

NO. 20-CI-4856

JEFFERSON CIRCUIT COURT
JUDGE BRIAN C. EDWARDS
DIVISION ELEVEN (11)

Jefferson County Board of Education et.al.

PLAINTIFF

v.

**COURT'S FINDINGS OF FACTS AND
CONCLUSIONS OF LAW**

Bobbie Holsclaw, In her Official Capacity as
Jefferson County Clerk, et.al.

DEFENDANT

Pursuant to *KRS 132.017*, this matter is before the Court on Plaintiffs' challenge to the validity of the Jefferson County Clerk's Office's certification of a tax recall petition. The Plaintiffs in this matter are Jefferson County Board of Education ("JCBE") and Jefferson County Teachers Association ("JCTA"). The Defendant is Bobbie Holsclaw, In her Official Capacity as Jefferson County Clerk ("Clerk's Office"). Also involved in this action is a group of citizens calling themselves the Tax Recall Petition Committee ("The Committee") who were previously granted leave to intervene.

KRS 132.017 (2)(i) states:

A final determination of the sufficiency of a petition shall be subject to final review by the Circuit Court...and shall be limited to the validity of the county clerk's determination.

JCBE and JCTA have requested a review of the validity of the County Clerk's determination that the recall petition submitted by the Committee contained the necessary number of valid signatures required for certification. Upon review of all tendered pleadings, relevant authorities, and testimony as presented during the trial of this matter, this Court must conclude that the County Clerk erred in its decision to validate and certify that the petition contained the necessary number of valid

signatures required to place the tax recall question on the ballot.

BACKGROUND

Pursuant to *KRS 160.470*, on May 21, 2020, the members of the JCBE voted to impose a 7.6 cent increase to the ad valorem property tax assessed annually upon Jefferson County property owners. Prior to voting to approve the rate increase, two public notices were published detailing the proposed increase and providing notice of the JCBE meeting which resulted in the rate increase vote. The previous rate was 73 cents per every \$100 of assessed property value and the proposed increase would raise the rate to 80.6 cents. The revenue generated by this tax would go towards funding several different Jefferson County Public School (“JCPS”) projects including property maintenance and capital construction.

After the announcement of the proposed rate increase, a committee was formed by the Intervening Defendants to contest the increase. Because a portion of the revenue generated by the tax increase would be in excess of 4% more than the previous compensating rate, *KRS 132.010* provides affected tax payers a process in which they can challenge the increase and seek a recall vote. Pursuant to *KRS 132.010* and *132.017*, The Committee created a petition to recall the tax rate increase and upon review, this petition was certified by the Jefferson County Clerk and the matter has now been placed on the November 3, 2020 general election ballot.

JCBE is now requesting that this Court declare that the Clerk’s Office improperly certified the recall petition and is further requesting that the recall measure be removed from the November 3, 2020 ballot or in the alternative, that any votes casted in favor of recall be deemed null and void. The Jefferson County Clerk’s Office has responded to these claims and asserts that they properly reviewed and certified the signatures on the petition submitted by the Committee. The Committee

has intervened in this matter and concurs with the County Clerk that the certification was proper. A trial on this matter was convened on October 20, 2020 and ending on October 23, 2020 and the dispute now stands submitted for decision. In support of its decision, the Court now submits Findings of Fact and Conclusions of Law specifically relating to the validity of the tax recall petition.

FINDINGS OF FACT

JCBE voted to adopt the above-referenced tax rate increase on May 21, 2020. The following day, a five-member group organized by attorney Theresa Camoriano filed an affidavit with the Jefferson County Clerk to form the Tax Recall Petition Committee. Ms. Camoriano testified that she organized The Committee, however she was unable to serve as a named member of The Committee because she does not reside in the tax district that would be impacted by the proposed tax rate increase. The Committee members then began the process of collecting the necessary number of petition signatures to have the proposed tax rate increase issue placed on the November 3, 2020 general election ballot. Perhaps the only uncontroverted fact in this dispute is that the requisite number of valid petition signatures needed to place this issue on the ballot would be 35,517.

