

NO. 24-CI-7851

JEFFERSON CIRCUIT COURT
JUDGE MELISSA BELLOWS
DIVISION SEVEN (7)

KENTUCKY DEMOCRATIC PARTY

PLAINTIFF

v.

MOTION TO INTERVENE

BOBBIE HOLSCLAW, in her official
capacity as Jefferson County Clerk;
JEFFERSON COUNTY BOARD OF
ELECTIONS.

DEFENDANTS

* * * *

ACLU OF KENTUCKY'S MOTION TO INTERVENE AS CO-PLAINTIFF

Pursuant to Kentucky Rule of Civil Procedure 24.02 and 24.03, putative Intervenor ACLU of Kentucky ("ACLU"), by counsel, moves to intervene in this action as co-Plaintiff. In support of this motion, the ACLU states as follows:

FACTS

In this year's general election, voters in Jefferson County were met with substantial delays at various polling sites due to the maladministration by the County Clerk's office in utilizing its electronic poll book technology. Widespread delays were caused because, according to the Clerk's office, the electronic pollbooks were taking longer to boot up than anticipated. [See CHRIS SUTTER, *Bring Your Patience: Technical issues, long lines slowing down voting at some Jefferson County polling locations*, WDRB.com, at https://www.wdrb.com/news/politics/technical-issues-long-lines-slowing-down-voting-at-some-jefferson-county-polling-locations/article_dccfffec-9b70-11ef-b183-931a00a7c809.html (last visited Nov. 5, 2024).]

Because Kentuckians have a finite amount of time in which to exercise their franchise, these significant delays created hardships on many who have had to choose between waiting in line to vote versus engaging in other life necessities, such as working, child care, *etc.* (and who are unable to return to their polling locations before 6:00 p.m.).

The ACLU of Kentucky is the not-for-profit state affiliate of a national civil rights organization whose mission is to promote and defend individuals' civil liberties, including the right to vote. The ACLU of Kentucky works to protect voting rights through, *inter alia*, litigation, advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, get out the vote efforts, election protection, and census participation. The ACLU has members who are registered voters throughout the Commonwealth, including in Jefferson County, Kentucky. And upon information and belief, ACLU members include those who are duly registered Jefferson County voters, and who have suffered harm as a result in above-referenced voting delays. Thus, the putative Intervenor shares common claims (and requests identical relief) to the existing Plaintiffs in this action.

ARGUMENT

I. Permissive Intervention Should Be Granted.

Kentucky Rule of Civil Procedure (CR) 24.02 provides:

Upon timely application anyone may be permitted to intervene in an action: (a) when a statute confers a conditional right to intervene or (b) when an applicant's claim or defense and the main action have a question of law or fact in common In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

“The purpose of intervention is to prevent trying issues ‘to finality without all parties with a common interest in the issue or factual scenario being present.’” *Covington v.*

Commonwealth, 678 S.W.3d 918, 922 (Ky. Ct. App. 2023) (quoting *Bailey v. Bertram*, 471

S.W.3d 687, 691 (Ky. 2015), *as corrected* (Jun. 10, 2015)). “[P]ermissive intervention is more concerned with consolidating common legal and factual questions than with protecting the implicated rights of non-parties.” *Id.* (cleaned up). Thus, “[p]ermissive intervention requires the intervenor to have an interest or claim in common with the litigants in the underlying action.” *Id.*

Here, permissive intervention is appropriate because the ACLU of Kentucky’s putative Complaint [*attached* as Exh. 1] shares common questions of law and fact as the existing Complaint, as well as seeks the same relief. The ACLU of Kentucky, on behalf of its members, seeks to vindicate their right to vote in a general election that is conducted in accordance with both the letter, and spirit, of Kentucky law, and in a way that does not unfairly deprive individuals who wished (but were unable) to vote due to the County Clerk’s implementation errors.

WHEREFORE, for the foregoing reasons, this Court should permit the ACLU of Kentucky to intervene in this action as co-Plaintiff.

