

IN THE CHANCERY COURT FOR KNOX COUNTY TENNESSEE

James Gray,)
Chairman of the)
Democratic Party)
of Knox County Tennessee;)
as a voter in Knox County)
who will voted in the)
2006 Democratic Primary;)
as a Knox County taxpayer;)
and as a civic minded)
citizen on relationship)
of the State of Tennessee)
Plaintiffs)

2006 APR -3 A 8:13
EDWARD J. ...
CLERK OF COURT

v.)
Timothy Hutchison,)
Knox County, and)
Knox County Election)
Commission)
Defendants)

No. 166649-1

MOTION TO AMEND COMPLAINT

Pursuant to T.R.Civ.P. 15, Plaintiff moves to shorten Gray moves to amend his Complaint to add Knox County Tennessee as a party Defendant and to state additional basis for standing.

1. Plaintiff adds Knox County Tennessee as a party Defendant.
2. Knox County Tennessee is before this Court in *DeSelm v. Hutchison* and made an appearance in this action on March 31, 2006.
3. Knox County Tennessee has been served with all pleadings in this case.

4. The Knox County Law Director and the attorney appointed by the Law Director and being paid by Knox County to represent Timothy Hutchison were served and present on March 31, 2006.

5. Plaintiff is a taxpayer of Knox County and has standing to prevent Knox County Tennessee and the Knox County Election Commission from misappropriating public funds for an unconstitutional, unlawful and void election on May 2, 2006 because Plaintiff has a more than *de minimus* financial interest in the appropriation of local tax funds that is "direct and immediate" to assure that local tax funds are not misappropriated by Knox County Tennessee. *see Crampton v. Zabriskie*, 101 U.S. 601, 25 L.Ed. 107 (1879); *Frothington v. Mellon*, 262 U.S. 447, 486, 43 S.Ct. 597, 67 L.Ed. 1078 (1923); *Doremus v. Board of Education*, 342 U.S. 429, 433-434, 72 S.Ct. 394, 397, 96 L.Ed. 475; *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927); *Taub v. Com. of Ky.*, 842 F.2d 912, (6th Cir. 1988).

In *Ragsdale v. City of Memphis*, 70 S.W.3d 56 (Tenn.App. 2001) the Court held citizen taxpayers had standing to file action to prevent expenditure of public funds. Prior demand is not required of a citizen taxpayer where the status and relation of the involved officials to the transaction in question is such that any demand would be a formality. Where

the officials involved participated in the actions questioned, a prior demand is a mere formality and is excused. "It has been settled for over 100 years that a

taxpayer of a county may maintain an action to prevent the commission of an unlawful act by public officers, the effect of which would be to divert a public fund from the purpose for which it was intended, by law and thus increase his burden of taxation.

State ex rel. Baird v. Wilson County, 371 S.W.2d 434, 439 (Tenn.App. 1963). see also *Metropolitan Government of Nashville and Davidson County v. Fulton*, 701 S.W.2d 597, 600-601 (Tenn. 1985)

6. Democratic Party of Knox County Tennessee.

Plaintiff brings this action as Chairman of the Democratic Party of Knox County Tennessee on behalf of that association of persons who have an interest in fair, equal and pure elections for offices in Knox County Tennessee and who wish to have qualified candidates to vote for in the Democratic Primary.

7. Voter. Plaintiff is a registered voter in Knox County Tennessee; intends to vote in the Democratic Primary for Knox County office holders; Plaintiff has candidates who wish to qualify on the Democratic Primary ballot if permitted; and Plaintiff will vote for the candidates who will qualify if permitted unless another more qualified Democratic candidate were to qualify for that office. Plaintiff challenges the current ballot and May 2, 2006 because it prohibits Plaintiff from voting for candidates who will qualify in the Democratic Primary whom Plaintiff will vote if the Citizens Election Plan

is adopted by this Court and qualifying is reopened. Voters' rights under the First and Fourteenth Amendments were defined in *Anderson v. Celebrezze*, 460 U.S. 780, 787, 103 S.Ct. 1564, 1569, 75 L.Ed.2d 547 (1983), as " 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters ... to cast their votes effectively.' " (quoting *Williams v. Rhodes*, 393 U.S. 23, 30-31, 89 S.Ct. 5, 10, 21 L.Ed.2d 24 (1968)). *Zielasko*, 873 F.2d at 961. *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972), allowed a suit by voters to challenge state ballot access requirements, the voters/plaintiffs were persons who were seeking to become candidates but were barred therefrom under the subject statute. In *Erum v. Cayetano*, 881 F.2d 689 (9th Cir.1989), a voter was allowed to challenge a state ballot access requirement. In *Erum*, the plaintiff/voter was a non-partisan candidate who was seeking to become a candidate but was barred by the applicable statute. [footnote omitted] Finally, in *Henderson v. Ft. Worth Independent School District*, 526 F.2d 286 (5th Cir.1976), cert. denied, 441 U.S. 906, 99 S.Ct. 1996, 60 L.Ed.2d 375 (1979), a voter wishing to support a particular potential candidate was found to have standing to challenge a state statute ballot requirement.

