > Proximate Cause > General Overview

Real Property Law > Deeds > Validity Requirements > Enforceability

[HN3](#) Validity Requirements, Enforceability

See [W.Va. Code § 29C-3-102](#) (1985) of the Uniform Notary Act.

Real Property Law > Deeds > Validity Requirements > Enforceability

[HN4](#) Validity Requirements, Enforceability

The court holds that a notary's disqualifying interest can result in voiding an instrument that has been notarized by him. In deciding whether to void the instrument, a court should consider whether an improper benefit was obtained by the notary or any party to the instrument, as well as whether any harm flowed from the transaction. To the extent that [Tavener v. Barrett, 21 W. Va. 656 \(1883\)](#), and related cases state or imply the contrary, they are overruled.

Real Property Law > Deeds > Validity Requirements > Enforceability

[HN5](#) Validity Requirements, Enforceability

The court concludes that once it is shown that a notary has a disqualifying interest in an instrument which he acknowledged, and a suggestion of actual prejudice, unfair dealing, or undue advantage is raised by an adverse party, then the burden shifts to the notary or any party seeking to support the challenged document to demonstrate that no improper benefit was obtained and no harm occurred as a result of the disqualified act.

Real Property Law > Deeds > Validity Requirements > Enforceability

Torts > Remedies > Damages > General Overview

[HN6](#) Validity Requirements, Enforceability

[W.Va. Code § 29C-6-101](#) (1985) of the Uniform Notary Act (act) states: A notary public is liable to the persons involved for all damages proximately caused by the notary's official misconduct. The term "official misconduct" means the wrongful exercise of a power or the wrongful performance of a duty. The term "wrongful" as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless or injurious. [W.Va. Code § 29C-6-201](#) of the act. The term "proximately caused" used in [W.Va. Code § 29C-6-101](#), is further refined in W.Va. Code § 103: It is not essential to a recovery of damages that a notary's official misconduct be the only proximate cause of the damages.

Syllabus

SYLLABUS BY THE COURT

1. [W. Va. Code, 29C-3-102](#) (1985), states that a notary with a disqualifying interest may not legally perform any notarial act in connection with the transaction. It does not address the validity of a document acknowledged before a notary with a disqualifying interest.
2. A notary's disqualifying interest can result in voiding an instrument that has been notarized by him. In deciding whether to void the instrument, a court should consider whether an improper benefit was obtained by the notary or any party to the instrument, as well as whether any harm flowed from the transaction. To the extent that [Tavener v. Barrett, 21 W. Va. 656 \(1883\)](#), and related cases state or imply the contrary, they are overruled.
3. Once it is shown that a notary has a disqualifying interest in an instrument which he acknowledged, and a suggestion of actual prejudice, unfair dealing, or undue advantage is raised by an adverse party, then the burden shifts to the notary or any party seeking to support the challenged [***2] document to demonstrate that no improper benefit was obtained and no harm occurred as a result of the disqualified act.
4. [W. Va. Code, 29C-6-101](#) (1985), states that a notary public is liable to the persons involved for all damages proximately caused by the notary's official misconduct.
5. [W. Va. Code, 29C-6-201](#), provides that the term "official

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misconduct" means the wrongful exercise of a power or the wrongful performance of a duty. The term "wrongful" as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless, or injurious.

Counsel: William E. Galloway, Weirton, West Virginia, Pro Se.

Rose Ann Cinello, Weirton, West Virginia, Pro Se.

Judges: MILLER

Opinion by: MILLER

Opinion

[**876] [*267] Miller, Justice:

This case comes before us through a certified question from the Circuit Court of Brooke County pursuant to *W. Va. Code, 58-5-2* (1967),¹ and Rule 13 of the West Virginia Rules of Appellate Procedure.² We are asked to decide whether an attorney may be held liable to the beneficiary of a deed of trust where the attorney acted as the notary and as the trustee of the deed of trust. In the case at bar, this dual role resulted in the underlying debt losing its secured status in [***3] bankruptcy court.³

¹ [HNI](#) [↑] *W. Va. Code, 58-5-2*, provides, in pertinent part:

"Any question arising upon the sufficiency of a summons or return of service, upon a challenge of the sufficiency of a pleading or the venue of the circuit court, upon the sufficiency of a motion for summary judgment where such motion is denied, or a motion for judgment on the pleadings, upon the jurisdiction of the circuit court of a person or subject matter, or upon failure to join an indispensable party, in any case within the appellate jurisdiction of the supreme court of appeals, may, in the discretion of the circuit court in which it arises, and shall, on the joint application of the parties to the suit, in beneficial interest, be certified by it to the supreme court of appeals for its decision, and further proceedings in the case stayed until such question shall have been decided and the decision thereof certified back."

² Rule 13 of the Appellate Rules outlines the steps to follow when presenting a certified question.

³ The certified question reads as follows:

"Where an attorney at law serves as a draftsman, a notary public, and a trustee of a subsequently recorded deed, of a promissory note, and a subsequently recorded deed of trust in an owner/seller financed real estate transaction between two private citizens to which transaction the attorney at law is not a

[***4] I.

The petitioner, William Galloway, is an attorney at law. On January 3, 1990, Clarence and Heddy Rochinich, husband and wife, and the respondent, Rose Ann Cinello, hired Mr. Galloway to prepare a deed, a promissory note, and a deed of trust in order to consummate the sale of real property. Ms. Cinello wanted to sell the Rochinichs a residence in Weirton for \$ 22,000. The Rochinichs made a downpayment of \$ 1,500, and the balance, which was owner-financed by Ms. Cinello, was to be repaid in [**877] [*268] installments pursuant to a promissory note. The promissory note was secured by a deed of trust on the real property. The deed of trust was a first lien on the property, and Ms. Cinello was, therefore, a secured creditor.

The deed, promissory note, and deed of trust were signed on April 25, 1990. In the deed of trust, Mr. Galloway was named as the trustee and Ms. Cinello as the beneficiary. Mr. Galloway notarized both the deed and the deed of trust. On May 7, 1990, the deed and deed of trust were recorded in the office of the Clerk of the County Commission of Brooke County.

On December 3, 1990, the Rochinichs filed a Chapter Seven bankruptcy petition in the United States Bankruptcy Court for the [***5] Northern District of West Virginia. The assets listed in the Rochinichs' bankruptcy petition included the property they had purchased from Ms. Cinello. The Rochinichs also listed Ms. Cinello as a secured creditor to whom they owed approximately \$ 19,000.

On April 15, 1991, the bankruptcy trustee filed a complaint in the bankruptcy court⁴ alleging that Ms. Cinello did not have a perfected lien on the real estate because Mr. Galloway, as the trustee in the deed of trust, had also acknowledged the signatures of the Rochinichs.⁵ The Rochinichs filed an

party, does the owner/seller have a cause of action against said attorney at law for not perfecting a lien in favor of the owner/seller on the subject real estate because the said attorney at law served both as the trustee and notary public in the said deed of trust?"

⁴ This procedure is authorized in *11 U.S.C. § 544 (1988)*.

⁵ A certificate of acknowledgment is a document signed by "a notary public, justice of the peace, or other authorized officer, attached to a deed, mortgage, or other instrument, setting forth that the parties thereto personally appeared before him on such a date and acknowledged the instrument to be their free and voluntary act and deed. A verification of the act of the maker of the instrument." *Black's Law Dictionary* 226 (6th ed. 1990). The procedure for taking an acknowledgment is provided for in *W. Va. Code, 39-1A-3*. See

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answer to the complaint admitting the authenticity of the deed of trust and asserting that they wanted to reaffirm the debt.

[***6] By order entered November 14, 1991, the bankruptcy court ruled that Ms. Cinello had no security interest in the property. The principal legal authority relied upon by the bankruptcy court was *Tavener v. Barrett*, 21 W. Va. 656 (1883), where we invalidated a deed of trust because its trustee had also notarized the instrument. Ms. Cinello appealed this decision to the United States District Court. Mr. Galloway then filed a petition for declaratory judgment in the Circuit Court of Brooke County. In addition, Mr. Galloway and Ms. Cinello filed a joint motion requesting the circuit court to certify the question to this Court. The circuit court granted the motion.

II.

HN2 [↑] An acknowledgment is a formal declaration before an authorized public official, i.e., a notary public, by a person who has executed an instrument that the instrument is his free act or deed. ⁶ See generally 1A C.J.S. *Acknowledgments* § 2 (1985); *1 Am. Jur. 2d Acknowledgments § 1* (1962 & Supp. 1992). An acknowledgment has three functions: to authenticate the instrument; to permit the instrument to be introduced into evidence without proof of execution; and to entitle the instrument [***7] to be recorded. See generally 1 Am. Jur. 2d *Acknowledgments* at § 4. An acknowledgment is a prerequisite to recording an instrument in this State. See *W. Va. Code, 39-1-2* (1933). ⁷

As earlier noted, the bankruptcy court relied on *Tavener v. Barrett*, *supra*, where we [***8] held that the acknowledgment of the deed of trust by the trustee made the [***78] [*269] deed of trust invalid. In *Tavener*, we followed the rationale advanced by other courts that an acknowledgment is a quasi-judicial act, and, as a consequence, "the objection to the trustee taking such

acknowledgment is analogous to the one forbidding a judge to pass upon his own case. Though this act may not be strictly judicial, it is of a judicial nature and requires disinterested fidelity." 21 W. Va. at 688, quoting *Stevens v. Hampton*, 46 Mo. 404, 407 (). ⁸

[***9] Several cases follow *Tavener*, but provide no analysis of its rule. For example, in *Central Trust Co. v. Cook*, 111 W. Va. 637, 163 S.E. 60 (1932), which involved another acknowledgment of a deed of trust by the trustee-notary, we merely cited *Tavener* and concluded in Syllabus Point 2: "An acknowledgment of a trust deed by the grantors before the trustee as a notary public is invalid."

Similarly, in *Dixon v. Hesper Coal & Coke Co.*, 100 W. Va. 422, 130 S.E. 663 (1925), a mortgage company had its deed of trust declared invalid because the trustee acknowledged the instrument. Again, there was only a brief reference to *Tavener*.

In some jurisdictions, courts have focused on the notary's interest and have held that if the notary has a financial or beneficial interest in the transaction other than receipt of the ordinary notarial fee, the instrument is invalid. See *Loucks v. Carl Foster & Wards Used Cars*, 334 F.2d 86 (6th Cir. 1964); *Southern Iron & Equip. Co. v. Voyles*, 138 Ga. 258, 75 S.E. 248 (1912); *Logue v. Von Almen*, 379 Ill. 208, 40 N.E.2d 73 (1941); [***10] *Bartlett v. Bolte*, 193 Iowa 1063, 188 N.W. 814 (1922); *Pearl v. Interstate Secs. Co.*, 357 Mo. 160, 206 S.W.2d 975 (1947); *Musselshell Valley Farming & Livestock Co. v. Cooley*, 86 Mont. 276, 283 P. 213 (1929); *Loyal's Auto Exch., Inc. v. Munch*, 153 Neb. 628, 45 N.W.2d 913 (1951); *Armstrong v. Jonas*, 204 N.C. 153, 167 S.E. 562 (1933); *Phillips v. Brazosport Sav. & Loan Ass'n*, 366 S.W.2d 929 (Tex. 1963), appeal dismissed, 375 U.S. 438, 84 S. Ct. 506, 11 L. Ed. 2d 471 (1964); *First Nat'l Bank v. Citizens' State Bank*, 11 Wyo. 32, 70 P. 726 (1902). See generally 1 Am. Jur. 2d *Acknowledgments* § 16; 1A C.J.S. *Acknowledgments* § 40.

The analysis in these cases is somewhat different than in *Tavener*, but the same result is generally achieved, i.e., voiding the instrument. Typical of the reasoning of this

note 11, *infra*.

⁶ An acknowledgment differs from a verification because an acknowledgment authenticates the instrument by showing it was the act of the person executing it, while a verification is a sworn statement as to the truth of the facts stated within the instrument. 1A C.J.S. *Acknowledgments* § 2 (1985).

⁷ *W. Va. Code, 39-1-2*, provides, in pertinent part: "The clerk of the county court of any county in which any deed, contract, power of attorney, or other writing is to be, or may be, recorded, shall admit the same to record in his office, as to any person whose name is signed thereto, when it shall have been acknowledged by him, or proved by two witnesses as to him, before such clerk of the county court."

⁸ *Tavener* did hold, however, that the deed of trust would be valid between the parties *inter se* and to subsequent parties with actual notice: "The deed however is good between the parties, (being sui juris) and should prevail against subsequent deeds to those who had actual notice of its existence." 21 W. Va. at 688. (Citations omitted).

From a practical standpoint, this language provides little protection for the parties to the deed of trust if either the disqualified notary or one of the parties to the transaction has obtained an undue advantage over or has otherwise harmed the other party.

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approach is [***11] the principle articulated in *Loucks v. Carl Foster & Wards Used Cars*, 334 F.2d at 88, where the court quoted from *1 Am. Jur. 2d Acknowledgments § 16* at 458:

"An officer or a person otherwise legally authorized to take acknowledgments is not qualified to act where he has a financial or beneficial interest in the proceedings or will acquire such an interest under the instrument to be acknowledged.

"Frequently it is said that this rule rests upon grounds of *public policy*, the purpose being to close the door to temptation to fraud." (Emphasis added in *Loucks*).

The rule regarding the disqualifying interest of a notary is presently contained in our Uniform Notary Act, which the legislature adopted in 1984. ⁹ See generally [**879] [*270] *W. Va. Code, 29C-1-101, et seq.* The particular language regarding disqualification is contained in *HN3*[↑] *W. Va. Code, 29C-3-102* (1985):

[***12]

"(a) A notary public who has a disqualifying interest, as hereinafter defined, in a transaction may not legally perform any notarial act in connection with the transaction.

"(b) For the purposes of this chapter, a notary public has a disqualifying interest in a transaction in connection with which notarial services are requested if he:

"(1) May receive directly, and as a proximate result of the notarization, any advantage, right, title, interest, cash or property, exceeding in value the sum of any fee properly received in accordance with section three hundred one [§ 29C-4-301], article four of this chapter, or exceeding his regular compensation and benefits as an employee whose duties include performing notarial acts for and in behalf of his employer; or

"(2) Is named, individually, as a party to the transaction."

While this section states that a notary with a disqualifying interest "may not legally perform any notarial act in

connection with the transaction," it does not address the validity of a document acknowledged before a notary with a disqualifying interest. No provision in the Act deals with this question.

The first step in any analysis of this issue [***13] is to determine whether the notary has a disqualifying interest. Here, there is no disagreement that the notary had a disqualifying interest because he was a party to the deed of trust that he notarized. We addressed the interests of the parties in a deed of trust in *Lilly v. Duke*, 180 W. Va. 228, 231, 376 S.E.2d 122, 125 (1988):

"The beneficiary of a deed of trust enjoys a protectible interest in the property subject to the trust. We have recognized the substantial property interests involved in a deed of trust -- the trustee holding legal title for the beneficiary and the grantor holding an equitable title. *Rollyson v. Bourn*, 85 W. Va. 15, 100 S.E. 682 (1919)."

Where the notary has a disqualifying interest, the next question is the bearing this defect has on the validity of the instrument. We decline to follow the *per se* rule of *Tavener* and its progeny, which automatically voids a deed of trust because the trustee has acted as its notary. Such a rule can be unduly harsh, as illustrated by the facts of this case. The beneficiary of the deed of trust loses her security interest [***14] not because of any claim of wrongdoing, bad faith, or other improper conduct on her part, but solely on the basis that the notary was the trustee on the document.

If the primary purpose of the rule is to shield the parties from potential wrongdoing or fraud, then the focus of the inquiry should be shifted in this direction. Other jurisdictions have recognized the harshness of a *per se* rule, as evidenced by this summary from *1 Am. Jur. 2d Acknowledgments § 16* at 458-59:

"To hold that every interest renders the act ipso facto void is repugnant to sound principles of the law of evidence and in many cases must be productive of great hardship and injury. A more salutary rule declares that where there is no imputation or charge of improper conduct, bad faith, or undue advantage, the mere fact that the acknowledgment was taken before an interested officer will not vitiate the ceremony or render it void if it is otherwise free from objection or criticism. The fact of interest, however, ought to be regarded with suspicion and should provoke vigilance to detect the presence of unfair dealing, the slightest appearance of which the party seeking to uphold the acknowledgment should [***15] be required to clear away." (Footnote omitted).

⁹ See 1984 W. Va. Acts ch. 136. Our statute, *W. Va. Code, 29C-1-101*, provides: "This chapter shall be known and may be cited as the 'uniform notary act.'" However, our act is not identical to the national model as revealed by this statement from the statutory notes on the Uniform Law on Notarial Acts: "West Virginia. Has adopted a 'Uniform Notary Act' (Code 29C-1-101 to 29C-9-101) which contains some provisions similar to those of the uniform act and having to some extent the same general purpose, but which does not constitute a substantial adoption of the major provisions thereof." 14 Uniform Laws Annotated 126 (1990).

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See generally *Davis v. Hale*, 114 Ark. 426, 170 S.W. 99 (1914); *Bartlett v. Bolte*, *supra*; *J.W. Dillon & Son Co. v. Oliver*, 106 S.C. 410, 91 S.E. 304 (1917); *Weidman v. Templeton*, 61 S.W. 102 (Tenn. Ch. App. 1900); *Haile v. Holtzclaw*, 400 S.W.2d 603 (Tex. Civ. App. 1966), *rev'd on other grounds*, 414 S.W.2d 916 (Tex. 1967).

Accordingly, [HN4](#)^[↑] we hold that a notary's disqualifying interest can result in voiding [\[**880\]](#) [\[*271\]](#) an instrument that has been notarized by him. In deciding whether to void the instrument, a court should consider whether an improper benefit was obtained by the notary or any party to the instrument, as well as whether any harm flowed from the transaction. To the extent that *Tavener v. Barrett*, *supra*, and related cases state or imply the contrary, they are overruled.

Inasmuch as our statute forbids a notary with a disqualifying interest in an instrument to acknowledge it, we believe [\[***16\]](#) it is appropriate to place the burden of proof on the notary or any party supporting the instrument to uphold its validity. This rule is analogous to the principle we explained in *Kanawha Valley Bank v. Friend*, 162 W. Va. 925, 929, 253 S.E.2d 528, 530 (1979):

"A corollary to the fiduciary principle is the rule that a presumption of fraud arises where the fiduciary is shown to have obtained any benefit from the fiduciary relationship, as stated in *37 Am. Jur. 2d Fraud and Deceit § 441*:

". . . if he seeks to support the transaction, he must assume the burden of proof that he has taken no advantage of his influence or knowledge and that the arrangement is fair and conscientious[.]"

See also *Yaromey v. King*, 182 W. Va. 128, 386 S.E.2d 493 (1989); *Work v. Rogerson*, 152 W. Va. 169, 160 S.E.2d 159 (1968).

Thus, [HN5](#)^[↑] we conclude that once it is shown that a notary has a disqualifying interest in an instrument which he acknowledged, and a suggestion of actual prejudice, unfair dealing, or undue advantage is raised by an adverse party, then [\[***17\]](#) the burden shifts to the notary or any party seeking to support the challenged document to demonstrate that no improper benefit was obtained and no harm occurred as a result of the disqualified act.

III.

Ms. Cinello lost the benefit of being a secured creditor on the deed of trust in the bankruptcy proceeding because the bankruptcy court relied on our substantive law in *Tavener*.

Consequently, we must address whether the trustee-notary can be held liable to Ms. Cinello, the beneficiary of the deed of trust in this case, because the deed has been rendered ineffective.¹⁰

Should the federal district court uphold the bankruptcy court's ruling, Ms. Cinello will suffer a harm through the notary's action. Even though the trustee-notary [\[***18\]](#) did not gain any improper advantage, his failure to properly follow *Tavener* resulted in the invalidation of the deed of trust by the bankruptcy court. Thus, Ms. Cinello's status as a secured creditor under the deed of trust will have been destroyed. Her secured interest of some \$ 19,000 will have been lost, and she will share only with the common creditors.

Our Uniform Notary Act addresses a notary's liability. [HN6](#)^[↑] *W. Va. Code, 29C-6-101* (1985), states: "A notary public is liable to the persons involved for all damages proximately caused by the notary's official misconduct." "The term 'official misconduct' means the wrongful exercise of a power or the wrongful performance of a duty. The term 'wrongful' as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless or injurious." *W. Va. Code, 29C-6-201*. The term "proximately caused" used in *W. Va. Code, 29C-6-101*, is further refined in Section 103: "It is not essential to a recovery of damages that a notary's official misconduct be the only proximate cause of the damages."

In other jurisdictions, even in the absence of any specific statutory language, courts have held a notary and his official [\[***19\]](#) surety civilly liable for negligence in the performance of notarial duties. The most frequent cases are those where the notary has acknowledged a deed or other instrument without ensuring that the person whose signature he acknowledged was in [\[**881\]](#) [\[*272\]](#) fact the person he or she was represented to be.

For example, in *City Consumer Services, Inc. v. Metcalf*, 161 *Ariz. 1*, 775 P.2d 1065 (1989), the defendant went to the office of an attorney-notary with a woman he represented to be his wife. The defendant presented the notary with a quit claim deed purporting to transfer his wife's interest in the couple's family residence exclusively to him. The deed was dated and already bore his wife's supposed signature. Based only on the defendant's representation that the woman accompanying him was his wife, the notary notarized the

¹⁰ Based on the record in this case, and in light of our foregoing law, had this matter originated in the Circuit Court of Brooke County, we would have answered this question in the negative because there was no improper benefit or harm occurring from the disqualified act originally.

