

IN THE CHANCERY COURT FOR KNOX COUNTY TENNESSEE

James Gray,)
Chairman of the)
Democratic Party)
of Knox County Tennessee)
Plaintiffs)

v.)

No. 166649-1

Timothy Hutchison and)
Knox County Election)
Commission)
Defendants)

**PLAINTIFFS AMENDED AND SUPPLEMENTAL COMPLAINT FOR ADDITIONAL
RELIEF BY DECLARATORY JUDGMENT; TEMPORARY INJUNCTION; AND/OR
BY A WRIT OF MANDAMUS**

Plaintiff, joined in by Bee DeSelm and John Schmid as
Intervening Plaintiffs as of right pursuant to T.R.Civ.P. 24.01,
amend and supplement the Complaint for Temporary Injunction to
address supplemental events occurring after the filing of the
Complaint and to apply for a writ of mandamus pursuant to T.C.A.
§ 29-25-101 et seq.

The supplemental event addressed by this pleading is
the failure of the Knox County Election Commission to act on
March 31, 2006 to prevent an unconstitutional, illegal and void
primary election for offices in Knox County on May 2, 2006.

Plaintiffs request this Court rule that the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office"¹ trumps state election laws, common laws and Knox County laws that are insufficient or are not in harmony with the Constitution of Tennessee for the emergency facing Knox County voters and office holders.

Plaintiffs seek additional relief pursuant to T.R.Civ.P. 65.04 for a temporary mandatory injunction and writ of peremptory mandamus pursuant to T.C.A. § 29-25-102 to the Knox County Election Commission to hold a special primary election Plaintiff's referred to by Plaintiffs as the "Citizen's Election Plan"²

¹ Constitution of Tennessee Article I, Section 5; Article IV, Section 2.

² The "Citizen's Plan" is a non-partisan, fair, constitutional plan that allows for all citizens to have an equal opportunity to qualify and run for an office of Knox County; saves public funds from being spent on a unconstitutional, unlawful and void May 2, 2006 election; prohibits any candidate from obtaining a political advantage; provides Knox County voters a free and fair election; removes uncertainty in the election; and creates purity in the ballot. The "Citizen's Election Plan" is offered in response to the Knox County Election Commission's "Do Nothing Election Plan"; the Tennessee Coordinator of Election's "Expensive And Unconstitutional 'Ignore The Problem' Election Plan"; and a "Sandbagger's Election Plan" that would permit person to get into a public office by taking advantage of the current election disorder to obtain political appointments.

The Citizen's Election Plan

(1) That a writ for special primary election issue for all elected offices of Knox County to be held on June 19, 2006.³

(2) That qualifying for the June 19, 2006 primary election be opened immediately for all elected offices of Knox County and close at 12:00 noon on May 11, 2006;⁴

(3) That a qualifying petition not issue or be accepted by the Knox County Election Commission from Timothy Hutchison for the office of sheriff of Knox county because he is disqualified by Knox County Charter § 8.17 to seek the office of Knox County sheriff;

(4) That qualifying petitions for the office of Knox County Commissioner not issue or be accepted by the Knox County Election Commission for the office of a Knox County Commissioner disqualified by Knox County Charter § 8.17 from seeking the office of Knox County Commissioner;

³ June 19, 2006 is 45 days prior to the general election on August 3, 2006 in compliance with Knox County Charter § 2.08 as pertains to vacancies in the office of a Commissioner and which, as of April 5, 2006, would be 75 days prior to the special primary election as provided for by T.C.A. § 2-14-102 as to vacant county offices that would include the sheriff.

⁴ T.C.A. § 2-14-106 provides that qualifying deadline for a special election is the sixth Thursday before June 19, 2006 would be May 11, 2006.

(5) That qualifying petitions for the office of Knox County Commissioner not issue or be accepted by the Knox County Election Commission for any person determined by the Knox County Election Commission to be disqualified for the office for which they seek to qualify by Knox County Charter § 8.17.

