

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

PART I

ENTERED

APR 05 2006

**JAMES GRAY,**

HOWARD G. HOGAN

**Chairman of the  
Democratic Party  
of Knox County, Tennessee,**

**Plaintiff,**

**VS.**

**No. 166649-1**

**TIMOTHY HUTCHISON and  
KNOX COUNTY ELECTION  
COMMISSION,**

**Defendants.**

ORDER

In accordance with the Court's memorandum opinion, filed contemporaneously herewith, which is adopted and incorporated herein by reference, it is, therefore,

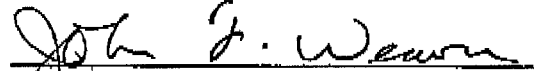
**ORDERED, ADJUDGED and DECREED** as follows:

(1) That the request of James Gray, Chairman of the Democratic Party of Knox County, Tennessee, for preliminary injunctive relief upon his document entitled, "APPLICATION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF," filed March 31, 2006, is denied; and

(2) That the MOTION TO CONSOLIDATE filed March 31, 2006, by James

Gray, Chairman of the Democratic Party of Knox County, Tennessee, is denied.

Enter this 5<sup>th</sup> day of April, 2006.

  
CHANCELLOR

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was placed in the United States Mail, postage prepaid to:

Herbert S. Moncier  
Attorney at Law  
550 W. Main Avenue, Suite 775  
Knoxville, TN 37902

Robert H. Watson, Jr.  
Attorney at Law  
P.O. Box 131  
Knoxville, TN 37901-0131


John E. Owings  
Chief Deputy Law Director  
400 Main Avenue, Suite 612  
Knoxville, TN 37902

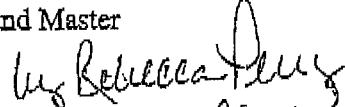
William H. Crabtree  
Assistant District Attorney  
P.O. Box 1468  
Knoxville, TN 37901-1468

James L. Murphy  
Attorney at Law  
P.O. Box 340025  
Knoxville, TN 37203

Janet Kleinfelter  
Assistant Attorney Genera  
P.O. Box 20207  
Nashville, TN 37202-0207

This 5<sup>th</sup> day of April, 2006.

  
Howard G. Hogan  
Clerk and Master

  
Deputy Clerk

**IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE**

**PART I**

FILED  
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KNOX COUNTY CLERK & MASTER

**JAMES GRAY,**

**Chairman of the  
Democratic Party  
of Knox County, Tennessee,**

**Plaintiff,**

**VS.**

**No. 166649-1**

**TIMOTHY HUTCHISON and  
KNOX COUNTY ELECTION  
COMMISSION,**

**Defendants.**

**MEMORANDUM OPINION**

This matter is before the Court on two documents filed March 31, 2006, by Jim Gray, Chairman of the Democratic Party of Knox County, Tennessee, to wit:

- (1) "APPLICATION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF;" and
- (2) "MOTION TO CONSOLIDATE."<sup>1</sup>

<sup>1</sup>The Court set the above two documents for hearing on Monday, April 3, 2006, pursuant to an order entered on March 31, 2006, upon motion filed by the applicant under Rule 6.04 of the Tennessee Rules of Civil Procedure. The applicant's counsel himself had set the above two documents for hearing upon the Court's docket for the afternoon of March 31, 2006. However, the applicant's counsel had not given notice in compliance with the time periods required under Tenn. R. Civ. P. 6. The applicant's counsel appeared before the Court on Friday, March 31, 2006, to present the above two documents. The Court interrupted an ongoing trial to entertain the appearance of the applicant's counsel but instructed the applicant's counsel that the Court would not hear

Pleadings for commencing and replying to a civil case are described in Rule 7.01 of the Tennessee Rules of Civil Procedure. "No other pleadings shall be allowed . . ." Tenn. R. Civ. P. 7.01. Neither of the documents filed by the applicant, Mr. Gray, are within the pleadings allowed by Tenn. R. Civ. P. 7.01.

