

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION \_\_\_\_  
CASE NO. 18-CI-\_\_\_\_\_**

*FILED ELECTRONICALLY*

**KAREN E. FAULKNER**

**PLAINTIFF**

**V.**

**COMMONWEALTH OF KENTUCKY  
STATE BOARD OF ELECTIONS,**

**SERVE:**

**Hon. Andy Beshear  
Office of the Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, KY 40601-3449**

**ALLISON LUNDERGAN GRIMES, in her official capacity  
as Secretary of State of the Commonwealth of Kentucky,**

**SERVE:**

**Hon. Andy Beshear  
Office of the Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, KY 40601-3449**

**JEFFERSON COUNTY BOARD OF ELECTIONS,**

**SERVE:**

**Bobbie Holsclaw, Chairperson  
527 W. Jefferson Street  
Louisville, KY 40202-2814**

**TANISHA ANN HICKERSON,  
4618 Wooded Oak Circle  
Louisville, KY 40245**

**and**

**ANDRE L BERGERON**  
**4809 Crofton Road**  
**Louisville, KY 40207**

**DEFENDANTS**

**VERIFIED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Karen E. Faulkner, by counsel, for her Verified Complaint for Declaratory and Injunctive Relief, states and alleges as follows:

**INTRODUCTION**

1. This is an action for declaratory and injunctive relief to require the Kentucky State Board of Elections to comply with state law by issuing a certificate of nomination for judicial office to Plaintiff Karen E. Faulkner, a candidate for Jefferson County District Judge, 9<sup>th</sup> Division. This action also seeks a declaration that the Jefferson County Board of Elections violated state law by tabulating and recording votes for a candidate who appeared on the ballot but tragically passed away before the County Board either certified the results of the primary election to the Secretary of State or conducted the recanvassing of votes requested by Plaintiff. The relief requested herein will enforce Plaintiff's right to compete as a candidate in the general election and ensure that the electorate has a choice between two qualified candidates in November.

**PARTIES**

2. Plaintiff Karen E. Faulkner ("Faulkner") is a resident of Jefferson County, Kentucky. Faulkner is a duly qualified candidate for Jefferson County District Judge, 9<sup>th</sup> Division, who competed in the May 22, 2018 primary election for that office.

3. Defendant Kentucky State Board of Elections ("State Board of Elections") is a state agency vested with the authority to administer the election laws of the state and supervise registration and purgation of voters within the state. KRS 117.015(1). The State Board of Elections has offices located at 140 Walnut Street, Frankfort, KY 40601. The State Board of Elections directs

and supervises the county boards of election in the administration of the elections laws in each county. KRS 117.035(1).

4. Defendant Secretary of State Allison Lundergan Grimes (“Secretary of State), is the duly elected Secretary of State for the Commonwealth of Kentucky. Pursuant to KRS 117.015(2), the Secretary of State is the Chairman of the State Board of Elections and the chief election official of the state. The Secretary of State is named to this action in her official capacity.

5. Defendant Jefferson County Board of Elections is a county board of elections organized pursuant to KRS 117.035 and operating at the direction and under the supervision of the State Board of Elections. Jefferson County Board of Elections has offices located at Edison Center, 701 West Ormsby Avenue, Suite 301, Louisville, KY 40203. Jefferson County Board of Elections is named as a necessary party in interest to this action pursuant to KRS 418.075.

6. Defendant Tanisha Ann Hickerson is a resident of Jefferson County and a duly qualified candidate for Jefferson County District Judge, 9<sup>th</sup> Division. Hickerson competed in the May 22, 2018 primary election for that office. Hickerson is named as a necessary party in interest to this action pursuant to KRS 418.075.

7. Defendant Andre L. Bergeron is a resident of Jefferson County and a duly qualified candidate for Jefferson County District Judge, 9<sup>th</sup> Division. Bergeron became the 9<sup>th</sup> Division Judge in 2017. Bergeron competed in the May 22, 2018 primary election to retain that office. Bergeron is named as a necessary party in interest to this action pursuant to KRS 418.075.

### **JURISDICTION AND VENUE**

8. This Court has subject jurisdiction over this matter pursuant to KRS 418.040 and KRS 418.045. This is an actual and justiciable controversy with respect to the enforcement of the election laws in the Commonwealth of Kentucky.

9. Venue is proper in this Court pursuant to KRS 452.480.

**FACTS**

10. On May 22, 2018, the primary election for the office of Jefferson County District Judge, 9<sup>th</sup> Division, was held. The duly qualified candidates for this office were Daniel “Danny” Alvarez, Andre Bergeron, Karen Faulkner, and Tanisha Hickerson.

11. On May 23, 2018, at 3:05 p.m., the Jefferson County Board of Elections reported the following unofficial results from the county’s 623 precincts for the office of Jefferson County District Judge, 9<sup>th</sup> Division:

<b>Candidate</b>	<b>Votes</b>	<b>Percentage</b>
Daniel “Danny” Alvarez	28,694	30.71
Tanisha Ann Hickerson	22,470	24.05
Karen E. Faulkner	22,453	24.03
Andre L. Bergeron	19,830	21.22

A true and correct copy of an Election Summary posted on the Jefferson County Clerk website, which reflects the above-stated “Unofficial Results,” is attached as **Exhibit 1**.