Authority To Order The Citizen's Election Plan

1. Because of the emergency facing Knox County voters and office holders and candidates for offices in Knox County, the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office" trump state law, common law or Knox County law insufficient or not in harmony with the Constitution to address the emergency facing officer holders in Knox County and the voters.⁵

2. The qualifying period for offices for Knox County between November 16, 2005 and February 18, 2006 for the May 2, 2006 primary election was void because disqualified persons were issued and permitted to file qualifying petitions.⁶

⁵ In *Bush v. Gore*, the United States Supreme Court held that state laws to vote, once provided for, are protected by the United State's Fourteenth Amendment guarantee of equal protection of the laws of the state.

⁶ Tennessee law does not address what is to occur where there is a unconstitutionally void qualifying period. Counsel has found no Tennessee case that address this issue.

3. The ballot created by Knox County's void qualifications procedure is unconstitutional and void because it does not comply with the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office".⁷ Art. I, § 5; Art. IV, § 1.

4. There exist a vacancy in the office of sheriff of Knox County because Timothy Hutchison had, during the previous two terms of the office of sheriff at his election for that office in August 2002, served more than a single term and Timothy Hutchison was disqualified for re-election in August 2002 and his office is vacant.

5. The Knox County Election Commission has a duty to conduct a special election for the vacant office of Sheriff in Knox County pursuant to T.C.A. § 2-14-201 et seq.

6. It constitutes a misappropriating public funds to conduct a unconstitutional, unlawful and void May 2, 2006 election with disqualified candidates on the ballot.

7. It constitutes misappropriating public funds for Knox County to pay office holders whose election is void because they were disqualified.

⁷ *Ibid.* footnote 5. Where an election of a person on ballot is unconstitutional is void it follows that the ballot is also void.

Need For Declaratory Judgment

8. There exist uncertainty whether the Knox County Election Commission has the authority to order a candidate's name removed from the ballot.

9. Defendant Hutchison disputes that he is a Knox County officer holder subject to Knox County Term Limits.

10. There exist uncertainty as to whether Knox County Commissioners who are disqualified from being re-elected should continue to campaign and spend funds.

11. There exist uncertainty by the voters as to who to vote for to avoid throwing away their vote.

12. There exist uncertainty as to what offices Knox County Term Limits apply.

Declaratory Judgment Requested

13. That this Court declare the qualifying period between November 16, 2005 and February 16, 2006 for all offices in Knox County unconstitutional and void as being in violation of the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office";

14. That this Court declare the ballot created by the unconstitutional qualifying period between November 16, 2005 and February 16, 2006 for all offices in Knox County unconstitutional and void the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office";

15. That this Court declare that because there is not a constitutional ballot it is impossible for Knox County to hold a constitutional and lawful election on May 2, 2006 that complies with the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office";

16. That this Court declare that the election of Timothy Hutchison in August 2002 was in violation of Knox County Charter § 8.17 and that there exist a vacancy in the office of Sheriff of Knox County.

17. That this Court declare the qualification of Timothy Hutchison by the Knox County Election Commission to run for the office of Sheriff of Knox County in 2006 is void because he is disqualified to hold that office;

18. That this Court declare the qualification of Twelve (12) Knox County Commissioners by the Knox County Election Commission to run for the office of Commissioner of Knox County in 2006 is void because they are disqualified to hold that office;

19. That this Court declare that conducting an unconstitutional and unlawful primary election on May 2, 2006 with disqualified candidates on a ballot would constitute a misappropriation of the public's money.

20. That this Court declare conducting an unconstitutional and unlawful primary election on May 2, 2006 with disqualified candidates on a ballot would violate the public policy of the people of Knox County expressed in Knox County Charter § 7.02 that provides County Commission by Ordinance the authority to "set the date for the County Primary on such date as the County Commission determines shall be the most economical and convenient for the citizens of Knox County" but limits County Commission's authority to do so to one (1) year before the proposed primary date.

