

FILED  
 BOONE CIRCUIT/DISTRICT COURT  
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 DAVID S. MARTIN, CLERK  
 BOONE CIRCUIT COURT  
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NO.

**CHRISTINE McLAUGHLIN**  
 1224 Thistledown Court  
 Hebron, KY 41048

**PLAINTIFF**

vs. **PETITION FOR INSPECTION OF OPEN RECORDS**

**BOONE COUNTY CLERK**  
**JUSTIN CRIGLER**

**DEFENDANT**

Serve: Justin Crigler, Boone County Clerk  
 2950 Washington Square  
 Burlington, Ky 41005  
 Via: certified mail

And: Jordan Dallas Turner, Boone County Attorney  
 2970 Union Square  
 Burlington, Ky 41005  
 Via: certified mail

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Comes the Plaintiff, Christine McLaughlin, by and through the undersigned counsel, and for her Petition for the Inspection of Open Records states as follows:

1. This court has jurisdiction in accordance with KRS 61.882.
2. The Plaintiff ("McLaughlin") is an adult resident of Boone County, Kentucky.
3. On June 16, 2023, McLaughlin, pursuant to KRS 61.872(2) and KRS 61.872(3)(a), submitted an Open Records Request ("ORR") to the Boone County Clerk ("Defendant"). **(Plaintiff's Exhibit (PX) #1 Draft Copy of ORR** (original version with name, signature is in the Clerk's Office)). McLaughlin requested approximately 1,267

ballots from the May 2023 primary election, to be presented for inspection, from the following precincts:

- a. Petersburg Community Center (A110);
- b. Burlington Elementary School (A112, A115);
- c. Boone County Library – Main Branch (A113);
- d. Boone Links Golf Course Clubhouse (B115, B118);
- e. Union Fire Station (B122);
- f. Gray Middle School (B124, B136); and
- g. Florence Elementary – Ralph Rush Center (C126).

4. After receiving McLaughlin’s ORR, County Clerk Justin Crigler spoke to County Attorney, Jordan Dallas Turner, and then told McLaughlin the Clerk’s Office, was going to take 5 days to respond in writing.

5. In accordance with KRS 61.870(2) the ballots are a public record.

6. KRS 61.872(3)(a) states, “A resident of the Commonwealth may inspect the public records: (a) During the regular hours of the public agency.” KRS 61.872(5) states that unless the record is “in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed five (5) days from receipt of the application . . . .” The records were and are available in the Clerk’s Office, and McLaughlin’s ORR should have been granted on the date it was presented, June 16, 2023, or at worst within five duty days after June 16th.

7. On June 22, 2023, the Office of the Boone County Attorney [on behalf of the Clerk] denied McLaughlin’s ORR based on claims asserted in the denial’s six

numbered paragraphs. As explained below, such claims are statutorily insufficient to deny McLaughlin's ORR. **(PX #2, Boone County Denial of ORR).**

a. In Paragraph #1 of the denial, Defendant cites KRS 61.878(1)(a) and KRS 118.025 to claim, or insinuate without explanation, that McLaughlin's inspection of the ballots would invade personal privacy, and perhaps even destroy the secrecy of the ballots. If Boone County ballots currently violate the privacy and secrecy requirements of the law – or the mere inspection of the ballots would violate the law – then those problems pre-existed McLaughlin's ORR, and those potential violations of law would increase, rather than decrease, the impetus for McLaughlin's inspection of the ballots.

b. In Paragraph #2, Defendant expresses the "opinion" that taken together KRS 61.878(1)(k) and KRS 117.275(16) "compel the ballots to remain untouched except in the event of a request for recanvass, contest or recount pursuant to KRS 120.250 – even after the 30-day, post-election impoundment of the ballots (under KRS 117.275(16)) has expired." This opinion conflicts with the practice of the Commonwealth, and perhaps even Boone County itself (when/if the county conducts inspections of selected ballots after elections).

In 2021, in development of practices under a law enacted by the Kentucky General Assembly, the State Board of Elections ("SBE") selected six counties in Kentucky to conduct a Risk-Limiting Audit ("RLA") of ballots from the 2022 general election **(PX #3, Commonwealth of KY, Final Report on Risk Limited Audit Pilot Program March 21, 2023)**. The SBE conducted the RLA prior to the end of 22 month period when the ballots must be destroyed under KRS 117.275(16). The SBE noted that

its inspection of ballots did not qualify as an actual RLA, so the SBE deliberately waited to conduct the practice audit “until after the thirty-day impoundment period . . .” to avoid “any issues to be raised in prospective recount litigation . . .” (PX #3, at 8).