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deed. Subsequently, City Consumer Services loaned money to the defendant on the ground that he had complete title to the property. Upon his default, the company tried to sell the property under its deed of trust, but discovered that the defendant had title to only a one-half interest. The lender then sued the notary for its losses [***20] and received a judgment. The Arizona Supreme Court affirmed:

"Metcalf claims his conduct was not negligent. Notaries public must conform their conduct to a defined statutory duty of care. See A.R.S. §§ 33-503 et seq. This statute requires, first, that the person whose signature is being acknowledged have 'appeared' before the notary and 'acknowledged he executed the instrument.' A.R.S. § 33-503(1). It also requires that the notary either have 'known' the person whose signature is being acknowledged 'or that the [notary have] *satisfactory evidence* that the person acknowledging was the person described in and who executed the instrument.' A.R.S. § 33-503(2) (emphasis added)." 161 Ariz. at , 775 P.2d at 1068. ¹¹

[***21] See also Bernd v. Fong Eu, 100 Cal. App. 3d 511, 161 Cal. Rptr. 58 (1979); Osborn v. Ahrens, 116 Idaho 14, 773 P.2d 282 (1989); Webb v. Pioneer Bank & Trust Co., 530 So. 2d 115 (La. App. 1988); McWilliams v. Clem, 228 Mont. 297, 743 P.2d 577 (1987); Keck v. Keck, 54 Ohio App. 2d 128, 375 N.E.2d 1256 (1977); Meyers v. Meyers, 81 Wash. 2d 533, 503 P.2d 59 (1972).

We have found only one case in our jurisdiction, Henderson v. Smith, 26 W. Va. 829 (1885), where a notary was sued. There the notary had taken a defective acknowledgment from a married woman. As a result, the beneficial owner of a deed of trust lost his lien. The acknowledgment had been prepared by an attorney, and the notary handled its execution. We held the notary had not acted corruptly or maliciously and was,

¹¹ We have similar requirements for taking an acknowledgment, as set out in W. Va. Code, 39-1A-3:

"The person taking an acknowledgment shall certify that:

"(1) The person acknowledging appeared before him and acknowledged he executed the instrument; and

"(2) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument."

therefore, not liable.

The standard of conduct is no longer limited to corrupt or malicious acts on the part of a notary. [***22] It has been strengthened by our Uniform Notary Act, under which negligence will suffice to create liability. To this extent, *Henderson* has been superseded by statute.

Having in mind that our Uniform Notary Act prohibits a notary with a disqualifying interest from acknowledging an instrument, and inasmuch as the notary in this case is an attorney, we conclude that he was negligent in making the acknowledgment. Moreover, under *Tavener* and its related cases, it should have been apparent that this defect would void the instrument if it were challenged, which is exactly what occurred in the bankruptcy court. Thus, the notary's negligent act proximately caused Ms. Cinello to lose her status as a secured creditor.

IV.

In summary, while we have altered our law under *Tavener*, we decline to give it any effect in this case, as the loss has already occurred. Accordingly, the certified [***882] [*273] question is answered in the affirmative, and Ms. Cinello does have a cause of action should the federal district court affirm the bankruptcy court's ruling.

The certified question having been answered, this case is dismissed.

Answered and dismissed.

MEMORANDUM

October 19, 1992

To: Other [***23] Justices

From: Justice Miller

Re: *Galloway v. Cinello*

No. 21226

Attached please find a recirculated copy of the above-referenced opinion. At the suggestion of Justice Neely, a change has been made at Syllabus Point 3 and on page 11 to insert the phrase "and a suggestion of actual prejudice, unfair dealing, or undue advantage is raised by an adverse party." The change on both pages is highlighted.

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Received: 2024-CA-0495 05/13/2024

Kate R. Morgan, Clerk

Kentucky Court of Appeals

APPENDIX 2

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ACTS OF THE GENERAL ASSEMBLY
of the
COMMONWEALTH OF KENTUCKY

Volume I



Passed at the Regular Session of the General Assembly, which was begun in the city of Frankfort, Kentucky, on Tuesday, January the second, 1990, and ended Friday, April the thirteenth, 1990.

Paid for from state funds.

pursuant to Section 1 of this Act before any payment of county road aid funds shall be made. The Department of Local Government shall notify the Department of Rural and Municipal Aid no later than March 1 annually of any county that has not submitted a uniform financial information report. The Department of Rural and Municipal Aid shall upon notification by the department immediately suspend all county road aid moneys to the county until the county complies with the provisions of this Act and submits the uniform financial information report to the Department of Local Government. The department shall immediately notify the Department of Rural and Municipal Aid to reinstate county road aid moneys to any county affected by this subsection as soon as the county submits the uniform financial information report.

SECTION 8. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The Department of Local Government shall consult with the Legislative Research Commission to determine a format for electronic data which is acceptable to both. At the earliest date possible, but no later than September 30, 1992, and each year thereafter, the Department of Local Government shall provide a copy of all reliable data from the uniform financial information reports of all reporting governments to the Legislative Research Commission in the agreed upon electronic format. The Department of Local Government shall, upon receipt, file a copy of each completed uniform financial information report with the county clerk of the county in which the reporting unit of local government is located.

Approved March 12, 1990

CHAPTER 48

(SB 47)

AN ACT relating to elections.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 15.243 is amended to read as follows:

(1) In addition to the other duties and powers of the Attorney General, he shall enforce all of the state's election laws by civil or criminal processes.

(2) The Attorney General shall:

(a) Devise and administer programs to observe the conduct of elections;

(b) Hold public hearings;

(c) Establish a toll-free telephone service for the purpose of receiving reports of election law violations. The service shall be operated during regular business hours throughout the year and during the hours which any poll in the state is open on the day of any primary, special election or regular election;

(d) Initiate investigations or investigate alleged violations of election laws at the request of a registered voter or on his own motion;

(e) Issue subpoenas for the production of any books, papers, correspondence, memoranda or other records, and compel the attendance of witnesses that he deems relevant to the purposes of any investigation;

(f) Present evidence of alleged violations to a grand jury; and

(g) File appropriate complaints in any court of competent jurisdiction.

(3) (a) The Attorney General shall be required to begin an independent inquiry for any potential irregularities that may have occurred in each election in not fewer than five percent (5%) of Kentucky's counties, to be selected at random in a public process, within twenty (20) days following each primary or regular election. **No county shall be subject to inquiry under this subsection in two (2) consecutive elections.**

(b) The Attorney General shall report his findings to the grand jury of each county involved and to the chief circuit judge for the circuit in which the county is located.

(4) When the Registry of Election Finance concludes there is probable cause to believe a violation of election laws has occurred, it shall forward the matter to the Attorney General for prosecution. In the event

the Attorney General or local prosecutor fails to prosecute the matter in a timely fashion, the registry's attorney may petition the Circuit Court to be appointed as a special prosecutor. Upon such motion timely filed, for good cause shown, the court shall enter an order to that effect.

(5) When requested by the Attorney General, all state and local agencies and officials, including the Auditor of Public Accounts, Commonwealth's attorneys, county attorneys, Registry of Election Finance, state police, sheriffs' departments and local police shall give all possible assistance to the Attorney General in the performance of his duties.

Section 2. KRS 116.025 is amended to read as follows:

(1) Every person[; ~~male or female,~~] who is a resident of this state and [~~has resided in~~] the precinct in which he offers to vote *on or before the day preceding the closing of the registration books for any primary, general [thirty (30) days next preceding the day of any regular]* or special election, who possesses on the day of any election the qualifications set forth in Section 145 of the Constitution, exclusive of the durational residency requirements, who is not disqualified under that section or under any other statute, and who is registered as provided in this chapter, may vote for all officers to be elected by the people and on all public questions submitted for determination at that election, in the precinct in which he is qualified to vote. Any person who shall have been convicted of any election law offense which is a felony shall not be permitted to vote until his civil rights have been restored by executive pardon.

(2) *Any person* [Persons] charged with or indicted for a crime, whether or not in custody for same, who *has* [~~have~~] not yet been convicted of the [~~said~~] offense and who *is* [~~are~~] not otherwise ineligible to vote, may vote for all offices to be elected by the people and on all public questions submitted for determination at that election, in the precinct in which he is qualified to vote.

(3) A registered voter who moves *while the registration books are closed for* [~~less than thirty (30) days before~~] an election and is not permitted to register at his new residence may vote at his former residence, either in person or by absentee *ballot* [~~vote~~].

Section 3. KRS 116.045 is amended to read as follows:

(1) Any person may register as a voter during the period registration is open if he possesses, or will possess on the day of the next regular election, the qualifications set forth in KRS 116.025.

(2) [~~Except during implementation of the initial statewide registration,~~] The county *clerk* [~~board of elections~~] shall cause all registration to be closed the *fourth Tuesday preceding through the first Monday* [~~thirty (30) days prior to, and the five (5) days~~] following, any primary or general election, and the *twenty-eight (28) days prior to and seven (7) days following* [~~ten (10) days prior to~~] any special election. No voter shall be registered or be permitted to change his registration during the period that the registration is closed; except that, registration shall be closed only in those precincts in which the election is held. *During the period that registration is closed, the county clerk shall accept no registrations or changes in registration except those received by mail or completed on election day at the polls and delivered to the clerk by the precinct election officers.*

(3) In all counties, the county clerk shall receive registration, transfers, or change of party affiliation at branch offices at any place in the county during those periods that the registration books are open. However, notice in the manner provided by KRS Chapter 424 *shall* [~~must~~] be given at least three (3), but not more than fourteen (14), days in advance of the time and place of any branch registration, and ten (10) days' written notice *shall* [~~must~~] be given to the county executive committee of each major political party in the county in which the branch registration is to be held.

(4) Any person may register to vote or may change his party affiliation in any of the following ways:

(a) In person;

(b) By mail;

(c) By means of the federal post card application, if the person is a resident of Kentucky and a member of the armed forces, or a dependent of members of the armed forces, *or overseas citizen;* or

(d) By [~~such~~] other methods of registration, or reregistration, [~~as~~] approved by the State Board of Elections, including the use of voluntary interested groups and political parties, under the proper supervision and directions of the county *clerk* [~~board of elections~~], which may include door to door canvassing.

(5) Upon receipt of the form prescribed by the State Board of Elections, properly filled out and signed by the applicant, the county clerk shall register the applicant.

(6) Any individual or group shall have access to a reasonable number of voter registration forms in the county clerk's office. **The [Such] individual or group shall act under the proper supervision and directions of the county clerk and shall** return these completed forms to the county clerk for official registration by the county clerk.

(7) The county clerk shall provide voter registration cards which shall be made available where motor vehicle license plates are issued. **The [Such] cards shall be displayed in plain view and notice of their availability posted prominently.** Personnel who issue [such] licenses may offer a voter registration card. The completed forms shall be returned by the applicant either in person or by mail to the county clerk for official registration.

Section 4. KRS 116.046 is amended to read as follows:

(1) The county clerk shall provide voter registration forms to each principal or assistant principal of every public high school, each area vocational school, and upon request, private schools, who shall designate a person in each school who shall be responsible for informing students and school personnel of the availability of the registration forms and assist them in properly registering [with the party of their choice]. The completed forms shall be returned to the county clerk, for official registration by the county clerk.

(2) **Any person designated to assist in registration in subsection (1) of this section shall fulfill this responsibility in an impartial and fair manner and shall not recruit a registrant for any particular party.**

(3) The State Board of Education shall implement programs of public education regarding elections, voting procedures, and election fraud, which shall include an audio-visual presentation for high school juniors and seniors. The State Board of Education, after consultation with the State Board of Elections, shall update the public education programs required by this section as relevant statutory changes occur, as different types of voting machines are used, or as more effective methods of presentation shall be developed.

Section 5. KRS 116.055 is amended to read as follows:

(1) Before a person shall be qualified to vote in a primary election, he shall possess all the qualifications required of voters in a regular election. In addition, he shall be a registered member of the party in whose primary election he seeks to vote, and shall have been registered as a member of that party at the time of the preceding regular election, or, in the case of new registrations not involving a change of political affiliation made after the preceding regular election, have registered and remained registered as a member of that party. No person shall be allowed to vote for any party candidates other than that of the party of which he is a registered member. The qualifications shall be determined as of the date of the primary, without regard to the qualifications or disqualifications as they may exist at the succeeding regular election, except that minors who will become eighteen (18) years of age on or before the day of the regular election shall be entitled to vote in the primary if otherwise qualified. However, any registered voter, whether registered as a member of a party or as an independent, shall be qualified to vote in primary elections for candidates listed in all nonpartisan races.

(2) In order to determine a voter's qualifications in case of doubt, one (1) of the judges of election shall swear the person as to any of the qualifications, and when so sworn the clerk shall write upon the voter's registration card the words, "sworn as to qualification."

Section 6. KRS 116.085 is amended to read as follows:

(1) When a voter changes his place of residence [from one precinct] to another **location** within the county, the clerk shall, upon application of the voter in person or by mail, transfer the voter's registration record to the proper precinct.

(2) When the boundaries of a precinct are changed by law, placing a registered voter in a new or different precinct, the clerk shall automatically transfer the voter's registration record to the proper precinct and mail the voter a notice of the change.

(3) **A voter who has changed his name may indicate the change at the precinct on election day by completing the form provided for this purpose by the State Board of Elections. The form shall be returned by the precinct officer to the county clerk who shall make the necessary change on the voter's registration record.** [Any voter who changes his name shall indicate the change at the precinct on election day by signing an oath, in duplicate, on forms supplied by the state board, indicating the change. The oath shall be returned

by the precinct officer to the county clerk, who shall retain the original oath for his records and send the duplicate to the state board.}]

(4) *The county clerk may petition the State Board of Elections for approval of a plan by which the clerk may make changes in voter addresses based upon the clerk's own knowledge of the change. If a voter's address is changed through a plan approved under this subsection, the clerk shall transfer the voter's registration record to the proper precinct and shall, within ten (10) days of the transfer, mail to the voter a notice of the address change which shall include the name and voting location of the voter's new precinct. [The clerk shall notify the state board of elections by the tenth of each month of all transfers of registration made by him, during the preceding month; and the clerk shall, within three (3) days following the closing of registration prior to an election, report all changes made since the previous report was filed.]*

Section 7. KRS 116.095 is amended to read as follows:

The county clerk shall permit any citizen, at all reasonable hours, to inspect or make copies of any registration record, without any fee. He shall, upon request, furnish to any person a copy of the registration records, for which he *may charge necessary duplicating costs not to exceed fifty cents (\$.50) per page* [shall receive the fee provided in KRS 116.105].

Section 8. KRS 116.112 is amended to read as follows:

(1) The state Board of Elections shall establish by administrative regulation a schedule to conduct a purge of ineligible and deceased voters in every even-numbered year beginning with the fiscal year which begins July 1, 1990. The purge shall be conducted as set forth in this section, *or by use of the United States Postal Service Address Information System (AIS).*

(2) The State Board of Elections shall send to each registered voter, by first class mail, a notice of voter registration. The notice shall contain:

- (a) The name of the voter; *and*
- (b) The voter's precinct; *and*
- (c) ~~The location of the voter's polling place.~~

(3) The notice shall provide that it is not forwardable and shall be returned to the State Board of Elections if undeliverable.

(4) If the notice is returned by the postal service with information that the voter has moved or may otherwise be ineligible to vote, the State Board of Elections shall forthwith mail to the voter who has moved a notice of intention to remove the voter's name from the voter registration list. This notice shall be forwardable *and shall give the voter thirty (30) days to protest that he remains eligible to vote and should not be removed from the registration rolls. The expiration of this thirty (30) day notice shall not fall during a period when the registration books are closed for any primary or general election. The State Board of Elections' purgation notice shall contain a change of address form addressed to the county clerk of the county where the voter resides upon which the voter may request that his voter registration be transferred to his new address in the county or may request a hearing before the county board of elections to protest that he remains eligible to vote. Immediately upon mailing of the notices to a county, the State Board of Elections shall forward to the county clerk a list of all voters in the county to whom purgation notices were sent.*

(5) *If the voter requests a change of address, in person or in writing, with the county clerk before the end of the thirty (30) day notice period, or if the voter files a protest before the end of the thirty (30) day notice period, he shall not be removed from the registration rolls of the county. All protests against removal shall be heard at the regular monthly meeting of the county board of elections next following the day upon which the thirty (30) day notice period expires.*

(6) *At the expiration of the thirty (30) day notice period, the county clerk shall remove from the registration rolls the names of all voters submitted to him by the State Board of Elections except those voters who have transferred their voter registration to their current residence address or who have filed a protest to be heard by the county board of elections.*

(7) *If the voter notifies the State Board of Elections prior to the election that he remains eligible to vote within the county, his name shall not be removed from the voter registration list. However, if no satisfactory explanation is obtained, the voter's name shall be removed from the voter registration roll.*

Section 9. KRS 116.113 is amended to read as follows:

(1) Upon receipt of notification from the Cabinet for Human Resources of the death of a person, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records it maintains, **except that no voter's name may be removed during the period of time the registration books are closed for any primary, general or special election.**

(2) Upon receipt of notification from the circuit clerk that a person has been declared incompetent, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records it maintains, **except that no voter's name may be removed during the period of time the registration books are closed for any primary, general or special election.**

(3) Upon receipt of notification from the Administrative Office of the Courts that a person has been convicted of a felony offense, the State Board of Elections shall within five (5) days cause the removal of the name of that person from the voter registration records it maintains, **except that no voter's name may be removed during the period of time the registration books are closed for any primary, general or special election.**

(4) Following the purge of a name from the records of the State Board of Elections, the state board [of elections] shall notify the clerk of the county in which the voter lived of the action; and the county clerk shall within ten (10) days update the county voter registration files to reflect the necessary change. If a protest is filed by the voter, the county board shall hear it at its next regular monthly meeting. If the county board decides in favor of the protesting voter, **the voter's registration record shall be restored, including his voting record. If the protest is filed while the registration books are closed and the county board decides in favor of the protesting voter, the county board shall issue the voter an "Authorization to Vote" for the upcoming election and the voter's record shall be restored when the registration books open following the election [his name shall not be purged, and the state board shall be notified of the action].**

Section 10. KRS 116.125 is amended to read as follows:

(1) In addition to the biennial purge required by KRS 116.112, the county board of elections may, upon information known to it or furnished to it by any citizen, **purge [delete] from the county registration rolls [register] the name of any voter who is no longer properly registered [and notify the voter by mail of its action]. Before purgation shall take place, the county board of elections shall mail to the voter a notice of intent to purge his name in thirty (30) days if no protest is filed by the voter. The end of the thirty (30) day protest period shall not fall within the time when the registration rolls are closed for any primary or general election. At the end of the thirty (30) days, if no protest has been filed, the county board of elections shall submit to the county clerk the name or names of voters to be purged and the clerk shall remove the name or names from the registration rolls of the county. If a protest is filed, the county board shall hear the matter at its next regular monthly meeting and the protesting voter's name shall not be removed from the registration rolls until the hearing is held.**

(2) **If the hearing is held during the period when the registration books are closed and the board determines that the voter is not properly registered, the county board shall submit the name of the voter to the county clerk for purgation when the registration books open immediately following an election. The board shall also provide notice to the election officers in the precinct where the voter's name appears on the precinct roster that the board has ruled the voter ineligible to vote and shall not be permitted to vote unless the circuit court issues an order to that effect.**

(3) **All forms pertaining to the notice of purgation and the notice to the precinct election officers relative to ineligible voters shall be prescribed by the State Board of Elections [If no protest is filed by the voter within thirty (30) days, his name shall be purged. If a protest is filed, the county board shall hear the matter at its next regular monthly meeting and either retain or purge the voter's name. If any name is purged, the county board shall inform the state board of its action.]**

(2) **If the name of any voter is purged from the county register as provided by subsection (1) of this section at such time that the registration period is closed for a particular election, and if the voter contends that actual notice of the deletion of his name from the register was not received, such voter shall be allowed to vote as provided by KRS 117.245].**

Section 11. KRS 116.155 is amended to read as follows:

All forms pertaining to registration [and purgation] shall be prescribed and furnished by the State Board of Elections. The registration form shall include the voter's name; date of birth; Social Security number, if any; **mailing and residence addresses, if different and telephone number [address];** and such other information

as the State Board of Elections may deem necessary. No person [who fails to include his Social Security number] shall be denied the right to register because of *the failure to include his Social Security number or telephone number* [such failure]. All forms which require a voter's signature shall provide for verification by the signer thereof.

SECTION 12. A NEW SECTION OF KRS CHAPTER 116 IS CREATED TO READ AS FOLLOWS:

In each county having within its boundaries a geographical area which has been ceded or leased to the government of the United States, the county clerk shall designate the precincts to which voters claiming Kentucky residence for voting purposes shall be assigned. If the ceded or leased territory extends beyond a single county, the county clerk in each county encompassing a part of the territory shall assign voters to the appropriate precincts. In making the assignments of absentee voters in any county that contains all or portions of more than one (1) congressional or state legislative district, any advantage shall be given to the district containing the largest territory.

Section 13. KRS 117.025 is amended to read as follows:

(1) The State Board of Elections shall appoint an executive director, who shall be the chief administrative officer for the board. The board shall also appoint an assistant to the director, who shall be of a different political party than the director. The salaries of the director and his assistant shall be set by the board.

(2) The State Board of Elections shall employ, on a bipartisan basis, a staff sufficient to carry out the duties assigned to the board, including [such] legal counsel as [is] deemed necessary by the board.

