

**FINAL** Commonwealth of Kentucky  
**Court of Appeals**

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FILED  
KENTON CIRCUIT/DISTRICT COURT  
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NOV - 6 2024  
BY JOHN C. MIDDLETON D.C.

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NO. 2024-CA-1003-EL

ROBERT J. FLAHERTY

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE KATHLEEN S. LAPE, JUDGE  
ACTION NO. 24-CI-01313

KENTON COUNTY BOARD OF  
ELECTIONS; CHAD LONGBONS;  
CAROL MCGOWAN; AND  
GABRIELLE<sup>1</sup> SUMME, KENTON  
COUNTY CLERK

APPELLEES

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: COMBS, EASTON, AND TAYLOR, JUDGES.

EASTON, JUDGE: Appellant Robert Flaherty (“Flaherty”) appeals the Kenton Circuit Court’s order denying his petition filed pursuant to Kentucky Revised Statutes (KRS) 118.176 to disqualify Appellees, Carol McGowan and Chad

<sup>1</sup> Flaherty’s Complaint named Kenton County Clerk, “Gabiella Summe,” as a party. However, Kenton County’s website reflects that the proper spelling of the Kenton County Clerk’s name is “Gabrielle.” Kenton County, <https://www.kentoncounty.org/383/County-Clerk> (last visited Aug. 27, 2024).

Longbons, as candidates for Crescent Springs, Kentucky City Council. Finding no error, we AFFIRM the circuit court.

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### BACKGROUND

Crescent Springs, Kentucky is a home rule city. Pursuant to KRS 83A.045(2)(b), it has adopted the nonpartisan method for election of city officers and eliminated a primary election for those offices. Therefore, candidates for election to Crescent Springs City Council are determined by the petition process. KRS 83A.045(2)(b)1.

On May 22, 2024, at 1:15 p.m., T. Patrick Hackett filed a nominating petition with the Kenton County Clerk seeking the nonpartisan office of City Councilmember of Crescent Springs, Kentucky. His nominating petition included the signatures of two people qualified to vote for him, Carol McGowan and Deborah<sup>2</sup> Noe.

On the same date, but two hours and forty-three minutes later, at 3:58 p.m., Appellee, Carol McGowan, also filed a nominating petition with the Kenton County Clerk seeking the nonpartisan office of City Councilmember of Crescent Springs, Kentucky. Her petition included the signatures of Thomas P. Hackett and

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<sup>2</sup> Ms. Noe is referred to by the circuit court as “Debora,” however, the nominating petitions filed with Appellant’s Complaint reflect that her name is spelled “Deborah,” so we will refer to her as “Deborah.”

Deborah Noe.

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A week later, on May 29, 2024, Appellee, Chad Longbons, filed a nominating petition with the Kenton County Clerk to seek the nonpartisan office of City Councilmember of Crescent Springs, Kentucky. His petition included the signatures of T. Patrick Hackett<sup>3</sup> and Deborah Noe.

The table below provides a visual representation of each candidate's petition, with the identity of each nominating petitioner, and the date/time the petition was filed.

Candidate	Petitioner #1	Petitioner #2	Date/Time filed
T. Patrick Hackett	Carol McGowan	Deborah Noe	05/22/2024 1:15:52 pm
Carol McGowan	Thomas P. Hackett	Deborah Noe	05/22/2024 3:58:22 pm
Chad Longbons	T. Patrick Hackett	Deborah Noe	05/29/2024 3:46:22 pm

All three petitions were accepted by the Kenton County Clerk.

On June 28, 2024, Flaherty filed a motion pursuant to KRS 118.176 to

<sup>3</sup> From the date of birth, address, and signatures, it is obvious that Thomas P. Hackett and T. Patrick Hackett are one and the same. Curiously, Flaherty never argued this duplication problem. We will not speculate as to why supposedly opposing candidates signed petitions for each other or why Hackett's name was listed differently.

challenge the bona fides of Appellees, Chad Longbons and Carol McGowan (collectively “the Candidates”). Flaherty alleged that the Candidates had failed to comply with the nominating petition requirements of KRS 118.315 and were thus disqualified from appearing on the ballot. He claimed that the Candidates impermissibly “reused” nominating petitioner, Deborah Noe. Since Deborah Noe was one of Mr. Hackett’s petitioners, and since he was the first candidate to file his nominating petition, Flaherty asserted that the other two candidates could not count Ms. Noe as a nominating petitioner, and their petitions were therefore invalid.