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If the Commonwealth, and the County, can inspect the ballots – after the end of the 30-day impound, and prior to the destruction of the ballots after 22 months – then McLaughlin should have the same access.

c. In Paragraph #3, Defendant speculates, without a factual basis, “that the inspection of the ballots will interfere with the integrity of the ballots and place the Clerk’s office in a position to facilitate a violation of KRS 119.195(4) [a Class C Felony].” While it is doubtful the specific intent element of KRS 119.195(4) could be met after the 30-day period is complete, KRS 61.874(1) already requires original public records to be handled with care. Even if the hypothetical/speculated felony involved McLaughlin – *rather than the Defendant’s own employees* – it would still not constitute a lawful reason to deny the ORR (because it would still be mere speculation).

d. In Paragraph #4, Defendant claims McLaughlin’s ballot inspection would create an unreasonable burden under KRS 61.872(6). However, the Defendant fails to provide clear and convincing evidence to support the claim. Responding to ORR’s is not a burden, but is instead a portion of the Clerk’s Office routine duties. The number of ballots to be inspected is approximately 1,267. Thus, the inspection should be completed within the business hours in a single day, as anticipated by KRS 61.872(3)(a). The 30-day impound period has expired, so there is no need for a Deputy Sheriff to be present. When the Commonwealth’s State Board of Elections conducted their ballot counting practice in 2022, no unbearable burdens were identified. (PX #2).

e. In Paragraph #5, Defendant claims that the documents requested “would offer no insight . . . nor information that would serve a purpose other than a private recount.” Again the Commonwealth’s General Assembly and the State Board of Elections (SBE) seem to disagree with the Defendant. One of the SBE’s conclusions from the ballot counting practice was that future repeats of that practice could “be a tool to build on the transparency of the Commonwealth’s voting machines and help prove the accuracy of these products.” (PX #2, at 13) Boone County was not one of the six counties selected for the SBE practice in 2022. If the only entities who are allowed to audit or inspect the system are the same entities who run the system, the goal of transparency is greatly mitigated or nonexistent.

The case cited by Defendant – *Kentucky Bd. of Examiners of Psychologists & Div. of Occupations & Professions, Dep’t for Admin. v. Courier-Journal & Louisville Times Co.*, 826 S.W.2d 324, 328 (Ky. 1992) – has no application to McLaughlin’s ORR. In that case, the Kentucky Supreme Court determined the requested information was “indeed, of a *very* personal nature and . . . would constitute a serious invasion of the personal privacy of those who complained against [Dr.] Tadajewski.” *Id.* at 328. After committing professional misconduct which “consisted of sexual improprieties,” Dr. Tadajewski “resigned from practice, surrendered his license and agreed that he would neither seek re-licensure nor engage in providing mental health service.” *Id.* at 325. By contrast, McLaughlin’s ORR does not request information of a personal sexual nature, and unlike Dr. Tadajewski’s dead career, elections and election ballots are lively Constitutional events, in which the public regularly participates.

f. In Paragraph #6, Defendant cites KRS 120.185 which sets out the statutory requirements for a recount. Recounts have no application to this case. Like the Commonwealth's Board of Elections ballot audit practice, as well as Boone County's select ballot counts, McLaughlin intentionally waited for the 30-day impound period to expire before she submitted her ORR.

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**WHEREFORE**, the Petitioner respectfully requests as follows:

1. That the Court requires McLaughlin's ORR be granted;
2. That the Court orders the Defendant to notify the Plaintiff of the place, time, and date for inspection of the requested records;
3. That the Court sets this matter for expedited hearing and judgment;
4. That the Court award costs and attorney's fees to McLaughlin under KRS 61.882(5).
5. That the Court under KRS 61.882(5) award McLaughlin \$25 per day since June 16 when McLaughlin was denied her right to inspect during business hours;
6. For any and all other relief to which she may be entitled.

Respectfully submitted,

/s/ Brian C. Corneilson  
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