A lawsuit "is commenced by filing a complaint with the clerk of the court." Tenn. R. Civ. P. 3. The applicant did not file a complaint. Rather, the applicant's counsel jumped forward to the provisions of Rule 65 of the Tennessee Rules of Civil Procedure for the obtaining of preliminary injunctive relief at the commencement or during the pendency of a civil action.<sup>2</sup>

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the documents absent compliance with the notice requirements of Rules 6 and 65 of the Tennessee Rules of Civil Procedure for preliminary injunctive relief involving mandatory acts. Following his court appearance, the applicant's counsel filed a motion to shorten the time for notice under Rule 6.04 of the Tennessee Rules of Civil Procedure. The Court entered an order upon the applicant's motion setting the applicant's above two documents for hearing on the following Monday morning at 10:00 A.M. However, shortly before the hearing on April 3, 2006, the applicant's counsel filed additional documents not embodied within the order entered March 31, 2006, for the expedited hearing of the above two documents. The Court did not take up any of the additional documents. The additional documents consist of the following: (1) Applicant's "MOTION TO AMEND COMPLAINT;" (2) "PLAINTIFFS (SIC) AMENDED AND SUPPLEMENTAL COMPLAINT FOR ADDITIONAL RELIEF BY DECLARATORY JUDGMENT; TEMPORARY INJUNCTION; AND/OR BY A WRIT OF MANDAMUS" filed in the name of the applicant and in the names of Bee DeSelm and John Schmid; (3) "MOTION TO INTERPLEAD (SIC) AND SHORTEN TIME FOR NOTICE BY JOHN SCHMID;" (4) "INTERVENING COMPLAINT OF JOHN SCHMID;" and (5) "MOTION TO INTERPLEAD (SIC) AND SHORTEN TIME FOR NOTICE BY BEE DESELM."

<sup>2</sup>As discussed in note 1 above, immediately prior to the expedited hearing on the applicant's document entitled, "APPLICATION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF," the applicant filed a document entitled, "PLAINTIFFS AMENDED AND SUPPLEMENTAL COMPLAINT FOR ADDITIONAL RELIEF BY DECLARATORY JUDGMENT; TEMPORARY INJUNCTION; AND/OR BY A WRIT OF MANDAMUS." However, although the document sets forth supplemental "occurrences or events which have happened since the date of the pleading sought to be

The preliminary injunctive relief requested by the applicant constitutes "extraordinary process" under T.C.A. § 29-1-101 *et seq.* However, the applicant's application does not comply with T.C.A. § 29-1-107.

Other problems exist with respect to the applicant's standing to obtain the relief sought by him. The upcoming election addressed by the applicant's application is a primary election. The applicant, a democrat, seeks to intervene in the Republican primary process. However, problems with the eligibility of a party's nominee, even if subsequently declared ineligible or disqualified by a court, are to be addressed by the nominee's party, not the other party. *See* T.C.A. § 2-13-204(a). A member of one party has no interest in the primary of another party. Tennessee case law, in the situation of primary election contest, holds that a member of one party is without standing under T.C.A. § 2-17-104 to contest a primary election of another party. *Dobbins v. Crowell*, 577 S.W.2d 190, 193 (Tenn. 1979); *Payne v. Ramsey*, 591 S.W.2d 434, 436 (Tenn. Ct. App. 1979) (a republican is without standing to contest a Democratic primary election.) Although the situation before this Court is not at the stage of a primary election contest, the same principles of standing apply.

With respect to the upcoming Republican primary, the applicant has not alleged any "special interest, status or wrong, which is not common to the body of citizens as a whole." *Metro. Gov't of Nashville and Davidson County, ex. rel. Anderson v. Fulton*,

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supplemented," leave of Court has not been granted for the filing of the supplemental pleading under Tenn. R. Civ. P. 15.04. Although the supplemental pleading refers to "intervenors," no order has been entered granting permission to intervene under Tenn. R. Civ. P. 24.