Tennessee Constitutional Provisions

21. **Article I. Declaration of Rights. § 1. Powers of people.** "That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper."⁸

22. **Article I. Declaration of Rights. § 4. Political or religious test.** "That no political or religious test, other than an oath to support the Constitution of the United States and of this State, shall ever be required as a qualification to any office or public trust under this State."⁹

⁸ "The civil rights of a citizen are inalienable, and no law, restrictive or prohibitory of those rights, can be passed by the people of the State. But a political right stands on a different principle, and may be extended or recalled, at the will of the sovereign power. . . . The elective franchise is not an inalienable right or privilege, but a political right, conferred, limited, or withheld, at the pleasure of the people, acting in their sovereign capacity. Each State may define it in its own Constitution, or empower its Legislature to do so. *Ridley v. Sherbrook*, 43 Tenn. 569 (1866)

⁹ Plaintiff cites this provision of the Tennessee Constitution because the failure of the Knox Election Commission creates a *de facto* political qualification for office because it will result in persons being elected because of their political affiliation with a particular party and deny persons of other political parties an equal opportunity to be elected. see *Waldauer v. Britton*, 113 S.W.2d 1178, (Tenn.1938)(a political test for

23. **Article I. Declaration of Rights, § 5. Elections and suffrage.** "[E]lections shall be free and equal . . ."

24. **Article I. Declaration of Rights, § 8. Deprivation of life, liberty or property under law; due process.**

"That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land. That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."¹⁰

25. **Article I. Declaration of Rights. § 17. Remedies in courts, suits against state.** "That all courts shall be open; and every man, for an injury done him in his lands, goods,

qualification for office violates Article I, § 4 of the Tennessee Constitution).

¹⁰ The failure to act by the Knox County Election Commission denies citizens, including Plaintiff, the right to vote for a qualified candidate for the office of sheriff in the Republican Primary for that office. Under equal protection clauses of State and Federal Constitutions state cannot confer upon one class of voters right to vote in primary elections of their party and deprive another class of the right unless discrimination can be justified on some rational basis. *Gates v. Long*, 113 S.W.2d 388 (Tenn.1938); *Bush v. Gore*, 531 U.S. 98 (2000).

person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct."¹¹

26. **Article I. Declaration of Rights. § 23. Right of assembly; redress of grievances.** "That the citizens have a right . . . to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance."¹²

27. **Article II. Distribution of Powers § 29. Legislative Department. Counties and towns; taxing authority; extension of credit; holding stock.** "The General Assembly shall have power to authorize the several counties and incorporated towns in this State, to impose taxes for County and Corporation

¹¹ This provision provides persons an action to challenge the qualifications of a person to run for office. *Comer v. Ashe*, 514 S.W.2d 730 (1974)(opposing candidate has a cause of action to challenge the qualifications of an opponent). Because a disqualified candidate is presented for election; there is opponent and because there the Knox County Law Director has disqualified himself,

¹² Plaintiff was denied his right to have his petition for call of a special election to fill vacant offices in Knox County heard and acted on by the Knox County election Commission. Plaintiff has the right to apply to this Court as being invested with the powers of government for redress of the grievances stated herein.

purposes respectively, in such manner as shall be prescribed by law . . ."¹³

28. **Article IV. Elections. § 1. Qualifications; precincts; military duty.** "Every person, being eighteen years of age, being a citizen of the United States, being a resident of the State for a period of time as prescribed by the General Assembly, and being duly registered in the county of residence for a period of time prior to the day of any election as prescribed by the General Assembly, shall be entitled to vote in all federal, state, and local elections held in the county or district in which such person resides. All such requirements shall be equal and uniform across the state, and there shall be no other qualification attached to the right of suffrage.

