

IN THE CHANCERY COURT FOR KNOX COUNTY TENNESSEE

Intervening Complaint of:

John Schmid,)
as a Knox County)
Commissioner;)
as a Knox County)
Taxpayer,)
as a registered)
Knox County voter)
who intends to)
vote in the Knox)
County Republican)
Primary election; and)
on Relationship to)
the State of Tennessee)
Plaintiff)

v.)

No. 166649-1

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

INTERVENING COMPLAINT OF JOHN SCHMID

John Schmid intervenes as of right pursuant to T.R.Civ.P. 24.01 as a Knox County Commissioner; as a Knox County Taxpayer; as a Knox County registered voter who will vote in the Republican primary for Knox County officer holders on behalf of himself, his constituents, and Knox County taxpayers and Knox County voters; and on his relationship to the State of Tennessee.

1. Intervening Plaintiff is a Knox County Commissioner who is Term Limited by Knox County Charter § 3.08 from seeking another office of Knox County Commissioner.

2. Intervening Plaintiff has served two terms as Knox County Commissioner and his term of office ends on September 1, 2006.

3. Intervening Plaintiff had qualified to run in the Knox Primary for a third term as Knox County Commissioner at the time of the decision of *Bailey v. Shelby County*.

4. Another candidate qualified to run against Intervening Plaintiff in the Knox County primary election.

5. Intervening Plaintiff is a Knox County taxpayer and brings this action to prevent the misappropriation of Knox County public funds.¹

6. Intervening Plaintiff brings this action as an individual pursuant to T.C.A. § 29-35-110.

7. Intervening Plaintiff has a special interest not shared by Knox County residents and taxpayers in general for

¹ Plaintiff is a property owner and taxpayer of Knox County and has standing because he has a "direct and immediate" financial interest 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).

enforcement of Knox County's Charter because Intervening Plaintiff qualified for his office after his predecessor, Bee DeSelm, complied with Knox County Charter § 8.17 Term Limits and did not seek another term allowing Intervening Plaintiff to seek and be elected to the office Commissioner DeSelm vacated.

8. Plaintiff has *Quo Warranto* 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 facia* merit. see *Bennett v. Stuttz*, 521 S.W.2d 575 (Tenn. 1975).

9. Intervening Plaintiff is a Republican and Intervening Plaintiff will vote in the 2006 primary election for officers of Knox County and has voter standing.²

² 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

10. Intervening Plaintiff is charged with the duty of representing the constituents of his district and has standing as a Knox County Commissioner.

11. Intervening Plaintiff is charged with the duty of appropriating the lawfully appropriating the public's funds and has standing to prevent the misappropriation of the public's funds for an unconstitutional, unlawful and void election.

12. Intervening Plaintiff; the constituents he represents; the taxpayers of Knox County; and the voters of Knox County have an interest in the subject of this action that may, as a practical matter, impair or impede their ability to protect those interest unless their interest are before this Court.

**Count One:
Declaratory Judgment**

13. T.C.A. § 29-14-101 et seq. provide this Court authority to declare the rights of persons under the law that are uncertain or disputed.

14. T.C.A. § 29-14-110 provides this Court authority to grant temporary injunctions and/or writs of alternate mandamus in aide of declaratory judgment.

potential candidate was found to have standing to challenge a state statute ballot requirement.

15. There exist uncertainty, confusion and disputes pertaining to the May 2, 2006 primary election in Knox County Tennessee.

16. Intervening Plaintiff announced that he would run for re-election under the advice of the Knox County Law Director Mike Moyers that Knox County Charter § 8.17 Term Limits was unconstitutional and there were no term limits applicable to Knox County Commissioners.

17. Those who support Intervening Plaintiff's policies and performance as a Knox County Commissioner most probably declined to qualify against Intervening Plaintiff and instead supported Intervening Plaintiff for another term as County Commissioner.

18. Intervening Plaintiff has read the Supreme Court's Opinion in *Bailey v. Shelby County* and it is Intervening Plaintiff's opinion *Bailey v. Shelby County* results in Knox County Charter Term Limits being constitutional and Intervening Plaintiff being term limited and not eligible to serve another term.

19. On March 29, 2006 the Knox County Election Commission made a suggestion that those Knox County Commissioners who are disqualified to voluntarily remove their name from the May 2, 2006 primary election.

20. Because Intervening Plaintiff has a primary opponent in the Republican Primary, if Intervening Plaintiff voluntarily withdrew his name from the ballot and qualifying was not reopened, Intervening Plaintiff's opponent would be the Republican nomination by default and Intervening Plaintiff would have abandoned the constituents who either forewent qualifying for Intervening Plaintiff's office or elected to support Intervening Plaintiff for a third term.