701 S.W.2d 597, 601 (Tenn. 1995). *See Hooker v. Nixon*, No. M2005-01383-COA-R3-CV, pp. 3-4 (Tenn. Ct. App. March 29, 2006) (affirming, for lack of standing, the trial court's dismissal of plaintiff's complaint challenging the constitutionality of the charter provision of the Metropolitan Government of Nashville Davidson County, Tennessee, imposing term limits) The applicant has no standing to raise any issue as to a candidate's eligibility to run in another party's primary. The applicant is neither a candidate for the office nor a member of the party for whom the primary is to be held. Clearly, the applicant has no standing to address such matters. *Id. See Malone v. City of Knoxville*, No. E2002-00734-COA- R3-CV (Tenn. Ct. App. May 5, 2003). *See generally Walker v. Sliger*, 405 S.W.2d 471, 474-475 (Tenn. 1966) (dismissing petition of "resident, citizen, taxpayer and duly register voter of the City of Knoxville" who claimed that two elected councilmen of the City of Knoxville were ineligible to serve because they had not complied with a private act mandating campaign disclosures and providing that a violation of the private act would result in disqualification from office).

Premitting the issue of standing, other problems exist with the applicant's theories. The applicant apparently proffers that the Tennessee Supreme Court's recent holding concerning Shelby County's charter applies to the situation of the Knox County charter and the Knox County Sheriff. *See Bailey v. County of Shelby*, No. W2005-01508-SC-R11-CV (Tenn. March 29, 2006) However, no issue was addressed in the *Bailey* case as to whether Shelby County's charter was valid or invalid for failing to include all of the constitutional officers within the charter. On the other hand, although reversed by the Tennessee Supreme Court on other grounds, the Tennessee Court of Appeals expressly

held, in *Bailey*, that "alternate forms of county government must include the constitutional officers named in Article VII<sup>3</sup> of the Tennessee Constitution. *Bailey v. County of Shelby*, No. W2005-01508-COA-R3-CV (Tenn. Ct. App. November 22, 2005) *rev'd*, No. W2005-01508-SC-R11-CV (Tenn. March 29, 2006).

When a county adopts a charter form of government, the charter form of government must result in the creation and establishment of an alternate form of county government to perform all the governmental and corporate functions previously performed by the county. T.C.A. § 5-1-203(b) (2005); *Bailey v. County of Shelby*. As conceded by the applicant's counsel in argument, the county government created by Knox County's charter does not create and establish an alternate form of government to perform all the governmental and corporate functions previously performed by the county. Knox County's charter does not so much as mention the governmental functions of its constitutional offices such as the Trustee, Register, Assessor of Property, or Court Clerks.<sup>3</sup>

The Knox County Charter mentions the office of the Sheriff but, in contrast with the offices of the Mayor and Commissioners, does not mention any qualifications for the office of Sheriff. Similarly, the Knox County Charter also mentions the County Clerk but only in connection with very limited duties. The Charter mentions the County Clerk's duties to transmit, publish and keep the County's ordinances, emergency ordinances and

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<sup>3</sup>The offices of "a legislative body, a County Executive, a Sheriff, a Trustee, a Register, a County Clerk and an Assessor of Property" are found in Article 7, Section 1 of the Tennessee Constitution. The office of a Court Clerk is found elsewhere in the Tennessee Constitution at Article 6, Section 13.



resolutions. Knox County Charter, Article II, Section 2.09. The Charter also mentions the County Clerk in conjunction with the Retirement Board's filing of an annual report. Knox County Charter, Article VI, Section 6.04(F). The Charter further mentions that the County Clerk shall submit proposed Charter amendments to the County Election Commission. Knox County Charter, Article VIII, Section 8.05. Additionally, the Knox County Charter states that the County Clerk may make a "reading" of an ordinance, emergency ordinance or resolution. Knox County Charter, Article VIII, Section 8.03(F). However, the Knox County Charter does not mention any qualifications for the office of County Clerk, such as age. Likewise the Knox County Charter does not mention any of the functions of the County Clerk except in the context of the very limited specific duties discussed above. Compare Knox County Charter, Article II, Section 2.09, Article VI, Section 6.04(F), and Article VIII, Sections 8.03(f) and 8.05 with T.C.A. § 18-6-104 et seq. and § 68-111-106. The Knox County Charter mentions the Assessor but only for the purposes of referencing the election of part of the School Board to the time of the Assessor's election. Knox County Charter, Article V, Section 5.01(B).