The General Assembly shall have power to enact laws requiring voters to vote in the election precincts in which they may reside, and laws to secure the freedom of elections and the purity of the ballot box. All male citizens of this State shall

¹³ The expense of holding a party primary election is an expense for a "public purpose," and primary elections, under statutes relating to compulsory legalized primary elections to nominate candidates for Governor, railroad and public utilities commissioners, and members of General Assembly, serve a purpose common to state and county, and hence a county tax may properly be levied for that purpose under Constitution. *Gates v. Long*, 113 S.W.2d 388 (1938). Plaintiff has standing as a Knox County Taxpayer to challenge the May 2, 2006 primary if it includes disqualified candidates as being a misappropriation of tax funds for an unlawful purpose. see

be subject to the performance of military duty, as may be prescribed by law.¹⁴

29. **Article VII. State and County Officers § 1. Counties; elected officers; legislative body; forms of government.** The qualified voters of each county shall elect for terms of four years a legislative body, a county executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property. Their qualifications and duties shall be prescribed by the General Assembly. Any officer shall be removed for malfeasance or neglect of duty as prescribed by the General Assembly. The legislative body shall be composed of representatives from districts in the county as drawn by the county legislative body pursuant to statutes enacted by the General Assembly. Districts shall be reapportioned at least every ten years based upon the most recent federal census. The

¹⁴ This section establishes the public policy of Tennessee for voters to have equal access to vote and to "purity of the ballot box." The failure to act by the Knox County Election Commission on March 30, 2006 violates the public policy of Tennessee of "purity of the ballot box". Courts enact protections not found in statutes to assure the "equal right to vote" and "purity of the ballot box". *Smith v. Dunn*, 381 F.Supp. 822. (1974) Fact that May primary election was not compulsory and was not utilized in many counties, and that next general election would be first opportunity for those other counties to fill vacancies occurring in county commission, did not defeat scheme that vacancies in county commission could be filled by special election held on same day as primary or referendum election. *Marion County Bd. of Com'rs v. Marion County Election Commission*, 594 S.W.2d 681 (1980); see also *Emery v. Robertson County Election Commission*, 586 S.W.2d 103 (1979).

legislative body shall not exceed twenty-five members, and no more than three representatives shall be elected from a district. Any county organized under the consolidated government provisions of Article XI, Section 9, of this Constitution shall be exempt from having a county executive and a county legislative body as described in this paragraph.

The General Assembly may provide alternate forms of county government including the right to charter and the manner by which a referendum may be called. The new form of government shall replace the existing form if approved by a majority of the voters in the referendum.

No officeholder's current term shall be diminished by the ratification of this article.

30. Article VII. State and County Officers. § 2. Vacancies in office. "Vacancies in county offices shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the next election occurring after the vacancy and is qualified."

31. Article XI. Miscellaneous Provisions. § 16. Bill of rights declared inviolate. "The declaration of rights hereto prefixed is declared to be a part of the Constitution of this State, and shall never be violated on any pretence whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights

contained, is excepted out of the General powers of government, and shall forever remain inviolate."

32. **Article XI. Miscellaneous Provisions. § 17. County offices.** "No County office created by the Legislature shall be filled otherwise than by the people or the County Court."

Tennessee Case Law

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

34. Votes knowingly cast for a candidate who cannot possibly exercise the functions of the office, if elected, are thrown away. *Stambaugh v. Price*, 532 S.W.2d 929 (Tenn.1976).

35. "The overriding legislative purpose [election code] was to provide a mechanism for the selection of successor county commissioners designed, on the one hand, to ensure that the people had continuing representation, and on the other, to give maximum opportunity for the public to exercise its choice." *Marion County Bd. of Com'rs v. Marion County Election Commission*, 594 S.W.2d 681 (Tenn.,1980).

36. Procedural safeguards included in the election laws are designed to prevent undue influence or intimidation of free and fair expression of will of electors or to insure that only those who meet statutory requirements for eligibility to

vote, cast ballots. T.C.A. § 2-102(a). *Emery v. Robertson County Election Commission*, 586 S.W.2d 103 (1979).

37. "In determining what circumstances of official omission or misconduct will avoid an election, the object to be attained by an election must be kept in view, to wit: The ascertaining of the will of the community upon a particular question." *Barry v. Lauck*, 45 Tenn. 588, 591 (Tenn).

