

**IN THE COURT OF APPEALS
AT KNOXVILLE**

Bee Deselm,)	
as a former Knox County)	
Commissioner who did not)	
run for re-election in)	
compliance with)	
Knox County Term Limits)	
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)	
)	
)	
Plaintiffs)	
)	
v.)	No. 164615-1
)	
Timothy Hutchison,)	
Knox County Tennessee,)	
Michael W. Moyers, and)	
Randall E. Nichols)	
)	
)	
Defendants)	

**T.R.A.P. RULE 10 EXTRAORDINARY APPEAL ON ORIGINAL APPLICATION
AND
T.R.A.P. RULE 2 MOTION TO SUSPEND THE APPELLATE RULES TO ACCEPT
APPEAL TO ON ISSUES IN THESE CASES TO EXPEDITE A DECISION
NECESSARY TO PREVENT IRREPARABLE HARM TO THE CONSTITUTIONAL
RIGHTS OF VOTERS IN KNOX COUNTY TENNESSEE**

**IN THE COURT OF APPEALS
AT KNOXVILLE**

James Gray,)
as Chairman of the)
Democratic Party)
of Knox County Tennessee;))
as a registered)
Knox County voter)
who intends to)
vote in the Knox)
County Democratic)
Primary election; and)
on Relationship to)
the State of Tennessee)

Plaintiffs)

v.)

No. 166649-1

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

Defendants)

**T.R.A.P. RULE 10 EXTRAORDINARY APPEAL ON ORIGINAL APPLICATION
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NECESSARY TO PREVENT IRREPARABLE HARM TO THE CONSTITUTIONAL
RIGHTS OF VOTERS IN KNOX COUNTY TENNESSEE**

**IN THE COURT OF APPEALS
AT KNOXVILLE**

John Schmid,)
as a Knox County)
Commissioner Term)
Limited but whose name)
is on a May 2, 2006)
Ballot for an Office)
he is disqualified from)
holding ;)
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)

**T.R.A.P. RULE 10 EXTRAORDINARY APPEAL ON ORIGINAL APPLICATION
AND
T.R.A.P. RULE 2 MOTION TO SUSPEND THE APPELLATE RULES TO ACCEPT
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RIGHTS OF VOTERS IN KNOX COUNTY TENNESSEE**

JOINT T.R.A.P. 10 AND T.R.A.P. 2 STATEMENT FOR APPEAL

Pursuant to T.R.A.P. 10, Plaintiffs apply to appeal to this Court from the denial of the Chancery Court for Knox County to hear Plaintiff's Motions and Pleadings and for the Chancery Court to disqualify itself.

Pursuant to T.R.A.P. 2 Plaintiffs move this Court suspend the appellate rules to permit an immediate appeal to expedite a resolution of issues necessary to prevent irreparable harm to the constitutional rights of the voters in Knox County Tennessee.

Plaintiff attaches documents necessary for this Court to understand the issue presented for appeal and will be pleased to provide such additional documents on a expedited basis as the Court, through the Clerk of the Court, may request.

1. T.R.A.P. 10 appeal lies to this Court because the Chancery Court departed from the accepted and usual course of

judicial proceedings on April 3, 2006 by denying, on procedural rulings, Plaintiffs' right to be heard pursuant to T.R.Civ.P. 15 on an amended complaint that was filed prior to a responsive pleading and denying Plaintiffs' rights to be heard on supplemental relief by writ of mandamus for events occurring since the original complaints as required by T.R.Civ.P. 1 to bring about a "just, speedy and inexpensive" determination of the issues presented.

2. There exist a constitution crisis in Knox County created by the release of the Tennessee Supreme Court opinion in *Bailey v. Shelby County* on March 29, 2006 resulting in the Knox County Sheriff, Twelve Knox County Commissioners, and potentially every other Knox County officer holder being on a May 2, 2006 primary ballot when some or all of said candidates are disqualified and when the office of sheriff is vacant.

3. Plaintiffs filed pleadings with the Knox County Chancery Court for mandatory injunctive relief and writs of mandamus for a ruling 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.

4. Plaintiffs assert that the Constitution of Tennessee trumps state election laws, common laws and Knox County laws that are insufficient, or are not in harmony with

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

the Constitution of Tennessee, under the emergency facing Knox County voters and office holders to protect their constitutional rights.

5. Plaintiffs assert that the voters of Knox county are suffering irreparable injury by being required to vote on an impure ballot that contains disqualified candidates at the risk of throwing away their vote and uncertainty as to whether their vote will be counted.

6. Plaintiffs seek a Citizens Election Plan:

(1) That a writ for special primary election issue for all elected offices of Knox County to be held on June 19, 2006.²

(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;³

(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

² 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.

³ 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.

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;

(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.

7. Plaintiffs filed pleadings for 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" ⁴

⁴ 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

8. Harmonizing Tennessee Election Laws; Knox County Election laws and the Constitution for new special primary election to comply with the Constitution on June 19, 2006, the earliest deadline affected is April 5, 2006 which is 75 days prior to the special election required by T.C.A. 2-14-102(a). Unless there is a decision prior to April 5, 2006 additional harmonizing of dates for a special primary election will be required to comply with the Constitution.