21. Intervening Plaintiff was prepared to voluntarily remove his name from the ballot at the Knox County Election Commission Meeting on March 31, 2006 on the condition that all constituents would have an equal opportunity to Republican or Democratic Primary.

22. Intervening Plaintiff was shocked on March 31, 2006 when the Knox County Election Commission, on the advice of the State Coordinator of Elections, advised the Knox County Commission to leave Intervening Plaintiff's name on the ballot and conduct a unconstitutional, unlawful and void election.

23. Intervening Plaintiff avers that it constitutes a misappropriation of the public's money for the Knox County Election Commission to spend the public's money for a illegal, unconstitutional and void election.

24. Intervening Plaintiff avers that it constitutes a fraud on the voters to present to the voters disqualified candidates.

25. Intervening Plaintiff avers that it is contrary to democratic principals and the public policy of Knox County, Tennessee and the United States of America to present disqualified candidates to the voters in an election.

26. Intervening Plaintiff avers that by leaving his name on the ballot he will be required to spend money and effort to avoid being defeated in an election for which he can not serve if elected and in order to create a vacancy after being disqualified for there to be a special election thereby creating irreparable harm to Intervening Plaintiff.

27. Intervening Plaintiff avers that by being on a ballot while disqualified is not constitutional under Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office."

28. Intervening Plaintiff adopts the averments of the Complaint and supplemental Complaint of Jim Gray and Bee DeSelm.

29. Intervening Plaintiff moves for declaratory judgment and additional relief pursuant to T.C.A. 29-14-110 as prayed for by Jim Gray and Bee DeSelm.

**Count Two:
Taxpayer Action**

30. Intervening Plaintiff is a taxpayer for Knox County Tennessee.

31. Intervening Plaintiff has standing as a taxpayer to prevent the misappropriation of the public funds of Knox County Tennessee.³

32. On behalf of the taxpayers of Knox County Intervening Plaintiff asserts that it constitutes misappropriation of the public funds for the Knox County Election Commission to spend public funds for a unconstitutional, illegal and void election on May 2, 2006.

³ Ragsdale v. City of Memphis, 70 S.W.3d 56 (Tenn.App. 2001). 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)

33. Pursuant to T.R.Civ.P. 65.04 Intervening Plaintiff moves for a temporary injunction and or preemptory writ of mandamus to the Knox County Election Commission commanding it to not appropriate any further money for the May 2, 2006 primary.

34. Intervening Plaintiff prays for the such additional relief as may be granted Jim Gray and Bee DeSelm.

**Count Three:
Voter Action**

35. Intervening Plaintiff brings this action as a registered voters of Knox County Tennessee that intends to vote in the 2006 Republican primary for offices in Knox County.

36. Intervening Plaintiff avers that the injury to Intervening Plaintiff as a voter is real and immediate.

37. Intervening Plaintiff asserts that it is fraud on the voters to present candidates that are disqualified or for which there is uncertainty as to their qualifications.

38. Intervening Plaintiff asserts that as a voter he should not be required to guess or risk his vote as being thrown away for a disqualified candidate.

39. Intervening Plaintiff asserts that it is unconstitutional to present an impure ballot to the voters for him to vote upon.

40. Intervening Plaintiff request a mandatory injunction and preemptory writ of mandamus commanding the Knox County Election not to place the names of disqualified candidates on ballots for Knox County voters and not to hold an election on May 2, 2006 on a ballot with the names of disqualified voters.

41. Intervening Plaintiff request such relief sought by Jim Gray and Bee DeSelm.

Count Four:
Vacancy In Office Of Sheriff

42. By necessity and for the public good, Intervening Plaintiff asserts this Court should declare that the office of Sheriff is vacant pursuant to Knox County Charter § 8.17 because Timothy Hutchison has, during the previous two terms of the office of Knox County Commissioner, served more than one term and his August 2002 election is void and the office of Sheriff is vacant.

43. Intervening Plaintiff moves for the relief prayed for by Jim Gray and Bee DeSelm.

WHEREFORE, Intervening Plaintiff seeks declaratory judgment, a mandatory injunction, and a writ of preemptory mandamus to the Knox County Election Commission pursuant to the "Citizen's Election Plan" set out by James Gray.

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 10:00 a.m. on April 3, 2006 or as soon thereafter as Plaintiff can be heard. You are invited to attend and be heard.