(3) The [state] board shall:

(a) Maintain a complete roster of all qualified registered voters within the state by county and precinct;

~~(b)~~ Delete the name of any voter whose name is included in those purged by a county board of elections by reason of death and furnished to it by the county boards of elections. It shall further delete the name of any voter who is deceased or who is no longer qualified to vote in the precinct where currently registered as may be provided by law, or who has failed to vote at any primary or regular election for four (4) consecutive years. Such names shall be deleted between the dates of the general and primary elections. The State Board of Elections shall notify the county boards of elections and the voter of such action and the reason therefor, by the tenth (10th) of the month following such action, except when the voter was purged by reason of death;

(c) Enter names on the various registration rosters as they are reported by the county boards of elections;

~~(b)~~~~(d)~~ For each primary election, furnish each county clerk with a master list of all registered voters in the county, together with three (3) signature rosters [lists] of all registered voters in each precinct of the county according to party affiliation, and two (2) lists of all registered voters in each precinct of the county at least five (5) days prior to each primary election;

~~(c)~~ For each regular election, furnish each county clerk with a master list of all registered voters in the county, together with one (1) signature roster of all registered voters in each precinct of the county on which each voter's party affiliation is identified, and two (2) lists of all registered voters in each precinct of the county at least five (5) days prior to each regular election;

~~(d)~~~~(e)~~ Maintain all information furnished to the [state] board relating to the inclusion or deletion of names from the rosters for four (4) years;

~~(e)~~~~(f)~~ Furnish, at a reasonable price, the state central executive committee of each political party [at a reasonable cost] qualifying under KRS 118.015 monthly data of all additions, deletions and changes of registration in each precinct of each county and the state central executive committee shall furnish a county listing to each of the county executive committees of each political party;

~~(f)~~~~(g)~~ Purchase, lease or contract for the use of [such] equipment [as may be] necessary to properly carry out its duties under the provisions of this chapter and KRS Chapters 116 and 118;

~~(g)~~~~(h)~~ Secure information from any source which may assist the board in carrying out the purposes of this section;

~~(h)~~~~(i)~~ Furnish at a reasonable price any and all precinct lists to duly qualified candidates, political party committees or officials thereof, or any committee that advocates or opposes an amendment or public question. The State Board of Elections may also furnish the precinct lists to other persons at the board's

discretion, at a reasonable price. [cost, provided, however] The board shall not furnish precinct lists to persons who intend to use the [such] lists for commercial use.

Section 14. KRS 117.035 is amended to read as follows:

(1) There shall be a county board of elections, which shall, at the direction and under the supervision of the State Board of Elections, administer the election laws and the registration and purgation of voters within the county.

(2) The board shall consist of the county clerk, the sheriff and two (2) members appointed by the State Board of Elections not later than July 1 following the election of persons to statewide office, for a term of four (4) years and until their successors are appointed. [; provided, that] The first board shall be appointed within one (1) month following December 1, 1972, and serve until successors are appointed in April, 1976. **The sheriff shall not serve on the board during any year in which he is a candidate, but shall recommend to the board a temporary replacement to serve in his place, subject to approval by the board. The county clerk may, at his option, continue to serve on the board during a year in which he is a candidate. If the clerk elects not to serve, he shall recommend a temporary replacement to serve in his place, subject to approval by the board. If the board rejects a replacement recommended by the sheriff or the county clerk, a new name shall be recommended until a temporary appointment is approved by the board [Where from any cause the county clerk or sheriff cannot act, the two (2) appointed members shall appoint a commissioner to serve during the period the county clerk or sheriff is ineligible. If the two (2) appointed members cannot agree on a substitute to function in place of the clerk or sheriff who becomes disqualified, such fact shall be certified to the state board within five (5) days and the board shall immediately appoint a person to serve during the period that such officer is ineligible].** Service on the board of elections shall be compatible with the holding of any other county office. The members shall be at least twenty-one (21) years of age, qualified voters in the county from which they are appointed, [not a candidate to be voted for at the elections] and shall not have been convicted of any election law offense. One (1) member shall be appointed from a list of five (5) names submitted by the county executive committee of each of the two (2) political parties that polled the largest number of votes in the state at the last preceding election for presidential electors. If there are two (2) or more contending executive committees of the same party in any county, the one (1) recognized by the written certificate of the chairman of the state central committee of the party, shall be the one (1) authorized to submit the lists. Appointees may be removed by the State Board of Elections for cause. **If [Where from any cause] an appointee is temporarily unable to act, a temporary appointee shall be named by the State Board of Elections. A temporary appointee shall serve until [such time as] the original appointee notifies the State Board of Elections that he is able to resume his term. Vacancies and temporary vacancies shall be filled in the same manner as provided for original appointments and the person appointed to fill the vacancy or temporary vacancy shall be of the same political party as his predecessor. Compensation and payment of actual expenses of members shall be set by the fiscal court either as an amount payable on an annual basis, or as an amount payable on a per diem basis of [at] not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100) [per day] for each day the board meets.**

(3) A majority of the board shall constitute a quorum. The county clerk shall serve as chairman of the meetings and may vote. In case of a tie, the chairman may cast an additional vote. Records shall be kept of all proceedings, and the records shall be public and kept at the office of the county clerk.

(4) The board shall meet at least once a month and may meet more frequently if necessary. The board shall stay in session on election days to correct clerical errors and rule on questions regarding voter registration and **may [is authorized to] make to the election officers such certifications as may be necessary. On election [said] days, appeals may be made to a circuit judge, but a ruling of the board shall be reversed only upon a finding that it was arbitrary and capricious.**

(5) In counties containing cities of the first and second class, the board **may [shall] employ, on a bipartisan basis, a staff sufficient to carry out the duties assigned to the board.**

Section 15. KRS 117.045 is amended to read as follows:

(1) The county board of elections shall **in the manner prescribed by this section**, not later than September 20 each year, appoint for each precinct in the county two (2) judges, one (1) clerk and one (1) sheriff of election[; who shall hold their offices for one (1) year and until their successors are appointed]. They shall serve in all elections held in the county during the year, except as provided in KRS Chapter 242.

(2) The county executive committees of the two (2) political parties having representation on the State Board of Elections may, on or before September 15 each year, designate in writing to the county board of elections a list of not less than four (4) names for each precinct; except that, in any precinct where there are not as many as four (4) persons possessing the qualifications of an election officer belonging to the political

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party filing the list, a less number may be designated. If there are two (2) or more contending executive committees of the same party in any county, the one (1) recognized by the written certificate of the chairman of the state central committee of the party shall be the one (1) authorized to submit the lists. The lists shall contain the full name, address, phone number and Social Security number, if available, of each person listed. The lists shall be accompanied by a signed statement from each person stating that he is willing to serve, has not failed to serve without excuse in the past, and has not been convicted of an election law offense. The State Board of Elections shall prescribe by administrative regulation the form of the list.

(3) The Attorney General shall notify each county political party chairman of the duties of the party.

(4) If lists are submitted, one (1) judge at each voting place shall be selected from each list, and the sheriff shall be chosen from one (1) list and the clerk from the other. If no lists are submitted, the two (2) members of the county board of elections who are appointed by the State Board of Elections may submit lists; and the county board shall select the sheriff and one (1) judge from one (1) list and the clerk and the other judge from the remaining list. If no lists are submitted, the county board shall select the sheriff and one (1) judge from the membership of one (1) party and the clerk and the other judge from the membership of the remaining party.

(5) If, after all reasonable efforts have been made, the county board of elections is unable to find two (2) qualified officers for each precinct who are affiliated with the two (2) political parties having representation on the State Board of Elections, the county board shall submit a list of emergency election officer appointments to the State Board of Elections. The county board shall also present, in writing, its efforts to recruit and appoint election officers as prescribed in subsection (4) of this section. The list of emergency appointments may include qualified voters not affiliated with the two (2) parties represented on the state board. The state board, after its review, may approve any or all of the emergency appointments submitted by the county board or may direct the county board to take other action. Any emergency appointment shall be made for the next ensuing election only.

(6) The county board of elections shall, within ten (10) days before the next ensuing election, give each election officer written notice of his appointment. The board may direct the sheriff of the county to serve the notice of appointment, if it deems ~~the~~ [such] action is necessary.

~~(7)~~[(6)] The State Board of Elections may require the county board of elections to submit its list of precinct officers for review. The State Board of Elections may, after a hearing, direct the removal of any election officer who the [state] board finds, based upon clear and convincing evidence, would not fairly administer the state election laws. The state board shall replace any officer so removed. The board shall provide for the method and manner of the hearing by administrative regulation.

~~(8)~~[(7)] An election officer shall be a qualified voter of the precinct, [and] except that, where no qualified voter of the required political party is available within the precinct, the election officer shall be a qualified voter of the county. An election officer shall not be a candidate or the spouse, parent, brother, sister or child of a candidate who is to be voted for at the election. **An election officer shall not have changed his voter registration party affiliation for two (2) years prior to his appointment.** An election officer may be removed, for cause, at any time up to five (5) days before an election. Vacancies shall be filled in the same manner as provided for original appointments and the person appointed to fill the vacancy shall be of the same political party as his predecessor, **except for emergency appointments made as provided in subsection (5) of this section.**

~~(9)~~[(8)] If the county board of elections fails to appoint election officers, or if any [such] officer is not present at the precinct at the time for commencing the election, or refuses to act, and if no alternate is available, the officer in attendance representing the political party of the absentee shall appoint a suitable person to act in his place for that election. If both representatives of the same political party are absent, qualified voters present affiliating with that party shall elect, viva voce, suitable persons to act in their places.

~~(10)~~[(9)] Each election officer shall be paid a minimum of **forty-nine** [fifteen] dollars **(\$49)** [(\$15)] per day, and such an additional amount as compensation as may be determined by the county board of elections, with the approval of the governing body which would be responsible for funding ~~the~~ [said] election officers' pay, for each election in which the election officer serves, to be paid by the county. **For delivering the election packets to the polls, the precinct election officers shall receive in addition the mileage reimbursement provided for state employees, for each mile necessarily traveled in the delivery of the packets to the polls or a flat fee if the fee equals or exceeds that amount.** For delivering election returns, the **two judges** [sheriff and the judge of the opposite political party from the sheriff] shall receive in addition **the mileage reimbursement provided for state employees** [ten cents (10¢)] for each mile necessarily traveled from the place of voting to and from the place of delivery, **or a flat fee if the fee equals or exceeds that amount. The fee paid to the two (2) judges for delivering election returns shall [to] be paid by the county.**

Section 16. KRS 117.075 is amended to read as follows:

(1) Any qualified voter who has not been declared mentally disabled by a court of competent jurisdiction, and who, on account of age, infirmity or illness, is not able to appear at the polls on election day may vote in the following manner. At least seven (7) days prior to the date of the election **and prior to the close of normal business hours**, he shall present to the clerk by mail or in person his **application for an absentee ballot containing a verified statement** that his inability to appear is due to age, infirmity, or illness, ~~and indicating whether or not the condition is temporary, applying to the instant election only, or is expected to be a continuing one~~. Upon receipt of the **application [verified statement]**, the clerk shall immediately mail to the voter **an absentee [a special] ballot** and envelopes, and the voter shall cast his vote in accordance with KRS 117.086. ~~The [Such]~~ ballot shall be returned by the voter to the county clerk by mail.

(2) Ballots furnished **pursuant [subsequent]** to the provisions of this section shall include the names of all candidates for which the voter is entitled to vote.

Section 17. KRS 117.077 is amended to read as follows:

In case of a medical emergency within seven (7) days or less of an election, a registered voter may apply for **an absentee [a special] ballot**. ~~The [Such]~~ application shall state that the emergency condition occurred within the seven (7) day period and **shall [must]** be notarized. The application form shall be restricted to the use of the voter or the spouse, parents or ~~[dependent]~~ children of the voter. If the voter has no spouse, parents or ~~[dependent]~~ children, the application form shall be restricted to the use of the voter or the brother, sister, niece or nephew of the voter. Upon receipt of the application and verification, the county clerk shall issue **an absentee [a special] ballot**.

Section 18. KRS 117.085 is amended to read as follows:

(1) All requests for an application for **an absentee [a special] ballot** and all applications for **an absentee [a special] ballot** shall be transmitted only by mail or in person as specifically provided by this section. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077, and those who are incarcerated in jail but have yet to be convicted, no **absentee [special] ballots** shall be mailed to an address within the county except to those voters who regularly work outside the county during all hours the office of the county clerk is open. **In the case of ballots returned by mail**, the county clerk shall provide **an absentee [a special] ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for an absentee [a special] ballot as provided in this section and who is properly registered as stated in his application. Application for an absentee [a special] ballot shall be made as follows:**

(a) Any qualified voter in any county who shall be absent from the county on any election day or any person incarcerated in jail who has been charged for a crime but has yet to be convicted of the ~~[said]~~ crime may, at any time not less than **the close of normal business hours** seven (7) days before the election, make application in person or by mail to the county clerk for **an absentee [a special] ballot**. ~~[A single application shall entitle a voter who qualifies to receive two (2) ballots, as provided by this section, to receive both such ballots.]~~ All requests for an application for **an absentee [a special] ballot** and all applications for **an absentee [a special] ballot** shall be made in person or by mail, at the option of the voter, except that the county clerk shall hand an application for **an absentee [a special] ballot** to the voter who appears in person to request **the [such] application**, or shall mail **the [such] application** to a voter who requests **the [such] application** by mail. ~~The [Such]~~ application shall be restricted to use of the voter or the spouse, parents or ~~[dependent]~~ children of the voter; and

(b) Residents of Kentucky who are members of the armed forces, or dependents of members of the armed forces **and overseas citizens**, may apply for an absentee ballot by means of the federal post-card application. ~~The application [Such applications]~~ may be used to register, re-register and to apply for an absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his seal to **the [such] application** form upon receipt.

(c) **Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he is registered, and any alternate precinct election officer may vote by absentee ballot. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. The applications shall be restricted to the use of the voter only.**

(2) The clerk shall type the name of the voter on the application form for that person's use and no other. The application form shall be in the form prescribed by the State Board of Elections, shall bear the seal

of the county clerk and shall contain the following information: name, residential address, precinct, party affiliation, statement of absence on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in said precinct and the voter's mailing address for **an absentee** [a special] ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.

(3) If the county clerk finds that the voter is properly registered as stated in his application **and qualifies to receive an absentee ballot**, he shall mail to the voter **an absentee** [a special] ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and **it** [same] shall be stamped by the postal service when the ballots are mailed.

(4) **Absentee** [(a) Except as otherwise provided by this subsection, Special] ballots which are requested prior to the printing of **the** [such] ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of **the printed** [such] ballots; and **absentee** [special] ballots which are requested subsequent to the receipt of such ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of **the** [such] request[;];

(b) At any general election at which names of candidates to federal office shall appear on the ballot, certain voters shall be mailed only one (1) ballot, which shall include the names of all candidates for which such voters are entitled to vote. Voters to receive only one (1) ballot shall be those voters who shall be:

1. Outside the fifty (50) states on the day of the election but whose request for a special ballot shall be received subsequent to the printing of the ballot containing the names of all candidates for which such voters are entitled to vote; and

2. Within the fifty (50) states on the day of the election; and

(c) At any general election for which separate ballots shall be printed for candidates for election to federal office, voters who shall be outside the fifty (50) states on the day of the election and who request a special ballot prior to the printing of the ballot containing the names of candidates exclusive of candidates to federal office, shall receive two (2) ballots. The first ballot shall contain the names of candidates to federal office, and the second shall contain the names of all candidates for which the voter is entitled to vote, exclusive of candidates to federal offices].

(5)[(4)] The clerk shall cause ballots to be printed **fifty (50) days prior to** [for] each primary or general election[.];

(a) Each primary, **fifty (50) days prior to the primary;**

(b) Each general election:

1. Names of candidates to federal office and no others, **fifty (50) days prior to the election;**

2. Names of the remaining candidates, **thirty-eight (38) days prior to the election; and**

3. Names of all candidates, **thirty-eight (38) days prior to the election].**

(6)[(5)] The outer envelope shall bear the words "**Absentee** [Special] Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address and precinct number. A detachable flap on the inner envelope shall provide space for the voter's signature, voting address, precinct number and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.

(7)[(6)] Any person who has received **an absentee** [a special] ballot but who knows at least seven (7) days before the date of the election that he shall be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his **absentee** [special] ballot and vote in person. He shall return his **absentee** [special] ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the **absentee** [special] ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Cancelled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from

the list of persons who were sent **absentee** [special] ballots, and the voter may vote in the precinct in which he is properly registered.

Section 19. KRS 117.086 is amended to read as follows:

(1) The voter **returning his absentee** [utilizing a special] ballot **by mail** shall mark his ballot, seal it in the inner envelope and then in the outer envelope and mail it to the county clerk as shall be provided by this chapter. The voter shall sign the detachable flap and the outer envelope in order to validate the ballot. In order to be counted, the ballots shall be received by the clerk by at least the time established by the election laws generally for the closing of the polls, which time shall not include the extra hour during which those voters may vote who were waiting in line to vote at the scheduled poll closing time.

(2) Any voter who shall be absent from the county on election day, but who does not qualify to receive an **absentee** [a special] ballot by mail under the provisions of KRS 117.085 **and all members of county boards of elections and precinct election officers qualified to vote by absentee ballot under the provisions of KRS 117.085, shall vote**; may execute a special ballot] at the main office of the county clerk prior to the day of election. **The clerk may provide for such voting by absentee ballot or may use the voting equipment in general use in the county either at the precinct or the equipment as may be used to tabulate absentee ballots, except as follows:**

(a) **Any voter qualifying to vote in the clerk's office as provided by this subsection who receives assistance to vote shall use the typed inner and outer envelopes as required in subsection (1) of this section.**

(b) **Any voter qualifying to vote in the clerk's office as provided by this subsection whose qualifications are challenged by any clerk or deputy shall vote in the manner required in subsection (1) of this section and shall complete an "Oath of Voter" affidavit which shall be inserted in the outer envelope along with the inner envelope.**

(3) **If the clerk uses general voting equipment or absentee ballot tabulating equipment as provided for in subsection (2) of this section, each voter casting his vote at the clerk's office shall sign an "Absentee Ballot Signature Roster."**

(4) The [county] clerk shall designate a location within his office where the ballots shall be cast secretly. In counties containing a city of the first or second class, the county clerk may establish locations other than his main office in which **the** [such] voters may execute **their** [special] ballots.; **provided that** Public notice of the locations **shall be** [is] given pursuant to KRS Chapter 424 and [that] similar notice by mail **shall be** [is] given to the county chairmen of the two (2) political parties whose candidates polled the largest number of votes in the county at the last general election.

(5)[(2)] The State Board of Elections shall **promulgate** [issue] administrative regulations to provide for casting ballots as provided in subsection (2) of this section.

(6)[(4)] The clerk shall deposit all of the returned **absentee** ballots in a locked ballot box immediately upon receipt without opening the outer envelope. The ballot box shall be locked with three (3) locks. The keys to the box shall be retained by the three (3) members of the central **absentee** [special] ballot counting board, if one is appointed, or by the members of the board of elections, and the box shall remain locked until the ballots are counted. **All voting equipment on which ballots are cast as permitted in subsection (2) of this section shall also remain locked and the keys shall be retained by the three (3) members of the central absentee ballot counting board, if one is appointed, or by the members of the board of elections, and the equipment shall remain locked until the ballots are counted.**

(7)[(5)] The clerk shall keep a list of all persons who return their **mail** [voted] ballots **or cast their ballots in the clerk's office**; and send a copy of that list to the state board after election day. The county clerk and the Secretary of State shall keep a record of the number of **absentee** [special] ballots cast in any election as a part of the official returns of the election.

Section 20. KRS 117.0863 is amended to read as follows:

(1) Except for those voters who have been certified as requiring assistance in voting on a permanent basis, any person voting by means of an **absentee** [a special] ballot as provided in this chapter who receives assistance in voting shall be required to complete the voter assistance form required by KRS 117.255.

(2) Any person who assists another person in voting by use of an **absentee** [a special] ballot shall complete the voter assistance form required by KRS 117.255.

(3) The detachable flap on all *absentee* [special] ballots shall have printed upon it the voter assistance form required by KRS 117.255, as well as a notice of the penalty for failure to complete the form.

(4) The State Board of Elections shall promulgate a voter assistance form which shall be in a form acceptable to the attorney general.

Section 21. KRS 117.0865 is amended to read as follows:

Any person who aids another in completing an *absentee* [a special] ballot shall not solicit or encourage that person to vote for or against any candidate, party, or issue. **Any person who violates this section shall be guilty of a Class D felony.**

Section 22. KRS 117.087 is amended to read as follows:

(1) The challenge of an *absentee* [a special] ballot shall [must] be in writing and in the hands of the county clerk before 3:00 p.m. on election day.

(2) The county board of elections shall count the *absentee* [special] ballots. The board may appoint a central *absentee* [special] ballot counting board of not less than three (3) members, who shall be qualified voters and no more than two-thirds (2/3) of whom shall be members of the same political party, to count the ballots at the direction of the county board of elections.

(3) Beginning at 3:00 p.m. on election day, the board shall [may] meet at the clerk's office to count the *absentee* [special] ballots. Candidates or their representatives shall be permitted to be present. The county board of elections shall authorize representatives of the news media to observe the counting of *absentee* [special] ballots. The board shall open the boxes containing *absentee* [special] ballots and remove the envelopes one (1) at a time. As each envelope is removed, it shall be examined to ascertain whether the outer envelope and the detachable flap are in proper order and have been signed by the voter. All unsigned *absentee* [special] ballots shall be rejected automatically. The chairman of the county board of elections shall compare the signatures on the outer envelope and the detachable flap with the signature of the voter that appears on the registration card. If the outer envelope and the detachable flap are found to be in order, the chairman shall read aloud the name of the voter. If the vote of the [such] voter is not rejected on a challenge then made as provided in subsection (4) of this section, the chairman shall [then] remove the detachable flap and place the inner envelope unopened in a ballot box which has been provided for the purpose.