Pursuant to *KRS 132.017(2)*, the Committee proceeded in accumulating both handwritten petition signatures as well as electronic signatures. To procure electronic signatures, committee member Michael Schneider testified that the Committee contracted with a third-party website vendor named HostGator in order to set up a website.

Per *KRS 132.017(2)(d)(5)* all petition signatures, whether electronic or handwritten, must be accompanied with the signatories “printed name, street address, Social Security number or birthdate, and the name and number of the designated voting precinct of the person signing.” The website used to collect the signatures and the required accompanying information did not include any security

features to ensure that the person inputting the information was who they purported to be – or that it was actually being inputted by a human being as opposed to an electronic “bot”.

During the period when signatures were being accumulated, Ms. Camoriano testified that she obtained access to the Lojic and the Republican Party voter databases. After receiving both the handwritten petition signature entries as well as the signature information inputted electronically via the website, Ms. Camoriano testified that she, along with her two daughters utilized information from the databases to change and alter an unknown number of both types of petition entries. The changes and alternations included changing the spelling of names, changing submitted birthdates, and making changes to the submitted addresses to match the information reflected on the voter data bases. Ms. Camoriano further testified that neither she, nor to her knowledge, anyone else obtained authorization from the purported signatories before altering the signature entries.

On July 10, 2020, Ms. Camoriano presented the Committee’s petition to the Clerk’s Office in a paper format consisting of 1,149 pages and containing 40,320 signatures for consideration. It is unclear what percentage of the submitted signatures were obtained by the Committee via handwritten forms or electronically via the website, however, according to data testified to by Ms. Camoriano, approximately ninety-five(95) percent of the total signatures reviewed by her and her daughters prior to submitting the petition to the clerk were signatures obtained electronically. Ms. Camoriano testified that she did not have a record of how many of the signatures entries were altered (all without authorization) prior to submission to the Clerk. In addition, Ms. Camoriano stated that she refused a request from the Clerk’s office to provide the electronic/digital data supporting the collection of these electronic signatures.

After receiving the Petition, the Clerk’s office began the verification review process to

determine whether it contained at least 35,517 valid signature entries in accordance with the requirements of *KRS 132.017*. According to testimony from the Clerk's Office Election Center Co-Director, Attorney Maryellen Allen, the review process employed by the Clerk's office staff was to compare the signature entries on the petition with information contained on the statewide Voter Registration Database and the Jefferson County Clerk's Office registration database. Even though the vast majorities of the submitted petition signature entries were for the first time obtained electronically, no procedural modifications or additional steps were added to the review process to determine the validity of the signature entries.

After review of all 40,320 petition signature entries was completed, the following determinations were made by the Clerk's Office:

- 36,131 signature entries were unconditionally valid without error;
- 2376 signature entries were valid but with error;
- 1813 signature entries were invalid

The Clerks office distinguished those signature entries deemed valid but with error from those entries deemed invalid. Those that fell into the latter category were found to be invalid because either the entries were deemed to be duplicate entries, the purported signatory was not a registered voter in the JCPS school district, and/or there was evidence that the purported signatory did not actually sign the Petition. Signature entries with data that did not match up with information contained in the databases including differently spelled names, different addresses, and/or different dates of birth were not deemed invalid and were included in the final certification tally. Signature entries that had clearly been modified or altered by Committee members were also not deemed invalid. After completing their review, the Clerk's office certified the petition as having 38,507

valid signature entries, which is 2990 more than needed to have the tax recall issue placed on the November 3, 2020 ballot.

Following the initiation of this lawsuit, the Plaintiff's retained the services of James Sprigler, a computer software application developer at HALO Applications. Mr. Sprigler provided expert testimony at the trial in this matter about his review of the petition. Mr. Sprigler testified that he reviewed the 36,131 petition signature entries that were deemed by the Clerk's Office to be unconditionally valid. In conducting his review, Mr. Sprigler testified that he specifically looked to determine whether or not those 36,131 entries contained any duplicative entries (multiple entries for the same voter), whether there were discrepancies between the signature entry information contained in the petition and information contained in the voter registration databases, and whether there were clear indications that entries had been altered subsequent to their input and but prior to their inclusion on the petition.