38. "Whatever statutory provisions are essential to the attainment of this end, are obviously indispensable; and whatever precautions prescribed by statute against mistake or fraud, are of such a nature that their omission in the particular instance has resulted in a fraud upon the electors, or has rendered the result of the election incurably uncertain, or the future omission of which, in the future, if permitted, must necessarily prove avenues of fraud, tend to prevent a fair exercise of the franchise, or to render elections insecure and uncertain, must be held to be matter of substance, and essential to the validity of the proceeding." *Barry v. Lauck*, 45 Tenn. 588, 591 (Tenn).

39. Although Const. Art. 11, § 17, requires county offices of legislative creation to be filled by people or county court, the Legislature may, under article 7, § 4, providing that election of officers and filling of vacancies not otherwise provided by Constitution shall be made as the Legislature may direct. . . . *Hodge v. State*, 188 S.W. 203 (1916).

40. A official disqualified from the office has no right to hold office and his office is void. *Hogan v. Hamilton County*, 179 S.W. 128 (Tenn. 1915).

State Law

41. T.C.A. § 2-14-101 requires that the Knox County Election Commission issue a writ of special election where there exist a vacancy in a county office.

42. On March 31, 2006 the Knox County Election Commission refused to consider Plaintiff's call for a special election as was its duty pursuant to T.C.A. § 2-14-101 et seq.

43. On March 31, 2006 the Knox County Election Commission refused to act to remove disqualified candidates from the May 2, 2006 ballot.

44. The failure to perform its duty to remove disqualified candidates and not hold a special election for vacant offices will cause to be submitted to the Knox County voters the names of disqualified candidates who are currently holding office by a void election and misappropriate public funds for the cost of a void election.

45. T.C.A. § 2-14-204 provides for special elections where a court disqualifies a candidate.

46. Unless this Court acts to disqualify Timothy Hutchison there can be no special election.

47. Upon this Court declaring the office of sheriff void the Knox County Election Commission is required by T.C.A. § 2-14-101 to hold a special election under the provisions of T.C.A. § 2-14-101 et seq.

48. The Coordinator of Elections advised the Knox County Election Commission on March 30, 2006 that the Knox County Election Commission could not constitutionally adjust the date of the May 2, 2006 primary election.

49. Article VII, Section 5 of the Tennessee Constitution does not apply the Knox County primary election set for May 2, 2006.

50. Knox County Charter § 7.02 provides for the date of primary elections in Knox County:

The primary election to nominate candidates for the County general election shall be held on the first Tuesday in May next preceding the County August general election.

. . .
Where so authorized by State law, the County Commission may by Ordinance passed at least one (1) year before the proposed date, set the date for the County Primary on such date as the County Commission determines shall be the most economical and convenient for the citizens of Knox County.

51. There is no provision of the Tennessee Constitution that prohibits the Knox County Election Commission from adjusting the date of the May 2, 2006 primary election.

52. The May 2, 2006 primary date was established by T.C.A. §§ 2-5-101 and 2-13-203.

53. T.C.A. § 2-14-102 grants the Election Commission authority to adjust the date of an election to fill the vacancy created by the void election of Timothy Hutchison and County Commissioners and must be read *in para materiam* with T.C.A. §§ 2-5-101 and 2-13-203.

54. T.C.A. § 2-17-113, provides:

If the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of constitutional disqualifications on his part or for other causes, the election shall be declared void.

55. T.C.A. § 2-48-101 provides:

Any office in this state is vacated:

(4) By the decision of a competent tribunal, declaring the election or appointment void or the office vacant.

56. Absent this Court declaring the office of sheriff of Knox County vacant along none of the remaining provisions of T.C.A. § 2-48-101 can operate to vacate the office of sheriff whereby a special election by the citizens of Knox County can be conducted by a special election pursuant to § 2-14-201 et seq.

57. T.C.A. § 8-48-106 provides:

Whenever there is a final judgment of a competent tribunal, declaring any election or appointment void, or any office vacated, such judgment shall promptly be certified by the clerk to the appointing power or power whose duty it is to take steps to fill the vacancy.

58. Because of the importance of acting immediately T.C.A. § 8-48-106 provides:

The provisions of §§ 8-48-102-8-48-107 for notice of official vacancy are merely directory, and the appointing power, or officer whose duty it is to take steps to supply the vacancy, need not wait for such notice, but may act on information derived from other sources.

