

**IN THE CHANCERY COURT FOR KNOX COUNTY TENNESSEE**

James Gray, )  
Chairman of the )  
Democratic Party )  
of Knox County Tennessee )  
Plaintiffs )  
v. ) No. \_\_\_\_\_ )  
Timothy Hutchison and )  
Knox County Election )  
Commission )  
Defendants )

In re:

Application for Injunctive Relief To The Knox County Election Commission To Remove The Name Of Timothy Hutchison From The May 2, 2006 ballot for the office of Sheriff of Knox County and to remove Timothy Hutchison from office, declare the office of sheriff of Knox County vacant and injunctive relief.

**APPLICATION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

Plaintiff brings this Petition for declaratory judgment pursuant to T.C.A. § 29-14-103, injunctive relief in aide of declaratory judgment and additional relief pursuant to T.C.A. § 28-14-110, and pursuant to T.R.Civ.P. 65.04:

I. For a temporary injunction removing the name of Timothy Hutchison from the ballot on May 2, 2006;

II. To declare whether the office of Sheriff of Knox County provided for by Knox County Charter § 3.09 is limited by Knox County Charter § 1.17 Term Limits;

III. To declare whether the election of Knox County Sheriff Timothy Hutchison to a third term of office is void; and

IV. To declare that the office of Knox County Sheriff is vacant; and

V. To provide such other relief, including injunction and attorney fees, as may be appropriate pursuant to T.C.A. § 29-14-110.

VI. Plaintiff has moved to intervene in a pending lawsuit in *DeSelm v. Hutchison* Knox County 164615-1 to apply the Knox County Charter Term Limits to remove and disqualify Timothy Hutchison from holding as the elected office of sheriff of Knox County Tennessee.

VII. Plaintiff asserts that this action should be consolidated with Knox County 164615-1 pursuant to T.R.Civ.P. 42.01 because this action involves common questions of fact and law.

In support of the relief requested, Plaintiff submits the following:

1. The decision of the Tennessee Supreme Court in *Bailey v. Shelby County* established Knox County Tennessee's Charter § 1.17 for Term Limits for Knox County Officer holders is constitutional.

2. Plaintiff has a special interest not held by the public to assure that qualified candidates be presented to the public for election to the office of Sheriff of Knox County.

3. Plaintiff brings this action as a civic minded citizen to effectuate (1) the will of the community to participate in the full, lawful and certain elections of the Knox County sheriff; (2) to have an election of the Knox County sheriff that will be certain and (3) to avoid insecure and uncertain results in the election of the Knox County sheriff. See *Barry v. Lauck*, 45 Tenn. 588 (1865)

4. Plaintiff asserts that qualified candidates in Knox County Tennessee would have qualified for the office of Knox County Sheriff had they not faced Timothy Hutchison as a well funded incumbent in his re-election effort.

5. Plaintiff asserts that it is a duty of his office of Chairman of the Knox County Democratic Party to support and provide access to citizens to run for office of sheriff in Knox County.

6. On March 29, 2006 the Tennessee Supreme Court in *Bailey v. Shelby County* (copy attached) and held Tennessee home rule counties, such as Knox County, are constitutionally permitted to impose term limits.

7. The Shelby County Charter Term Limits applied only to the Shelby County's legislative body.

8. Knox County Charter Term Limit § 8.17 applies to all "elected offices of Knox County".

9. Knox County Charter Articles II, III, and IV provide for offices of Knox County Mayor, Knox County Sheriff, Knox County Commissioners, Knox County Law Director, and Knox County Judiciary.

10. Other offices for Knox County Tennessee are not mentioned in the Knox County Charter.

11. The Office of Knox County Sheriff is an "elected office of Knox County" pursuant to Knox County Charter § 9.09 and is subject to term limits under Knox County Charter § 8.17.

12. Timothy Hutchison asserts that he is not subject to Knox County Term Limits pursuant to § 8.17 although his office is made an elected office of Knox County pursuant to Knox County Charter § 9.09.

13. "Election of one declared ineligible to office by Constitution is void." *Comer v. Ashe*, 514 S.W.2d 730 (Tenn.1974).

14. Plaintiff asserts that Timothy Hutchison is presently holding office illegally; his election is void; he should be removed from office forthwith; and the office of sheriff of Knox County should be declared to be vacant.

15. Plaintiff further avers that Timothy Hutchison is disqualified from being a candidate for the office of sheriff of Knox County on the May 2, 2006 pursuant to Knox County Charter § 8.17.

16. Timothy Hutchison states that he will seek re-election to a fourth term as Knox County Sheriff in violation of Knox County Charter § 1.17.

17. On information and belief the Knox County Law Director has recused himself from all matters pertaining to the elections.

18. The Knox County Law Director refused to perform the duty of Knox County Law Director to represent the public and uphold the Knox County Charter Term Limits as to Timothy Hutchison.

19. It would be an unlawful for the Knox County Law Director to hire a private non-elected attorney to represent the public where the elected Knox County Law Director refuses to perform the duty of his office.

20. If the Knox County Law Director cannot perform the duties of his office there exist a vacancy in the office of Knox County Law Director for which the Knox County Commission must appoint a *pro tem* Law Director as provided for by the Knox County Charter.