The circuit court disagreed and denied the motion by Order dated August 1, 2024. Flaherty filed a timely notice of appeal.

### STANDARD OF REVIEW

We review the circuit court’s conclusions of law regarding the interpretation of election laws *de novo*. *Hardin v. Montgomery*, 495 S.W.3d 686, 694 (Ky. 2016). Thus, “the [legal] conclusions reached by the lower court[] are entitled to no deference.” *Commonwealth v. Love*, 334 S.W.3d 92, 93 (Ky. 2011).

Uncertainty or doubt in statutory language and its application “should be resolved in favor of allowing the candidacy to continue[,]” *Heleringer v. Brown*, 104 S.W.3d 397, 403 (Ky. 2003), to protect legal voters and prevent disenfranchisement. *Varney v. Justice*, 6 S.W. 457 (Ky. 1888).

## ANALYSIS

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KRS 118.315(1) sets forth the requisite procedure for candidates for this city council election to appear on a regular election ballot: “[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 or her, complying with the provisions of subsection (2) of this section.” Subsection (2) provides,

The form<sup>[4]</sup> of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters from the district or jurisdiction from which the candidate seeks nomination. The petition shall include a declaration, sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed. . . . 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 city officer or board of education member, two (2) petitioners . . . . **If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he or she 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 or her signature is affixed.

KRS 118.315(2) (emphasis added). The instant ballot challenge concerns the

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<sup>4</sup> The form issued by the Kentucky Secretary of State does not address the counting of repeated signatures. We do not know whether this indicates that the Secretary of State interpreted the provision in question as directory rather than mandatory. We note this because it would not appear to be difficult to inform candidates on this standard form that they must make sure their petitions have signatures of voters who have not signed another petition for a candidate in the same race.

bolded portion of the statute subsection relating to a nominating petitioner who signs for more than one candidate for office.

Our analysis is governed by determination of whether the statutory subsection at issue is mandatory or directory. If it is a mandatory requirement, strict compliance with the statute is required, and noncompliance shall result in a candidate's disqualification. If the requirement is merely directory, then its violation would not be fatal to a candidacy. *Hardin*, 495 S.W.3d 686.

We should note the troubling concept that some legal directives in laws regulating elections matter more than others. Those who seek to be elected officials should comply with the law regarding their candidacy. The plain reading of KRS 118.315(2) leaves little doubt that Deborah Noe's signature should not be counted on the second and third petitions she signed. The problem is easily avoidable. For example, nothing prohibits filing a few extra signatures for the county clerk to count.

At the same time, we realize the significance of our decision. The parties submitted evidence that the practice of repeating signatures for city council petitions is common, perhaps not just in this one county. A decision to invalidate the petitions in this case could have unanticipated and serious repercussions for the coming election. Because of the strong public policy in favor of letting voters decide which candidates to vote for (even if those candidates did not strictly

comply with a given statute), we conclude that we must apply the well-established body of law about directory requirements.

Our courts have held that candidate residency requirements, the time for holding the election, and the disqualification of a candidate as a convicted felon are all mandatory in nature. *Hardin*, 495 S.W.3d at 699. The requirement that a nominating petition be signed by the prescribed *number* of registered voters has also been found to be a mandatory provision. *See Barnard v. Stone*, 933 S.W.2d 394, 396 (Ky. 1996); *Thomas v. Lyons*, 586 S.W.2d 711, 716 (Ky. 1979). But in a recent opinion, our Supreme Court held that KRS 118.125(2) (similar to KRS 118.315(2)), relating to *partisan* primary elections, is mandatory and required strict compliance. *Kulkarni v. Horlander*, No. 2024-SC-0215-DGE, 2024 WL 3929598 (Ky. Aug. 22, 2024).<sup>5</sup>

In contrast, our courts have found the requirement that a nominating petitioner include the date he signed the petition and his post office address was directory where the petitioner was shown to actually be a resident of the unit of government and thus had the right to vote in that election. *Skaggs v. Fyffe*, 98 S.W.2d 884 (Ky. 1936). Signing the nominating petition early, *i.e.*, “prior to the first Wednesday after the first Monday in November of the year preceding the year

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<sup>5</sup> This opinion has been ordered “To Be Published.”