Respectfully submitted,

/s William E. Sharp

Corey M. Shapiro

William E. Sharp

ACLU OF KENTUCKY FOUNDATION

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Louisville, Kentucky 40202

(502) 581-9746

corey@aclu-ky.org

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Attorney for Putative Intervenor-Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene was filed electronically on November 5, 2024 *via* the CourtNet 2.0 system, and by serving a copy on the following individuals *via* electronic mail:

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ACLU OF KENTUCKY

RETRIEVED FROM DEMOCRACY.ORG/COURTNET.COM

Exhibit 1:

Complaint

RETRIEVEDFROMDEMOCRACYDOCKET.COM

NO. 24-CI-7851

JEFFERSON CIRCUIT COURT
JUDGE MELISSA BELLOWS
DIVISION SEVEN (7)

ACLU OF KENTUCKY

PLAINTIFF

v. **COMPLAINT FOR DECLARATORY AND EMERGENCY
INJUNCTIVE RELIEF**

BOBBIE HOLSCLAW, in her official
capacity as Jefferson County Clerk;
JEFFERSON COUNTY BOARD OF
ELECTIONS.

DEFENDANTS

* * * *

**COMPLAINT
Preliminary Statement**

1. In this year's general election, record numbers of Kentuckians availed themselves of early and absentee voting to exercise their franchise, including in Jefferson County (Kentucky's most populous county). However, on election day, the Jefferson County Clerk's encountered problems with their electronic poll book technology because, according to the Clerk's office, "the electronic pollbooks were taking longer to boot up at 6:00 a.m. and check in voters." [See attached Exh. 1: Email from Jefferson County Clerk's office; see also CHRIS SUTTER, *Bring Your Patience: Technical issues, long lines slowing down voting at some Jefferson County polling locations*, WDRB.com, at https://www.wdrb.com/news/politics/technical-issues-long-lines-slowing-down-voting-at-some-jefferson-county-polling-locations/article_dcefffec-9b70-11ef-b183-931a00a7c809.html (last visited Nov. 5, 2024).]

These electronic poll books are supposed to allow election workers to easily upload and maintain voter rolls at the various election sites. But voters across Jefferson County

have experienced significant delays in being able to vote because poll workers have been unable to quickly locate registered voters in the electronic poll book system. *Id.* Due to these delays, the Jefferson County Clerk’s office told its on-site poll workers that “[t]he volume of people who used early voting is holding up the epollbooks. When they come up you MUST us a manual search, don't scan an ID.” [Exh. 2: Nov. 5, 2024 Text to Poll Workers.]

2. Voting is a “fundamental right eliciting . . . exacting judicial scrutiny.” *Cook v. Popplewell*, 394 S.W.3d 323, 344 (Ky. 2011). “It is beyond cavil that voting is of the most fundamental significance under our constitutional structure.” *Burdick v. Takashi*, 504 U.S. 428, 433 (1992) (internal citation and quotations omitted). “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). “Other rights, even the most basic, are illusory if the right to vote is undermined.” *Obama for Am. v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012) (quoting *Wesberry*, 376 U.S. at 17); *see also League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 476 (6th Cir. 2008) (“The right to vote is a fundamental right, preservative of all rights.” (internal citations and quotations omitted)). “[W]hen any substantial number of legal voters are, from any cause, denied the right to vote, the election is not free and equal, in the meaning of the Constitution.” *Wallbrecht v. Ingram*, 175 S.W. 1022, 1026 (Ky. 1915).

3. Kentuckians have a finite amount of time in which to exercise their franchise on November 5, 2024, and significant delays in being able to do so has created hardships on many who have had to choose between waiting in line to vote versus engaging in other life necessities, such as working, child care, *etc.* Thus, the delays created by the

Jefferson County Clerk's poor implementation of its electronic poll book technology are imposing irreparable harms on those prospective voters who cannot either: (a) continue waiting in line to vote beyond that which is reasonably necessary; or (b) return to the polls before 6:00 pm. Thus, these harms justify this Court granting emergency injunctive relief to compel Defendants to exercise their statutory authority to extend the voting deadline in Jefferson County, Kentucky by two (2) hours.