Knox County Charter

59. Knox County Charter Section 8.17 provides:

A. Effective January 1, 1995, no person shall be eligible to serve in any elected office of Knox County if during the previous two terms of that office the person in question has served more than a single term. Service prior to the passage of this measure shall not count in determining length of service.

60. Pursuant to *Bailey v. Shelby County* Knox County Charter § 8.17 is constitutional.

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

62. Timothy Hutchison has, during the previous two terms of the office of Knox County sheriff, served more than one term and his August 2002 election is void and his office is vacant. *Comer v. Ashe*.

63. There is no provision of the Knox County Charter to fill a vacancy in the office of sheriff.

64. Knox County Charter § 2.08 provides that the Knox County Commission fill a vacancy of a Commission seat until the next election except where the vacancy occurs within 45 days of

the next general election at which time the successor appointed by Counsel serves the remaining term of the vacated office.¹⁵

The Office of Sheriff Is A Knox County Office

65. Knox County Charter § 3.09 provides:

The Sheriff shall be the Chief Law Enforcement Officer of the County and is charged with the enforcement of such ordinances as provide in this Charter. The Sheriff shall be elected by the qualified voters of Knox county according ot law, and shall have all powers and duties, either expressly or impliedly, now or hereafter conferred by law and this Charter.¹⁶

66. "The primary badge of a State officer is that the Legislature provides that the State pay the salary of the office." *Durham v. Dismukes*, 333 S.W.2d 935 (1960).

67. Additional criteria that have been held to be helpful in deciding whether an office is one of the county or of the state is whether there was a legislative intent to create a office with jurisdiction beyond the borders of the county; does

¹⁵ Knox County Charter § 3.05 provides that a vacancy in the office of Mayor is to be filed by the Knox county Commission and the successor is to be elected at the next general election except where the vacancy occurs within 45 days of the next general election at which time the successor appointed by Counsel serves the remaining term of the vacated office.

¹⁶ The Court may recall this is the "Top Cop" provision Sheriff Hutchison relied on to campaign to defeat consolidated government in Knox County. While it is disingenuous for Sheriff Hutchison to now try to assert he is not a Knox County official, some may suggest that by his prior insistence on being the Charter "Top Cop" to defeat consolidated government Sheriff Hutchison shot himself in the foot in his current attempts to distance himself from Knox County's Charter.

the county bare the expense of the office; does the county paid the salary of the officer; is the County entitled to the fees collected by the officer; and are 'the overall duties are applicable to the people of the county alone'. *Durham v. Dismukes*, 333 S.W.2d 935 (1960).

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

69. When an election is found to have been null it shall be declared void and so certified to the power authorized to fill vacancy or order new election. *Conger v. Roy*, 267 S.W. 122 (Tenn. 1924)

Arguments

70. Knox County elected Law Director Mike Moyers, when he took office, decided not to "support and defend" the Knox County Charter Term Limits as required by his oath taken pursuant to Knox County Charter § 8.07.

71. Knox County Law Director Moyers failure to "support and defend" the Charter provision resulted in Knox County Charter Term Limits not being enforced as to Knox County Office Holders.

72. Unlike Knox County where our Law Director is elected, the Shelby County Law Director is appointed.

73. Unlike the Knox County elected Law Director, the appointed Shelby County Law Director "supported and defended" the Shelby County Term Limit provision.

74. On June 26, 2005 a chancery court in Shelby County held in *Bailey v. Shelby County* that Shelby County's Term Limit Charter provision was constitutional and applied to term limit three of its incumbent County Commissioners.

75. On July 7, 2005, Knox County Law Director Moyers was called on, by the attached letter, by Bee DeSelm to support and defend Knox County's Term Limits against Timothy Hutchison

76. Knox County Law Director Moyers failed and refused to "support and defend" Knox County's Term Limits after the Shelby County decision.

77. Knox County Law Director Moyers abrogated his duty to act to the Shelby County Law Director as to the fate of Knox County's Charter Term Limits, Knox County office holders and Knox County voters.