(4) When the name of a voter is read aloud by the chairman, the vote of the [such] voter may be challenged by any board member or by the written challenge provided in subsection (1) of this section and the challenge [thereto] may be determined and the vote accepted or rejected by the board as if the voter was present and voting in person[,] but if the outer envelope and the detachable flap are regular, and substantially comply with the provisions of this chapter, they shall be considered as showing that the voter is prima facie entitled to vote. If the vote of a voter is rejected pursuant to the challenge, the inner [outer] envelope shall not be opened, **but returned to the outer envelope upon which [and] the chairman shall write on the envelope the word "rejected"**.

(5) After the challenges have been made and all the blank inner envelopes have been placed in a ballot box, the box shall be thoroughly shaken [so as] to redistribute the ballots in the box. The board shall [then] open the ballot box, remove the *absentee* [special] ballots from the inner envelopes, **and count the ballots [and record the special ballot votes on a form provided by the state board].**

(6) The board shall unlock any voting equipment used to cast ballots in the clerk's office as provided for in KRS 117.086 and a total of all absentee ballots shall be made and recorded on the form provided by the State Board of Elections.

~~(7)~~(6) The county board of elections shall make public the *absentee* [special] ballot results after 6:00 p.m.

Section 23. KRS 117.145 is amended to read as follows:

(1) At least **fifteen (15)** [two (2)] days before any special election, and at least fifty (50) days before any primary **or [; and at least thirty-eight (38) days before any]** regular election, the county clerk of each county shall cause to be printed and ready for use ballot labels for each candidate who, and each question which, is entitled to be voted upon in such election. The ballot labels shall be printed on clear white paper or other material which shall be furnished by the printer. They shall be printed in black ink, in plain, clear type clearly legible to a person with normal vision, and shall be of such size as will fit the ballot frames. The labels shall include the necessary party designations.

(2) Each county clerk shall have printed a sufficient number of [special] paper *absentee* ballots. The *absentee* [special] ballot shall be used for voting by absent voters; **by precinct officers who have been assigned to a precinct other than their own; by members of a county board of elections;** by voters so disabled by age, infirmity or illness as to be unable to appear at the polls; and for voting in an emergency situation. The ballot stubs shall be consecutively numbered and the county board shall keep a record, by number, of all *absentee* [special] ballots used for any of the purposes listed herein.

(3) At least three (3) days before a special or regular election, the county clerk shall equip the voting machines with the necessary supplies for the purpose of write-in votes. The county clerk shall also attach a pencil or pen to the voting machine for write-in purposes.

(4) If supplemental paper ballots have been approved as provided in KRS 118.215, the county clerk shall cause to be printed a sufficient number of paper ballots for the registered voters of each precinct. The paper ballots shall have stubs which are numbered consecutively. The quality of paper on which the supplemental paper ballots are printed shall be determined by regulations promulgated by the secretary of the Finance and Administration Cabinet.

Section 24. KRS 117.195 is amended to read as follows:

(1) At least one (1) hour prior to the opening of the polls, the county clerk shall deliver each machine, with the operating device and mechanism and the device covering the registering counters securely locked, to the clerk of the precinct in which it is to be used, and shall take a receipt [therefor] indicating the distinguishing number of the machine. The clerk of the precinct shall cause the machine to be arranged in the voting place so [in such a manner] that the front of the machine, on which appear the ballot labels and the operating devices, will not be visible, when being operated, to any person other than the voter.

(2) **In polling places in which machines for multiple precincts are located, the county clerk shall post a sign near each machine identifying the precinct for which the machine has been designated.**

(3) If supplemental paper ballots have been approved as provided in KRS 118.215, the county clerk shall, at least one hour prior to the opening of the polls, deliver a sufficient number of ballots for the registered voters of each precinct, a sufficient number of voting booths for voting paper ballots, string, rubber stamps for marking "Spoiled" and "Unused" ballots and a locked ballot box for each precinct. The county clerk shall take a receipt for the number of ballots issued and the ballot box for each precinct. The county clerk shall retain the keys to all ballot boxes.

Section 25. KRS 117.205 is amended to read as follows:

Before permitting any person to vote on the day of the election, the election officers shall examine the machine to ascertain whether it has been operated since the counters referred to in subsection (10) and (11) of KRS 117.125 were set at zero, and to ascertain whether the ballot labels are arranged as specified on the printed instruction cards. If the machine indicates that it has been operated or if the ballot labels are not so arranged, the officers shall not unlock the operating device or mechanism, but shall immediately secure the attendance of **the county clerk and one (1) member [or all of the members]** of the county board of elections **other than the county clerk**, who shall reset **the [said]** counters at zero and **[then]** relock the device covering the counters, or properly arrange the ballot labels, as the case may be, in the presence of the election officers. If the attendance of [such] members of the board of elections cannot be obtained before the opening of the polls or within one (1) hour thereafter, the election officers shall notify the county clerk of the foregoing facts and obtain from the county clerk a reserve voting machine, and **[thereafter]** proceed to conduct the election. Any reserve machine **[so used]** shall **have been certified [be prepared]** for use at the election by the county board of elections and **prepared for use at the election by** the election officers in **the [such]** precinct in the same manner as the original machine was prepared for the election **[by the county clerk]**. The machine found to have been so operated shall be returned immediately to the custody of the county clerk, whose duty it shall be to promptly repair same in order that it may be used as a reserve machine in the election if needed.

Section 26. KRS 117.215 is amended to read as follows:

(1) If, during the conduct of an election, a machine becomes in a state of disrepair so that it cannot be operated in a manner that will comply with the provisions of this chapter, the election officers shall lock or seal the machine in such a manner as to prevent further voting thereon and record the numbers shown by the public counter. Then the election officers shall secure from the county clerk a reserve voting machine, which shall be prepared and made ready for use as provided in KRS 117.205, and thereupon proceed to conduct the election. When the polls are closed both the original and reserve voting machines shall be examined and the votes thereon registered shall be counted as provided in KRS 117.275 and the aggregate number

of votes cast on both machines for each candidate and on each question shall be certified as the result of the election in that precinct.

(2) If an emergency should arise due to the malfunction of the voting machine, the county clerk shall provide a backup voting machine or *supplemental paper* [~~special~~] ballots for use at the precinct and a ballot box in which to deposit the voted ballots. The ballot box shall be locked with two (2) locks and the judges of the precinct shall each hold the key to one (1) lock. At the close of voting, the ballots shall be counted at the precinct or a central counting center and added to the votes cast by machine. The aggregate of these votes shall be certified as the result of the election in that precinct.

Section 27. KRS 117.235 is amended to read as follows:

(1) No person, other than the election officers and challengers, shall be permitted within the voting room while the vote is being polled, except for the purpose of voting or except by authority of the election officers to keep order and enforce the law.

(2) No officer of election shall do any electioneering on election day.

(3) No person shall do any electioneering [~~or exit polling~~] at the polling place or within a distance of five hundred (500) feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters on election day, unless the fiscal court or legislative body of an urban-county government specifically authorizes by ordinance on a county wide basis a greater distance from the polling place within which electioneering may be permitted, but in no case shall electioneering [~~or exit polling~~] be allowed within five hundred (500) feet of any entrance to a building in which a voting machine is located if that entrance is unlocked and is used by voters. Electioneering shall include the displaying of signs, the distribution of campaign literature, cards or handbills, the soliciting of signatures to any petition, or the solicitation of votes for or against any candidate or question on the ballot in any manner, but shall not include exit polling. [~~Any person conducting exit polls on election day shall register with the county clerk not less than seven (7) days before the day of the election. The clerk shall give the exit poller a document showing that he has registered, and the exit poller shall carry that document with him at the polls on election day.~~] Nothing contained in this section shall prohibit electioneering conducted within a private residence or establishment other than that in which the polling place is located by persons having an ownership interest in such property.

(4) No voter shall be permitted to converse with others while in the voting room concerning their support or nonsupport of any candidate, party or issue to be voted on, except as provided in KRS 117.255.

(5) The election sheriff, under the supervision of the precinct election judges, shall enforce the election laws and maintain law and order at the polls and within fifty (50) feet of any entrance to the building in which the voting machine is located if that entrance is unlocked and is used by voters. Assistance may be requested of any law enforcement officer.

Section 28. KRS 117.255 is amended to read as follows:

(1) The voter shall be instructed by the officers of election, with the aid of the instruction cards and the model, in the use of the machine, if the voter so requests.

(2) Except for those voters who have been certified as requiring assistance on a permanent basis, no voter shall be permitted to receive any assistance in voting at the polls unless he makes and signs an oath that, by reason of inability to read English, or by reason of blindness or other physical disability he is unable to vote without assistance. The oath shall be upon a voter assistance form prescribed by the State Board of Elections. All persons assisting a voter shall execute the voter assistance form.

(3) Upon making and filing with the judges ~~the~~ [~~such~~] oath, the voter shall retire to the voting machine, with the judges, and one (1) of the judges shall [~~then~~], in the presence of the other and the voter, operate the machine as the voter directs. The disabled person applying to vote may, if he prefers, be assisted by a person of his own choice who is not an election officer, except that the voter's employer, an agent of that employer, an officer or agent of that voter's union, or a candidate shall not assist the voter, nor shall a person assist more than two (2) voters on the date of any primary, [~~or~~] regular or special election.

(4) The clerk shall swear the person accompanying the disabled or blind voter to operate the voting machine in accordance with the directions of the disabled or blind voter, and the disabled or blind voter and the person sworn shall [~~then~~] enter the voting booth and the one [~~so~~] sworn shall operate the machine for the disabled or blind voter as he directs.

(5) Voters who require assistance on a permanent basis due to blindness or other physical disability may apply to the county board of elections for certification. Application may be made when registering to vote or completing the voter assistance form by indicating the reason for obtaining assistance is permanent. The county board of elections shall determine whether the applicant requires assistance on a permanent basis. The county board of elections shall notify the **county clerk who shall enter such certification on the voter's registration record.** The State Board of Elections[; ~~which~~] shall cause the precinct roster of voters to indicate those voters who are certified to receive assistance permanently without signing voter assistance forms at the precinct.

(6) Voting booth shall mean an area in which a voter casts his vote which is designed **to insure** [in such a manner that] the secrecy of the vote [is insured]. No voter shall be assisted under this subsection unless the judges and the sheriff of election are satisfied of the truth of the facts stated in the oath. The voter shall state in his oath the specific physical disability that requires him to receive assistance[; and the judges of election shall enter in writing, on a record of assisted voters, the voter's name and the specific physical disability which required him to receive assistance].

(7) No voter shall be permitted to occupy the voting machine more than two (2) minutes if other voters are waiting to use it.

(8) In primary elections, before a voter is permitted to use the voting machine, a judge of the election shall adjust the machine so that the voter will only be able to vote for the persons for whom the voter is qualified to vote.

(9) If the machine is so constructed as to require adjustment after one (1) person has voted before another person may vote, the judges of election shall [se] adjust it after each person has voted.

(10) The election officers shall constantly maintain a watch in order to prevent any person from voting more than once.

(11) [In elections for President and Vice President, if a voter is eligible to vote only for the office of president and vice president, a judge of the election shall adjust the machine so that the voter will only be able to vote for President and Vice President.]

(12) If supplemental paper ballots have been approved, as provided in KRS 118.215, the voter shall vote his ballot in privacy in a booth provided for that purpose by the county clerk. If the voter spoils his ballot, he shall return the spoiled paper ballot to an election official who shall stamp the ballot "Spoiled," initial and place the spoiled ballot in an envelope provided for that purpose. The voter shall [then] be issued a second supplemental paper ballot. Upon completion of voting, the voter shall remove the numbered stub from the ballot, hand the stub to an election official and deposit the voted ballot in the locked ballot box in the presence of precinct election officials.

~~(12)~~ The election sheriff shall be responsible for reporting violations of this section.

Section 29. KRS 117.265 is amended to read as follows:

(1) A voter may, at any general or special election, cast a write-in vote for any person whose name does not appear upon the ballot label as a candidate, by writing the name of his choice upon the appropriate device for the office being voted on provided on the voting machine as required by KRS 117.125. Any voter utilizing an **absentee** [a special] ballot may write in a vote for any person whose name does not appear upon the ballot, by writing the name of his choice under the office.

(2) Two (2) election officers of opposing parties shall upon the request of any voter instruct such voter on how to cast a write-in vote.

(3) This provision does not apply to elections for President and Vice President of the United States where the vote is cast for presidential electors rather than the candidate, nor does it apply to elections for municipal offices conducted pursuant to KRS 83A.170.

Section 30. KRS 117.275 is amended to read as follows:

(1) At the count of the votes in any [such] precinct, any candidate and any representatives to witness and check the count of the votes therein, who are [hereby] authorized to be appointed as is provided in subsection (6) of this section, shall be admitted and be permitted to be present and witness the count.

(2) As soon as the polls are closed, and the last voter has voted, the judges shall immediately lock and

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seal the operating lever, [or] mechanism *or other device* of the *voting equipment* [machine] so that the voting and counting mechanism will be prevented from operation, and they shall [then] sign a certificate stating:

- (a) That the *voting equipment* [machine] has been locked against voting and sealed;
- (b) The number of voters, as shown on the public counters;
- (c) The number registered on the protective or accumulative counter or device, if any; and

(d) The number or other designation of the *voting equipment* [machine], which certificate shall be returned by the judges of election to the officials authorized by law to receive it [the same]. The judges shall [then] compare the number of voters, as shown by the counter of the *voting equipment* [machine], with the number of those who have voted as shown by the protective or accumulative counter or device, *if any*.

(3) *Where voting equipment is used which does not print the candidates' names, lever numbers and total votes received on a general return sheet or record for that equipment, the procedure to be followed shall be:* the judges, in the presence of the representatives mentioned in subsection (1) of this section, if any, and of all other persons who may be lawfully within the polling place, shall [then] make visible the registering counters, and, for that purpose, shall unlock and open the doors, or other covering concealing the *counters* [same], giving full view of all the counter numbers. The judges shall, under the scrutiny of *the* [such] representatives, and in the order of the offices as their titles are arranged on the machine, read and announce, in distinct tones, the results as shown by the counter numbers for each candidate and for and against each question voted on. The counters shall not be read consecutively along the party rows or columns, but shall always be read along the office columns or rows, completing the canvass for each office or question before proceeding to the next. The vote as registered shall be entered by the judges, in ink, on quadruplicate return sheets, and also on a general return sheet and statement, all of which, after the canvass is completed, shall be signed by the *election officers* [judges]. The total votes cast for each candidate, and for and against each question, [and the votes written in,] shall [then] be entered on the general and quadruplicate return sheets and statement. [There shall also be entered on the general return sheet and statement the number of voters who have voted, as shown by the lists of voters, and the number who have voted on each machine, as shown by the public counters, and also the number registered on the protective or accumulative counter or device on each machine immediately after the closing thereof and sealing of the machine. The number or other designation of each machine used shall also be entered thereon. In the case of primary elections, quadruplicate return sheets shall remain exposed to view until the said returns and all other reports have been fully completed.] *The proclamation of the result of the votes cast shall be announced distinctly and audibly by one (1) of the judges, who shall read the name and the vote cast for each candidate and the vote for and against each question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the voting equipment, and any necessary corrections shall be made by the judges, and the door or other cover of the voting equipment shall then be closed and locked.*

(4) [The proclamation of the result of the votes cast shall be announced distinctly and audibly by one (1) of the judges of election, who shall read the name of the vote cast for each candidate and the vote for and against each question submitted. During such proclamation ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the machine, and any necessary corrections shall then and there be made by the judges, after which the doors or other cover of the voting machine shall be closed and locked and the return sheet shall be signed by each of the judges of election.] If any *officer* [judge] shall decline to sign *the* [such] return, he shall state his reason [therefor] in writing, and a copy thereof, signed by him, shall be enclosed with *the* [such] return. Each of the return sheets shall be enclosed in an envelope, which shall be securely sealed, and each of the *officers* [judges] shall write his name across the fold of the envelope. One (1) of the quadruplicate return sheets, along with the general return sheet and *the write-in roll, if any write-in votes were cast in the precinct* [precinct list], shall be directed to the county board of elections of the county in which the election is being held, one (1) to the county clerk of the county in which the election is being held and one (1) to the local governing body of each of the two (2) dominant political parties. *The* [Said] envelope shall have endorsed thereon a certificate of the election officers, stating the number of the machine, the precinct where it has been used, the number on the seal, and the number on the protective or accumulative counter or device at the close of the polls. Following the tabulation of all votes cast in the election, including absentee votes *and write-in votes*, the county board shall [immediately] mail the tabulation *sheets showing the results from each precinct to the State Board of Elections and the county clerk shall mail or deliver* [result, the general return sheets and] the precinct lists from each precinct to the State Board of Elections.

(5) As soon as possible after the completion of the count, the *two (2) judges* [election officers] shall return to the county board of elections the keys to the voting machine received and receipted for by them,

and the county clerk in which the precinct is located shall have the voting machine properly boxed or securely covered and removed to a proper and secure place of storage.

(6) In primary elections, each candidate or group of candidates may designate to the county board of elections a representative to witness and check the vote count. In regular elections, the governing authority of each political party, each candidate for member of board of education, independent candidate or independent ticket may designate a representative to the county board of elections to witness and check the vote count. The county board of elections shall authorize representatives of the news media to observe the taking of the tally of votes from the voting machine in each precinct in each primary, regular or special election.

(7) If supplemental paper ballots have been approved, as provided in KRS 118.215, after the polls are closed, the precinct election officials shall stamp "Unused" on all supplemental paper ballots not used. The election officers shall string all used ballots' stubs upon a string provided for that purpose, and the stubs shall be placed in an envelope. The **two (2) judges [sheriff and the judge from the opposite political party from the sheriff]** shall return to the county clerk's office the locked ballot box, all ballot stubs, spoiled ballots and unused ballots at the same time as the tabulation of votes from the voting machine is delivered. The county clerk shall issue a receipt for the number of ballot stubs, unused ballots, spoiled ballots and the ballot box. The county board of elections, or its designee, shall count and tally the paper ballots manually or with the use of tabulating equipment which does not involve an additional voting system. The results of the vote tally shall be certified by the county board of elections to the county clerk and to the Secretary of State. The county board of elections shall authorize the candidates or their representatives and representatives of the news media to be present during the counting of the paper ballots. Except as otherwise required in this chapter that certain records and papers relating to specified elections be retained for twenty-two (22) months, the county clerk shall retain the paper ballots for sixty (60) days, after which time they shall be destroyed in [such] a manner [as] to render them unreadable by the county board of elections if no contest or recount action has been filed.

Section 31. KRS 117.365 is amended to read as follows:

Upon the first day a grand jury convenes after a primary, general election or special election, the county clerk shall present to the grand jury all voter assistance forms and all applications for **absentee [special]** ballots which shall have been completed in the immediately preceding primary, general election or special election.

Section 32. KRS 117.375 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

(1) "Electronic or electromechanical voting system" means a system of casting votes by use of marking devices and tabulating ballots employing automatic tabulating equipment or data processing equipment.

(2) "Automatic tabulating equipment" means apparatus necessary to automatically examine and count votes as designated on ballots and data processing machines which can be used for counting ballots and tabulating results.

(3) "Voting device" means either an apparatus in which paper ballots or ballot cards are used in connection with an implement by which a voter registers his votes with ink or other substance or by punching, or an apparatus by which such votes are registered electronically, so that in either case the votes so registered may be computed and tabulated by means of automatic tabulating equipment.

(4) "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device or by marking with a pen or special marking device.

(5) "Ballot label" means the cards, papers, booklet, pages or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines.

(6) "Ballot" or "official ballot" means the voting machine ballot label, ballot cards, paper ballots, an absentee ballot, [a special ballot,] or a supplemental paper ballot which has been authorized for the use of voters in any primary, general or special election by the Secretary of State or the county clerk.

(7) "Voting punch device" means an apparatus in which ballots or ballot cards are inserted for the piercing of ballots by the voter. The hole may be in the form of a round dot, rectangle, square, or any other shape that will clearly indicate the intent of the voter.

(8) "Vote marking device" means any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.

(9) "Secrecy envelope" means the envelope handed to the voter with his ballot into which the voter shall place his voted ballot cards.

(10) "Precinct ballot counter" means an automatic tabulating device used at the precinct to tabulate and process ballots.

(11) "Voting machine" or "machine" shall include lever machines and, as far as applicable, any electronic or electromechanical unit and supplies utilized or relied upon by a voter in casting and recording his votes in an election.

Section 33. KRS 117.377 is amended to read as follows:

(1) The fiscal court of any county, or any urban county government, may acquire by purchase or lease or lease-purchase agreement or abandon any voting system covered by this chapter, *if the [provided such]* equipment has been approved by the State Board of Elections. The fiscal court shall notify the State Board of Elections that a new voting system is being installed in the county.

(2) The county *clerk [board of elections]* of any county may petition the State Board of Elections to allow a new voting system in the county if an emergency exists. The petition must state the reasons why the present equipment is inadequate. Within sixty (60) days of the receipt of the petition the State Board of Elections shall notify the county *clerk [board of elections]* whether the permission to obtain a new voting system is *granted [approved]* or *denied [disapproved]*. The letter of approval *shall [must]* be presented to the fiscal court for its approval before any new voting system is acquired.