Jurisdiction and Venue

4. The Court has original jurisdiction over the subject matter of this action pursuant to Ky. Const. § 112(5), KRS § 23A.010, and KRS § 418.040.

5. This Court has personal jurisdiction over Defendants, and venue is proper pursuant to KRS § 452.405 because the actions giving rise to the claim arise in Jefferson County, Kentucky.

6. This Court also has authority to provide the emergency injunctive relief requested pursuant to Kentucky Rule of Civil Procedure (CR) 65.04.

Parties

7. The ACLU of Kentucky is the not-for-profit state affiliate of a national civil rights organization whose mission is to promote and defend individuals' civil liberties, including the right to vote. The ACLU of Kentucky's principal place of business is 325 W. Main Street, Suite 2210, Louisville, Kentucky 40202. The ACLU of Kentucky works to protect voting rights through, *inter alia*, litigation, advocacy, legislation, communication, and outreach, including work to promote voter registration, voter education, get out the vote efforts, election protection, and census participation.

The ACLU of Kentucky has members throughout the Commonwealth, including in Jefferson County, Kentucky. Further, its members include Jefferson County residents who are lawfully registered to vote and have sought to do so on November 5, 2024. Upon information and belief, its members also include those who have encountered significant delays in exercising their franchise due to the electronic poll book problems and whose ability to vote before 6:00 pm ET is jeopardized.

8. Defendant Bobbie Holsclaw is the Jefferson County Clerk—a state constitutional office—whose duties include, inter alia, recruiting, training, and placing Election Officers in Jefferson County to administer elections.

9. Defendant Jefferson County Board of Elections is the governmental entity tasked with administering all federal, state, and local elections in Jefferson County, Kentucky. KRS § 117.035. Its Board consists of the following members: Bobbie Holsclaw, in her official capacity as Jefferson County Clerk; Col. John E. Aubrey, in his official capacity as Jefferson County Sheriff; Carl Bensinger—Democratic Member appointed by the State Board of Elections; and Linda F. Humber—Republican Member appointed by the State Board of Elections. KRS § 117.035(2)(a).

Factual Allegations

10. At all relevant times, Defendant acted under color of state law.

11. Section 6 of Kentucky’s Constitution guarantees “[a]ll elections shall be free and equal.”

12. Further, Jefferson County polls are statutorily required to open at 6:00 a.m. local time, and close at 6:00 p.m. local time. KRS § 118.035(1). Voters who are in line at 6:00 p.m. local time must, under Kentucky law, be allowed to vote. KRS § 118.035(1).

13. However, upon information and belief at least one of Plaintiff's members has been unable to cast a ballot in the presidential election because the electronic poll book problems in Jefferson County so significantly delayed voting that the individual had to leave the polling location before being able to vote. Upon information and belief, at least one of Plaintiff's members is also unlikely to be able to cast a ballot during regular poll hours due to pre-existing reasons but would be able to vote between the hours of 6:00 p.m. and 8:00 p.m. ET, if Jefferson County's polling location hours are extended. And upon information and belief, these problems with the polls books have continued through-out the day, and as such, poll workers have continued to perform a manual search to check-on voters.

14. Per the Jefferson County Clerk's own communications, these problems are widespread throughout the entire county at numerous precincts. Thus, it is impossible to identify which specific precincts need relief.

15. Poor implementation by the Jefferson County Clerk's office of its election-related duties has resulted in Jefferson County voters being deprived of the statutorily mandated period of time during which to cast their ballots because of the significant delays that have effectively shortened the period of time and imposed irreparable harms to those wishing to cast their ballots but unable to either: (a) wait in the line to do so; or (b) return to their polling locations before 6:00 p.m. ET.