9. On March 29, 2006 the Knox County Law Director advised the Knox County Election Commission that it should remove the names of Twelve (12) disqualified Knox County Commissioner's from the May 2, 2006 ballot; refused to advise the Election Commission to remove the name of Timothy Hutchison for sheriff of Knox County; and declined to provide any advice as to all other Knox County offices.

10. The Knox County Law Director then recused himself from any further action on the *Bailey v. Shelby County* case as it affected Knox County office holders or the May 2, 2006 election.

11. On March 29, 2006 Knox County Election Commission Director Greg MacKay advised the Knox County Election Commission that qualifying in Knox County could be reopened for

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.

disqualified candidates and that he could have a new ballot out for the May 2, 2006 primary election on or before April 11, 2006.

12. On March 31, 2006, after Plaintiff's initial complaints and before a responsive pleading, the Knox County Election Commission refused to remove disqualified candidates and failed to act to correct the impure ballot for the May 2, 2006 primary election.

13. On April 3, 2006 Plaintiffs amended their complaints as of right pursuant to T.R.Civ.P. 15.01 to address the March 31, 2006 failure of the Knox County Commission to act.

14. The Chancery Court on April 3, 2006 refused for procedural reasons that the amended complaint was not on the court's docket to permit Plaintiffs to speak to the amendment as of right.

15. The Chancery Court on April 3, 2006 restricted Plaintiffs right to be heard to the complaints and pleadings in place prior to the March 31, 2006 Election Commission's failure to act as it had been advised on March 29, 2006 by the Knox County Law Director to remove the names of disqualified candidates.

16. By imposing limitations on Plaintiffs T.R.Civ.P. 15.01 right to amend prior to a responsive pleading the Chancery Court has departed from the customary and ordinary procedure

provided for by T.R.Civ.P. 15.01 and is causing delay that will, by default, result in the denial of the constitutional rights of the voters of Knox County and Plaintiffs by being provided an impure ballot on May 2, 2006.

17. A Complaint has been pending in the Knox County Chancery Court since July 12, 2005 in *DeSelm v. Knox County* raising the issues of Knox County term limits and their application to the Knox County sheriff and Timothy Hutchison.

18. Previously, the Knox County Chancery Court held that Bee DeSelm did not have standing.

19. On April 3, 2006 after the Supreme Court opinion in *Bailey* Plaintiffs presented the issues to the Chancery Court again.

20. Although all parties were present and represented by counsel, all parties had been provided notice, and the issues were the same that the parties had before them since July 12, 2006 in *DeSelm v. Hutchison*, on April 3, 2006 the Chancery Court procedurally refused to consider Plaintiff's pleadings because "they were not on the docket."

21. On April 3, 2006 the Chancery Court refused to hear Plaintiff's motions to shorten T.R.Civ.P. 6(b) notice of five days, if required for a T.R.Civ.P. 65.04 temporary injunction or writ of preemptory mandamus, although T.R.Civ.P. 6(b) provides for *ex parte* permission to be granted and

T.R.Civ.P. 1 provides that T.R.Civ.P. 6(b) be construed to provide for a "just, speedy and inexpensive" determination of the issues.

22. The Chancery Court construed procedural issues to prevent a resolution of the Constitutional rights of the voters, candidates for public office, and officer holders in Knox County.

23. Once the merits are decided that there will be an appeal.

24. Any appeal will be *de novo*.

25. Because there will be an appeal *de novo* this Court should suspend its rules to expedite that appeal pursuant to T.R.A.P. 2.

26. Plaintiff moved to disqualify the Chancery Court judge and all Knox County judges pursuant to Supreme Court Rule 19, Canon 3 E. for an appearance of partiality because an argument can be made that Knox County judges are term limited by the 1994 Knox County ballot that did not exclude judges and all Knox County judges are made Knox County judiciary by Article IV of the Knox County Charter; because Timothy Hutchison is an officer of the Chancery Court; that the Chancery Court is and it dependant on the sheriff for its bailiffs, process and operations; that employees at will who are bailiffs of the Chancery Court have *ex parte* access to the Court and records and

chambers; because a Knox County judge has more than a *de minimus* interest in the issues as they pertain to all Knox County office holders; that a Knox County judge have a political interest in office holders the judge is politically affiliated with and shares political party campaign funds; and that the Knox County Law Director Mike Moyers is currently Chancellor-elect of the same court as the Chancellor and is a named Defendant by Bee DeSelm for personal liability for his failure and neglect to support and defend the Knox County Charter.

27. Because of the urgency of this appeal, Plaintiffs request this Court's prompt action.

28. Because of the likelihood that any aggrieved party would seek T.R.A.P. 11 review by the Supreme Court of any decision by this Court and because the issues pertain to the Supreme Court's opinion in *Bailey v. Shelby County* and issues specifically reserved in that opinion as to the May 2, 2006 Shelby County primary, Plaintiffs are requesting the Court "reach down" and take this case up directly.

WHEREFORE, Plaintiffs moves that this Court grant T.R.A.P. 10 appeal and suspend the rules of Appellate Procedure to expedite this appeal and address the issues raised by the first attachment "Plaintiffs Amended and Supplemental Complaint for Addition Relief by Declaratory Judgment; Temporary

Injunction; an/or by a Writ of Mandamus" that has been joined in
by Intervening Plaintiffs John Schmid and Bee DeSelm.

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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