Section 34. KRS 117.995 is amended to read as follows:

(1) *Any person appointed to serve as an election officer but who shall knowingly and willfully fail to serve and who is not excused by the county board of elections for the reasons specified in this chapter shall be guilty of a violation and shall be ineligible to serve as an election officer for a period of five (5) years [Any person who violates any provision of this chapter, or who willfully does any act that will accomplish a result intended to be prevented, or that will prevent from being accomplished a result intended to be permitted, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned in the county jail for not more than one (1) year, or both].*

(2) Any county clerk or member of the county board of elections who knowingly and willfully violates any of the provisions of this chapter, including furnishing applications for *absentee [special]* ballots to persons other than those specified by the provisions of this chapter and failure to type the name of the voter on the application form as required by the provisions of this chapter, shall be *guilty of a Class D felony [confined in the penitentiary for not less than one (1) nor more than five (5) years].*

(3) Any officer who willfully *[or neglectfully]* fails to prepare or furnish ballot labels or *absentee [special]* ballots or fails to allow a qualified voter to cast his vote on the machine as required of him by this chapter shall be *guilty of a Class A misdemeanor [fined not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) for each offense, and in addition thereto may be confined in the county jail for not less than sixty (60) days nor more than six (6) months].*

(4) Any election officer who knowingly and willfully violates any of the provisions of this chapter, including failure to enforce the prohibition against electioneering established by KRS 117.235, shall be *guilty of a Class D felony [confined in the penitentiary for not less than one (1) year nor more than three (3) years].*

(5) Any person who signs a name other than his own on an application for *an absentee [a special]* ballot or on the verification form for *the [such]* ballot, or any person who votes *an absentee [a special]* ballot other than the one (1) issued in his name, or any person who applies for *the [such]* ballot for the use of anyone other than himself or *the [such]* person *[as shall be]* designated by the provisions of this chapter, or any person who makes a false statement on an application for *an absentee [a special]* ballot shall be *guilty of a Class D felony [fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned in the county jail for not more than one (1) year, or both].*

(6) Any person who violates any provision of KRS 117.235 related to prohibited activities on election day, after he has been duly notified of *the [such]* provisions by the sheriff of the election precinct, shall, for each offense, be *guilty of a Class A misdemeanor [fined not less than one hundred dollars (\$100) nor*

more than one thousand dollars (\$1,000) or imprisoned in the county jail for not more than one (1) year, or both.

(7) [Any person who shall have been selected to serve as an election officer but who shall knowingly and willfully fail to serve and who is not excused by the county board of elections as provided in this chapter shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and shall be ineligible to serve as an election officer for a period of five (5) years.

(8) Any person who knowingly and willfully prepares or assists in the preparation of an inaccurate voter assistance form shall be guilty of a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense; however, if a voter has been permanently certified as requiring voting assistance, there shall be no offense for the failure of the voter to complete the form.

Section 35. KRS 118.015 is amended to read as follows:

(1) A "political party" within the meaning of this chapter, is an affiliation or organization of electors representing a political policy and having a constituted authority for its government and regulation, and which cast at least twenty percent (20%) of the total vote cast at the last preceding election at which presidential electors were voted for.

(2) The word "election" used in reference to a state, district, county or city election, includes the decisions of questions submitted to the qualified voters as well as the choice of officers by them.

(3) A "ballot" or "official ballot" means the voting machine ballot label, ballot cards, paper ballots, an absentee ballot, [a special ballot] or a supplemental paper ballot which has been authorized for the use of the voters in any primary, general or special election by the secretary of state or the county clerk.

(4) "Ballot label" means the cards, papers, booklet, pages or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines.

(5) "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting punch device or by marking with a pen or special marking device.

(6) "Voting machine" or "machine" shall include lever machines and, as far as applicable, any electronic or electromechanical unit and supplies utilized or relied upon by a voter in casting and recording his votes in an election.

(7) The word "resident" used in reference to a candidate in a state, district, county or city election shall mean actual resident, without regard to the residence of the spouse of the candidate.

Section 36. KRS 118.035 is amended to read as follows:

(1) The polls shall be opened at 6:00 a.m., prevailing time, and remain open continuously until 6:00 p.m., prevailing time. Any voter who is waiting in line at the polls to cast his vote at closing time, and who has been unable to cast his vote before closing time because of the large numbers of voters casting their votes, shall be allowed to cast his vote as soon after closing time as practicable; provided, however, that no vote shall be cast after 7:00 p.m. No voter who arrives at the polls after 6:00 p.m., prevailing time, shall be allowed to cast his vote.

(2) Any person entitled to a vote at any election in this state shall, if he has made application for leave prior to the day he appears before the county clerk to request an application for or to execute **an absentee** [a special] ballot, or prior to the day of election, be entitled to absent himself from any services or employment in which he is then engaged or employed for a period of four (4) hours on the day he appears before the clerk to request an application for or to execute **an absentee** [a special] ballot, during normal business hours of the office of the clerk or on the day of the election between the time of opening and closing the polls.

(3) Any person selected to serve as an election officer shall be entitled to absent himself from any services or employment in which he is then engaged or employed for a period of an entire day to attend training or to serve as an election officer. Such person shall not, because of so absenting himself, be liable to any penalty. The employer may specify the hours during which the employe may absent himself. No person shall refuse an employe the privilege hereby conferred, or discharge an employe or threaten to discharge an employe or subject an employe to a penalty, because of the exercise of the privilege.

Section 37. KRS 118.045 is amended to read as follows:

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(1) Every voting precinct on the day upon which any election is held shall, during voting hours, display an American flag of dimensions of *reasonable size* [no less than three (3) feet wide by four (4) feet long], which shall be firmly attached to the entrance of the voting precinct so that it will be readily visible to the general public.

(2) The precinct sheriff shall attach the American flag to the entrance of the voting precinct upon the opening of the polls on the election day and shall remove the same upon the closing of the polls.

(3) The fiscal court of every county shall purchase out of its general fund sufficient American flags for every voting precinct in that county.

Section 38. KRS 118.115 is amended to read as follows:

Except as provided in subsection (2)(b) of KRS 83A.045 governing vacancies in candidacy, candidates for unexpired terms to be filled at a regular election shall be nominated at the primary next preceding the regular election, if the vacancy occurred not less than *one hundred thirty-four (134)* [~~one hundred five (105)~~] days before the primary. If the vacancy occurred less than *one hundred thirty-four (134)* [~~one hundred five (105)~~] days before the primary, the nomination shall be made in a manner determined by the governing authority of the political party concerned. In the preparation of ballots, candidates for full terms shall be grouped together, and candidates for unexpired terms shall be grouped together, under appropriate headings, so that the voter may easily distinguish the candidates for full terms from the candidates for unexpired terms.

Section 39. KRS 118.125 is amended to read as follows:

(1) Except as provided in KRS 118.155, any person who is qualified under the provisions of KRS 116.055 to vote in any primary election for the candidates for nomination by the party at whose hands he seeks the nomination, shall have his name printed on the official ballot of his party for an office to which he is eligible in that primary, upon filing, with the proper officer at the proper time, a notification and declaration.

(2) The notification and declaration shall be in the *form prescribed by the State Board of Elections. It shall be signed by the candidate and by not less than two (2) registered voters of the same party from the district or jurisdiction from which the candidate seeks nomination. The notification and declaration shall include the following oath [form]:*

[Notification and Declaration

Of for nomination to the office of

To (county clerk or Secretary of State, as case may be).

Commonwealth of Kentucky.

..... County.]

For the purpose of having my name placed on the official primary election ballot as a candidate for nomination by the _____ Party, I, _____ (name in full as desired on the ballot), do solemnly swear that I reside at No. _____ street in the City of _____, State of Kentucky, and that I am a registered _____ (party) voter in _____ precinct, City of _____; that I believe in the principles of the _____ Party, and intend to support its principles and policies and vote for its nominees at the coming regular election; that I was affiliated with such party and supported its nominees at the last regular election, or was prevented from doing so by reason of _____ (state reason here); that if nominated as a candidate of such party at the ensuing election I will accept the nomination and not withdraw; that I will not knowingly violate any election law or any law relating to corrupt and fraudulent practice in campaigns or elections in this state, and if finally elected I will qualify for the office.

[I further solemnly swear that I am a bona fide candidate for nomination and am honestly seeking the office for which this notification and declaration is filed; that I expect to make a campaign for the nomination and am not running in the interest of any other candidate, group or faction or to promote any interest other than that of the public; that I am in no sense a pretended, fictitious or "dummy" candidate and am not filing as candidate for the purpose of influencing or controlling or attempting to influence or control a selection of challengers or inspectors or officers of election; that it is my honest purpose and intention to be and remain a candidate through the primary election; that I have not been persuaded, urged, solicited, influenced or induced to file this notification and declaration by any person in furtherance of the interests of any other candidate.

.....
(Signature of candidate)

Subscribed and sworn to before me by; this day of; 19....

.....
(Signature of officer)

.....
(Title of officer)

My commission expires]

The declaration shall be subscribed and sworn to by the person making it[,] before an officer authorized to administer an oath.

(3) [At the time of filing his notification and declaration, the candidate shall file therewith an affidavit of two (2) reputable electors who are members of the party to which the candidate belongs. The affidavit shall be in the following form:

Commonwealth of Kentucky:

..... County:

We, and; do solemnly swear that we are qualified electors and members of the Party, and were affiliated with that party and supported its nominees at the last regular election; that we are residents and legal voters of the City of; County of; State of Kentucky; that we are personally acquainted with; who files the hereto attached notification and declaration, and we know him to be a discreet citizen and a member of the Party, and that to the best of our knowledge and belief he has affiliated with and supported that party as defined in the primary election law; that he is a resident of the city, county and state set out in his notification and declaration; that we believe him to be qualified to fill the office of; and that he is a bona fide candidate and not running in the interest of any other candidate, group or faction or to promote any interest other than that of the public.

We do further solemnly swear that to the best of our knowledge and belief the said is in good faith a candidate for nomination for said office, and that he is not merely becoming a pretended, fictitious or "dummy" candidate for the purpose of influencing or controlling the selection of challengers, inspectors or officers of election for the benefit or in the interest of any other candidate or group of candidates.

.....
(Signatures of affiants)

Subscribed and sworn to before me by and; this day of; 19....

.....
(Signature of officer)

.....
(Title of officer)

My commission expires

(4) The notification and declaration and the accompanying affidavits may be on the same or separate sheets, but shall be filed together. When the notice and declaration has been [so] filed with the proper officer, and certified according to KRS 118.165, the officer shall have the candidate's name printed on the ballot according to the provisions of this chapter, except as provided in KRS 118.185.

(4) [(6)] Titles, ranks or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials and contractions of given names may be acceptable as the candidate's name.

Section 40. KRS 118.165 is amended to read as follows:

(1) Except as provided in KRS Chapters 83A and 116 to 121, candidates for offices to be voted for by the electors of one (1) county or of a district less than one county, except members of Congress and members of the General Assembly, shall file their nomination papers with the county clerk of the county not less than one hundred **nineteen (119)** [~~twenty (120)~~] days before the day fixed by law for holding the primary election. Candidates for offices to be voted for by the electors of more than one (1) county, and for members of Congress and members of the General Assembly, shall file their nomination papers with the Secretary of State not less than one hundred **nineteen (119)** [~~twenty (120)~~] days before the day fixed by law for holding the primary election. All nomination papers shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which **the** [~~such~~] papers are permitted to be filed.

(2) The Secretary of State or the county clerk shall examine the notification and declaration form of each candidate to determine whether it is regular on its face. [~~The proper officer shall notify the candidate by regular mail within twenty-four (24) hours of filing that his papers have been certified.~~] If there is an error, the **proper** officer shall notify the candidate by certified mail within twenty-four (24) hours of filing.

Section 41. KRS 118.212 is amended to read as follows:

(1) If, before the time of certification provided in KRS 118.215, any candidate whose notification and declaration or certificate or petition of nomination has been filed in the office of the Secretary of State dies or notifies the Secretary of State in writing, signed and properly notarized that he will not accept the nomination or election, the Secretary of State shall not certify his name.

(2) If, before the ballots are printed, any candidate whose notification and declaration or certificate or petition of nomination has been filed in the office of the county clerk dies or notifies the clerk, in the manner described in subsection (1) of this section, that he will not accept the nomination or election, the clerk shall not cause his name to be printed on the ballot.

(3) If, before the ballots are printed, any candidate whose notification and declaration or certificate or petition of nomination has been filed in the office of the Secretary of State dies or notifies the Secretary of State in the manner described in subsection (1) of this section, that he will not accept the nomination or election, the Secretary of State shall immediately notify the appropriate county clerk, and the clerk shall not cause his name to be printed on the ballot.

(4) If, after the ballots are printed, any candidate whose name appears thereon shall **officially withdraw** or die, **neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate** [~~the county clerk shall cause his name to be blocked out or obliterated from the ballot. The clerk shall not knowingly allow the name of a deceased person to appear on an election ballot.~~].

(5) **If, after the ballots are printed, any candidate whose name appears thereon shall officially withdraw or die, the county clerk shall provide a notice to the precinct election officers who shall see that the notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notice required by this subsection and the precinct officers fail to post the notice at the polling place, the precinct officers shall be guilty of a violation subject to a fine of not less than ten dollars (\$10) nor more than two hundred fifty dollars (\$250).**

Section 42. KRS 118.215 is amended to read as follows:

(1) After the order of the names has been determined as provided in KRS 118.225, the Secretary of State shall certify, to the county clerks of the respective counties entitled to participate in the nomination or election of the respective candidates, the name, place of residence and party of each candidate for each office, as specified in the nomination papers or certificates and petitions of nomination filed with him, and shall designate the device with which the candidate groups or lists of candidates of each party shall be printed, in the order in which they are to appear on the ballot, with precedence to be given to the party that polled the highest number of votes at the preceding election for presidential electors, followed by the political party which received the second highest number of votes with the order of any other political parties and independents to be determined by lot. Candidates for county offices and local state offices shall be listed in the following order: Commonwealth's attorney, circuit clerk, property valuation administrator, county judge/executive, county attorney, county clerk, sheriff, jailer, county commissioner, coroner, justice of the peace and constable. The names of candidates for President and Vice President shall be certified in lieu of certifying the names of the candidates for presidential electors. **The** [~~Such~~] names shall be certified as follows:

(a) Not less than **ninety-eight (98)** [~~eighty (80)~~] days before a primary;

(b) Not less than **seventy-seven (77)** [~~sixty-two (62)~~] days before a general election, **the [such]** certification to include only candidates to federal office; and

(c) Not less than **seventy-seven (77)** [~~fifty-seven (57)~~] days before a general election, **the [such]** certification to include all candidates except those to federal office.

(2) Except as otherwise provided in subsection (3) of this section, all independent candidates whose nominating petitions are filed with the county clerk shall be listed under the title and device designated by them as provided in KRS 118.315, or if none is designated, under the word "independent," and shall be placed on the ballot in a separate column or columns or in a separate line or lines according to the office which they seek. The order in which independent candidates shall appear on the ballot shall be determined by lot by the county clerk. If the same device is selected by two (2) groups of petitioners, it shall be given to the first selecting it and the county clerk shall permit the other group to select a suitable device. This section **shall [does]** not apply to candidates for municipal offices which come under subsection (3) of this section.

(3) The ballots used at any election in which city officers are to be elected as provided in subsection (2) of this section shall contain the names of candidates for **the [such]** city offices grouped according to the offices they seek, and **the [such]** candidates shall be immediately arranged with and designated by the title of office **they [such candidates]** seek. The order in which the names of the candidates for each office are to be printed on the ballot shall be determined by lot. Each group of candidates for each separate office for which **the [such]** candidates are to be elected shall be clearly separated from other groups on the ballot and spaced so as to avoid confusion on the part of the voter.

(4) The Secretary of State shall not knowingly certify to the county clerk of any county the name of any candidate who has not filed the required nomination papers, nor knowingly fail to certify the name of any candidate who has filed the required nomination papers.

(5) If the county clerk determines that the number of certified candidates cannot be placed on a ballot which can be accommodated by the voting machines currently in use by the county, he shall so notify the State Board of Elections not less than **eighty-eight (88)** [~~seventy (70)~~] days before the primary or **sixty-five (65)** [~~fifty (50)~~] days before the general election. The State Board of Elections shall meet within five (5) days of **the [such]** notice, review the ballot conditions and determine whether [~~or not~~] supplemental paper ballots are necessary for the election. Upon approval of the State Board of Elections, supplemental paper ballots may be used for nonpartisan candidates for an office or offices and public questions submitted for a yes or no vote, provided that all candidates for any particular office shall be placed either on the machine ballot or on the paper ballot.

(6) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

Section 43. KRS 118.225 is amended to read as follows:

(1) For the purpose of determining the order in which the names of candidates to be voted for by the electors of the entire state shall be certified and printed on the ballots with the designation of the respective offices, the Secretary of State shall prepare lists of the counties of each congressional district of the state. He shall [~~then~~] arrange the surnames of all candidates for each office in alphabetical order for the First Congressional District, and the names shall be certified in this order to the county clerks of all the counties comprising that district. For each succeeding congressional district, taken in numerical order, the name appearing first for each office in the last preceding district shall be placed last, and the name appearing second in the last preceding district shall be placed first, and each other name shall be moved up one (1) place. The lists shall be certified accordingly.

(2) For all other offices for which nomination papers and petitions are filed with the Secretary of State, the order of names of candidates for each office shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2:00 p.m., standard time, **one hundred sixteen (116)** [~~eighty-eight (88)~~] days before the primary or **eighty-eight (88)** [~~sixty-four (64)~~] days before the general election.

(3) For all offices for which nomination papers and petitions are filed in the office of the county clerk, the order in which the names of candidates for each office are to be printed on the ballot shall be determined by lot at a public drawing in the office of the county clerk at 2:00 p.m., standard time, **one hundred sixteen (116)** [~~eighty-eight (88)~~] days before the primary or **eighty-eight (88)** [~~sixty-four (64)~~] days before the general election.

(4) If the number of certified candidates cannot be placed on a ballot which can be accommodated on

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voting machines currently in use in the county, the county clerk shall notify the State Board of Elections, as provided in KRS 118.215.

Section 44. KRS 118.305 is amended to read as follows:

(1) Except as provided in KRS 118.345, and subject to the provisions of subsections (2) and (3) of this section, the county clerk of each county shall cause to be printed for the voting machines and on the *absentee* [special] ballots for the regular election the names of the following persons:

(a) Candidates of a political party, as defined in KRS 118.015, who have received certificates of nomination at the preceding primary election, or certificates of nomination under KRS 118.185, and whose certificates of nomination have been filed with the Secretary of State or the appropriate county clerk;

(b) Candidates of a political party, as defined in KRS 118.015, who have been nominated for an unexpired term in a manner determined by the governing authority of the party, as provided in KRS 118.115, and whose evidences of nomination have been filed with the Secretary of State or the appropriate county clerk within the time prescribed in this chapter;

(c) Candidates of a political party, as defined in KRS 118.015, who have been nominated by the governing authority of the party to fill a vacancy in the candidacy of a person nominated at the preceding primary election, as provided in KRS 118.105, and whose certificates of nomination have been filed with the Secretary of State or the appropriate county clerk, by at least the date provided by the election law generally for such filing;

(d) Candidates who have been nominated by a political organization as provided in KRS 118.325 and whose certificates or petitions of nomination have been filed with the Secretary of State or the appropriate county clerk within the time prescribed in this chapter;

(e) Independent candidates who have been nominated by petition as provided in KRS 118.315, and whose petitions of nomination have been filed with the Secretary of State or the appropriate county clerk within the time prescribed in this chapter;

(f) Successful nominees of all nonpartisan primaries which shall have been conducted;

(g) Candidates who have filed a petition of candidacy as shall be required to fill a vacancy which shall appear on the ballot;

(h) Where a vacancy in a candidacy occasioned by the death, removal or resignation of a candidate before the election and after the ballot labels have been prepared is filled by the chairman of the state, district or county political organization as provided by law, the chairman shall furnish to the county clerk a sufficient number of printed ballot labels bearing the name of the new candidate to replace those bearing the name of the candidate with respect to which the vacancy has occurred. If such ballot labels are furnished to the clerk before the machines are delivered to the election precincts, the clerk shall cause them to be inserted in the proper ballot frames. If they are furnished after the machines have been delivered to the election precincts, the county clerk shall cause the ballot labels to be delivered to the clerk of each precinct, with directions as to insertion in the proper ballot frames;

(i) Candidates for President and Vice President of the United States, of those political parties and organizations who have nominated presidential electors as provided in KRS 118.325, where the certificates of nomination of such electors has been filed with the Secretary of State within the time prescribed in this chapter; ~~and~~

(j) Candidates for soil and water district supervisors who have been nominated by petition as provided in KRS 262.210; *and*

(k) Candidates for city office for which no nonpartisan primary has been conducted in a city which requires nonpartisan city elections.

(2) Candidates for members of boards of education shall have their names printed on ballot labels and *absentee* [special] ballots for the regular election only after filing as provided in KRS 160.220.

(3) Except as provided in KRS 118.105 and 118.115, the name of no candidate shall be printed on the ballot labels and *absentee* [special] ballots for any regular election as the nominee of any political party as defined in KRS 118.015, or under the emblem of any political party, as so defined, except those candidates who have been duly and regularly nominated as nominees of that party at a primary election held as provided in this chapter.

(4) No county clerk shall knowingly cause to be printed, upon the ballot labels or *absentee* [special] ballots for any regular election, the name of any candidate of a political party, as defined in KRS 118.015, who has not been nominated in the manner provided in the primary election laws or the name of any candidate who is not in compliance with the restrictions concerning party registration and candidacy provided in subsection (1) of KRS 118.315.

(5) The names of candidates for President and Vice President shall be certified in lieu of certifying the names of the candidates for presidential electors.

(6) Whenever a vacancy occurs in an elective office which is required by law to be filled temporarily by appointment, the officer or body designated by law to make the appointment, or in the case of an office to be filled by appointment from a list of nominations, the officer or body designated by law to make the nominations, shall immediately notify in writing both the county clerk and Secretary of State of the vacancy.