The charter referendum presented to the qualified voters of Knox County reads as follows:

"SHALL KNOX COUNTY GOVERNMENT BE CHANGED FROM ITS CURRENT FORM TO A HOME RULE CHARTER GOVERNMENT CONSISTING OF AN EXECUTIVE BRANCH HEADED BY THE EXECUTIVE OF KNOX COUNTY, A LEGISLATIVE BRANCH CONSISTING OF THE COMMISSION OF KNOX COUNTY AND A JUDICIAL BRANCH CONSISTING OF THE EXISTING COURTS OF KNOX COUNTY, OR ANY OTHER COURTS ESTABLISHED BY LAW?

FOR, A CHARTER FORM OF COUNTY GOVERNMENT

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AGAINST A CHARTER FORM OF COUNTY GOVERNMENT

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Knox County Charter, Article IX, Section 9.08.

The Charter provides that "all lawful powers are vested in the Executive of Knox County and the Commission of Knox County, except those powers reserved to the judiciary." Knox County Charter, Article I, Section 1.02. While the Knox County Charter briefly mentions the Sheriff, it appears to mention the Sheriff for the purpose of separating him from the Executive Branch to be headed by the Mayor. Knox County Charter, Article III, Sections 3.02 & 3.09. Knox County's Charter expressly provides that the Sheriff will "be elected by the qualified voters of Knox County . . ." Knox County Charter, Article III, Section 3.09. The Charter expressly provides that "the Mayor shall not assume any of the constitutional, statutory, or Charter duties of the Sheriff. Knox County Charter, Article III, Section 3.03(A). In other words, Knox County's alternate or charter government shall consist of the Mayor and the Commission, with the Sheriff remaining separate and elected.

Knox County's Charter otherwise recognizes the separateness of its constitutional officers from its Charter government. Without so much as mentioning the names or titles of the County's constitutional officers, much less their qualifications or functions, the Knox County Charter refers to them separately and collectively as "constitutional officers." For instance, in its budget procedures, the Knox County Charter expressly refers to "constitutional officers," as such, without otherwise mentioning or describing

them. Knox County Charter, Article III, Section 3.07. The Charter also provides that "each constitutional, statutory, or Charter official of Knox County, whether appointed or elected, shall be required to follow the provisions of the Knox County Purchasing Ordinance for construction or purchasing of goods and services with public funds." Knox County Charter, Article III, Section 3.03(N).

Knox County's Charter appears to be a compromised form of government whereby an alternate form of government is only partially implemented. The Charter leaves preexisting offices unaddressed in the charter and as independent offices under the Tennessee Constitution and Statutes. However, no such compromised form of government appears to be available under Article VII, Section 1, of the Tennessee Constitution or under T.C.A. § 5-1-203(b) (2005). The Knox County Charter, although presented to the qualified voters of Knox County as a charter government, appears to be more in line with the general form of county government provided by Article VII, Section 1 of the Tennessee Constitution which provides:

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 every ten years based upon the most recent federal census. The 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 legislative body as described in this paragraph.

\* \* \*

The argument certainly exists that the Knox County Charter, as presented to the voters of Knox County, never effectively implemented a charter form of government because it does not provide an alternate form of government to perform all the governmental functions previously performed by the County, such as the functions of some of the constitutional officers not even mentioned in the Knox County Charter. This argument would appear to apply to all Knox County officials. A more restrictive argument exists that the Knox County Charter does not embrace the qualifications of any of its constitutional officers, other than the Mayor and Commissioners.

In the case before this Court, involving only the Knox County Sheriff, it may be argued that the Knox County Charter does not address his qualifications for office. Knox County's Charter does not prescribe any of the qualifications prescribed by general state law at T.C.A. § 8-8-102. General state law provides that "to qualify for election or appointment to the Office of Sheriff a person shall" be a citizen of the United States, at least twenty-five years of age, a qualified voter of the county, have a high school diploma or equivalent, have no conviction of a felony, have no dishonorable discharge from the military, have been certified as free of mental disorder, and possess a current and valid peace officer certification. T.C.A. § 8-8-102. Except for the County Mayor and Commissioners, the Knox County Charter addresses the qualifications of its officers only at Article VIII, Section 8.07, by requiring that "[b]efore entering upon their duties" they "meet all qualifications provided by this Charter and all applicable laws of the State of Tennessee." However, the applicant's theory is that the Sheriff is no longer subject to the

general laws for his qualifications and duties but is governed by the Charter. The Charter of Knox County provides for no such qualifications for Sheriff.