At trial, Mr. Sprigler testified that his review resulted in the following findings:

- 843 of the certified unconditionally valid signature entries were duplicates;
- 123 of the certified unconditionally valid signature entries were for individuals whom the Clerk's office had no record of being a registered qualified voter within the JCPS voting district;
- 1035 of the certified unconditionally valid signature entries were for individuals whose petition listed address did not match an address contained in the Clerk's office voter registration records;
- 692 of the certified unconditionally valid signature entries were for individuals whose petition listed address and/or date of birth did not match the address and/or date of birth

contained in the Clerk's office voter registration records;

- 859 of the certified unconditionally valid signature entries were for individuals whose electronically inputted signature entry information was altered after this information was inputted on the website but before it was included on the petition;
- 75 of the certified unconditionally valid signature entries were for individuals whose handwritten signature entries on the petition were altered after the fact.

Mr. Sprigler concluded that if each of these flawed signature entries were deemed invalid, this would make the number of properly certifiable error free signature entries contained on the Committee's petition 33,271 which is 2246 less than is required for the tax recall question to be placed on the November 3, 2020 ballot.

On cross examination, Mr. Sprigler was questioned extensively about the reliability of the software program he created to conduct his analysis. The Committee's counsel also cross-examined Mr. Sprigler concerning the records he relied upon in conducting his analysis. Mr. Sprigler testified that his analysis relied upon a summary of the Clerk's voter registration records in reaching his conclusions. No evidence was presented to indicate that either Mr. Sprigler's software program or the Clerk's voter registration records summary was flawed or inaccurate. The Court thus finds no reason to question the veracity of the data relied upon by Mr. Sprigler in furtherance of his review.

CONCLUSIONS OF LAW

KRS 132.017 (2)(i) states:

A final determination of the sufficiency of a petition shall be subject to final review by the Circuit Court...and shall be limited to the validity of the county clerk's determination.

This Court is now tasked with determining the validity of the County Clerk's determination that the petition submitted by the Committee contained the required number of signatures from registered voters residing in the JCPS tax district. Prior cases clearly illustrate that the question of whether a certification decision was in accordance with statutory requirements is subject to de novo review and is a legal question of statutory interpretation. *Bratton v. CitiFinancial, Inc.*, 415 S.W.3d 625, 628 (Ky. 2013)

Kentucky Courts have been reviewing the validity of decisions relating to ballot petitions throughout the last century. Unfortunately, there is no unequivocally clear guidance for trial courts on how this is to be done. The question becomes even murkier as we enter a new frontier in which petition signatures are being primarily accumulated through electronic means as opposed to handwritten paper petition forms.

Plaintiffs primarily rely upon two cases by our Commonwealth's highest Court in support of their contention that the petition at issue in this matter failed to comply with the necessary statutory requirements to obtain valid certification from the Circuit Clerk. First, the Plaintiffs call the Court's attention to *Barnard v. Stone*, 933 S.W. 2d 394 (1996). Mr. Barnard was a congressional candidate who had submitted a nominating petition to the Circuit Clerk in order to have his name placed on the election ballot. *KRS 118.315* required that nominating petitions contain the signatures of 400

registered voters from the relevant voting district. Mr. Barnard's petition contained 398 unquestionably valid signatures and 4 that were in dispute because they had been signed by persons other than the named signatory but purportedly with the signatory's authorization. The Trial Court upheld the decision by the Board of Elections to certify the nominating petition, but the Court of Appeals reversed the Trial Court stating that compliance with election statutes requires a finding that petitions strictly comply with the statutory requirements. The Kentucky Supreme Court found that because the 4 signatures at issue were not actually signed by the named signatory, those signatures should not have been included in the final count of valid signatures on the petition. The Kentucky Supreme Court affirmed the Court of Appeals decision. The Plaintiffs argue that this effectively established a rule that petitions to place matters on election ballots must strictly comply with statutory authorities in order to be validly certified.

