

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

**JUSTIN CRIGLER,**  
*in his capacity as Boone County Clerk,*

**PETITIONER**

**IN RE: UNION PRECINCT 1 AND UNION PRECINCT 4  
GENERAL ELECTION ON NOVEMBER 5, 2024**

**AND**

**DOUGLAS BINE**

**INTERVENING PETITIONER/CONTESTANT**

**V.**

**BRIAN GARNER, et al.**

**RESPONDENTS**

**JUDGMENT AND ORDER**

This matter is before the Court for final disposition on Petitioner Douglas Bine's Election Contest Remedy. Pursuant to an Order entered January 28, 2025, and following a hearing held on January 21, 2025, the parties effectively stipulated that the integrity of the election was such that the outcome could not be determined by the ballots cast. Consequently, by agreement of the parties, the Court ordered simultaneous briefing on the issue of the appropriate remedy. All memoranda having been timely filed,<sup>1</sup> the Court took the matter under submission on January 30, 2025. Having considered the record, the memoranda and exhibits submitted by the parties, and being in all ways sufficiently advised, the Court enters this Order.

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<sup>1</sup> By Petitioner Douglas Bine, Defendants (namely, a combined memorandum from Respondent Justin Crigler, in his capacity as Boone County Clerk and Chair of the Boone County Board of Elections and Respondents Stephen Mueller, Janet Cowen, and Michael Helmig as members of the Boone County Board of Elections), and Brian Garner (who is appearing *pro se*).

## FACTUAL BACKGROUND<sup>2</sup>

This case originated by a petition filed by Boone County Clerk Justin Crigler pursuant to KRS 120.117, just days following the election conducted November 5, 2024. At a hearing on that petition, it was undisputed that eligible voters within the City of Union voting at Union Precinct No. 1 and Union Precinct No. 4 were disenfranchised. This occurred because voters who did not reside within the City of Union (and who were therefore ineligible to vote for the members of City Council) were provided and voted on ballots that should have been exclusively limited to residents of the City of Union.

As recited in previous orders, there is no dispute that eight hundred (800) ballots were provided to Union Precincts 1 and 4 for eligible voters within city limits in those precincts.<sup>3</sup> By 11:30 a.m., Crigler received a call that the precincts were running out of ballots for City voters. Only 414 residents from the City of Union had requested ballots at these two precincts. However, all 800 City of Union ballots were voted, resulting in precinct officials reporting a shortage of ballots at those two precincts. After learning the error at 11:30 a.m., the Clerk ordered the voting machines to be taken out of service and new machines installed. This occurred by 12:30 p.m. Between those times, some voters from the City of Union attempted but were unable to vote.

At these same precincts, there were 1,259 non-City voters who requested ballots.<sup>4</sup> Thus, there was a total of 1,690 ballots requested at these two precincts for all voters.<sup>5</sup> There are two

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<sup>2</sup> The procedural posture and factual background is more fully set out in the Order entered January 3, 2025, and November 12, 2024.

<sup>3</sup> 500 ballots were provided to Union Precinct 1, and 300 to Union Precinct 4.

<sup>4</sup> 759 non-City voters requested ballots at Union Precinct 1, and 500 in Union Precinct 4.

<sup>5</sup> Curiously, according to the data presented by Petitioner Bine as purportedly prepared by Professor Mack Mariani from Xavier University, 997 ballots were requested at Union Precinct 1 but only 963 were submitted or cast. And at Union Precinct 4, a total of 693 were requested but only 679 were submitted or cast. That would result in a discrepancy of 48 fewer ballots cast or submitted than were requested (respectively, 34 in Union Precinct 1 and 14 in Union Precinct 4). See Pet. Bine's Memo., p. 17, and Exh. A, p. 3.

problems with the election. Firstly, voters in the City of Union were unable to vote for members of City Council (whether by having been given the wrong ballot or by being turned away between 11:30 and 12:30). Secondly, many of the non-City voters were improperly given ballots to vote for members of City Council. Because the process of casting ballots must be anonymous, there is no way to determine precisely how many City residents were disenfranchised, or how many non-City residents cast votes for which they were ineligible. All that can be ascertained is that, during the time that no distinction was being made to distinguish between the appropriate ballots, a total of 414 City residents requested ballots but 800 ballots were voted.