8. **Knox County Charter Primary Election Requirement.**

Knox County Charter § 7.02 requires that candidates be selected

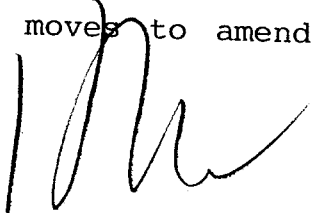
for offices in Knox County by primary election and unless this Court adopts the Citizens Election Plan no Knox County Democratic candidate can qualify except by write-in procedures. As Chairman of the Knox County Democratic Party unless there is a constitutional, lawful primary election, there exist uncertainty as to how Democratic Candidates for the General Election can be selected.

9. **Conflicts of interest and futility.** All persons who have authority, or a duty, to enforce the Two-Term limit of Knox County's Charter have a conflict of interest in pursuing this action because they are themselves potentially affected by said limitation. An ouster proceeding may lie against those who knowingly authorized Timothy Hutchison to unlawfully hold office. see State of Tennessee Attorney General Opinion # 05-049 issued April 19, 2005. (copy attached) For these reasons, any requirements of prior demand would be futile.

10. **Individual Standing.** Plaintiff brings this action as an individual pursuant to T.C.A. § 29-35-110.

11. **Quo Warranto Standing.** Plaintiff has standing as a public minded citizen to right the wrong of Knox County not enforcing its Charter Two-Term Limit on Timothy Hutchison pursuant to an *in limine* determination by the Court that the claims asserted herein have *prima facie* merit. see *Bennett v. Stutts*, 521 S.W.2d 575 (Tenn. 1975).

WHEREFORE, Plaintiff moves to amend his Complaint to assert the foregoing.



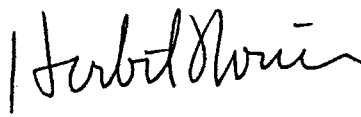
HERBERT S. MONCIER
Attorney for Plaintiffs

Herbert S. Moncier
Suite 775 Bank of America Center
550 Main Avenue
Knoxville, Tennessee 37902
(865) 546-7746
BPR # 1910

JOINDER BY BEE DESELM AND JOHN SCHMID

Bee DeSelm and John Schmid join in the foregoing amendment except for statements of standing of Jim Gray as Chairman of the Democratic Party.

Bee DeSelm and John Schmid acknowledge Jim Gray has additional standing that they do not have as Chairman of the Democratic Party of Knox County.



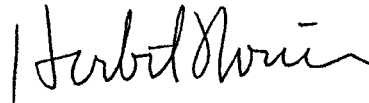
HERBERT S. MONCIER
Attorney for Plaintiffs

Herbert S. Moncier
Suite 775 Bank of America Center
550 Main Avenue
Knoxville, Tennessee 37902
(865) 546-7746
BPR # 1910

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. Janet Kleinfelter, Senior Counsel, Tennessee Attorney General's Office, Attorney for Coordinator of Elections for the State of Tennessee.



HERBERT S. MONCIER
Attorney for Plaintiffs

LAW OFFICES OF
HERBERT S. MONCIER

ATTORNEY AT LAW

SUITE 775, BANK OF AMERICA

550 MAIN AVENUE

KNOXVILLE, TENNESSEE 37902

July 5, 2005

DAVID S. WIGLER

OFFICE
(865) 546-7746
FAX
(865) 546-7765

HAND DELIVERED

Randall E. Nichols
Knox County District Attorney General
400 Main Avenue Suite 168
Knoxville, Tennessee 37902

Re: Bee DeSelm ex rel. v. Timothy Hutchison

Dear Mr. Nichols:

As we have discussed, I write on behalf of my client, Bee DeSelm, to demand¹ that you file the attached *quo warranto* action to remove Timothy Hutchison from unlawfully holding and exercising the office of Knox County Sheriff and Chief Law Enforcement Officer created by Knox County Charter Article III, Section 3.09 pursuant to the 1994 Referendum Amendment to Knox County's Charter that provides "No individual shall be permitted to hold the same elected office of Knox County Government more than two (2) consecutive terms."