The Plaintiffs also rely on the Kentucky Court of Appeals decision in *Board of Ed. of Warren County v Fiscal Court of Warren County*, 485 S.W.2d 752 (1972). The facts in that matter are quite similar to those before the Court in the instant action. The Warren County Board of Education approved a resolution to levy a tax increase to support Warren County Schools. A group then presented a petition to the Warren County Fiscal Court to have a referendum vote on the resolution placed on the general election ballot. Pursuant to KRS 160.485 to be deemed valid, a petition must be accompanied by an affidavit verifying the names and addresses of the petition signers. The affidavit submitted in support of the petition properly verified the signers' names but did not verify the addresses. The trial court held that the petition was valid because the affidavit substantially complied with the statutory requirements. However, the Court of Appeals held that the petition was not substantially compliant thus reversing the decision of the trial court and resulting in the

resolution being removed from the ballot.

The Defendants primarily rely upon the Kentucky Court of Appeals decision in *The Petition Committee v Board of Education of Johnson County*, 509 S.W.3d 58 (2016). In that matter, the Board of Education of Johnson County approved a tax rate levy. Pursuant to KRS 132.017, a committee was formed to create a petition to have the tax rate issue placed on the ballot for a recall. The petition was approved and certified by the Johnson County Clerk, however when the certification was challenged in the Johnson Circuit Court, the Circuit Court concluded that the petition lacked the requisite number of valid signatures and should not have been certified.

The Circuit Court found that certain pages of the petition did not meet the strict requirements of the controlling statutes in that they did not identify the signatories' precinct, identified the precinct by number only, or contained a signature from voters residing in two or more precincts, The circuit court struck all signatures from the non-compliant pages....The circuit court concluded that only 155 of the 1347 verified by Clerk Holbrook were valid. *Id.* at 63

The Court of Appeals found that the Johnson County Circuit Court erred in its determination that the Circuit Clerk improperly certified the petition. Specifically, it was held that the Circuit Court improperly applied a strict compliance standard as opposed to a substantial compliance standard. The Court noted that there were no allegations of fraud or misconduct alleged and found that "simply because a voter may not have identified a precinct, not known his or her precinct name, or signed on the wrong page, should not invalidate his or her signature." *Id.* at 67. Applying a substantial compliance standard of review, the Court held that the petition met statutory requirements.

The Committee also calls the Court's attention to the Kentucky Court of Appeals decision in *Daviess County Public Library Taxing Dist. v. Boswell*, 185 S. W. 3d 651 (2005). In that matter, the

Library approved a tax rate increase and a committee then submitted a petition to the Davies County Clerk to have the issue placed on the ballot. The Clerk certified the petition, thus enabling the matter to be placed on the ballot. The Library sought Circuit Court review of the Clerk's certification and argued that it was improperly certified. However, unlike in the case before this Court, there was no challenge to the validity or number of the signatures on the petition. Instead, the challenge was based upon concerns over whether the petition was timely filed and whether the petition specified the correct tax rate. The Circuit Court concluded that the petition was properly certified and the Court of Appeals, applying a substantial compliance standard, found that the clerk was correct in liberally construing the statutory requirements and in finding that the petition substantially complied with the statutory requirements.

Both cases relied upon by the Defendants make the compelling point that statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature. *Id. at 658*. As discussed in detail in this Court's *Opinion and Order Denying Summary Judgment*, the intent of our legislature in enacting *KRS 132.017* was to provide impacted taxpayers the opportunity to voice an objection to any proposed tax rate increase. Accordingly, this Court agrees with the Defendants that review of questions concerning compliance with *KRS 132.017* should be done in a manner which promotes the furtherance of our legislature's intent that taxpayers be afforded an opportunity to challenge proposed tax rate increases.

However, liberally construing the requirements articulated in a statute does not equate to *ignoring* the need for such requirements, particularly in the context of determining the legitimacy of matters that will be placed on election ballots which may directly impact the quality of our public schools. Whereas there has been much discussion regarding the legislative intent behind allowing

for voters to express their opinion on tax rate increase initiatives, the Court cannot ignore that in enacting *KRS 160.470*, our legislature also expressed its intent to allow for publicly elected representative school boards to enact measures to ensure adequate funding for their school districts.