Section 45. KRS 118.315 is amended to read as follows:

(1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him, complying with the provision of subsection (2) of this section. No person who is a registered member of a political party shall be eligible to election as an independent candidate. This restriction shall not apply to candidates to those offices specified in KRS 118.105(4), for supervisor of a soil and water conservation district, for candidates for mayor or legislative body in cities of the second to sixth class or to candidates participating in nonpartisan elections.

(2) *The form of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters of the same political party affiliation from the district or jurisdiction from which the candidate seeks nomination.* A petition of nomination for a state officer, or any officer for whom all the electors of the state are entitled to vote, shall contain five thousand (5,000) petitioners; for a representative in congress from any congressional district, or for any officer from any other district except as herein provided, four hundred (400) petitioners; for a county officer, member of the general assembly or commonwealth's attorney, one hundred (100) petitioners; for a soil and water conservation district supervisor, twenty-five (25) petitioners; for a city officer, two (2) petitioners; and for an officer of a division less than a county except as herein provided, twenty (20) petitioners. The signatures of the petition need not be appended to one (1) paper. Each petitioner shall include his residence, Social Security number and post-office address. *Failure of a voter to include his Social Security number and address shall result in his signature not being counted.* If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he shall be counted as a petitioner for the candidate whose petition is filed first, except a petitioner for the nomination of candidates for soil and water conservation district supervisors may be counted for every petition to which his signature is affixed. *[The petition shall state the name and residence of each of the candidates, the name of the office for which he is running, the district, if applicable, from which he is running, that he is legally qualified to hold the office, and that the subscribers are legally qualified, to vote for the candidate. Except for municipal, school board and supervisor of soil and water conservation district races, petition may designate a brief name or title of the party or principle that the candidate represents, together with any simple figure or device by which it is desired that he be designated on the voting machines.]*

(3) Titles, ranks or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials and contractions of given names may be accepted as the candidate's name.

(4) The Secretary of State and county clerks shall examine the petitions of all candidates who file with them to determine whether each petition is regular on its face. If there is an error, the Secretary of State or the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

[(5) The state board of elections shall prescribe the forms for the petition.]

Section 46. KRS 118.325 is amended to read as follows:

(1) Any political organization not constituting a political party within the meaning of KRS 118.015 but which cast two percent (2%) of the vote of the state at the last preceding election for presidential electors may nominate, by a convention or primary election held by the party in accordance with its constitution and bylaws, candidates for any offices to be voted for at any regular election, except the office of member of a board of education, for which nominations shall be made as provided in KRS 160.220. Any political party, as defined in KRS 118.015, and any political organization not constituting such a political party but which cast two percent (2%) of the vote of the state at the last preceding election for presidential electors, may nominate, by a convention or primary election held by the party or organization in accordance with its constitution and bylaws, as many electors of President and Vice President of the United States as this state is entitled to elect.

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(2) The certificate of nomination by such a convention or primary election shall be in writing, shall contain the name of each person nominated, his residence and the office to which he is nominated, and shall designate a title for the party or principle that such convention or primary election represents, together with any simple figure or device by which its list of candidates may be designated on the voting machines. The certificate shall be signed by the presiding officer and secretary of the convention, or by the chairman and secretary of the county, city or district committee, who shall add to their signatures their respective places of residence, and acknowledge the same before an officer duly authorized to administer oaths. A certificate of the acknowledgment shall be appended to the certificate of nomination. In the case of electors of President and Vice President of the United States the certificate of nomination shall state the names of the candidates of the party for President and Vice President.

(3) Any person desiring to become a candidate for an office, the nomination to which is to be made by a convention pursuant to subsections (1) and (2) of this section, except for the office of elector of President and Vice President of the United States, shall file a statement with the official designated in KRS 118.165 with whom notification and declaration forms are filed for the office. The *form of the* statement shall be prescribed by the State Board of Elections [to be subscribed and sworn to by the person making it, before an officer authorized to administer an oath, such form to include the name, place of residence, and the party and office for which he desires to become a candidate. Such statement shall be subscribed and sworn to by the person making it before an officer authorized to administer an oath]. Such statement shall be filed as prescribed by KRS 118.365.

(4) If the certificate of nomination of any state convention requests that the figure or device selected by such convention be used to designate the candidates of such party on the voting machines for all elections throughout the state, that figure or device shall be used until changed by request of a subsequent state convention of the same party. The device may be any appropriate symbol other than the coat of arms or seal of this state or of the United States, the national flag, or any other emblem common to the people at large.

(5) In case of death, resignation or removal of any such candidate subsequent to nomination and before the ballot labels are printed, the chairman of the state, county or city district committee shall fill the vacancy, unless a supplemental certificate or petition of nomination is filed. In the case of electors of President and Vice President of the United States, a vacancy may be filled by the chairman of the state committee at any time before the meeting of the electors, whether the vacancy occurs before or after the election.

(6) If any political party entitled to nominate by convention fails to do so, the names of all nominees by petition for any office who are designated in their petition as members and candidates of that party shall be printed under the device and title on the voting machines as if nominated by a convention. If two (2) or more persons who have filed certificates of nomination under this section claim to be the nominee of the same political party, the governing authority of that party shall designate to the secretary of state and county clerk, in writing, which of the candidates is entitled to the party emblem. If there are two (2) or more contending executive committees of the same party in the county or district, the county or district executive committee that is recognized by the state governing authority of the party, by the written certificate of its chairman, shall be recognized by the Secretary of State and county clerk.

Section 47. KRS 118.365 is amended to read as follows:

(1) Certificates of nomination issued by the State Board of Elections shall be filed by that board with the Secretary of State immediately. *The* [Such] certificates issued by the county board of elections shall be filed by that board with the county clerk immediately.

(2) Petitions of nomination for candidates for city offices, for candidates for members of boards of education, and for candidates for supervisors of soil and water conservation districts shall be filed with the county clerk not less than *ninety-one (91)* [sixty-eight (68)] days before the day fixed by law for the holding of regular elections.

(3) [Statements of] Candidates for an office, the nomination to which is to be made by a convention pursuant to KRS 118.325(1) and (2), except for the office of electors of President and Vice President of the United States, shall file *the* [such] statements [as are] required by KRS 118.325(3), with the official designated in KRS 118.165 with whom notification and declaration are filed for the office, not less than the date provided by the election laws generally for filing notification and declaration forms.

(4) Certificates of nomination made by the governing authority of a political party within the meaning of KRS 118.015 or a political organization not constituting a political party within the meaning of KRS 118.015 but which cast two percent (2%) of the vote of the state at the last preceding election for presidential electors to fill vacancies in office, as provided in KRS 118.115 and 118.325, shall be filed as required with the Secretary of State or county clerk not less than *ninety-one (91)* [sixty-eight (68)] days before the day fixed by law for the election of the person in nomination.

(5) Petitions of independent candidates to fill a vacancy which has occurred less than the number of days prior to a primary as provided in KRS 118.375 and prior to **one hundred six (106) days** [~~three (3) months~~] before the general election[,] shall be filed [~~by such petitions~~] not later than **ninety-one (91)** [~~sixty-eight (68)~~] days prior to the general election.

(6) Except as otherwise provided in this section, petitions of nomination shall be filed as required with the Secretary of State or county clerk not less than one hundred **nineteen (119)** [~~twenty (20)~~] days before the day fixed by law for the holding of primary elections. Certificates of nomination shall be filed with the Secretary of State or county clerk, as required by law, not less than **ninety-one (91)** [~~sixty-eight (68)~~] days before the day fixed by law for the holding of general elections.

(7) Petitions and certificates of nomination for electors of President and Vice President of the United States shall be filed with the Secretary of State not less than sixty-eight (68) days prior to the date fixed by law for the election of such electors.

(8) Petitions of nomination, petitions for candidacy, statements, and certificates of nomination shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which such papers are permitted to be filed.

Section 48. KRS 118.375 is amended to read as follows:

If [~~Where~~] a vacancy occurs in any elective office less than one hundred **thirty-four (134)** [~~five (105)~~] days before the primary or at any time after the primary, but not less than **one hundred six (106) days** [~~three (3) months~~] before the general election, independent candidates may file their petitions at the time and place provided for in KRS 118.365,[,] subject[, ~~however,~~] to the restrictions concerning party registration and candidacy provided in KRS 118.315(1).

Section 49. KRS 118.405 is amended to read as follows:

No candidate's name shall appear on any voting machine or **absentee** [~~special~~] ballot more than once, except that a candidate's name may appear twice if he is a candidate for a primary or a regular election and also a candidate to fill a vacancy in the same office required to be filled at a special election, when the special election to fill a vacancy is scheduled for the regular election day.

SECTION 50. A NEW SECTION OF KRS CHAPTER 118 IS CREATED TO READ AS FOLLOWS:

A successful candidate in a special election held for the purpose of filling a vacancy in any elective office shall take office immediately upon certification of the election results by the State Board of Elections and administration of the oath of office.

Section 51. KRS 117.305 is amended to read as follows:

The canvass and returns provided for in KRS 117.275 shall constitute the official returns of the precinct, unless within ninety-six (96) hours after the close of the polls **in a primary or regular election, or within twenty-four (24) hours after the close of the polls in a special election held for the purpose of filling a vacancy**, the county clerk or county board of elections takes notice of a discrepancy in the tally of votes cast in any precinct or number of precincts, or a candidate makes a written request to the county board of elections to check and recanvass the voting machines and absentee ballots of any precinct or any number of precincts involving his race. After this time period has elapsed and notice is taken, the election board shall immediately assemble and recheck and recanvass each machine and make a proper return thereof to the county clerk, in which event the canvass and return shall become the official returns for the election. In making the recanvass the board shall make a record of the number of the seal upon the voting machine and without unlocking the machine against voting, recanvass the vote cast thereon. If, upon a recanvass, it is found that the original canvass of the returns has been correctly made from the machine, and that there still remains a discrepancy unaccounted for this discrepancy shall be noted. The registering counter of each candidate who requested a recanvass and the counter of the candidate's opponent shall be reset at zero before it is tested, after which it shall be operated at least one hundred (100) times. If, upon recanvass, it appears that the original canvass of the returns by the election officers was incorrect, the returns and all papers being prepared by the board shall be corrected accordingly, except that there shall be no change in the vote of any candidate from that originally certified unless such candidate was actually notified. The county board of elections shall, immediately upon receipt of a request for a recanvass, notify each candidate for the office of the time and place of the recanvass. At the recanvass, each political party represented on the board may appoint a representative there to be its governing body, and also each candidate to be voted for may be present either in person or by a representative or both. The county board of elections shall authorize representatives of the news media to observe the recanvass of the votes cast on the voting machine in each precinct. Nothing in this section

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shall prohibit an individual from requesting, in addition to a recanvass, a recount as authorized by KRS Chapter 120.

Section 52. KRS 118.581 is amended to read as follows:

The State Board of Elections shall convene in Frankfort sixty (60) days prior to a presidential preference primary. At the meeting required by this section, the board shall nominate as presidential preference primary candidates all those ~~generally advocated and nationally recognized as~~ candidates of the political parties for the office of President of the United States *who have qualified for matching federal campaign funds*. Immediately upon completion of this requirement, the board shall transmit a list of all *the* ~~such~~ nominees selected to the Secretary of State and shall also release the list to the news media.

Section 53. KRS 118.591 is amended to read as follows:

(1) Any person seeking the endorsement by a political party for the office of President of the United States ~~who has not been nominated by the State Board of Elections~~, or any group organized in this state on behalf of, and with the consent of, *the* ~~such~~ person, may file with the Secretary of State certified petitions signed by five thousand (5,000) persons who, at the time they sign, are registered and qualified voters in the Commonwealth and are affiliated, by ~~such~~ registration, with the same political party as the candidate for whom petitions are filed.

(2) *The* ~~Such~~ petitions shall be filed by the petitioners with the Secretary of State no later than sixty (60) days prior to a presidential preference primary.

(3) The petitions *shall* ~~must~~ state:

- (a) The name of the candidate for nomination and the party of which he is a member; and
- (b) The name and address of the chairman of the group circulating such petition.

(4) The Secretary of State shall ~~forthwith~~ determine the sufficiency of petitions filed with him and shall immediately communicate his determination to the chairman of the group which has filed *the* ~~said~~ petitions.

Section 54. KRS 118.601 is amended to read as follows:

(1) The Secretary of State shall ~~forthwith~~ contact each person who has been nominated by ~~the State Board of Elections or by~~ petition and notify him in writing by certified mail, with return receipt requested, that his name will appear as a candidate on the Kentucky presidential primary ballot of his party; ~~provided that he:~~

(a) Deposits with the Secretary of State the sum required by KRS 118.611; and

(b) Forwards to the Secretary of State a notice of candidacy form, to be supplied by the Secretary of State, along with the written notification required by this section.

(2) Failure of a candidate to deposit the fee required by KRS 118.611 and to execute the notice of candidacy within fifteen (15) days after receipt of the written notification shall be a disclaimer and a withdrawal of his name from the primary].

(2)[(3)] The order in which the names of candidates for a presidential preference primary are to be printed on the ballot shall be determined by lot at a public drawing in the office of the Secretary of State at 2:00 p.m., standard time, forty-two (42) days before the presidential preference primary.

(3)[(4)] Not less than forty-one (41) days before the presidential preference primary is to be held, and after the order of the names has been determined as provided by subsection (3) of this section, the Secretary of State shall certify to each county clerk the name, place of residence and party of each candidate, as specified in the notice of candidacy forms or petitions filed with him and shall designate the device with which the candidates of each party shall be printed, in the order in which they are to appear on the ballot, with precedence to be given to the party that polled the highest number of votes at the preceding election for presidential elections, followed by the political party which received the second highest number of votes.

Section 55. KRS 118.611 is amended to read as follows:

[(1)] Before any candidate's name is placed upon the official ballot by the Secretary of State for a

presidential preference primary in the Commonwealth, the candidate *shall remit to* [must deposit with] the Secretary of State *a filing fee* [the sum] of one thousand dollars (\$1,000), which shall be *non-refundable* [refunded to the candidate by the Secretary of State if the candidate receives three percent (3%) or more of the total vote cast in the presidential preference primary of his political party].

(2) If the candidate fails to receive three percent (3%) or more of the total popular vote cast in the presidential preference primary of his party, the one thousand dollars (\$1,000) deposit shall escheat to the Commonwealth and be placed in a special trust and agency fund to be used by the Secretary of State to defray election expenses].

Section 56. KRS 118.621 is amended to read as follows:

[(1)] The Secretary of State shall place the names of all candidates who have been nominated by [the State Board of Elections or by] petition [and who satisfy the requirements of KRS 118.601 and 118.611] on the official presidential preference primary ballot of their respective political parties. The Secretary of State shall additionally place on the ballot of each political party a ballot slot for voters to cast an "uncommitted" vote. This vote shall be entitled to the same proportionate representation as a candidate under KRS 118.641, but delegates representing these voters shall not be bound by the first ballot requirement of KRS 118.631.

[(2) If no presidential candidates nominated by the board or by petition meet the requirements of KRS 118.601 and 118.611, then no presidential preference primary shall be held in the Commonwealth.]

Section 57. KRS 118.740 is amended to read as follows:

A copy of a proclamation issued under KRS 118.710 or 118.720, or a writ of election issued under KRS 118.730 shall be forwarded by mail to the sheriff of each county in the district in which the election is to be held, at least *thirty-five (35)* [twenty (20)] days before the election. [A writ of election issued under KRS 118.730 shall be forwarded by mail to the sheriff of each county in which the election is to be held, in sufficient time to enable] The sheriff of each county in which an election is to be held shall [to] give notice [of the election] at least *thirty (30)* [fifteen (15)] days before the day of election[, and no such writ shall be issued unless it will enable the sheriff to give such notice]. If, from any cause, the sheriff cannot properly act, he shall immediately hand the writ or proclamation to the person authorized to act in his place.

Section 58. KRS 118.770 is amended to read as follows:

When a writ of election or proclamation is issued to fill a vacancy as prescribed in KRS 118.710, 118.720 or 118.730, [in the office of member of the general assembly or the office of member of congress,] independent petitions and certificates of nomination may be filed *twenty-eight (28)* [ten (10)] days before the day of election, and if filed with the Secretary of State shall be immediately certified by him to the proper county clerks.

Section 59. KRS 118.995 is amended to read as follows:

(1) Any person who violates any of the provisions of KRS 118.136 shall be *guilty of a Class A misdemeanor* [fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or confined in the county jail for not less than thirty (30) days nor more than ninety (90) days, or both].

(2) If the Secretary of State violates any of the provisions of subsection (4) of KRS 118.215, he shall be *guilty of a Class D felony* [confined in the penitentiary for not less than one (1) year nor more than three (3) years].

(3) Any person who violates subsection (5) of KRS 118.176 shall be *guilty of a Class A misdemeanor* [fined not less than twenty dollars (\$20) nor more than five hundred dollars (\$500) or imprisoned in the county jail for not less than one (1) month nor more than six (6) months, or both, and may also be proceeded against for contempt].

(4) If any county clerk violates any of the provisions of subsection (4) of KRS 118.305 he shall be *guilty of a Class D felony* [confined in the penitentiary for not less than one (1) year nor more than three (3) years].

Section 60. KRS 118A.060 is amended to read as follows:

(1) Except as provided in KRS 118A.100 and 118A.110, no person's name shall appear on a ballot label or special ballot for an office of the Court of Justice without first having been nominated as provided in this section.

(2) Each candidate for nomination shall file a petition for nomination with the Secretary of State not

less than one hundred **nineteen (119)** [~~twenty (120)~~] days before the day fixed by law for holding the primary election. **The petition shall be signed by the candidate and by not less than two (2) registered voters from the district or circuit from which he seeks nomination.** The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which such papers are permitted to be filed.

(3) The petition for nomination shall [~~state the name and residence of the candidate and shall describe, by district or circuit, and by numbered division thereof if divisions exist, the office for which he seeks nomination. It shall be signed by him and by not less than two (2) registered voters from the district or circuit from which he seeks nomination. The petition shall~~] be in the form prescribed by the State Board of Elections. Titles, ranks or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials and contractions of given names may be acceptable as the candidate's name.

(4) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing. The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2:00 p.m., standard time, **one hundred sixteen (116)** [~~eighty-eight (88)~~] days before the primary election.

(5) Not less than **ninety-eight (98)** [~~eighty (80)~~] days before the primary election, and after the order of names on the ballot has been determined as required in subsection (4) of this section, the Secretary of State shall:

(a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as specified in the petitions for nomination filed with him; and

(b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.

(6) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

(7) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the special ballots for the primary the names of the candidates for offices in the Court of Justice.

(8) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot." The words "Vote for one," or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labelled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.

(9) The two (2) candidates receiving the highest number of votes for nomination for justice or judge of a district or circuit, or numbered division thereof if divisions exist, shall be nominated. Certificates of nomination shall be issued as provided in KRS 118A.190.

(10) If it appears after expiration of the time for filing petitions for nomination that there are not more than two (2) candidates who have filed the necessary petitions for a place on the ballot in the regular election, **no drawing for ballot position shall be held and** the Secretary of State shall immediately issue and file in his office certificates of nomination, and send copies to the candidates.

Section 61. KRS 118A.090 is amended to read as follows:

(1) For the regular election, the order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2:00 p.m., standard time, **eighty-eight (88)** [~~sixty-four (64)~~] days before the regular election.

(2) Not less than **seventy-seven (77)** [~~fifty-seven (57)~~] days before the regular election, and after the order of names on the ballot has been determined as required in subsection (1) **of this section**, the Secretary of State shall:

(a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as certified under KRS 118A.060; and

(b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.

(3) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk. The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the special ballots for the regular elections the names of the candidates for offices of the Court of Justice.

(4) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in such a manner that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for one" or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.

(5) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division thereof if divisions exist, shall be elected.

Section 62. KRS 118A.100 is amended to read as follows:

(1) Candidates for an unexpired term of a judicial office to be filled at a regular election shall be nominated at the primary next preceding the regular election in the manner prescribed in KRS 118A.060 if the vacancy occurs not less than one hundred ~~thirty-four (134)~~ **thirty-four (134)** [five (105)] days before the primary. If the vacancy occurs on or after the one hundred ~~thirty-fourth~~ **thirty-fourth** [fifth] day before the primary, the election to fill the unexpired term shall be held in accordance with the procedures described in this section and Section 152 of the Constitution of Kentucky.

(2) If in a regular election for judicial office no candidates nominated as provided in KRS 118A.060 are available due to death, incapacity or withdrawal, and ~~the~~ **the** [such] candidates have not been replaced as provided in KRS 118A.060, the election to fill the regular term shall be conducted in the manner prescribed in subsections (3) through ~~(11)~~ **(11)** [(14)] of this section.

(3) Each candidate shall file a petition for candidacy with the Secretary of State at least ~~ninety-one (91)~~ **ninety-one (91)** [sixty-eight (68)] days before the day fixed by law for holding the regular election. ~~The~~ [Such] petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which ~~the~~ [such] papers are permitted to be filed.

(4) [The petition for candidacy shall state the name and residence of the candidate and shall describe by district or circuit, and numbered division thereof if divisions exist, the judicial office for which he seeks election. It shall be signed by him and not less than two (2) registered voters from the district or circuit from which he seeks candidacy.] The petition **for candidacy** shall be in the form prescribed by the State Board of Elections. Titles, ranks or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials and contractions of given names may be acceptable as the candidate's name.

(5) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing.

(6) The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2:00 p.m., standard time, ~~eighty-eight (88)~~ **eighty-eight (88)** [sixty-four (64)] days before the regular election.