For your consideration, I am enclosing the recent decision of Shelby County Chancellor D. J. Alissandratos in Walter Bailey, Julian Bolton and Cleo Kirk v. County of Shelby, et al. Shelby Chancery Court No. CH-04-0550-3.

I am also enclosing the case of Bennett, et al. v. Stutts, 521 S.W.2d 575 (1975).

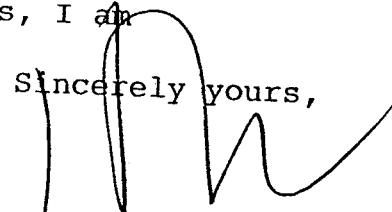
I acknowledge the close working relationship between your office and the office of Sheriff in prosecuting crime in Knox County. Please be advised that if you choose not to bring this *quo warranto* action that my client, Bee DeSelm, request your authority to do so as provided for in Bennett. v. Stutts.

¹ The term "demand" is used as a legal term and not in a disrespectful or pejorative manner.

Randall E. Nichols
Tuesday, July 5, 2005
Page 2

With kindest regards, I am

Sincerely yours,



Herbert S. Moncier

HSM:hsm

Enclosures

LAW OFFICES OF
HERBERT S. MONCIER

ATTORNEY AT LAW

SUITE 775, BANK OF AMERICA

550 MAIN AVENUE

KNOXVILLE, TENNESSEE 37902

July 8, 2005

DAVID S. WIGLER

OFFICE
(865) 546-7746
FAX
(865) 546-7765

HAND DELIVERED

Mr. Michael Moyers
Knox County Law Director
400 Main Avenue Suite 612
Knoxville, Tennessee 37902

Re: Bee DeSelm ex rel. v. Timothy Hutchison

Dear Mr. Moyers:

I write on behalf of my client, Bee DeSelm, to demand¹ that you take immediate action to remove Timothy Hutchison from unlawfully holding and exercising the Knox County Charter Article III, Section 3.09 office of Sheriff and Chief Law Enforcement Officer pursuant to the 1994 Referendum Amendment to Knox County's Charter that provides "No individual shall be permitted to hold the same elected office of Knox County Government more than two (2) consecutive terms."

Timothy Hutchison on July 7, 2005 announced he was withdrawing Knox County Tennessee from its long standing agreement with the Knox County Emergency Communications Board for the Knox County Emergency Center, E-911, to provide dispatch services for the Knox County Sheriff's Department.

My client, Bee DeSelm, believes that Timothy Hutchison does not have authority as Knox County Charter Article III, Section 3.09 Sheriff and Chief Law Enforcement Officer to withdraw Knox County Tennessee from an agreement and that action is a duty of the Knox County Mayor and Knox County Commission pursuant to the Charter.

Substantial public funds are subject to misappropriation by the actions announced by Timothy Hutchison on July 7th withdrawing dispatch services from E-911.

¹ The term "demand" is used as a legal term and not in a disrespectful or pejorative manner.

Randall E. Nichols
Tuesday, July 5, 2005
Page 2

If Timothy Hutchison is unlawfully holding and exercising the office of Knox County Sheriff and Chief Law Enforcement Officer in violation of the 1994 Charter Referendum Two-Term Limit or if he is exceeding the authority of his office as Sheriff and Chief Law Enforcement Officer, his actions of July 7th withdrawing from E-911 are void and must be immediately stopped.

For your consideration, I am enclosing the recent decision of Shelby County Chancellor D. J. Alissandratos in Walter Bailey, Julian Bolton and Cleo Kirk v. County of Shelby, et al. Shelby Chancery Court No. CH-04-0550-3. I am also enclosing the case of Bennett, et al. v. Stutts, 521 S.W.2d 575 (1975).

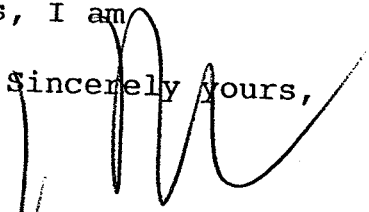
I recognize that a term-limit declaratory judgment would potentially affect your office. I also acknowledge your conflict of interest in your representation of Timothy Hutchison.

Time is of the essence in your taking action to prevent further misappropriation of public funds by either paying Timothy Hutchison for holding and exercising authority of the office of Knox County Sheriff and Chief Law Enforcement Officer or his withdrawing Knox County from its agreement with E-911.

Your reply by the end of business Tuesday, July 11, 2005 is requested.

With kindest regards, I am

Sincerely yours,


Herbert S. Moncier

HSM:hsm

Enclosures