Compounding the problem is that each ballot allowed for four votes, one for each position available. Five candidates stood for election. Hence, a voter could vote for one candidate only or up to four. City-wide, the election returns for each candidate were tabulated as follows:<sup>6</sup>

i. John J. Mefford	2,227
ii. Eric Dulaney	1,976
iii. Jeremy M. Ramage	1,756
iv. Brian F. Garner	1,693
v. Douglas Bine	1,628

There could be as many as 800 invalid votes between Union Precincts 1 and 4. Statistically, it is likely less but there is no way to know. The difference in tabulated votes between Garner and Bine is only 65 votes. The difference between Mefford and Bine, which would represent the greatest margin, is only 599. Hence, none of the races can be determined by tabulation of votes.

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<sup>6</sup> As the Court understands it, sometime after the election, Jeremy M. Ramage withdrew, thereby refusing to qualify. This would result in four candidates remaining, equaling the number of positions on the Council. Nevertheless, the votes cast for Ramage cannot be applied to other candidates for purposes of the question presented here, *i.e.*, is which of the candidates could be deemed fairly elected, if any.

The Court notes that some parties contend 932 City ballots were cast (which is more than the 800 ballots purportedly provided), and that because there were 414 City voters who requested ballots, the discrepancy is only 518. The first problem with this is it assumes 932 ballots were provided by the Boone County Clerk (to Union Precincts 1 and 4), rather than the 800 ballots that he verified as having provided. The second problem with this is that it speculates that all 414 City voters who requested ballots would have been given the appropriate ballot. But no such speculation can be assumed as fact because all of the ballots were given out indiscriminately. This is undisputed. Therefore, it could be equally assumed that all City ballots had been given to the 1,259 non-City voters. In any event, and regardless of whether the City ballots provided numbered 800 or 932, the disparity is greater than 599 votes.

#### **ARGUMENTS PRESENTED**

Petitioner Bine contends that the election for City Council must be declared void as to all candidates and that their respective offices be vacated. Bine asserts that, because the statute states the Court shall proceed in equity, it may afford a broad range of remedies. According to Bine, this Court has three options to provide a remedy, namely: (1) order a special City-wide election be conducted, (2) order a special election for Union Precincts 1 and 4 only, or (3) order the Mayor of the City of Union to appoint commissioners to fill the vacancies.

Defendant/Respondent Garner agrees with Bine that the Court may choose between the foregoing three remedies. Garner further argues, however, that the tabulated election results may not be overturned unless the tainted ballots exceed 20% of the total votes cast. According to Garner, assuming all of the 414 City residents were given City ballots, the total tainted votes are less than 20% because a total of 5,065 votes were cast City-wide. Thus, Garner contends, the Court should not declare the election void.

Boone County Clerk Justin Crigler, along with the other Defendants/Respondents, agree that the defects in the conduct of the election invalidates the tabulated results. They further argue, however, that the law affords only one remedy, namely, the filling of vacancies by appointment of the mayor.

### ANALYSIS

KRS 120.165 states, in relevant part, as follows:

(1) A contest instituted under KRS 120.155 shall proceed as equity actions.

...

(4) If it appears from an inspection of the whole record that there has been such fraud, intimidation, bribery, or violence in the conduct of the election that neither contestant nor contestee can be judged to have been fairly elected, the Circuit Court, or an appellate court, on appeal, may adjudge that there has been no election. In that event the office shall be deemed vacant, with the same legal effect as if the person elected had refused to qualify. If one (1) of the parties is adjudged by the court to be elected to the office, he or she shall, on production of a copy of the final judgment, be permitted to qualify or be commissioned.

“The fraud contemplated by KRS 120.165(4) . . . includes what might be classified as constructive fraud. Constructive fraud arises through some breach of a legal duty which, irrespective of moral guilt, the law would pronounce fraudulent because of its tendency to deceive others, to violate confidence, or to injure public interests.” *Wood v. Kirby*, 566 S.W.2d 751, 755 (Ky. 1978). “[T]he essence of this review is to determine whether any candidate ‘can be judged to have been fairly elected.’ Stated otherwise, our analysis is not necessarily focused on the breadth of the fraud itself, but its effect on the entire election.” *McClendon v. Hodges*, 272 S.W.3d 188, 191 (Ky. 2008).

“Though Kentucky courts are reluctant to declare an election void, our case law has long established that this extreme remedy is nonetheless necessary when it is impossible to fairly discern a winner.” *Id.*, at 191-192. “Even when evidence of fraud is limited to only a portion of

the electorate or to specific precincts, it may nonetheless be necessary to set aside the entire election.” *Id.* The test is whether the Court can “fairly identify which votes should be disregarded to declare a winner.” *Id.*, at 191.