78. On July 26, 2005 an action was filed by Bee DeSelm in this Court to enforce Knox County Charter Limits as to the office of Knox County Sheriff based on Knox County Term Limits being constitutional.

79. Knox County Law Director Moyers and Chief Deputy Law Director John E. Owings opposed this Court considering Knox

County's Charter Term Limits and resolving uncertainty that existed by declaratory judgment.

80. Knox County Law Director Moyers and Chief Deputy Law Director Owings opposed Ms. DeSelm's efforts to have Knox County's Charter subjected to declaratory judgment in advance of the November 16, 2005 qualifying for offices in Knox County.

81. Knox County Law Director Moyers and Chief Deputy Law Director Owings failed to "support and defend" the Knox County Charter and, in fact, opposed the Knox County Charter Term Limits.

82. Knox County Law Director Moyers has publicly stated since the Supreme Court's opinion in *Bailey v. Shelby County* that he now has a conflict of interest because he represents or is friends with persons whom Knox County's citizens voted should be subject to term limits.

83. Shelby County had only three County Commissioners affected by its term limit charter.

84. Every office holder in Knox County was potentially affected by Knox County's Charter Term Limits.

85. Knox County Law Director Mike Moyers and Chief Deputy Law Director Owings left the fate of Knox County office holders and voters to the Western Section of the Tennessee Court of Appeals once the Commissioners affected appealed the chancery court decision.

86. A split 2-1 decision of the Western Section of the Tennessee Court of Appeals in *Bailey v. Shelby County*, 2005 WL 3115915, Tenn.Ct.App., was released November 22, 2005 that also resulted Knox County Charter § 8.17 being unconstitutional.

87. At the time of the Western Section of the Court of Appeals opinion, 2 judges had held home rule county term limits were constitutional and 2 judges had held home rule county term limits were unconstitutional.

88. Knox County Law Director Moyers and Chief Deputy Law Director Owings abrogated their duty to "support and defend" Knox County's Charter Term Limits to the Shelby County Law Directory as to whether to seek permission to appeal to the Supreme Court from the 2-1 decision of the Western Section of the Court of Appeals.

89. As a result of the failures to act by Knox County Law Director Moyers and Chief Deputy Law Director Owings, the Knox County Election Commission during the qualifying period for offices in Knox County between November 16, 2005 to February 16, 2006 did not enforce the Knox County Term Limits in issuing and accepting qualifying ballots for offices in Knox County.

90. Qualifying closed for Knox County offices on February 16, 2006.

91. After qualifying closed for Knox County offices the Tennessee Supreme Court on March 29, 2006 in *Bailey v.*

Shelby County held that home rule charter term limits were constitutional.

92. *Bailey v. Shelby County* resulted in Knox County Term Limit Charter provision being valid.

93. Because the Knox County Charter Term Limits are constitutional the qualifying procedure in Knox County between November 16, 2005 and February 16, 2006 was in violation of Knox County Term Limits, is unconstitutional and void.

94. The ballot created for the May 2, 2006 election by the unconstitutional and void qualifying procedure is void.

95. Plaintiff and voters can not be punished by paying for, or be required to bare the risk of having there votes thrown away, by voting for a disqualified candidate because of the failures of the Knox County Law Directors and Knox County Election Commission to act.

96. The taxpayers of Knox County can not have their public funds appropriated for an unconstitutional and void election because of the failures of the Knox County Law Director and Knox County Election Commission to act.

97. Public funds of Plaintiff and the Knox County taxpayers can not be misappropriated for the payment of officers whose election is void because they were disqualified and their office is vacant.

98. The Knox County Election Commission has refused perform the duty delegated to it by the General Assembly to act to secure for the Knox County citizens and office holders the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office" by allowing a void election of Timothy Hutchison and Twelve County Commissioners.

99. The failure of the Knox County Election Commission to act and conduct a election with disqualified candidates subverts the will of the people to democracy and must be rectified by this Court.

100. The Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office" trumps any state law, common law or Knox County law that act to deny the people a constitutional election.

101. Where there are conflicts between the provisions of the law, the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office" must control.