12. Upon information and belief, the Unofficial Results reported in the Election Summary accurately reflect the actual number of votes cast for each of the four primary contenders on May 22, 2018. Upon information and belief, there were no election irregularities calling into question these vote totals.

13. Pursuant to KRS 118A.190(4), only the top two vote-getting nominees for judicial office advance to the general election. Based on the votes cast on election day, the difference between second place (Hickerson) and third place (Faulkner) was 17 votes.

14. The day after the election, on the afternoon of May 23, 2018, Danny Alvarez tragically passed away at Baptist Hospital East.

15. KRS 118A.150(6) provides in pertinent part as follows:

If after the certification of candidates who will appear on the ballot, any candidate whose name appears on the ballot shall withdraw or die, *neither the precinct election officers nor the county board of elections shall tabulate or record* the votes cast for the candidate; (emphasis supplied)

16. KRS 118A.190(2) provides in pertinent part as follows:

Following a primary or regular election, the board of elections of each county shall make out *duplicate certificates of the total number of votes received by each candidate*, by circuit or district, and numbered division thereof if divisions exist. The certificate of *the total number of votes shall be certified* to the Secretary of State's Office not later than 12 noon, prevailing time, on the Friday following the primary or regular election. (emphasis supplied)

17. Upon information and belief, the Jefferson County Board of Elections made a timely certification to the Secretary of State's Office of the votes cast in the election for Jefferson County District Judge, 9<sup>th</sup> Division.

18. Upon information and belief, the Jefferson County Board of Elections knew that Alvarez had passed away but nonetheless included votes cast for him in its certification of the total number of votes certified to the Secretary of State's Office, in violation of KRS 118A.150(6).

19. Due to the slim 17 vote margin separating the second and third place primary finishers, on Friday, May 25, 2018, Faulkner filed a written request, pursuant to KRS 117.305, with the Secretary of State requesting a recanvass of the voting machines and absentee ballots cast by the voters in the 623 precincts.

20. Pursuant to 31 KAR 4:070, Section 3(3), the County Board of Elections was thereafter required to "check and tabulate" the votes of the four primary candidates for the office

of Jefferson County District Judge, 9<sup>th</sup> Division. Pursuant to KRS 118A.150(6), the County Board of Elections was prohibited from including votes cast for Alvarez in its tabulation.

21. On Thursday, May 31, 2018, the Jefferson County Board of Elections assembled to conduct the recanvass. During the recanvass, the Jefferson County Board of Elections tabulated and recorded votes cast for Alvarez, in violation of KRS 118A.150(6). The 2018 Election Summary Recanvass report, reflecting a Run Date of 5/31/2018 at 9:53 a.m., is attached hereto as **Exhibit 2**.

22. At all relevant times, the Jefferson County Board of Elections was acting under the direction and supervision of the State Board of Elections pursuant to KRS 117.035(1).

23. KRS 118A.190(3) provides in pertinent part: “The State Board of Elections *shall meet to count and tabulate the votes* received by the different candidates as certified to the Secretary of State no later than the third Monday after the primary or regular election.” (emphasis supplied). The Office of the Secretary of State has scheduled this meeting to occur on June 5, 2018.

24. On May 24, 2018, and thereafter, the Office of the Secretary of State was reported as stating that the present circumstances surrounding the untimely passing of a judicial candidate immediately after the election were unprecedented. *See, e.g., J. Meador, Death of judicial candidate has no recent precedent, state says*, Insider Louisville (May 24, 2018). The Office of Secretary of State was also reported as stating that since Alvarez could not be included on the November election ballot, second-place finisher Hickerson would be the only remaining candidate on the ballot by default. *Id.* The Office of Secretary of State was also reported as stating that Faulkner, the third-place vote getter, would not be listed on the November election ballot. Copies of representative news stories are collectively attached as **Exhibit 3** (reporting the position of the Secretary of State with respect to advancing only one candidate to the general election).

25. Upon information and belief, these public reports accurately reflect the legal position that has been taken, and will be taken in the future, on this issue by the Office of the Secretary of State and the State Board of Elections, including for purposes of guiding the actions of the State Board of Elections at the scheduled June 5, 2018 meeting.

26. At the June 5, 2018 meeting, the State Board of Elections plans to repeat and ratify the legal errors, and unlawful certifications, made by the Jefferson County Board of Elections when it (1) certified to the Secretary of State the votes cast in favor of Alvarez and (2) later re-counted, tabulated, and recorded the votes cast for Alvarez when it conducted the recanvassing. The Board of Elections' anticipated counting and tabulation of votes cast for Alvarez will violate KRS 118A.150(6).