The Knox County Charter provides, at Article VIII, Section 8.10, entitled "Residence and qualification of County officials and employees," that "[a]ny County official who shall voluntarily remove his/her residence outside the district from which elected or appointed shall forfeit that office immediately." Knox County Charter, Article VIII, Section 8.10 (emphasis added). The term, "district," denotes application to the Commissioners and School Board members only. The Charter contains no such section for "County officials" elected countywide. The Charter contains no such section for the Sheriff, Trustee, Register, County Clerk, Assessor of Property, or Court Clerks. The Charter contains no residency requirement for the Sheriff, Trustee, Register, County Clerk, Assessor of Property, or Court Clerks.

Although "the duties of the county's constitutional officers as prescribed by the General Assembly" may not be diminished under a county charter, Knox County's Charter makes no assignment of any duties to some of the county's constitutional officers. See T.C.A. § 5-1-210. For the most part, Knox County's Charter does not concern itself with the assignment of administrative and executive functions to its officers of county government, other than the Mayor. For instance, Knox County's Charter does not even mention the Register of Deeds or Trustee or their functions, qualifications, or compensation. See T.C.A. § 5-1-210.

Additionally, it appears that state law requires that Timothy Hutchison's name must be placed on the primary election ballot regardless of whether he may be

subsequently disqualified. *See* T.C.A. § 2-5-204. The Knox County Charter also states that respecting any person who filed a qualifying petition for a primary election, in compliance with general law, the Election Commission “shall . . . place his/her name on the primary ballot pursuant to general law.” Knox County Charter, Article VII, Section 7.03 (emphasis added). In the event of Timothy Hutchison’s subsequent disqualification by a court, state law provides the remedy at T.C.A. § 2-13-204. The Knox County Charter expressly renders itself subject to these provisions of general law. Knox County Charter Section 7.04. The relief sought by the applicant would require a violation of state laws and the Knox County Charter. Finally, absentee voting appears to be in process for the primary election. *See* T.C.A. § 2-6-202. The relief sought by the applicant would result in immediate and unnecessary upheaval in the absentee voting process.

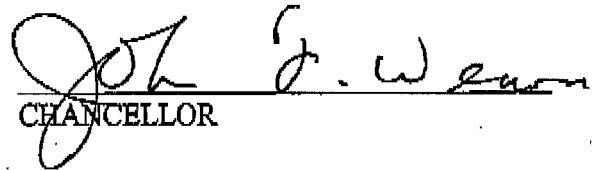
The applicant, through his counsel, has requested that this Court ignore the rules of standing, the Tennessee Rules of Civil Procedure, and the Tennessee statutes. However, this Court is not so inclined. To obtain a temporary injunction, the applicant must “clearly” show “by verified complaint, affidavit or other evidence” that his “rights are being or will be violated by an adverse party” and that he “will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.” Tenn. R. Civ. P. 65.04(2). By reason of the matters discussed above, this Court finds and concludes that the applicant has failed to make the showing required of him. Accordingly, the applicant’s request for preliminary injunctive relief will be denied.

The foregoing opinion is limited to the issue of whether the applicant has made

the showing required of him for preliminary injunctive relief. It does not constitute a final judgment or dispose of any issue other than whether the applicant has made the showing necessary for the granting of preliminary injunctive relief to him.

The Court has also considered the applicant's motion to consolidate this matter with civil action number 164615-1. However, all claims of the petitioner in civil action number 164615-1 have been dismissed with respect to the right of Timothy Hutchison to occupy the Office of Knox County Sheriff. Consolidation of this matter with civil action number 164615-1 would result in additional and unnecessary complexity. Accordingly, the applicant's motion to consolidate is denied.

Signed this 5<sup>th</sup> day of April, 2006.

  
CHANCELLOR

cc: Herbert S. Moncier, Esq.  
Robert H. Watson, Jr., Esq.  
John E. Owings, Esq.  
William H. Crabtree, Esq.  
Jerold L. Becker, Esq.  
Janet Kleinfelter, Esq.  
James L. Murphy, Esq.