(7) Not less than ~~seventy-seven (77)~~ **seventy-seven (77)** [fifty-seven (57)] days before the regular election, and after the order of names on the ballot has been determined as required in subsection (6) of this section, the Secretary of State shall:

(a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as specified in the petitions for candidacy filed with him; and

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(b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.

(8) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

(9) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the *absentee* [special] ballots for the regular election the names of the candidates for offices of the Court of Justice.

(10) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in such a manner that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for one" or "Vote for one in each division," shall be printed on the appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labelled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.

(11) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division thereof if divisions exist, shall be elected.

Section 63. KRS 118A.150 is amended to read as follows:

(1) In certification of candidates for judicial office, no reference shall be made to political affiliation.

(2) The Secretary of State shall not knowingly certify to the county clerk of any county the name of any candidate who has not filed the required nomination or candidacy papers, nor knowingly fail to certify the name of any candidate who has filed the required nomination or candidacy papers.

(3) No county clerk shall knowingly cause to be printed on the ballot labels or *absentee* [special] ballots for any election, the name of a candidate for an office of the Court of Justice who has not been certified in the manner specified in this chapter.

(4) If, before the time of certification provided for in this chapter, any candidate whose petition or certificate of nomination or petition for candidacy has been filed, dies or notifies the Secretary of State in writing, signed and properly notarized, that he will not accept the nomination or election, the Secretary of State shall not certify his name.

(5) If, before the ballots are printed, any candidate whose petition or certificate of nomination or petition for candidacy has been filed, dies or notifies the Secretary of State in the manner described in subsection (4) of this section, that he will not accept the nomination or election, the Secretary of State shall immediately notify the appropriate county clerk, and the clerk shall not cause his name to be printed on the ballot.

(6) If after the ballots are printed, any candidate whose name appears thereon shall *withdraw or die, neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate* [the county clerk shall cause his name to be blocked out or obliterated from the ballot. The clerk shall not knowingly allow the name of a deceased person to appear on an election ballot].

(7) *If, after the ballots are printed, any candidate whose name appears thereon shall withdraw pursuant to KRS 118.212 or die, the county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation, subject to a fine of not less than ten dollars (\$10) nor more than two hundred fifty dollars (\$250).*

Section 64. KRS 119.015 is amended to read as follows:

Any county clerk or deputy county clerk who falsely or fraudulently registers the name of any person or permits any person to register knowing that *the* [such] person is not entitled to register, or who fails or refuses to deliver copies of the registration records to a person entitled thereto, [or to the proper election officers for use in elections,] shall be *guilty of a Class D felony* [imprisoned in the penitentiary for not less than one (1) year nor more than three (3) years].

Section 65. KRS 119.025 is amended to read as follows:

(1) In the case of registration outside of cities of the first class,] Any person who knowingly or fraudulently causes himself to be registered in more than one (1) precinct, **or to be registered more than once**, or in a precinct other than the one in which he is a legal voter, or who registers under any name other than his real name, or who gives a false address, or who in any manner causes himself to be registered when he is not legally entitled to register, [or who knowingly or fraudulently aids, abets, counsels or advises in the commission of any such act, shall be imprisoned in the penitentiary for not less than one (1) year nor more than three (3) years.

(2) In the case of registration in cities of the first class, any person who knowingly causes himself to be registered in more than one (1) precinct, or to be registered more than once, or to be registered when he is not entitled to register,] or who makes a false oath as to his ability to read or write, or who **knowingly or fraudulently aids**, [or] abets, **counsels or advises** in the commission of any such act, shall be **subject to the penalties prescribed for Class D felonies** [fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), or imprisoned in the penitentiary for not less than one (1) year nor more than five (5) years, or both].

Section 66. KRS 119.035 is amended to read as follows:

Any person who fraudulently or unlawfully alters any registration record, or fraudulently adds any name thereto, or willfully secretes, suppresses, mutilates or destroys any registration record, or makes or uses any false or fraudulent registration record, [shall, when such act occurs in connection with registration outside of a city of the first class, be imprisoned in the penitentiary for not less than one (1) year nor more than three (3) years. When such act occurs in connection with registration in a city of the first class, such person,] and any person who aids or abets in the commission of such act, shall be **subject to the penalties prescribed for Class D felonies** [fined not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000), or imprisoned in the penitentiary for not less than one (1) year nor more than five (5) years, or both].

Section 67. KRS 119.045 is amended to read as follows:

Any person who attempts to or forcibly prevents any person from registering, or in any way unlawfully interferes with any person registering, or prevents or interferes with a clerk or registration officer in carrying out his duties with relation to the registration of voters, shall be **guilty of a Class A misdemeanor** [fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned in the county jail for not less than six (6) months nor more than twelve (12) months, or both].

Section 68. KRS 119.056 is amended to read as follows:

Any person in possession of nomination papers entitled to be filed under the statutes relating to primary elections who wrongfully alters, mutilates or suppresses such papers, or wrongfully fails to cause them to be filed at the proper time in the proper office, shall be **guilty of a Class A misdemeanor** [fined not more than five hundred dollars (\$500), or imprisoned in the county jail for not more than six (6) months, or both].

Section 69. KRS 119.065 is amended to read as follows:

Any person who forges the name of a signer to a nomination paper shall be **guilty of a Class C felony** [imprisoned in the penitentiary for not less than two (2) years nor more than ten (10) years].

Section 70. KRS 119.076 is amended to read as follows:

Any county clerk who willfully and knowingly refuses or fails to have the name of any candidate printed upon the official ballot in the manner provided by law shall be **guilty of a Class D felony** [imprisoned in the penitentiary for not less than one (1) year nor more than three (3) years].

Section 71. KRS 119.095 is amended to read as follows:

Any printer of ballots, or person employed in printing ballots, who prints or permits to be printed any ballot in any other form than the one prescribed by law, or with any name or device placed, spelled or arranged thereon other than as authorized and directed by the county clerk, or who gives or delivers, or knowingly permits to be taken, any ballot by any person other than the county clerk for whom the ballots are being printed, shall be **guilty of a Class C felony** [imprisoned in the penitentiary for not less than three (3) years nor more than ten (10) years].

Section 72. KRS 119.115 is amended to read as follows:

(1) Any unauthorized person found in possession of any key to a voting machine to be used or being

used in any primary, general or special election shall be **guilty of a Class A misdemeanor** [fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500) and imprisoned in the county jail for not more than six (6) months].

(2) Any person who, during or before any primary, general or special election willfully tampers with or attempts to tamper with, disarrange, deface or impair in any manner whatsoever, injures or destroys any ballot label, or destroys any such voting machine while in use at an election or at any other time, or who shall, after such machine is locked and sealed in order to preserve the record of the vote, tamper with or attempt to tamper with the record of the vote, or who aids or abets with intent to destroy or change the record of the vote shall be punished by a fine of not more than ten thousand dollars (\$10,000) and imprisoned in the penitentiary for not less than one (1) year nor more than five (5) years.

(3) Any election official, or other person entrusted with the custody or control of any voting machine who, with intent to cause or permit any voting machine to fail to correctly register votes cast thereon, tampers with or disarranges such machine in any way, unlawfully opens such voting machine, prevents or attempts to prevent the correct operation of such voting machine or causes such voting machine to be used or consents to its being used for any election with knowledge of the fact that the machine is not in order, or not perfectly set and adjusted to correctly register all votes cast thereon, or removes, changes or mutilates any ballot label on a voting machine shall be punished by a fine of not more than ten thousand dollars (\$10,000) and imprisoned in the penitentiary for not less than one (1) year nor more than five (5) years.

Section 73. KRS 119.155 is amended to read as follows:

(1) Any person who unlawfully prevents or attempts to prevent any voter from casting his ballot, or intimidates or attempts to intimidate any voter so as to prevent him from casting his ballot, or who unlawfully interferes with the election officers in the discharge of their duties, shall be **guilty of a Class D felony** [confined in the penitentiary for not less than one (1) year nor more than five (5) years, for each offense].

(2) Any person who, by himself or in aid of others, forcibly breaks up or prevents, or attempts to break up or prevent, or obstructs or attempts to obstruct, the lawful holding of an election, shall be **guilty of a Class A misdemeanor** [fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500), or imprisoned in the county jail for not more than one (1) year].

Section 74. KRS 119.165 is amended to read as follows:

(1) Any person who falsely personates a registered voter, and receives and casts a ballot by means of such personation, shall be **guilty of a Class D felony** [imprisoned in the penitentiary for not less than one (1) year nor more than two (2) years, and shall forfeit his right to vote forever after]. An attempt at such personation shall **constitute a Class B misdemeanor** [be punished by a fine of not more than two hundred dollars (\$200), and imprisonment in the county jail for not more than six (6) months].

(2) Any person who, by means other than falsely personating a registered voter, votes at an election in this state when he is a resident of another state or country, or votes more than once at an election, or knowingly votes or offers to vote in a precinct other than the one in which he resides, or votes by use of the naturalization papers of another person, shall be **guilty of a Class D felony** [imprisoned in the penitentiary for not less than one (1) year nor more than five (5) years]. Any person who lends or hires his or another's naturalization papers to be used for the purpose of voting shall be subject to the same penalty.

(3) Any resident of this state who, by means other than falsely personating a registered voter, votes at a regular or special election before he has resided in this state thirty (30) days, or in the county and precinct where the election is held the time required by law, or before he has attained full age, or before he has become a citizen, shall be **guilty of a Class B misdemeanor** [fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100), or imprisoned in the county jail for not less than ten (10) days nor more than ninety (90) days, or both].

(4) Any person who, by means other than falsely personating a registered voter, votes in a primary election knowing that he is not qualified as provided in KRS 116.055, shall be fined one hundred dollars (\$100) for each offense.

(5) Any person who applies for or receives a ballot at any voting place other than the one at which he is entitled to vote, under circumstances not constituting a violation of any of the provisions of subsections (1) to (4) of this section, shall be **guilty of a Class A misdemeanor** [fined not less than twenty dollars (\$20.00) nor more than five hundred dollars (\$500), or imprisoned in the county jail for not less than ten (10) days nor more than six (6) months, or both].

Section 75. KRS 119.195 is amended to read as follows:

(1) Any person who, during an election, knowingly and willfully removes or attempts to remove an official ballot from the election room, or has in his possession outside the election room any official ballot, either genuine or counterfeit, shall be **guilty of a Class D felony** [~~imprisoned in the penitentiary for not less than two (2) years nor more than five (5) years~~].

(2) Any voter who attempts to leave the election room with an official ballot in his possession shall at once be arrested on demand of either of the judges of election and shall be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100).

(3) Any person who takes or removes in any manner, feloniously or with the consent or permission of the custodian, any official ballot from any place where it may lawfully be, or knowingly and willfully has in his possession or custody any such official ballot except as an officer or custodian under the law or while within the polling place for the purpose of voting, and any custodian or officer who permits any official ballot to be removed or carried away from the place where it may lawfully be by any person other than the officer or custodian whose duty it is to receive it, shall be **guilty of a Class C felony** [~~imprisoned in the penitentiary, for not less than three (3) years nor more than ten (10) years~~].

(4) Any election officer, or other person entrusted with the custody or control of any official ballot, either before or after it has been voted, who in any way marks, mutilates or defaces any official ballot or places any distinguishing mark thereon, for the purpose of vitiating the official ballot, shall be fined not more than two thousand dollars (\$2,000) and imprisoned in the penitentiary for not less than five (5) years nor more than ten (10) years.

(5) Any person who unlawfully destroys or attempts to destroy any official ballot box used, or any official ballot deposited, at any election, or who unlawfully, by force, fraud or other improper means, obtains or attempts to obtain possession of any ballot box or any official ballot therein deposited, while the voting at any election is going on or before the official ballots are duly taken out and counted according to law, shall be confined in the penitentiary for not less than one (1) year nor more than five (5) years, and fined not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000).

(6) Any election officer who mutilates or tampers with any of the seals, or destroys or removes any official ballots required to be preserved, shall be **guilty of a Class D felony** [~~confined in the penitentiary for not less than one (1) year nor more than three (3) years~~].

(7) Any county clerk who knowingly and willfully opens any ballot box and removes any official ballot therefrom, or removes, destroys or tampers with a ballot box and official ballots left in his care and custody, or permits any other person to do so, during the period the boxes are required to remain locked in his office, shall be **guilty of a Class D felony** [~~confined in the penitentiary for not less than one (1) year nor more than three (3) years~~].

(8) Any person who removes, mutilates or destroys, or adds any new official ballots to, the regular official ballots that have been counted and prepared for preservation, or that have already been preserved, so that the result of the election in the precinct or county is changed, shall be **guilty of a Class D felony** [~~confined in the penitentiary for not less than one (1) year nor more than three (3) years~~].

(9) Any person who tampers with or changes the official ballots, or opens the receptacles in which the official ballots are contained without the order of the court, after the ballots have been sent to the Franklin County courthouse in connection with the contest of a constitutional amendment, shall be **guilty of a Class A misdemeanor** [~~fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000); and imprisoned in the county jail for not less than six (6) months nor more than one (1) year~~].

Section 76. KRS 119.205 is amended to read as follows:

(1) Any person who receives a bribe for his vote at an election, or for his services or influence in procuring a vote at an election, shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000) or be confined in the penitentiary for not less than one (1) nor more than five (5) years, or both, and shall be excluded from office and suffrage upon conviction.

(2) Any person who bribes, conspires to bribe another or assists to bribe another shall be fined not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000), or be confined in the penitentiary for not less than one (1) year nor more than five (5) years, or both, and upon conviction shall be excluded from office and suffrage.

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(3) "Bribe," as used in this section, means any reward, benefit or advantage, present or future, to the person influenced or intended to be influenced, or to another at his instance, or the promise of such reward, benefit or advantage; it includes money or other thing of value given or lent to be wagered on the result of an election, or the promise thereof, or a bet with another that such other will vote for a named candidate, and the gift or promise of a share in any such bet made or to be made.

(4) Any person who receives money or other thing of value to be used for the purpose of procuring or influencing a vote shall be deemed to have been bribed.

(5) (a) Any candidate or person working on behalf of any candidate who knowingly makes payment to another or any person who receives payment from such candidate, or person for services rendered or goods furnished, including advertising, in excess of that normally charged for such services or goods, shall be **guilty of a Class B misdemeanor** [fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or imprisoned in the county jail for not less than ten (10) nor more than ninety (90) days, or both].

(b) No candidate or committee, or any person on their behalf, shall pay any person more than the reasonable value thereof for transporting voters to the polls on the day of an election. All such payments shall be by check and no portion of such payment shall be paid to any of the persons transported. Any person found guilty of a violation of this subsection shall be **guilty of a Class B misdemeanor** [fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500); or imprisoned in the county jail for not less than ten (10) nor more than ninety (90) days, or both].

Section 77. KRS 119.225 is amended to read as follows:

Any member of a county board of elections who refuses to permit an inspector designated under KRS 117.275 and 117.315 to exercise free and full action in witnessing the count of the ballots, or interferes with the right of such an inspector to have a free and full opportunity to witness the count of the ballots, shall be guilty of a **Class A [high] misdemeanor**; and shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000); or imprisoned in the county jail for not less than six (6) months nor more than one (1) year].

Section 78. KRS 119.235 is amended to read as follows:

Any person who willfully alters, obliterates, secretes, suppresses or destroys a stub book, return or certificate of election, and any officer who makes, aids in making or authorizes the making of any false or fraudulent stub book, certificate of election or election return, shall be **guilty of a Class D felony** [confined in the penitentiary for not less than one (1) year nor more than five (5) years].

Section 79. KRS 119.245 is amended to read as follows:

Any member of the state board of elections or of a county board of elections who willfully and knowingly violates any provision of the statutes relating to his duties, or fails to execute faithfully any of the duties imposed upon him by law, for which no other penalty is provided, shall be **guilty of a Class B misdemeanor** [fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); and imprisoned in the county jail for not more than sixty (60) days].

Section 80. KRS 119.255 is amended to read as follows:

Any person who, by threat of violence or in any other manner, intimidates or attempts to intimidate the election officers, the state board of elections or a county board of elections in the performance of their duty and any persons who conspire together and go forth armed for the purpose of intimidating said officers, shall be **guilty of a Class D felony** [imprisoned in the penitentiary for not less than one (1) year nor more than five (5) years].

Section 81. KRS 119.265 is amended to read as follows:

Any public officer who willfully neglects to perform a duty imposed upon him under the election laws, for which no other penalty is provided, or who willfully performs such duty in a way that hinders the objects of the election laws, shall be **guilty of a Class B misdemeanor** [fined fifty dollars (\$50.00) and imprisoned in the county jail for two (2) months].

Section 82. KRS 119.325 is amended to read as follows:

Any person having the possession of any books, correspondence or papers of a corporation that may show or tend to show any violation of the provisions of KRS 121.025, or of KRS 121.045 or 121.055, or of subsection

(1) of KRS 121.310, who refuses, when summoned by a grand jury, to produce such books, correspondence or papers, or to appear and testify concerning them or to give any other evidence material to the matter under investigation, shall be **guilty of a Class A misdemeanor** [proceeded against for contempt, and upon conviction shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year].

Section 83. KRS 132.017 is amended to read as follows:

(1) (a) That portion of a tax rate levied by an ordinance, order, resolution, or motion of a county fiscal court, district board of education or legislative body of a city, urban-county government or other taxing district subject to recall as provided for in KRS 68.245, 132.023, 132.027 and 160.470, shall go into effect forty-five (45) days after its passage. If during the forty-five (45) days next following the passage of the order, resolution, or motion, a petition signed by a number of registered and qualified voters equal to ten percent (10%) of the voters voting in the last presidential election is presented to the county clerk or his authorized deputy, or to the county fiscal court, district board of education, or legislative body of a city or urban-county government or other taxing district, as the case may be, protesting against passage of the ordinance, order, resolution, or motion, the ordinance, order, resolution, or motion shall be suspended from going into effect until after the election referred to in subsection (2) of this section. **When the** [If such] petition is presented to the county clerk or his authorized deputy, **the** [such] officer shall immediately notify the presiding officer of the appropriate fiscal court, district board of education, or legislative body of a city or urban-county government or other taxing district, as the case may be. Each sheet of the petition shall contain the names, **residence** [and] addresses **and Social Security numbers or dates of birth** of voters in but one (1) voting precinct, and each sheet shall state the name, number, or designation of the precinct and, where applicable, the name, designation, or number of the district or ward wherein the precinct is situated. [The board or boards of registration in the county shall give necessary and appropriate aid to] The county clerk **shall** [so that such officer may] make the conclusive determination of whether the petition contains enough signatures of qualified voters to suspend the effect of the order or resolution.

(b) The county fiscal court, district board of education, or legislative body of a city, urban-county government or other taxing district may cause the cancellation of the election by reconsidering the ordinance, order, resolution, or motion and amending **the** [such] ordinance, order, resolution, or motion to levy a tax rate which will produce no more revenue from real property, exclusive of revenue from new property as defined in KRS 132.010, than four percent (4%) over the amount of revenue produced by the compensating tax rate defined in KRS 132.010 from real property. **The** [Such] action by the county fiscal court, district board of education, legislative body of a city, urban-county government or other taxing district shall be valid only if taken within fifteen (15) days following the date of the presentation of the petition.

(2) (a) **If** [In the event] an election is necessary under the provisions of subsection (1) of this section, the county fiscal court or legislative body of a city, urban-county government or other taxing district shall cause to be submitted to the voters of the county, district, or urban county at the next regular election, the question as to whether **the** [such] property tax rate shall be levied. The question shall be so framed that the voter may by his vote answer "for" or "against." If a majority of the votes cast upon the question oppose its passage, the order, resolution, or motion shall not go into effect. If a majority of the votes cast upon the question favor its passage, the order, resolution, or motion shall go into effect.

(b) **If** [In the event] an election is necessary for a school district under the provisions of subsection (1) of this section, the district board of education may cause to be submitted to the voters of the district in a called common school election not less than twenty (20) days nor more than thirty (30) days from the date the signatures on the petition are validated by the county clerk, or at the next regular election, at the option of the district board of education, the question as to whether **the** [such] property tax rate shall be levied. The question shall be so framed that the voter may by his vote answer "for" or "against." If a majority of the votes cast upon the question oppose its passage, the order, resolution, or motion shall not go into effect, and the property tax rate which will produce four percent (4%) more revenues from real property, exclusive of revenue from new property as defined in KRS 132.010, than the amount of revenue produced by the compensating tax rate defined in KRS 132.010, shall be levied without further approval by the county fiscal court, district board of education, or legislative body of a city, urban-county government or other taxing district, as the case may be. If a majority of the votes cast upon the question favor its passage, the order, resolution, or motion shall go into effect. The cost of a called common school election shall be borne by the school district causing the election to be held.

(3) Notwithstanding any statutory provision to the contrary, **if** [in the event that] a city, county, school district or other taxing district has not established a final tax rate as of September 15, due to the recall provisions of KRS 68.245, 132.017, 132.027 or 160.470, regular tax bills shall be prepared as required in KRS 133.220 for all districts having a tax rate established by **that** [such] date; and a second set of bills shall be prepared and collected in the regular manner, according to the provisions of KRS Chapter 132, upon establishment of final tax rates by the remaining districts.

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(4) ~~If [In the event]~~ a second billing is necessary, the collection period shall be extended to conform with the second billing date.

(5) All costs associated with the second billing shall be paid by the taxing district or districts requiring the second billing.

