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**COMMONWEALTH OF KENTUCKY
BOONE CIRCUIT COURT
DIVISION I
CASE NO. 24-CI-01869**

MEDIA5040

**IN RE: UNION PRECINCT NO. 1 AND UNION PRECINCT NO. 4 GENERAL
ELECTION AND NOVEMBER 5, 2024**

DEFENDANTS' MOTION TO STRIKE

Defendants, Justin Crigler, as Boone County Clerk and Chair of the Boone County Board of Elections, and Stephen Mueller, Janet Cowen, and Michael Helmig as members of the Boone County Board of Elections, by and through counsel and pursuant to CR 12.06, respectfully move the Court to strike the Verified Petition and Application for Election Contest, and for Declaratory and Injunctive Relief filed by Intervening Movant Douglas Bine on December 4, 2024. A Memorandum in Support is attached.

Respectfully submitted,

/s/ Jeffrey C. Mando, Esq.

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Clerk Justin Crigler, and Stephen Mueller,
Janet Cowen, and Michael Helmig as
Members of the Boone County Board of
Elections*

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NOTICE OF HEARING

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Please take notice that the foregoing motion will come on for hearing on **December 17, 2024 at 9:00 a.m.** before the Hon. Richard Brueggemann in the Boone Circuit Court, or as soon thereafter as counsel may be heard.

CERTIFICATION OF COUNSEL

This is to certify that on the **9th** of December, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CourtNet system which will send electronic notice to: Steven J. Megerle, Esq.

I hereby certify that a copy was also sent vis U.S. Mail to:

Brian F. Garner
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John J. Mefford
10710 Aspen Plance
Union, KY 41091

Eric Dulaney
10069 Indian Hill Drive
Union, KY 41091

/s/ Jeffrey C. Mando
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**IN RE: UNION PRECINCT NO. 1 AND UNION PRECINCT NO. 4 GENERAL
ELECTION AND NOVEMBER 5, 2024**

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STRIKE

Defendants, Justin Crigler, Boone County Clerk and Chair of the Boone County Board of Elections, and Stephen Mueller, Janet Cowen, and Michael Helmig as members of the Boone County Board of Elections, by and through counsel, submit the following memorandum in support of their Motion to Strike of Intervening Movant Douglas Bine's "Verified Petition and Application for Election Contest, and Declaratory and Injunctive Relief" as procedurally improper.

I. Procedural Background

Following reports of voting irregularities during the November 5, 2024 General Election, Boone County Clerk Justin Crigler filed a Verified Petition, pursuant to KRS § 120.017, concerning ballots cast at Union Precincts Nos. 1 and 4 in Boone County. Pursuant to KRS § 120.017(3), the Court immediately ordered custody of the voting machines and ballots from the precincts at issue to be transferred to the Court and initially set the date for the manual recount by the Court for November 12, 2024

Under the statutory recount procedure, candidates, upon proper motion, shall be made parties to the action. KRS 120.017(4). Thus, Intervening Movant Douglas Bine, a current Union city commissioner seeking re-election, filed a Motion to Intervene and for Leave to File an Election Contest and Application. In that motion, Bine argued that, under

KRS 120.017, “[c]andidates affected by the irregularities are freely granted leave to be added as parties, participate in the recount, and to bring an election contest under Ky. Rev. Stat. § 120.155 and to appeal the recount totals determined in this action.”

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On November 12, 2024, this Court entered an Order denying Crigler’s KRS 120.017 petition, reasoning that a recount under the circumstances would be inappropriate, but granting Bine’s motion. (See 11/12/24 Order) Within its Order, the Court also stated that “[p]arties to this action, or other persons having an interest and not yet before Court, are free to seek other relief, if appropriate, in an election contest suit.”

On December 4, 2024, Intervening Movant Douglas Bine filed, within this same KRS 120.017 recount action, a Verified Petition and Application for Election Contest, and Declaratory and Injunctive Relief.

II. BINE’S PLEADING IS PROCEDURALLY IMPROPER UNDER KENTUCKY’S ELECTION STATUTES

Rather than initiating a separate proceeding, Bine has improperly filed an election contest petition within the existing recount action. This procedural maneuver is not contemplated by KRS 120.017, nor by this Court’s November 12, 2024 Order. As such, Bine’s filing is procedurally improper and should be stricken from the record.