Here, regardless of whether there were 800 or 932 ballots provided for City races, there is no way to know how many of the City residents actually voted on a City ballot. It is undisputed that those ballots were given indiscriminately to both City and non-City voters. All we know is that either 800 or 932 City ballots were purportedly cast, and that only 414 City residents requested a ballot. We do not know how many, if any, of those 414 were given a City ballot. Contrary to Garner’s arguments, the law requires that the election be overturned if the tainted votes would have favored the one having the lowest vote tally.

“If the number of [invalid ballots] would be sufficient to change the result if they had been cast for the minority, then the election should be set aside upon the ground that it could not be determined with certainty that the result . . . represented the will of the majority.” *Id.*, quoting *Lakes v. Estridge*, 172 S.W.2d 454, 456 (Ky. 1943), quoting *Wallbrecht v. Ingram*, 175 S.W. 1022, 1028 (Ky. 1915). And “when such irregularities are so widespread or general as to leave the judicial mind in doubt as to how the election did go, or would have gone but for them, then they cannot be eliminated.” *Harrison v. Stroud*, 110 S.W. 828, 830 (Ky. 1908).

For all of the foregoing reasons, this Court finds that the failure to provide City residents with the City ballots, and the indiscriminate provision of City ballots to ineligible non-City voters, “was such as to color the election with [constructive] fraud.”<sup>7</sup> This Court further finds “that the proper tabulation of votes [cannot] be done with a reasonable degree of certainty.”<sup>8</sup>

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<sup>7</sup> See *Wood v. Kirby*, 566 S.W.2d, at 755.

<sup>8</sup> *Id.*

Garner presents no law to support his contention that at least twenty percent of the total votes cast must be tainted before the election can be overturned. It appears he takes this from Bine's Petition for Contest. But Bine presents no law for this premise, either. Bine alleges this to have been the common law but, even if so, statutory enactments supersede the common law. Further, although Bine and Garner both argue this Court has authority to order a special election, neither point to any law to support that premise. Pursuant to BGLR 6.D. of the local rules for this Circuit, "[b]riefs and memoranda filed with the Court shall contain citations to evidence and law that support all arguments advanced therein."

In any event, the Court agrees with Defendant/Respondent Crigler that the law affords only one remedy, namely, the process provided for in KRS 83A.040(5). This statute provides for that the members of the Union City Commission be appointed by the sole remaining member of that legislative body, its mayor. KRS 83A.040(5) provides the mayor with the authority to fill the respective seats hereby vacated, pending the next succeeding annual election, in accordance with Section 152 of the Kentucky Constitution. That this is so is well settled law. *Poyntz v. Shackelford*, 54 S.W. 855, 856 (Ky. 1900), overruled on other grounds by *Pratt v. Breckinridge*, 112 Ky. 1, 21 (1901) ("[T]he meaning of this section is quite plain. Whenever a vacancy occurs in an elective office, it is to be filled by appointment."); *Pence v. Frankfort*, 41 S.W. 1011, 1012 (Ky. 1897).

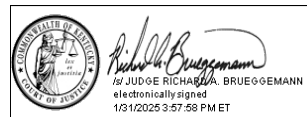
It isn't that this Court is not sympathetic to Bine's request for a special election (or to that expressed by John Mefford and other candidates at the hearing that their preference would be resolution by the voters at the ballot box). However, this Court must rule according to what the law is. Kentucky is governed by a representative republic, whose representatives are democratically elected. Those elected to the legislative branch determine the law that this Court

must apply. “It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments.”<sup>9</sup> As John Adams put it, *ours is a government of laws, not men.*

**THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED** that the election for all races held for City Commissioner, in and for the City of Union, is **VOID** and **SET ASIDE** on the ground that it cannot be determined with certainty that the result represented the will of the majority.

**IT IS FURTHER HEREBY ORDERED AND ADJUDGED** that effective the entry date of this Order, and as a necessary result of setting aside the election, Defendants/Respondents that purported to attain office of City Commissioner as a result of that election, are hereby ousted from office pursuant to KRS 120.165(4) and the vacancies of said offices shall be filled by the Mayor of the City of Union pursuant to KRS 83A.040(5).

**IT IS SO ORDERED.**



**JUDGE RICHARD A. BRUEGGEMANN**  
**BOONE CIRCUIT COURT**

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<sup>9</sup> James Madison, FEDERALIST NO. 48.