Section 84. KRS 160.477 is amended to read as follows:

(1) (a) Upon request of the board of education of any school district, the county ~~clerk~~ [board of elections] shall submit to the qualified voters of the district, the question as to whether a special school building tax rate of not less than five cents (5) nor more than fifty cents (50) as requested by the board shall be levied on each one hundred dollars (\$100) of property subject to local taxation. This tax levy shall be in addition to the maximum school tax levy provided by subsection (2) of KRS 160.470. The income from the tax shall be used for the purchase or lease of school sites and buildings and physical education and athletic facilities, for the erection and complete equipping of new school buildings and physical education and athletic facilities, for the major alteration, enlargement and complete equipping of existing buildings, and physical education and athletic facilities, for the purpose of retiring, directly or through rental payments, school revenue bonds issued for such school improvements, for the purpose of providing maintenance and insurance for school facilities, and for the purpose of financing any program for the acquisition, improvement, or building of school improvements. The question shall be so framed that the voter may by his vote answer "for" or "against."

(b) The election shall be held not less than fifteen (15) or more than thirty (30) days from the time the request of the board is filed with the county ~~clerk~~ [board of elections], and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws, and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district; and

(c) If a majority of those voting on the question favor the special school building tax levy, the tax-levying authority shall, when the next tax rate for the district is fixed, levy the special rate specified for the school building fund in addition to the levy provided by subsection (2) of KRS 160.470.

(2) There may be included, in the maximum levy provided for in subsection (2) of KRS 160.470, a special levy for building fund purposes as authorized by KRS 160.476, which shall be in addition to the levy authorized by vote as provided in subsection (1) of this section.

(3) In addition to or in lieu of this special tax, any board of education may pay into this special fund at the close of any fiscal year the proceeds from the sale of land or property no longer needed for school purposes and allow any balances to remain in the general fund over and above the amount necessary for discharging obligations for the fiscal year in full.

(4) The special fund provided for in subsection (1) of this section shall be kept in a separate account designated as "special voted school building fund." The fund shall be kept in the depository selected by the district board of education, or invested in bonds of the United States, of this state, or of any county or municipality in this state, provided, however, that such investment shall be approved by the State Board for Elementary and Secondary Education.

(5) All expenditures from such fund shall be made solely for the purposes enumerated in this section and shall be made in accordance with the school laws of the state at such times as the district board of education determines. The district board of education shall cause to be made annually an audit of the building fund by a certified public accountant or by an accountant approved by the State Board for Elementary and Secondary Education.

(6) Notwithstanding the provisions of any other subsection of this section to the contrary, for the 1966 tax year and for all subsequent years no district board of education shall levy a tax at a rate under the provisions of this section which exceeds the compensating tax rate as defined in KRS 132.010, except as provided in subsection (7) of this section, and except that a rate which has been approved by the voters under this section but which was not levied by the district board of education in 1965 may be levied after it has been reduced to the compensating tax rate as defined in KRS 132.010, and except that in any school district where the rate levied in 1965 was less than the maximum rate which had been approved by the voters, the compensating tax rate shall be computed and may be levied as though the maximum approved rate had been levied in 1965 and the amount of revenue which would have been produced from such maximum levy had been derived therefrom.

(7) Notwithstanding the limitations contained in subsection (6) of this section no tax rate shall be set lower than that necessary to provide such funds as are required to meet principal and interest payments

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on outstanding bonded indebtedness and payments of rentals in connection with any outstanding school revenue bonds issued under the provisions of KRS Chapters 58 and 162.

Section 85. KRS 160.597 is amended to read as follows:

Any school tax authorized by KRS 160.593 to 160.597, 160.601 to 160.633, and 160.635 to 160.648 may be recalled as follows:

(1) The order or resolution levying any of the school taxes designated heretofore in this section shall go into effect not less than thirty (30) days nor more than ninety (90) days after its passage. If, during the thirty (30) days immediately following the passage of the order or resolution, a petition signed by a number of registered and qualified voters equal to fifteen percent (15%), except in counties containing a city of the first class, equal to five percent (5%), of the votes cast in the school district or combined taxing district levying the tax for the office receiving the greatest total vote at the last preceding presidential election is presented to the county clerk [board of elections] requesting that the order or resolution of *the* [such] tax be placed before the voters for approval, the order or resolution shall be suspended from going into effect for that district until after the election provided for in subsection (2) of this section. The person presenting the petition shall be given a receipt indicating the date of presentation. Each sheet of the petition shall contain the names, residence [and] addresses, **Social Security numbers, or dates of birth** of voters in but one (1) voting precinct and each sheet shall state the name, number, or designation of the precinct and, where applicable, the name, number or designation of the district or ward wherein the precinct is situated. If the signature is difficult to read, the voter shall, on the same line legibly write or print his name in the same fashion as he signed it. One (1) or more persons shall verify by affidavit the signatures and addresses of the signers of the petition. The county clerk [board of elections] shall make the determination of whether the petition contains enough signatures of qualified voters to suspend the effect of the order or resolution, and immediately [thereafter] shall notify the school board that the petition has been received and that the order or resolution levying *the* [such] tax will be placed before the voters for approval. The county clerk [board of elections] shall certify to the school board within thirty (30) days of receipt of the petition that the petition is properly presented and in compliance with the provisions of this section. If the county clerk [board of elections] finds the petition to be invalid, it shall state in writing the deficiency of said petition. Written notification that the petition has been declared invalid and the deficiencies thereof shall be sent by certified mail to the person to whom a receipt was given by the county clerk [board of elections], and shall be published at least one (1) time in a newspaper of general circulation within the county containing the school district levying the tax, or if there be no such newspaper, shall be posted at the courthouse door. If good cause is shown, the county clerk [board of elections] shall permit the petitioners to correct the deficiencies either by securing additional valid signatures or by circulating a new petition, *the* [such] petition to be submitted to the county clerk [board] within thirty (30) days from the date of the written notification of the deficiencies.

(2) Thereupon, if it has been determined that the petition contains enough valid signatures to suspend the effect of the order or resolution, the county clerk [board of elections] shall submit the question to the voters of the school district at the next regular election or a called common school election, either of which is to be held not less than sixty (60) days from the date of the passage of the order or resolution. The question shall be so framed that the voter may by his vote answer, "for" or "against." If a majority of the votes cast in a district or combined taxing district upon the question oppose its passage, the order or resolution shall not go into effect in that district or combined taxing district. If a majority of the votes cast in a district or combined taxing district upon the question favor its passage, the order or resolution shall go into effect in that district. *If [In the event that]* the election is to be held in more than one (1) school district within a county, the votes shall be counted separately. The cost of a called common school election shall be borne by the school district causing the election to be held.

(3) If any statute in existence on June 17, 1978, is found to be in conflict with any provision of this section, the provisions of this section shall prevail.

Section 86. KRS 162.080 is amended to read as follows:

(1) Whenever a board of education deems it necessary for the proper accommodation of the schools of its district to enlarge sites for school buildings, to purchase new sites, which in the case of independent districts may be not more than two (2) miles without the boundary lines of the district, to improve, remodel or restore school buildings, to erect or equip new school buildings, or for any or all of these purposes, and the annual funds raised from other sources are not sufficient to accomplish the purpose, the board shall make a careful estimate of the amount of money required for the purpose and shall determine the amount of money for which bonds shall be issued and the purpose to which the proceeds shall be applied. Upon request of the board of education of any district, the county clerk [board of elections] shall submit to the qualified voters of the district, the question as to whether bonds shall be issued for the purpose. The question shall be so framed that the voter may by his vote answer "for" or "against."

(2) The request shall be accompanied by an ordinance or resolution which shall fix the time the bonds shall run and, if a serial issue, the amount to mature at each time. It shall limit the rate of interest to be permitted on the bonds, which shall not exceed the amount permitted by law, and the total amount of bonds to be issued, and shall provide for the levy of a tax to pay the interest and to create a sinking fund to retire them at their maturity.

(3) The election shall be held not less than fifteen (15) nor more than thirty (30) days from the time the request of the board of education is filed with the county ~~clerk~~ [board of elections], and reasonable notice of the election shall be given. The election shall be conducted and carried out in the school district in all respects as required by the general election laws, and shall be held by the same officers as required by the general election laws. The expense of the election shall be borne by the school district.

Section 87. KRS 242.020 is amended to read as follows:

(1) A petition for an election shall be signed by a number of constitutionally qualified voters of the territory to be affected, equal to twenty-five percent (25%) of the votes cast in the territory at the last preceding general election. The petition may consist of one (1) or more separate units, and shall be filed with the county clerk.

(2) The petition for election, in addition to the name of the voter, shall state also his *residence* [post office] address, *Social Security number or date of birth* and the correct date upon which his name was signed.

(3) No signer may withdraw his name or have it taken from the petition after the petition has been filed. If the name of any person has been placed on the petition for election without his authority, he may appear before the county judge/executive before the election is ordered and upon proof that his name was placed on the petition without his authority, his name may be eliminated by an order of the county judge/executive. When his name has been eliminated, he shall not be counted as a petitioner.

(4) After a petition for election has been filed, the county judge/executive shall make an order on the order book of the court directing an election to be held in that territory.

Section 88. KRS 242.070 is amended to read as follows:

Not more than twenty (20) days prior to an election, any group of citizens that in good faith favors or opposes the proposition to be submitted may file with the chairman of the county board of *elections* [election commissioners] a petition asking that it be recognized as the committee entitled to nominate election officers and to certify challengers, witnesses to the counting of the votes and certification of the results, and guards to assist in guarding the boxes containing the votes which have been cast during the period which the group desires. If more than one (1) group claims the right to nominate election officers and certify challengers, witnesses and guards, the county board of *elections* [election commissioners] shall promptly decide and publicly announce which committee is entitled to nominate officers and certify challengers, witnesses and guards. That decision shall not be final, but any aggrieved party may appeal to the county judge/executive, and upon hearing the county judge/executive shall determine which group shall be recognized.

Section 89. KRS 242.080 is amended to read as follows:

(1) The respective committees advocating and opposing the proposition shall each file with the chairman of the county board of *elections* [election commissioners] before the time designated for the selection of officers a list of not more than four (4) persons possessing the qualifications of election officers for each voting precinct, and the board of *elections* [election commissioners] shall appoint the officers from those lists, as provided in KRS 242.090.

(2) The committees may sign and issue certificates designating challengers at the polls, witnesses to the count of votes and guards to assist in guarding the boxes containing votes which have been cast, in the same manner as political committees under the general election laws.

Section 90. KRS 242.090 is amended to read as follows:

The county board of *elections* [election commissioners], not more than fifteen (15) and not less than ten (10) days before the day appointed for the holding of the election, shall appoint officers to conduct the election, in the manner provided by general election laws. It shall make equal division of officers between those favoring and those opposing the proposition instead of between political parties. The same equal division of challengers at the polls, of witnesses at the count, and of guards to guard the boxes, shall be made.

Section 91. KRS 242.110 is amended to read as follows:

The result of the election shall be certified by the county board of **elections** [election commissioners]. The certificate of the result shall be immediately filed with the county clerk and the county judge/executive shall have the certificate entered on the order book. The entry of the certificate, or an attested copy thereof, shall be prima facie evidence of the result of the election in actions under this chapter.

Section 92. KRS 83A.045 is amended to read as follows:

(1) Partisan elections of city officers shall be governed by the following provisions, regardless of the form of government or classification of the city:

(a) A candidate for party nomination to city office shall file his nomination papers with the county clerk of the county not less than **one hundred nineteen (119)** [ninety (90)] days before the day fixed by KRS Chapter 118 for holding a primary election. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which such papers are permitted to be filed.

(b) An independent candidate for nomination to city office shall not participate in a primary election, but shall file his nomination papers with the county clerk of the county not less than **ninety-one (91)** [sixty-eight (68)] days before the day fixed by KRS Chapter 118 for holding a regular election. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which **the** [such] papers are permitted to be filed.

(c) A candidate for city office in a partisan election shall be prohibited from being a registered party candidate during a primary election and, if defeated in the primary, changing his registration to independent for the purpose of seeking the same office at the regular election for which he was defeated in the primary election. However, if a vacancy occurs in the party nomination for which he was an unsuccessful candidate in the primary election, his name may be placed on the voting machines for the regular election as a candidate of that party if he has been duly made the party nominee after the vacancy occurs, as provided in KRS 118.105.

(2) Nonpartisan elections of city officers shall be governed by KRS 83A.050, 83A.170, 83A.175 and the following provisions, regardless of the form of government or classification of the city:

(a) A candidate for city office shall file his nomination papers with the county clerk of the county not less than **one hundred nineteen (119)** [ninety (90)] days before the day fixed by KRS Chapter 118 for holding a primary election. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which such papers are permitted to be filed;

(b) Any city of the fourth to sixth class may by ordinance provide that the nomination and election of candidates for city office in a nonpartisan election shall be conducted pursuant to the provisions of this subsection:

1. A city may forego conducting a nonpartisan primary election for the nomination of candidates to city office, regardless of the number of candidates running for each office, and require all candidates to file their nomination papers with the county clerk of the county no less than **ninety-one (91)** [sixty-eight (68)] days before the day fixed by KRS Chapter 118 for holding a regular election.

2. All nomination papers shall be filed no later than 4 p.m. local time when filed on the last day on which **the** [such] papers are permitted to be filed.

3. If a city does not conduct a primary election pursuant to this subsection, the election of candidates to city office shall be governed by the provisions of this subsection, KRS 83A.175(2) to (7), and KRS Chapters 116 to 121.

4. If a city does not conduct a primary election pursuant to this subsection, candidates for city office shall not be required to make pre-election reports to the Registry of Election Finance pursuant to KRS 121.180, but shall be required to make post-election reports within thirty (30) days after the regular election in November.

5. In the absence of a primary pursuant to this subsection, the number of candidates equal to the number of city offices to be filled[,] who receive the highest number of votes cast in the regular election for each city office shall be elected.

6. Candidates shall be subject to all other applicable election laws pursuant to this chapter and KRS Chapters 116 to 121.

7. If a vacancy occurs in a candidacy for city office in any city which has not held a primary pursuant

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to this subsection after the expiration of time for filing nomination papers due to the death, incapacity or withdrawal of a candidate, the vacancy in candidacy shall be filled in the following manner:

a. If the vacancy in candidacy occurs less than *ninety-one (91)* [~~sixty-eight (68)~~] days but more than thirty (30) days prior to the regular election, candidates shall file petitions of nomination to fill the vacancy with the county clerk not less than thirty (30) days prior to the regular election.

b. If the vacancy in candidacy occurs less than thirty (30) days prior to the regular election and there are no remaining candidates running to fill the office for which a vacancy has occurred, the office shall remain vacant until after the regular election and if no person is elected to the office by write-in ballots at the regular election, the vacancy in office shall be filled temporarily by the officer or body designated by law to fill the appointment.

Section 93. KRS 83A.170 is amended to read as follows:

(1) In any city which has under the provisions of KRS 83A.045 required nonpartisan city elections, or in any city of the second class operating under the city manager form of government pursuant to KRS 83A.150, no person shall be elected to city office except as provided in this section or as otherwise provided in this chapter relating to nonpartisan elections.

(2) No person shall be elected to city office without being nominated in the manner provided in this section at a nonpartisan primary election to be held at the time prescribed by KRS Chapters 116 to 121, except as otherwise provided in this chapter. Nonpartisan primary elections shall be conducted by the same officers, chosen and acting in the same manner, with the same rights and duties as in regular elections.

(3) Each applicant for nomination shall, by at least the last date prescribed by the election law generally for filing notification and declaration forms with the county clerk, file with the county clerk a petition of ***nomination which shall be in the form prescribed by the State Board of Elections*** signed by at least two (2) registered voters in the city. Each voter may sign a slated petition up to the number of offices to be filled for a particular position or may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized then he shall be counted as a petitioner for the candidate whose petition is filed first. ~~The petition shall be in the following form:~~

~~"We the undersigned, qualified voters of the City of request that the name of be placed before the voters of the city as that of an applicant for nomination for the office of at the primary election to be held in our city on the date prescribed by law for primary elections generally. We know the applicant to be a qualified voter of the city and a person of good character, and he is, in our judgment, qualified for the duties of the office.~~

Name	Street Address	Social Security Number
.....
.....
.....

~~The petition shall be verified by the affidavit of some person as to the genuineness of signatures and addresses of the signers.] No voter shall sign more than one (1) petition with reference to each applicant. If any voter signs more than one (1) petition of an applicant, the name of that voter shall not be counted as valid on any petition.~~

(4) The county clerk shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

(5) Immediately upon expiration of the time for filing petitions, the county clerk shall have published in accordance with KRS Chapter 424 the names of the applicants as they will appear before the voters at the primary.

(6) Subsection (5) of this section shall not apply if it appears, immediately upon expiration of the time for filing petitions, that there are not more than two (2) applicants for nomination for each city office to be filled, or, when the nominations are for city legislative body members in cities electing legislative body members at large, and there are no more than twice the number of applicants for nomination for the number

of offices to be filled. In that case, the applicants for nomination shall thereby be nominated and no **drawing for ballot position nor** primary election shall be held for that office. If, in accordance with the provisions of this section, a primary election has not been held, candidates for nonpartisan city office shall not be required to make pre-election reports to the Registry of Election Finance pursuant to KRS 121.180, but shall be required to make post-election reports within thirty (30) days after the regular election in November.

(7) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

(8) If before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk dies or notifies the clerk in writing, signed and properly notarized, that he will not accept the nomination, the clerk shall not cause his name to be printed on the ballot.

(9) If, after the ballots are printed, any candidate whose name appears thereon shall **withdraw pursuant to KRS 118.212** or die,

(a) **Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.**

(b) **The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation [the county clerk shall cause his name to be blocked out or obliterated from the ballot. The clerk shall not knowingly allow the name of a deceased person to appear on the ballot].**

(10) Names of applicants for each nomination shall be placed before the voters of the city. The voters shall be instructed to vote for one (1) candidate, except that they shall be instructed to vote for the number of legislative body members to be elected in cities nominating legislative body members at large. No party designation or emblem of any kind, nor any sign indicating any applicant's political belief or party affiliation shall be used.

(11) Persons qualified to vote at a regular election are qualified to vote at a nonpartisan primary election and the law applicable to challenges made at a regular election is applicable to challenges made at a nonpartisan primary election.

(12) Votes shall be counted as provided in general election laws, pursuant to KRS Chapters 116 to 121, and the result shall be published as provided in KRS Chapter 424.

(13) The two (2) applicants receiving the highest number of votes for nomination for each city office shall be nominated, or where the nominations are for city legislative body members in cities electing legislative body members at large, there shall be nominated the number of applicants receiving the highest number of votes equal to twice the number of offices to be filled.

(14) At the regular election following a nonpartisan primary election, the names of the successful nominees and candidates who have filed a petition of candidacy as provided in this chapter to fill a vacancy shall be placed before the voters.

(15) The nominee or candidate receiving the greater number of votes cast for each city office shall be elected.

(16) KRS Chapters 116 to 121 prescribing duties of county clerks and other public officers in the conduct of elections shall be applicable in all respects to nonpartisan city elections, except no election officer or other person within a polling place shall tell or indicate to a voter, by word of mouth or otherwise, the political affiliation of any candidate for city office.

Section 94. KRS 83A.175 is amended to read as follows:

(1) Candidates for an unexpired term of a nonpartisan city office to be filled at a regular election shall be nominated at the primary next preceding the regular election in the manner prescribed in KRS 83A.170 if the vacancy occurs not less than one hundred **thirty-four (134)** [~~five (105)~~] days before the primary. If the vacancy occurs on or after the one hundred **thirty-fourth (134th)** [~~fifth~~] day before the primary, the election to fill the unexpired term shall be held in accordance with the procedures described in this chapter, KRS Chapters 116 to 121, and Section 152 of the Constitution of Kentucky.

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(2) If in a regular election for nonpartisan city office no candidates nominated to an office as provided in KRS 83A.170 are available due to death, incapacity or withdrawal, or when city legislative body members are to be elected at large and there are fewer nominees than there are [such] offices to be filled, or if a fourth to sixth class city has not conducted a primary election pursuant to KRS 83A.045, the election to fill the regular term shall be conducted in the manner prescribed by this section.

(3) Each candidate shall, by at least the last date prescribed by the election law generally for filing petitions of nomination with the county clerk, file with the county clerk a petition for candidacy. **The petition shall be prescribed by the State Board of Elections and shall be signed by at least two (2) registered voters in the city.** Each voter may sign individual petitions equal to the number of offices to be filled. If a voter signs petitions for more candidates than he is authorized, [then] he shall be counted as a petitioner for the candidate whose petition is filed first. [The petition shall be in the following form:

"We the undersigned, qualified voters of the City of request that the name of be placed before the voters of the city as that of a candidate for election for the office of at the general election to be held in our city on the date prescribed by law for the general election. We know the candidate to be a qualified voter of the city and a person of good character, and he is, in our judgment, qualified for the duties of the office.

Name	Street Address	Social Security Number
.....
.....
.....

The petition shall be verified by the affidavit of some person as to the genuineness of signatures and addresses of the signers.] No voter shall sign more than one (1) petition with reference to each candidate. If any voter signs more than one (1) petition of a candidate, the name of that voter shall [not] be counted as valid **only on the first petition filed** [on any petition].

(4) The county clerk shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

(5) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.

(6) If before the ballots are printed, any candidate whose petition has been filed in the office of the county clerk[,] dies or notifies the clerk in writing, signed and properly notarized, that he will not accept the election, the clerk shall not cause his name to be printed on the ballot.

(7) If, after the ballots are printed, any candidate whose name appears thereon shall **withdraw pursuant to KRS 118.212** or die,

(a) **Neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate.**

(b) **The county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation [the county clerk shall cause his name to be blocked out or obliterated from the ballot. The clerk shall not knowingly allow the name of a deceased person to appear on the ballot].**

Section 95. The following KRS sections are repealed:

- 116.049 Voter registration card.
- 116.075 Registration application form - Report to state board; and
- 119.135 Election officer's failure to perform duty.

Approved March 12, 1990