

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 22-CI-00047

DERRICK GRAHAM, JILL ROBINSON, MARY LYNN
COLLINS, KATIMA SMITH-WILLIS, JOSEPH SMITH, and
THE KENTUCKY DEMOCRATIC PARTY

PLAINTIFFS

vs.

MICHAEL ADAMS, in his official capacity as
Secretary of State of the Commonwealth of Kentucky and
THE KENTUCKY STATE BOARD OF ELECTIONS

DEFENDANTS

and

COMMONWEALTH OF KENTUCKY

INTERVENING DEFENDANT

ORDER

This matter is before the Court upon Secretary of State Michael G. Adams and the Commonwealth of Kentucky's *Motion to Dismiss*. This matter was called before the Court on Thursday, February 10, 2022, at 10:00 a.m. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby **DENIES** Secretary of State Michael G. Adams and the Commonwealth of Kentucky's *Motion to Dismiss*.

When considering a motion to dismiss, Civil Rule 12.02 requires the Court to construe the pleadings liberally "in a light most favorable to the plaintiff" and to take all factual allegations in the complaint to be true. *Gall v. Scroggy*, 725 S.W.2d 867, 869 (Ky. Ct. App. 1987) citing *Ewell v. Central City*, 340 S.W.2d 479 (Ky. 1960). "The court should not grant the motion unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved in support of his claim." *Mims v. W.-S.*

Agency, Inc., 226 S.W.3d 833, 835 (Ky. Ct. App. 2007) quoting *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. Ct. App. 2002). In *D.F.Bailey, Inc. v. GRW Engineers Inc.*, 350 S.W.3d 818 (Ky. Ct. App. 2011), the Kentucky Court of Appeals discussed a trial court's standard of review when ruling on a motion to dismiss. "[T]he question is purely a matter of law. [...] Further, it is true that in reviewing a motion to dismiss, the trial court is not required to make any factual findings, and it may properly consider matters outside of the pleadings in making its decision. *Id.* at 820 (internal citations omitted).

With this strict standard in mind, in taking all factual allegations asserted by Plaintiffs as true and in construing the pleadings in a light most favorable to Plaintiffs, the Court cannot dismiss any of Plaintiffs' claims at this premature stage.¹ Due to the nature of this action, the Court will decide the merits in an expedited manner. Accordingly, the parties shall appear before the Court on Tuesday, March 1, 2022, at 9:30 a.m. for a full hearing on the merits. The parties shall present any expert testimony at the March 1, 2022, hearing.

WHEREFORE, Secretary of State Michael G. Adams and the Commonwealth of Kentucky's *Motion to Dismiss* is **DENIED**. The parties shall appear before the Court on Tuesday, March 1, 2022, at 9:30 a.m. in Courtroom H of the Franklin County Courthouse for a full hearing on the merits of this action.

¹ As noted in the Court's simultaneously issued Order on Plaintiffs' *Motion for Temporary Injunction, Jensen v. Kentucky State Board of Elections*, 959 S.W.2d 771 (Ky. 1997) appears instructive as to the merits of Plaintiffs' Section 33 claim, however, given Plaintiffs' claim is slightly different than issue decided in *Jensen*, the Court is unable to outright dismiss Plaintiffs' Section 33 claim.

SO ORDERED, this 17th day of February, 2022.

	<p>Hon. Thomas Dawson Wingate <small>/s/ HON. THOMAS DAWSON WINGATE electronically signed 2/17/2022 12:00:29 PM ET</small></p>
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THOMAS D. WINGATE
Judge, Franklin Circuit Court

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this _____ day of February, 2022, to the following:

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Hon. Heather L. Becker

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