102. The failure of the Knox County Commission to act on Plaintiff's call for a special election or issue the writ of special election for the vacancies of the office of sheriff and the Twelve County Commissioners constitutes cause that this Court issue, in addition to the temporary injunction, a preemptive writ of mandamus to require that the Election Commission to act to protect the public to secure and certain elections and to accommodate the will of the people to democracy to vote for only qualified candidates for Knox County offices.

103. Unless Timothy Hutchison's election and the election of the seven County Commissioners is declared void and their office vacant, the voters of Knox County will be denied the right to vote for a qualified candidates for their sheriff and County Commissioners by special election under the election laws of Tennessee.

104. The failure to declare that the elections of Timothy Hutchison and seven County Commissioners in August 2002 is void and that the office of Sheriff and the seven County Commissioners re vacant is creating unnecessary expense to the public and taking from the Knox County citizens the right to elect their public officials as guaranteed them by the Constitution of Tennessee for "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office" .

105. By leaving disqualified candidates on the ballot on May 2, 2006 citizens are denied an opportunity to mount a write-in campaign and voters are denied the right to vote by write-in for a qualified campaign.

106. If this Court does not declare void the qualifying period; qualification of Timothy Hutchison; qualification of the twelve (12) County Commissioners, or the May 2, 2006 primary, Plaintiffs move this Court declare that any other qualified person be permitted to mount a write-in campaign for the nomination for sheriff of Knox County or the County Commission for any office where there is a disqualified candidate on the ballot.

WHEREFORE, Plaintiffs in addition to, or as a substitute for a temporary injunction, move for a preemptory writ of mandamus and for declaratory judgment as follows:

1. Declaratory judgment that the office of Knox County Sheriff is vacant;
2. Declaratory judgment that the qualifying process between November 16, 2005 and February 16, 2006 was unconstitutional and void;
4. Declaratory judgment that the ballet based on the unconditional and void qualifying process is unconstitutional and void;

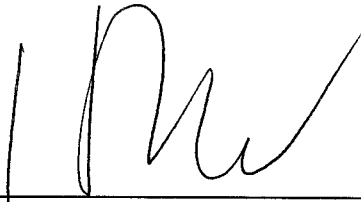
5. A preemptive writ of mandamus to command the Knox County Election Commission issue a writ of special election implementing the "Citizen's Election Plan" for the Knox County primary election for all Knox County offices on June 19, 2006; open qualifying for all primaries for all Knox County offices immediately and close qualifying at 12:00 noon on May 5, 2006; and that Timothy Hutchison, the Twelve Commissioners nor any other candidate Term Limited be allowed by the Knox County Election Commission to qualify who is term limited by Knox County Charter § 3.17.

6. That this Court order pursuant to 54.02 that its judgments on items 1 through 5 above be considered a final judgment there being no just reason for delay.

7. That this Court retain jurisdiction of all other issues pending in this or other litigation that may be consolidated or interplead in or with this case.

8. That this Court retain jurisdiction to hear any other issues that may be presented by the parties that pertain to the primary election.

9. That Plaintiffs have such other relief as they may be entitled including attorney fees and cost.


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and John Schmid

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(865) 546-7746
BPR # 1910

AFFIDAVIT

STATE OF TENNESSEE)
) ss
COUNTY OF KNOX)

We, the undersigned, after first being duly sworn,
make oath that the information contained in this pleading is
true to the best of our information knowledge and belief and
that we are justly entitled to the relief sought therein.


JAMES GRAY


JOHN SCHMID

Each of said persons
sworn to and subscribed their
name before me this 4 of April 2006.

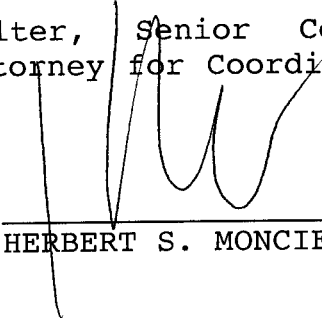

NOTARY PUBLIC

My Commission Expires: 6-6-2006

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