CLAIMS FOR RELIEF

COUNT I: Declaratory and Injunctive Relief

15. Plaintiff incorporates by reference all of the paragraphs of this Complaint.

16. Defendants' actions, by and through its acts or omissions in administering the November 5, 2024 election in Jefferson County, Kentucky, has caused (and is continuing to cause) irreparable harm to duly registered voters who attempted to vote but were unable to do so due to the substantial delays caused by the electronic poll book problems; and who are also unable to return to their polling locations before 6:00 p.m. ET.

17. Defendants are responsible for administering elections in Jefferson County, Kentucky, and they have a duty to ensure that eligible, registered voters are able to exercise their fundamental right to vote in accordance with the laws of Kentucky. Defendants' acts/omissions violate Plaintiffs' (and their members') rights under Ky. Const. § 6 and KRS § 118.035.

18. Absent the requested relief, Plaintiff's members, and the public at large, will suffer irreparable harm for which there is no adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs request that this Court grant the following relief:

- 1) Enter a declaratory judgment finding that the Defendant are violated KRS § 118.035 and Section 6 of the Ky. Constitution by failing to administer elections in a manner that keeps polls open and accessible to Kentucky voters from 6:00 a.m. to 6:00 p.m.
- 2) Grant Injunctive Relief in the form of an Order extending polling hours at all Jefferson County polling locations for two (2) hours, *i.e.*, from 6:00 p.m. ET to 8:00 p.m. ET;
- 3) Grant any additional relief to which Plaintiffs may be entitled.

Respectfully submitted,

/s Corey M. Shapiro

Corey M. Shapiro

William E. Sharp

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Attorney for Plaintiffs

RETRIEVEDFROMDEMOCRACYDOCKET.COM

Exhibit 1:
*Email from Jefferson County
Clerk's Office*

RETRIEVEDFROMDEMOCRACYBUCKET.COM

William Sharp

From: Elections <elections@JeffersonCountyClerk.org>
Sent: Tuesday, November 5, 2024 8:37 AM
To: William Sharp
Subject: RE: EPoll Book issues

This Message Is From an External Sender

This message came from outside your organization.

Due to the large number of absentee voters, the electronic pollbooks were taking longer to boot up at 6:00 a.m. and check in voters.

Thanks,
Election Center

From: William Sharp <WSharp@aclu-ky.org>
Sent: Tuesday, November 5, 2024 8:10 AM
To: Elections <elections@JeffersonCountyClerk.org>
Cc: Corey Shapiro <corey@aclu-ky.org>
Subject: re: EPoll Book issues

Sir/Madam,

I am reaching out to inquire about the status of Jefferson County's election-related problems this morning, and to find out what the timeline is for correcting the problems. Also, we are interested in knowing whether there is any effort to extend the voting deadline for Jefferson County voters in light of this morning's problems. Thank you.

William E. Sharp
Pronouns: he/him/his

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ACLU
Kentucky

Exhibit 2:

*Nov. 5, 2024 Text to Poll
Workers*

RETRIEVEDFROMDEMOCRACYDOCKET.COM

The volume of people
who used early
voting is holding up
the e-pollbooks. When
they come up you
MUST use a manual
search. don't scan an
ID.

NO. 24-CI-7851

JEFFERSON CIRCUIT COURT
JUDGE MELISSA BELLOWS
DIVISION SEVEN (7)

ACLU OF KENTUCKY

PLAINTIFF

v.

ORDER

BOBBIE HOLSCLAW, in her official
capacity as Jefferson County Clerk;
JEFFERSON COUNTY BOARD OF
ELECTIONS.

DEFENDANTS

* * * *

Motion having been made, and the Court being sufficiently advised:

IT IS HEREBY ORDERED that:

Putative Intervenor ACLU of Kentucky's Motion to Intervene as co-Plaintiff in the above-styled action is hereby **GRANTED**.

Judge, Jefferson Circuit Court

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