A. BINE CANNOT INITIATE AN ELECTION CONTEST WITHIN A RECOUNT PROCEEDING UNDER KRS 120.017

The Boone County Clerk initiated this action as a recount petition under KRS 120.017. Pursuant to subsection (4) of this statute, Bine, as a Union City Commission candidate, was properly made a party to the action. However, under KRS 120.017(6), the only recourse available to a candidate under this statute is to appeal the judgment to the Court of Appeals. KRS 120.017 does not permit a candidate to concurrently or subsequently file an election

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contest within the same action. Indeed, as explained in its November 12 Order, this Court cannot grant relief for election irregularities under a statute that provides for a recount as the sole remedy.

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Moreover, KRS 120.155(4) explicitly permits a candidate who is party to a requested recount petition to file an election contest within a recount proceeding only if the recount was brought under KRS 120.185(1) - a provision that applies exclusively to recounts initiated by candidates. This action, however, was not initiated by a candidate under KRS 120.185(1), but rather by the County Clerk under KRS 120.017. Bine is, therefore, precluded from pursuing an election contest in the instant action.

In his Motion to Intervene and for Leave to File an Election Contest, Bine argued that “[c]andidates affected by the irregularities are freely granted leave to be added as parties, participate in the recount, and to bring an election contest under Ky. Rev. Stat. § 120.155 and to appeal the recount totals determined in this action.” Bine is incorrect. KRS 120.017 does not contemplate or authorize such a filing in this context.

Defendants do not dispute that Bine has the right to file an election contest. However, he has not done so in a procedurally proper manner. Under the circumstances, there is only one permissible way for Bine to pursue an election contest: by initiating a separate suit in Boone Circuit Court under KRS 120.155(1). The provisions of KRS 120.155(4) and KRS 120.185, which contemplate election contests in conjunction with recounts initiated by candidates, do not apply here. The Court acknowledged the proper procedure in its November 12, 2024 Order, stating: “Parties to this action, or other persons having an interest and not yet before the Court, are free to seek other relief, if appropriate, in an election contest

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suit.” Any such contest must be filed as a separate action, and the Court’s Final Order in this case does not disturb that legal proposition.

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B. KENTUCKY COURTS CONSISTENTLY ENFORCE STRICT COMPLIANCE WITH STATUTORY REQUIREMENTS IN ELECTION DISPUTES

Permitting Bine to file and proceed with an election contest within this KRS 120.017 recount petition action would be inconsistent with the legislative framework governing election disputes. It is well-established that the Legislature has authority to prescribe by whom and under what conditions a contest may be maintained. *City of Pikeville v. Pike Cnty.*, 297 S.W.3d 47, 51 (Ky. Ct. App. 2009); *Kash v. Smith*, 250 Ky. 490, 63 S.W.2d 617 (1933); *Gross v. Ball*, 258 Ky. 730, 81 S.W.2d 409 (1935); *Gallagher v. Campbell*, 267 Ky. 370, 102 S.W.2d 340 (1937); *Stamper v. Hall*, 270 Ky. 164, 109 S.W.2d 386 (1937); *Stafford v. Bailey*, 282 Ky. 525, 138 S.W.2d 998 (1940); *Dixon v. Maddox*, 311 Ky. 28, 223 S.W.2d 178 (1949); and *Payne v. Blanton*, 312 Ky. 636, 229 S.W.2d 438 (1950).

These precedents make clear that the statutory conditions governing election contests are not mere formalities but substantive jurisdictional prerequisites established by the General Assembly. In *Dixon v. Maddox*, *supra* the Court emphasized that election contests are “in the nature of summary proceedings, with condition precedent prescribed requirements,” and further noted that such proceedings “embody some of the elements of a proceeding in rem.” 311 Ky. 28, at 30.

III. CONCLUSION

Permitting Bine to prosecute an election contest within this action, in contravention of the statute, would be improper and inappropriate. For the reasons set forth herein, Defendants request that Bine’s “Verified Petition and Application for Election Contest, and Declaratory and Injunctive Relief” be stricken from the record.

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Respectfully submitted,

/s/ Jeffrey C. Mando, Esq.

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Attorneys for Defendants, Boone County Clerk Justin Crigler, and Stephen Mueller, Janet Cowen, and Michael Helmig as Members of the Boone County Board of Elections

CERTIFICATION OF COUNSEL

This is to certify that on the **9th** of December, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CourtNet system which will send electronic notice to: Steven J. Megerle, Esq.

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/s/ Jeffrey C. Mando

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