21. On March 29, 2006 Knox County Election Commission Director Greg McKay expressed urgency for any changes made for the May 2, 2006 ballot.

22. Director McKay stated changes to the ballot would be required to be in place on or before April 6, 2006 at which time the ballot would close and no further changes to the ballot could be made to meet the May 2, 2006 deadline.

23. This Court has power, jurisdiction and authority to determine the eligibility of Timothy Hutchison to be on the ballot for the office of Sheriff of Knox County Tennessee and that he was not qualified to have his name appear on the ballot. *Comer v. Ashe*, 514 S.W.2d 730 (Tenn.1974).

24. Pursuant to T.C.A. 28-14-110 Plaintiff is entitled to a mandatory injunction and damages in aide of declaratory judgment that Timothy Hutchison is disqualified from being on the ballot for the May 2, 2006 election.

25. Pursuant to T.R.E. 65.04 Plaintiff is entitled to a mandatory injunction because Plaintiff rights, the rights of persons who seek to run for public office that Plaintiff represents, and the rights of voters to vote for a qualified candidate for sheriff of Knox County on May 2, 2006 are and will be violated and Plaintiffs, candidates, voters and taxpayers will suffer immediate and irreparable injury, loss and damages pending a final judgment in this action; and the failure and

neglect to remove Timothy Hutchison from the ballot for the May 2, 2006 election will tend to render any final judgment ineffectual.

26. Plaintiff, candidates, taxpayers and voters of Knox County will suffer immediate and irreparable harm if Timothy Hutchison is allowed to remain in office or have his name on the May 2, 2006 ballot by:

A. By having a sheriff whose election is void;

B. By being disenfranchising of their right to vote for a qualified candidate for sheriff of Knox County provided by the Charter of Knox County and the Constitution and laws of the State of Tennessee;

C. By being disenfranchising of their right to vote for a qualified candidate for sheriff of Knox County provided by the Charter of Knox County and the Constitution and laws of the State of Tennessee for sheriff of Knox County where Timothy Hutchison, if elected, will be disqualified and the vacancy created will be appointed by Knox County Commission;

D. By the public being required to incur the unnecessary expense of an election for a disqualified candidate for the office of sheriff;

E. By prohibiting other qualified candidates to run for the office of sheriff to qualify either by such rules as

the election commission adopts; write-in for the May 2, 2006 election; or pursuant to Tennessee law;

F. Because the Law Director has failed and neglected to perform his duty, unless this Court hears this matter Plaintiff and voters of Knox County are denied representation by an elected public official as provided for by Knox County Charter 3.08 D.

WHEREFORE, Plaintiff prays for the following relief:

1. That this action be consolidated with the pending action in *DeSelm v. Hutchison*, et al pursuant to T.R.Civ.P. 42.01; and

2. Pursuant to T.R.Civ.P. 65 this Court grant a hearing at 1:30 p.m. on Friday March 31, 2006 or as soon thereafter as Plaintiff can be heard on this application for an injunction requiring the Knox County Election Commission remove the name of Timothy Hutchison from the May 2, 2006 ballot; and

3. That at the hearing this court issue declaratory judgment that Knox County Sheriff Timothy Hutchison is disqualified from seeking a fourth term as Knox County sheriff by Knox County's Term Limit Charter provision; and

4. That at the hearing this Court issue declaratory judgment that the Knox County Election Commission is required to remove Timothy Hutchison's name from the May 2, 2006 ballot; and



5. That in aid of declaratory judgment this Court issue a mandatory injunction requiring the Knox County Election Commission to remove the name of Timothy Hutchison from the May 2, 2006 ballot; and

6. That this Court declare that the election of Timothy Hutchison to his present term is void; remove Timothy Hutchison from office; declare the office of sheriff of Knox County vacant; and enjoin Timothy Hutchison from exercising any of the duties of the office of sheriff; and

7. That Plaintiff have such other relief as he may be entitled including attorney fees and such other relief as is appropriate pursuant to T.C.A. § 28-14-110.

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HERBERT S. MONCIER  
Attorney for Plaintiff

Herbert S. Moncier  
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(865) 546-7746  
BPR # 1910

**Acknowledgment**

I hereby make oath that the averments of the foregoing are true to the best of my information knowledge and belief and that I entitled to the relief sought.

\_\_\_\_\_  
JAMES E. GRAY

Sworn to and subscribed  
before me this \_\_\_\_\_ day of March 2006.

\_\_\_\_\_  
Notary Public  
My commission expires:

**NOTICE OF HEARING**

Plaintiff gives notice that the foregoing will be presented to Chancellor John Weaver at the Knox County Chancery Court, Part I, at 1:30 p.m. on March 31, 2006 or as soon thereafter as Plaintiff can be heard. You are invited to attend and be heard.

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HERBERT S. MONCIER

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served upon the following:

1. The Knox County Law Director;
2. Robert H. Watson, Jr., Attorney for Timothy Hutchison;
3. Jerold Becker, attorney for Michael E. Moyers;
4. James Murphy, attorney for the Knox County Election Commission;
5. Brook K. Thompson, Coordinator of Elections for the State of Tennessee.

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HERBERT S. MONCIER

