

**IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE**

Bee DeSelm, et al.)	
)	
Appellants)	
)	
)	SC: E2006-00689-SC-RDM-CV
v.)	E2006-00681-SC-S10-CV
)	
)	
Timothy Hutchison, et al.)	
)	
Appellees)	

**Appellant's T.R.A.P. 24(e) Modification Of The Record On
T.R.A.P. 10 Appeal
and
T.R.A.P. Rule 2 Motion To Suspend The Appellate Rules To
Consider A New Order Of The Chancery Court On T.R.A.P. 10(b)
Appeal**

1. Appellants pursuant to T.R.A.P. 24(e) move to modify the record on the T.R.A.P. 10 application pending before this Court to provide the attached Order from the Knox County Chancery Court that was faxed to the Knox County Commission Office on April 5, 2006 at 2:54 p.m.¹²

¹ T.R.A.P. 27(d) permits the filling of supplemental authorities by letter, however, Appellants do not submit this Order as supplemental authority for their appeal other than to establish T.R.A.P. 10 jurisdiction that the Chancellor below has departed from the usual and normal course of judicial proceedings.

² Chancellor Weaver still has Appellant DeSelm's motion to disqualify under advisement. Until April 12, 2006 a candidate can qualify to write-in to be on the ballot to oppose Chancellor Weaver for Part I of the Knox County Chancery Court in the republican primary. The Republican Primary that approximately 18 Republican officer holders, excluding judges, who are

2. Appellants move to suspend the Appellate Rules as provided for by T.R.A.P. 2 for this Court to consider this new Order on Appellants pending T.R.A.P 10(b) appeal in this Court.

3. Appellant's counsel was not been provided a copy of the Order or notified of its entry and could not obtain a copy from the Clerk because of the lateness of the hour that Counsel learned of the Order.³

4. The Chancery Court held neither Appellants DeSelm or Gray have standing.

5. The Chancery Court did not address Commissioner Schmid's standing because on April 3, 2006 the Chancellor ruled that was not "on the Court's docket".

potentially term-limited by Knox County Charter Term Limits. Knox County Law Director Mike Moyers is unopposed in the Republican primary for Part III of the Knox County Chancery Court. As stated in Appellant's motions to disqualify filed in the T.R.A.P. Sheriff Hutchison is an officer of Chancellor Weaver's Court; Chancellor Weaver's bailiffs and court officers are employees at will of Sheriff Hutchison; and Chancellor Weaver is running for re-election on the Republican ticket with Sheriff Hutchison and the eighteen (18) other Republican officer holders who are potentially Term Limited.

³ Counsel learned of the Order through the Sheriff's Department web site where it was posted.

6. Pleadings for a mandatory injunction and writ of mandamus to the Knox County Election Commission for failing to act to remove disqualified candidates from the May 2, 2006 ballot were not heard by the Chancery Court on April 3, 2006 or addressed by the attached Order and remain pending.⁴

7. The ruling that neither Appellant DeSelm or Gray do not have standing would, in the normal course of judicial proceedings, be the end to the limited claims heard on April 3, 2006 and the Chancery Court would now hear Appellants claims that pertain to events that occurred late March 31, 2006 on and writ of mandamus to the Knox County Election Commission.⁵

⁴ Rather than again proceeding by notice as provided for by T.R.Civ.P. 65.04 and the Court not having ruled Appellant's T.R.Civ.P. 6 motions to shorten any T.R.Civ.P. 6 time, Counsel upon receipt of the Order and called the Court's secretary to request a hearing on April 6th or 7th on the pleadings not considered by the Court on April 3, 2006. Counsel was informed that the Court would hear those motions on Wednesday April 12, 2006 if all other counsel were "available". Counsel asked for an earlier date and pointed out that April 12th may be too late to get a new ballot for May 2nd. April 12th would also be the date candidates are required to qualify to mount a write-in campaign. A write in candidate could qualify to run against Chancellor Weaver's who is currently uncontested for re-election in the Republican primary or in the Democratic primary. Counsel was then informed that the Chancellor would hear whether Appellants had standing on Monday April 10th if all other counsel were "available". The secretary said she would contact other counsel to see if they were available, however, Counsel has not heard back and no date is currently set.