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in which the office will appear on the ballot” has likewise been found to be a directory requirement where the petition “was signed by eligible registered voters[.]” *Stoecklin v. Fennell*, 526 S.W.3d 104, 106-07, 108 (Ky. App. 2017). A requirement that a voter signing a candidate’s nominating petition be sworn before an officer authorized to administer an oath was determined to be directory where the signers were registered voters who could vote in that election. *Hoffman v. Waterman*, 141 S.W.3d 16 (Ky. App. 2004).

We must determine whether *Kulkarni* signals a desire of the Kentucky Supreme Court to alter the direction of this body of law and make strict compliance with KRS 118.315(2) mandatory rather than directory. The Court in *Kulkarni* was careful to explain the separate body of law which developed over more than one hundred years with respect to *partisan* elections. Both *Skaggs* and *Stoecklin* were mentioned in *Kulkarni* but not overruled. Considering the context of *Kulkarni* and the line of cases on directory requirements, we hold that the portion of KRS 118.315(2) relating to “counting”<sup>6</sup> petitioners to be directory in

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<sup>6</sup> Although the candidate has the ultimate responsibility to insure his or her filing of a proper petition, the “shall be counted” language of KRS 118.315(2) is directed toward the county clerk and not the candidate. KRS 118.315(4) directs a county clerk to “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 county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.” KRS 118.315(4). Applying basic precepts of statutory construction, this subsection places certain responsibilities on the county clerk to verify technical compliance with nominating petition requirements relating to a voter’s eligibility to vote within the jurisdiction. *See Skaggs*, 98 S.W.2d 884 (“Therefore, the requirement in the current statute that the

nature. If both signing petitioners are eligible voters registered to vote in the election at issue within the given district or jurisdiction, the real purpose of the law is satisfied.

There is no dispute that Deborah Noe actually resides within the district or jurisdiction of the Crescent Springs, Kentucky City Council and that she is a registered voter. She can vote for all three of the candidates for whom she signed petitions. These facts serve to place the case at bar within our state's "directory" line of cases, under which substantial compliance with the applicable statute is sufficient.

In contrast to this case and the other "directory" cases, *Kulkarni* involved a party primary election and an elector *who was not registered to vote* in the primary election for which she sought to nominate a candidate. In *Kulkarni*, one of the nominating petitioners for the Democratic primary candidate was a

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nominating petition signatures be dated or they will not count, is also not mandatory, so long as it can be established that the petition signers are eligible voters for the relevant election." Here, the Kenton County Clerk accepted the nominating petitions and did not send a notification of error within twenty-four (24) hours. KRS 118.315(4). This lends support for a finding that the petitions were sufficiently compliant on their face to justify not disqualifying the candidates. The *Skaggs* court held that,

if the petition discloses the petitioners to be residents of the unit of government involved and to have the right to vote in the election to be held, it will be deemed prima facie sufficient. This is particularly so if the clerk charged with the duty of accepting or passing upon the same is satisfied.

*Skaggs*, 98 S.W.2d at 888.

registered Republican when she signed the nominating petition. She was not eligible to vote for the candidate she attempted to nominate and could not vote in the Democratic primary. The Kentucky Supreme Court held this was fatal to the nominating petition.

*Kulkarni* concerned a *partisan primary* election. Kentucky primary elections are subject to special rules and additional scrutiny to avoid partisan gamesmanship. This state's highest court has noted that the purpose of the state's original primary election law was "to purify the politics of the state, by preventing frauds and wrongdoing in making nominations[.]" *Hager v. Robinson*, 157 S.W. 1138, 1146 (Ky. 1913). For example, one purpose of a closed primary is to prevent voters of one party from nominating a weak or "dummy" candidate for another party, so the nominator's true party has a better chance of prevailing in the general election.

A primary election is one for the nomination of candidates for office of the respective political parties by the members thereof. If Republicans vote the Democratic party ballot, and Democrats vote the Republican party ballot, a Socialist vote any ballot but their own, then nomination so made cannot be said to be party nomination.

*Id.* This concern over inter-party scheming is not so clearly present in a nonpartisan election.