27. KRS 118A.190(4) provides in pertinent part as follows: "Certificates of nomination for a judicial office shall be issued to the two (2) candidates receiving the highest number of votes...." Based on the actions the State Board of Elections will take at the June 5, 2018 meeting, the State Board of Elections does not intend to issue a certificate of nomination to Faulkner and will instead issue a certificate of nomination only to Hickerson. Such action will violate KRS 118A.190(4) because by operation of KRS 118A.150(6), as a result of the passing of Alvarez, Hickerson and Faulkner are the two highest vote-getters for the office in question and both are required to receive a certificate of nomination for the general election.

28. By operation of law, Faulkner has a right and a valid expectancy with respect to receiving a certificate of nomination. Faulkner's rights as a candidate will be violated if she is deprived of a certificate of nomination in violation of state law. In addition, the voters of Jefferson County will be deprived of a choice between two qualified candidates as intended by the General Assembly when it enacted the statutes governing primary elections for judicial candidates.

29. As it currently stands, the State Board of Elections will meet on June 5, 2018 to count and tabulate the votes, and this vote count will result only Hickerson receiving a certificate of nomination. Thereafter, Faulkner will be unable to claim that she has been nominated to compete in the general election.

30. Faulkner's inability to represent to the electorate that she is a viable candidate would have devastating consequences for her campaign in a variety of respects including with respect to her immediate plans to marshal support from undecided voters, to lay the groundwork for endorsements, and, through her committee, to raise the necessary funds to compete in a county-wide general election. The issuance of a certificate of nomination to Hickerson, and not to Faulkner, will be widely reported and become common knowledge. In short, the lack of a certificate of nomination will inevitably cripple Faulkner's campaign.

31. Awaiting a final judgment on the merits (which could be delayed until after ballots are printed) to commence a county-wide judicial campaign is simply not a realistic option. The lack of interim relief pending a final judgment on the merits would render that remedy entirely ineffectual.

**FIRST CLAIM FOR RELIEF**  
**Declaration of Rights**

32. Plaintiff restates and incorporates by reference, as if set forth fully herein, the allegations in the preceding paragraphs of the Verified Complaint.

33. By operation of the election laws, Faulkner is the second-place vote getter for the office of Jefferson County District Judge, 9<sup>th</sup> Division. Faulkner is entitled to a declaration of rights that, due to the votes for Alvarez not being counted or tabulated, she finished second in the primary election and is entitled to receive a certificate of nomination for that office for the November election.

**SECOND CLAIM FOR RELIEF**  
**Temporary and Permanent Injunction**

34. Plaintiff restates and incorporates by reference, as if set forth fully herein, the allegations in the preceding paragraphs of the Verified Complaint.

35. There is no adequate remedy at law with respect to Faulkner's legal right to a certificate of nomination. Faulkner is entitled to a permanent injunction requiring the State Board of Elections to issue her a certificate of nomination for the general election.

36. Faulkner will suffer immediate and irreparable injury if the State Board of Elections meets, counts votes cast for Alvarez, and thereby deems Faulkner to be a third-place finisher who is not entitled to a certification of nomination. If Faulkner is initially denied the certificate of nomination to which she is legally entitled, there will be a cloud over her candidacy which will make it virtually impossible to campaign, to obtain voter support, to obtain endorsements, or for her committee to fundraise. Due to the need to immediately mount of viable campaign, a final judgment in Faulkner's favor would therefore be rendered ineffectual.

37. Faulkner is entitled to a temporary restraining order and/or temporary injunction (1) prohibiting the State Board of Elections from counting or tabulating votes cast for Alvarez at the scheduled June 5, 2018 meeting or any similar meeting convened before or after that date for the same or similar purposes; (2) prohibiting the State Board of Elections at any such meeting from issuing a certificate of nomination to Hickerson without also issuing one to Faulkner; and (3) requiring the State Board of Elections to issue a certificate of nomination to Faulkner.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Karen E. Faulkner respectfully requests the following relief:

- A. A Judgment on the First Claim for Relief for a Declaration of Rights;
- B. A Temporary Restraining Order/Temporary Injunction as set forth under the  
Second Claim for Relief;
- C. A Permanent Injunction under the Second Claim for Relief;
- D. Reasonable costs of suit;
- E. All other relief to which the Plaintiff may be entitled.



Respectfully submitted,

/s/ David S. Kaplan  
DAVID S. KAPLAN  
MICHAEL P. ABATE

**KAPLAN JOHNSON ABATE & BIRD LLP**  
710 West Main Street, 4<sup>th</sup> Floor  
Louisville, Kentucky 40202  
Telephone: (502) 416-1631  
Facsimile: (502) 855-4971  
[dkaplan@kaplanjohnsonlaw.com](mailto:dkaplan@kaplanjohnsonlaw.com)  
[mabate@kaplanjohnsonlaw.com](mailto:mabate@kaplanjohnsonlaw.com)  
COUNSEL FOR PLAINTIFF,  
KAREN E. FAULKNER