⁵ The Chancery Court has still not set a hearing for the applications for temporary injunction and mandamus before it by Appellants, including Appellant Schmid, who is a sitting Knox County Commissioner whose name is on the ballot for May 2, 2006

8. Instead, after ruling that Appellants DeSelm and Gray did not have standing to support and defend Knox County's Charter, Chancellor Weaver, by *obiter dictum*, *sua sponte* addressed Knox County Charter's that had been pending before him since July 2005 on Plaintiff's DeSelm's application for a mandatory injunction to require the Knox County Law Director Mike Moyers support and defend Knox County Term Limits.

9. By way of *obiter dictum* and Constitutional due process notice or an opportunity for Appellants or the people to be heard,⁶ the Chancellor addressed matters concerning Knox County's Charter that had not been plead; were not before him on April 3, 2006; and for which there was not notice or meaningful opportunity for anyone, Appellants or much less the people of Knox County to be heard.

10. The Chancellor's *obiter dictum* constitutes more delay and fodder for confusion and denial of the people's right to be heard to support and defend their Charter.

but who believes that he is disqualified by this Court's Opinion in *Bailey v. Shelby County*.

⁶ "[C]ore requirements" of due process are "adequate notice ... and a genuine opportunity to explain"). The notice provided must be "reasonably certain to inform those affected," *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950), and the opportunity to be heard must be given "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62 (1965).

11. The Chancellor's *obiter dictum* opposes the people's right to their government and their Constitutional guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office".

12. The Chancellor's *obiter dictum* opposes the people's right to their Constitutional guarantees to equal protection of their voting rights provided them by the people's Charter.

13. The Chancellor's *obiter dictum* creates more confusion and uncertainty to the voters of Knox County than existed prior to the Order.

14. The Chancellor's *obiter dictum sua sponte* raises the specter that Knox County's Charter Government does not exist while the procedurally refused to address the constitutional rights of voters to "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office" because the violation of those rights had not occurred at the time of the limited pleadings the Chancellor heard at the April 3rd hearing.

15. At the time of the limited pleadings considered by the Chancellor on April 3rd and in his Order on April 5th, the Election Commission on March 29, 2006 stated that it was going to remove the name of disqualified candidates and reopen qualifying.

16. It was only at the Friday 5:00 p.m. Election Commission meeting that the Election Commission did an about fact and, by its non-action left, at a minimum twelve (12) disqualified candidates, and potentially twenty (20) disqualified candidates on the ballot thereby creating an election that did not comply with the constitutional as being "free and equal"; with "every person [being] entitled to vote"; and "purity of the ballot box for office."

17. The Chancellor's Order refuses to address the constitutional crisis created in Knox County by the inaction of the Election Commission to remove disqualified candidates from the ballot.

18. The Chancellor's Order by *obiter dictum* erroneously states that T.C.A. § 2-13-204(a) controls Knox County's primary election on May 2, 2006 and that political parties by State law can make nominations pursuant to that Statute after the primary.

19. Knox County Charter in § 7.02 provides:

Sec. 7.01. Primary election required.

A primary election shall be held in Knox County for the selection of all political party nominees of all parties, which are qualified under State law as political parties, for the selection of candidates for all county offices, judicial offices and all other offices which are filled by the voters of Knox County at the August general election in even-numbered years. All such elections shall be held in the manner provided for holding such primary elections by general law.

20. The people of Knox County decided by their Charter that political parties could not nominate candidates to run for office in Knox County and that only the voters could decide by election who would carry their parties nomination.

21. The Election Commission and voters are being told that political parties can select their candidates after the primary and the obiter dictum in this Order now supports that claim.

22. While party caucus or convention nominations may be permitted under State law; this does not appear to be the case under Knox County § 7.01 that was not mentioned in the Chancellor's dictum.