*Kulkarni* ratified the long-standing mandatory/directory distinction in

our election case law and recognized that some statutory requirements are technical or directory in nature and do not mandate strict compliance. In *Kulkarni*, the Supreme Court left intact the directory line of cases and did not overrule this Court's holding in *Stoecklin*, which addressed the same statute subsection (KRS 118.315(2)) at issue in this case. In *Stoecklin*, this Court held it was "insignificant" that electors had signed a candidate's nominating petition before the date authorized by statute "given that the nominating petition was signed by eligible registered voters, submitted timely, otherwise followed all statutory requirements and was not noted to have any error by the county clerk." *Stoecklin*, 526 S.W.3d at 108. Thus, a nominating petitioner's status as a registered or eligible voter is the critical factor. The candidate must show that each of his two signatories can actually vote for the candidate in the coming election.

As an additional basis for finding the statutory subsection at issue to be directory and not mandatory, there is now no clearly stated consequence contained in the language of the statute for failing to comply with it. In *Stoecklin*, this Court noted, "[i]f the provision that signatures be dated or they will not count is not mandatory, it is not logical to interpret the provision that voters must not sign before a certain date (**which does not specify a penalty for noncompliance**) as mandatory." *Id.* at 107-08 (emphasis added).

If the General Assembly intended that a petitioner's signing for a

subsequent candidate cannot be counted, it could have easily achieved this by appending the word “only” to the end of the portion of the statute subsection addressing counting nominating petitioners. It did not do so, and the rules of statutory construction dictate that we interpret that choice as intentional. *Revenue Cabinet v. O’Daniel*, 153 S.W.3d 815 (Ky. 2005) (“we assume that the Legislature meant exactly what it said, and said exactly what it meant”) (internal quotation marks and footnote omitted); *Maysey v. Express Servs., Inc.*, 620 S.W.3d 63, 71 (Ky. 2021) (“we presume that the legislature is aware of the state of the law when it enacts a statute, including the judicial construction of prior enactments”). The General Assembly could amend the statute to state more clearly that the signatures of those who sign duplicate petitions shall not be counted, and a petition not in compliance shall be invalid.

The predecessor statute to KRS 118.315, KRS 118.080 (repealed 1972), *did* include a more clearly stated and specific consequence for noncompliance within the statutory language regarding a single person nominating more than one candidate for a particular office. The former KRS 118.080(2) stated, “[i]f any person joins in nominating, by petition, more than one nominee for any office to be filled, **he shall not be counted as a petitioner for either nomination.**” KRS 118.080(2) (repealed 1972) (emphasis added).

*Stewart v. Burks*, 384 S.W.2d 316 (Ky. 1964), addressed the former

KRS 118.080(2) that included the penalty language. In *Stewart*, this state's highest court held that KRS 118.080 served to invalidate duplicate signatures on nominating petitions. 384 S.W.2d at 320. *Stewart* was decided under the prior statute which included more specific penalty language and is therefore distinguishable from the current version of KRS 118.315(2) and its application in this case.<sup>7</sup>

### CONCLUSION

After careful review, we hold that the nominating petitioner "counting" requirement of KRS 118.315(2) is directory in nature. We further hold that the Candidates substantially complied with the statute. Deborah Noe served as a petitioner on more than one candidate's nominating petition, but it is undisputed that she is registered to vote and is an eligible voter in the general election for the office of Crescent Springs City Council.

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<sup>7</sup> Pursuant to the maxim, *expressio unius est exclusio alterius*, we acknowledge that KRS 118.315(2) includes language relating to the nomination of candidates for soil and water conservation district supervisors that raises the strong inference that duplicate signatures on nominating petitions for other offices will not be counted:

If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he or she 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 or her signature is affixed.**

KRS 118.315(2) (emphasis added). But we believe the legislative history and the removal of more clearly stated penalty language from KRS 118.080 (predecessor to KRS 118.315) weigh in favor of our holding today that the counting of repeat petitioners is directory.

For the foregoing reasons, we AFFIRM the Kenton Circuit Court.

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ALL CONCUR.

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BRIEF FOR APPELLANT:

Frank A. Wichmann  
Erlanger, Kentucky

BRIEF FOR APPELLEES CHAD  
LONGBONS AND CAROL  
MCGOWAN:

Daniel A. Hunt  
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