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

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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,)
Knox County Tennessee and)
Knox County Election)
Commission)
Defendants)

In re:

Motion to Interplead of John Schmid.

**MOTION TO INTERPLEAD AND SHORTEN TIME FOR
NOTICE BY JOHN SCHMID**

John Schmid, Knox County Commissioner, pursuant to T.R.Civ.P. 24.01, moves to interplead as of right his attached claims for his interest as a Knox County Commissioner and the interest of his constituents relating to the subject of this action which may, as a practical matter impair or impede his ability to protect the interest of his constituents unless heard in this action.

Notice has been provided as stated in the certificate of service by both fax and email on April 1, 2006 and hand delivery on April 3, 2006.

Motion To Shorten Time

Movant moves the period of any required notice that may be provided by T.R.Civ.P. 6 be shortened whereby this petition can be heard by the Court on April 3, 2006 at 10:00 a.m.

1. Attorneys for Knox County, Timothy Hutchison, the Knox County Election Commission and the Tennessee Coordinator of Elections will be present to be heard on the application in this case on Monday April 3, 2006 at 10:00 a.m.

2. Movant has received information that persons who oppose resolution of the chaos and uncertainty created in Knox County since the Supreme Court's opinion in *Bailey v. Shelby County* are mounting an effort to delay a ruling in this case until after available deadlines to take corrective actions by mounting a challenge to standing of Jim Gray as Chairman of the Knox County Democratic Party and standing of former Knox County Commissioner Bee Deselm whose seat Movant sought after Commissioner DeSelm obeyed Knox County's Term Limit provision and did not run for re-election in 1998.

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

4. Intervening Plaintiff relies on the averments of his attached Intervening Complaint as grounds to shorten any five (5) day time period required for notice for a temporary injunction on notice pursuant to T.R.Civ.P. 65.04.

5. The Tennessee Supreme Court decided the case of *Bailey v. Shelby County* in seven calendar days.

6. The issue presented by movant is the same issue and has been before this Court and the Knox County Law Director who was attorney for the Knox County Election Commission since this case was filed July 26, 2005.

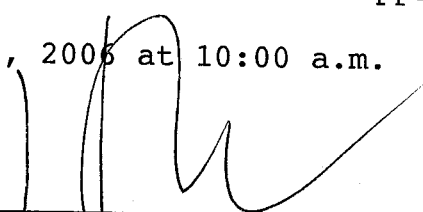
7. The changes since July 26, 2005 have been the Supreme Court's decision in *Bailey v. Shelby County* and Timothy Hutchison qualifying to stand for re-election for a fourth term and having his name on a ballot that must be printed by April 6, 2006.

8. If this Court were to require five (5) calendar days notice from March 30, 2006 pursuant that would mean that a hearing could not be conducted until at the earliest April 6, 2007, the day the ballots are to be closed.

9. T.R.Civ.P. 6.04 provides this Court authority to shorten any period required to hear a motion that, if applicable to a temporary injunction in a pending action, provides this Court authority to shorten the time for notice for the supplemental temporary injunction sought in this action.

10. T.R.Civ.P. 1 requires this Court construe T.R.Civ.P. 6 to secure the just, speedy and inexpensive determination of this action.

WHEREFORE, Intervener moves the Court shorten any period for notice of this motion to the period prior to April 3, 2006 at 10:00 a.m. and this Court hear the application for temporary injunction on April 3, 2006 at 10:00 a.m.



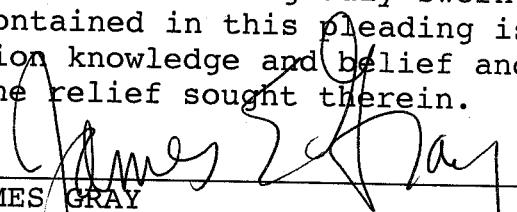
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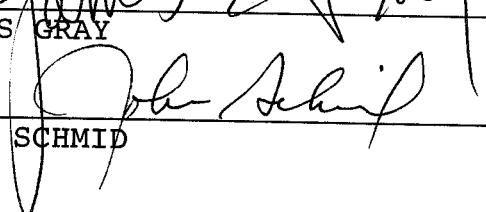
AFFIDAVIT

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 2 of April 2006.



NOTARY PUBLIC

My Commission Expires: 6-6-2006

NOTICE OF HEARING

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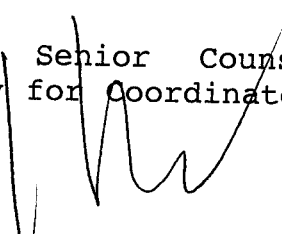


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