23. For example, Commissioner Schmid has primary opposition in the Republican Primary. If Commissioner is on the ballot and defeats his opponent but is later disqualified his opponent wins the Republican primary election by default. This would be true even if the opponents vote for himself was the candidates only vote. Because Charter § 7.02 requires election of the party candidate there can be no party convention or caucus to place a Knox County office holder on the general election ballot.

24. At a primary election on May 2, 2006 and if Knox County Government is valid under the *obiter dictum* of the Chancellor in his Order, the voters are being required to throw away their votes for disqualified candidates.

25. The Chancellor, after Knox County has operated under Home Rule for 15 years; after the Charter has been before the Chancellor since July 2005; after the Chancellor held that Bee DeSelm and Jim Gray cannot represent the taxpayers or voters to support and defend their Charter and the taxpayers rights; and when no one is representing the people and taxpayers of Knox County, by *obiter dicta* undermined the Charter of Knox County that belong to the people of Knox County.

26. A fair reading of the Chancellor's *obiter dicta* is that he is of the opinion that the foundation of Knox County Charter Government is invalid.

27. The Chancellor's *obiter dicta* violates the core provision of the Constitution of Tennessee and established principles of Tennessee law.

28. Article I, Section 1, of Tennessee's constitution provides the people have an "unalienable and infeasible right to alter, reform, or abolish the government in such manner as they may think proper." The Chancellor's *obiter dicta* suggest that the people of Knox County do not have the right to form their own government.

29. The constitution is the truest expression of the will of the people, and it is their intent in adopting a constitutional provision that must prevail. See *Williams v. Carr*, 218 Tenn. 564, 404 S.W.2d 522, 526 (Tenn.1966). The Chancellor's *obiter dicta* suggest that the people's intent to create Knox County's government should not prevail.

30. "Our courts have repeatedly held that absurdities should be avoided [and] that the courts should not place upon a statute a construction which would work to the prejudice of the public interest." See *State ex rel. Maner*, 588 S.W.2d at 540. The Chancellor's *obiter dicta* suggest the public's interest to their government in Knox County is to be ignored.

31. The established rule of statutory construction in Tennessee is that where one reasonable interpretation would render a statute unconstitutional and another reasonable interpretation would render it valid, courts are to choose the construction which validates the statute. *Mitchell v. Mitchell*, 594 S.W.2d 699, 702 (Tenn.1980). The Chancellor's *obiter dicta* strains to invalidate the people's Charter for Knox County's Government.

32. Pursuant T.R.A.P. 10, Appellants request this Court grant T.R.A.P. 10 appeal of because the proceedings in the Chancery Court on April 3, 2006 and the resulting Order of April 5, 2006 departed from the usual course of judicial proceedings

by denying Appellants their right to access to the Court on pleadings that were amended as of right pursuant to T.R.Civ.P. 15.01, there being no responsive pleading filed, that was designed by the Chancery Court, in violation of T.R.Civ.P. 1, to delay addressing and determining the constitutionality of the May 2, 2006 ballot.

33. Pursuant T.R.A.P. 10, Appellants request this Court grant T.R.A.P. 10 appeal of because the Chancery Court departed from the usual course of judicial proceedings after holding DeSelm and Gray did not have standing, and then *sua sponte* and without providing constitutional due process notice and a meaningful opportunity to Appellants or the people to be heard to support and defend their Charter, and by *obiter dicta*, questioning the foundation of Knox County's Charter Government.

WHEREFORE, Appellants move this Court pursuant to T.R.A.P. 27(d) or by suspension of the Appellate Rules pursuant to T.R.A.P. 2, to consider the supplemental occurrence of the Order entered April 5, 2006 and grant T.R.A.P. 10 permission to appeal.



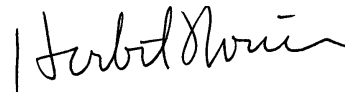
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CERTIFICATE OF SERVICE

A copy of the foregoing has been served on:

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;
6. The Knox County District Attorney General.



HERBERT S. MONCIER