In its October 16, 2020 Opinion and Order, this Court stated:

Providing JCBE a means to procure adequate funding for JCPS while giving the taxpayers of Jefferson County an opportunity to voice their opposition to what may be excessive funding initiatives are equally important objectives. JCPS serves a vital and critical role in Louisville's continuing efforts to become a vibrant and thriving community of well-educated citizens. JCPS educates the majority of the children who reside in Louisville and plays an essential role in ensuring that these young people grow up into critical thinking, civically engaged and well-educated men and women. JCPS schools have produced some of our nation's most influential figures including Muhammad Ali (Central High School), Supreme Court Justice Louis Brandeis (Male High School), and trailblazing journalist Diane Sawyer (Seneca High School) and endeavors to produce many more such influential men and women. However, achieving such aspirational goals does not come for free. JCPS is funded in part by ad valorem property taxes paid for by the citizens of Jefferson County. Absent the revenue generated from these taxes, JCPS would be unable to function. The responsibility for vigilantly safeguarding and protecting the citizens from burdensome and unnecessarily high tax rates and for ensuring that tax revenues are utilized in a fiscally responsible fashion rests with the elected members of the JCBE. Each of these individuals serve 4-year terms in which the voters of their respective districts are given the opportunity to hold them accountable for the exercise of this very important responsibility. The frame work for which these elected officials must act within is the tax statutes created by our state's legislature. Through voting on who serves on the JCBE and in our Legislature, the citizens of Jefferson County are given a critically important opportunity to weigh in on how their tax dollars are being utilized and this opportunity manifests itself in the voter's ability to hold their elected officials accountable at election time.

In his analysis of a school board/tax recall referendum very similar to the one at issue before this Court, this question of balancing the rights of taxpayers in the context of decisions made by elected school boards was carefully scrutinized by what was then, Kentucky's High Court. In his

concurring opinion in *Board of Ed. of Warren County v Fiscal Court of Warren County*, 485 S.W.2d 752 (1972), Justice Reed stated:

In the case before us, the legislature could have subjected every decision of the school board to an unlimited referendum by the citizens who elected it, or it could have denied the referendum device entirely. The legislature chose a middle ground and made a policy choice; a strictly circumscribed and limited right of referendum was extended where the elected and responsible representatives of the people decided that the imposition of the particular legislatively authorized tax was needed for a more adequate school system. *Id.* at 756

The Committee argues that it is the laudable goal of *KRS 132.017* to allow voter participation in substantial tax increases. However, as Justice Palmore stated in his concurring opinion,

That the people are denied a direct and immediate vote on this matter results not from what this court wishes or decrees but from the restrictions enacted by the legislature and from somebody's failure to comply with those restrictions. *Id.* at 757.

KRS 132.017 affords tax payers an opportunity to contest proposed tax increases, but it also mandated specific requirements and restrictions that can not be allowed to be ignored if the statute is to have any purpose at all. If these requirements are not enforced, the clear intent of the legislature to restrict recall elections except in the case where it can be verified that a substantial and identifiable portion of the community have expressed an interest for such an election becomes negated. This is why our legislature placed the specific requirements articulated in the body of *KRS 132.017* and upon careful review of the record in this matter, this Court finds that the requirements of *KRS 132.017* were not satisfied. Specifically, this Court finds that:

- In determining that the petition submitted by The Committee contained 38,507 valid signature entries, the Clerk's Office inexplicably ignored its own findings that 2,376 of those signatures contained errors and allowed those entries to be included in its final number of certified valid entries;

- 843 of the certified valid entries on the petition were duplicate entries that should have been excluded;
- 123 of the certified valid entries on the petition were for voters whom there existed no valid voter registration record;
- 934 of the certified valid entries on the petition had been altered after they were signed by the purported signatories and prior to being included on the submitted petition;
- No attempt was made to ensure the security and confirm the authenticity of the electronic signatures which constituted the overwhelming number of the signatures on the petition.

Unlike in the *Johnson County* case or the *Davis County Library* case, even under a substantial compliance standard, it is impossible for this Court to conclude that a petition containing the aforementioned errors can be deemed compliant with the requirements of *KRS 132.017*. In addition to not involving an analysis of the unique issues presented by electronically submitted signatures, none of the cases cited by the Defendants involved the certification of over 2000 signature entries containing acknowledged name/address/date of birth errors. In addition, deficiencies involving alleged misconduct and unauthorized altering of signature entries call into legitimate question the veracity of the entire petition. However, perhaps most concerning is the clear attempt of The Committee to submit multiple entries for individual citizens. These are not insignificant concerns that can be ignored, and they should not have been.

As stated above, this is the first time that a Court has been asked to review a petition containing electronic signatures procured from an online website. Although this change allows for

more citizens to participate in the democratic process, it also allows for more potential problems and requires that the Clerks office implement the necessary procedures to ensure that potential fraud does not take place. This did not occur. As stated by the Plaintiffs, with the ability to submit electronic signatures, there is “nothing to prevent one individual with access to a voter database from undermining the integrity of the process by entering hundreds of thousands of signatures to the petition. These concerns are exacerbated when there is clear evidence that online signature entries were altered after submission.

In conclusion, the Clerks office erred in certifying a petition that materially failed to comply with the clear requirements of *KRS 132.017* and that failed to contain the requisite number of valid signature entries.

Regarding the Intervening Defendants Counterclaims, the Court adopts the findings contained in the Opinion and Order entered October 16, 2020 in which the Court denied the Committee’s motion for summary judgment. The Court held that the Committee had failed to establish that JCBE had not complied with the legal and procedural prerequisites in *KRS 133.185* and *KRS 160.470* which were required in order to impose a tax increase on Jefferson County property owners.

As to *KRS 133.185*, the Court concluded that strict compliance with both that statute and *KRS 132.017* was untenable and could not have been accomplished in a manner that would have allowed the question of the recall of the proposed tax rate increase to be decided by Jefferson County taxpayers through the November 3, 2020 general election ballot. The Court explained that it is the role of the judiciary to analyze conflicting statutes in a way that will achieve the common goal of the two statutes. *Landrum v. Commonwealth ex rel. Beshear*, 599 S.W.3d 781, 788 (Ky. 2019)

(“Recognizing this distinction in the statutes offered up on both sides of the present case, it is our role to harmonize the law to give meaningful effect to both statutes in furtherance of the General Assembly’s intent in enacting them.”) (footnotes omitted). As to *KRS 160.470*, the Court further concluded in its Opinion and Order entered October 16, 2020 that there were no material or prejudicial deficiencies with JCBE’s notice for the May 21, 2020 meeting which adopted the proposed tax increase.

The Committee presented no additional facts or legal argument at the trial. With no additional or contrary evidence submitted, the Court thus adopts its previous findings and reasoning, and holds that the Counterclaim should be dismissed as a matter of law.

ORDER

1. IT IS ORDERED AND ADJUDGED that the Counterclaim by the Committee as Intervening Defendants shall be dismissed with prejudice; and,

2. IT IS FURTHER ORDERED AND ADJUDGED, pursuant to KRS 132.017(2)(i), that the petition submitted by the Committee did not contain sufficient signatures of registered and qualified voters to place the issue of JCBE increasing its annual tax levy to 80.6 cents per \$100 of assessed property value before the voters within the Jefferson County public schools taxing district for potential recall; and,

3. IT IS FURTHER ORDERED AND ADJUDGED, pursuant to KRS 132.017(2)(e), that "no further action" may be taken concerning the Committee's petition, and thus any votes cast by absentee ballot, by early voting, or on November 3, 2020, shall be retained but not be tabulated, shall not be considered final, and shall not be certified by the Jefferson County Board of Elections, just as if a candidate for office had died before an election, *see* KRS 118.212(5); and

4. IT IS FURTHER ORDERED, pursuant to KRS 318.385(2), that the Clerk shall take care to "retain and preserve, for a period of twenty-two (22) months from the date of [the November 3, 2020] election at which candidates for the office of presidential elector or member of the United States Senate or House of Representatives are voted for, and only for the precincts in which any such office appears on the ballot all records and papers relative to the voter returns for all the offices voted for in those precincts."

This is a final and appealable Order and Judgment, and there is no just cause for delay.

Entered: _____



Jefferson Circuit Court