

**IN THE SUPREME COURT OF TENNESSEE
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.)

Timothy Hutchison,)
Knox County Tennessee,)
Michael W. Moyers, and)
Randall E. Nichols)

Defendants)

CA: E2006-000681-COA-R10-CV
Knox Chancery No. 164615-1

**T.C.A. § 16-3-201(d)(1) MOTION FOR THE SUPREME COURT TO ASSUME
JURISDICTION OVER AN UNDECIDED EXTRAORDINARY APPEAL FILED IN THE
TENNESSEE COURT OF APPEALS**

**IN THE SUPREME COURT OF TENNESSEE
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.)	CA: E2006-000681-COA-R10-CV
)	Knox Chancery No. 166649-1
)	
Timothy Hutchison;)	
Knox County Tennessee and)	
Knox County Election)	
Commission)	
)	
)	
Defendants)	

**T.C.A. § 16-3-201(d)(1) MOTION FOR THE SUPREME COURT TO ASSUME
JURISDICTION OVER AN UNDECIDED EXTRAORDINARY APPEAL FILED IN THE
TENNESSEE COURT OF APPEALS**

**IN THE SUPREME COURT OF TENNESSEE
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)	
)	CA: E2006-000681-COA-R10-CV
v.)	Knox Chancery No. 166649-1
)	
Timothy Hutchison;)	
Knox County Tennessee; and)	
Knox County Election)	
Commission)	
)	
Defendants)	

**T.C.A. § 16-3-201(d)(1) MOTION FOR THE SUPREME COURT TO ASSUME
JURISDICTION OVER AN UNDECIDED EXTRAORDINARY APPEAL FILED IN THE
TENNESSEE COURT OF APPEALS**

JOINT MOTION OF APPELLANTS

Pursuant to T.C.A. § 16-3-201(d) Appellants move this Court reach down and assume jurisdiction over a pending T.R.A.P. 10 Extraordinary Appeal that pertains State law, the right to hold and retain public office, and Constitutional law of unusual importance and for which there is a special need for expedited decision to protect the Constitution rights of Knox County voters, public office holders and candidates for a primary election to be held on May 2, 2006. *see Memphis v. Shelby County Election Commission*, 146 S.W.3d 531 (2004)

The Constitutional issue presented is whether, in the case of an emergency or for unforeseen events creating necessity, 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 trump State and Knox County laws that are insufficient to provide for the protections provided by the Constitution of Tennessee.

Appellants if permitted to appeal, or if this Court reaches down and accepts jurisdiction, will advocate a "Citizens Election Plan" for a writ of mandamus to the Knox County Election Commission to harmonize insufficient State and Knox

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

County election laws to conform with the requirements of the Constitution of Tennessee to:

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

(2) To open qualifying for the June 19, 2006 primary election immediately for all elected offices of Knox County and close at 12:00 noon on May 11, 2006;³

(3) To not accept a qualifying petition for the June 19, 2006 primary election from Timothy Hutchison for the office of sheriff of Knox county because he is disqualified by Knox County Charter Term Limits to seek that office

(4) To not accept a qualifying petition for the office of Knox County Commissioner from any Knox County Commissioner who is disqualified from seeking the office of Knox County Commissioner by Knox County Charter Term Limits;

(5) That a qualifying petitions for any elected office of Knox County not be accepted by Knox County Election Commission:

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.

A. From any person determined by the Knox County Election Commission to be disqualified for that office by Knox County Charter Term Limits; or

B. From any person determined by this Court to be disqualified for for that office by Knox County Charter Term Limits; and

C. That this Court designate a qualified judge⁴ to retain jurisdiction in these cases in the Chancery Court to resolve issues on an expedited basis that may arise during the Knox County primary election process and provide for direct appeal to this Court by any party on any issues that may be adjudicated.

Attachments

I. Copy of the August 1994 ballot question presented and adopted by the voters of Knox County Tennessee and certified by the Knox County Election Commission;

II. Copy of a copy of a document, not on file with any Knox County Office, presented by Knox County Law Director Mike Moyer the day after Bee DeSelm filed and action for declaratory judgment on July 12, 2005 to enforce Knox County

⁴ Plaintiffs asserts for the reasons stated in the pleadings filed in the Chancery Court attached under tab 4 to the T.R.A.P. 10 Application for Extraordinary Appeal Knox County judges should be disqualified. The trial Chancellor has "under advisement" Plaintiffs motion to disqualify because Knox County Law Director Mike Moyers is now the Chancellor-elect of Part 3 of the Knox County Chancery Court.

Term Limits pursuant to the Opinion in the Shelby County Chancery Court in *Bailey v. Shelby County*.

III. Copy of the printed Knox County Charter as re-published after Bee DeSelm filed an action for declaratory judgment on July 14, 2006 seeking declaratory judgment whether the August 1994 ballot provision or the document presented by Mr. Moyers on July 13, 2005 constituted the Knox County Charter Term Limits.

IV. Copies of letters to the Knox County Law Director and the Knox County District Attorney General dated July 5, 2005 and July 8, 2005 demanding those officers enforce Knox County Term Limits as to the office of Sheriff of Knox County and Timothy Hutchison who, at that time, was serving his fourth term in the office of Knox County Sheriff.

V. Copies of the Orders of Knox County Chancery Court denying motions to disqualify Knox County judges and the Knox County Chancery Court; denying Bee DeSelm standing; denying Bee DeSelm's motion to amend the order denying standing; and a T.R.A.P. 28(c) statement of proceedings on March 29, 2006.⁵

VI. Copy of the T.R.A.P. 10 Extraordinary Appeal Application in the Court of Appeals.

⁵ Counsel failed to attach these relevant documents to the T.R.A.P. 10 application that was filed in an expedited manner in order to obtain an expedited appellate resolution of the issues.

VII. Copy of the Sample Ballot for the May 2, 2006 primary election in Knox County Tennessee.

Reasons For This Court To Assume Jurisdiction

1. Term limits apply to all elected offices in Knox County under both pursuant to the 1994 ballot and the document presented by Law Director Moyers.

2. A primary election is set for May 2, 2006 for all Knox County offices as provided for by Knox County Charter § 7.02.

3. Knox County's Charter provides in § 2.01 for a County Commission, in § 3.02 for a Mayor, in § 3.08 for a Law Director, in § 3.09 for a sheriff, and in § 4.01 for judges.⁶

4. The Knox County Charter provides in § 5.01 for its Board of Education.

5. The Home Rule Charter of Knox County created by the third paragraph of the Constitution of Tennessee Article VII, Section 1 does not provide for or create the office of Trustee, Register, or County Clerk that is provided for in the Constitution of Tennessee, Article VII, Section 1, paragraph 1, however said offices are on the May 2, 2006 Knox County primary ballot required by Knox County Charter § 7.02.

⁶ The 1994 ballot did not have a provision excluding judges. The document presented by Law Director Moyers, that was later declaratory judgment was filed in *DeSelm v. Knox County* placed in the published Charter does in § 8.17 exclude judges.

6. The Home Rule Charter of Knox County created by the third paragraph of the Tennessee Constitution Article VII, Section 1 does not provide for or create an office of Assessor of Property provided for in paragraph one of Article VII, Section 1 for counties organized under state law and the office of Assessor of Property is not on the May 2, 2006 ballot for all offices of Knox County provided for by Knox County Charter § 7.02.

7. The Home Rule Charter of Knox County created by the third paragraph of the Tennessee Constitution Article VII, Section 1 does not have a provision for the elected Knox County Offices of Criminal and Fourth Circuit Court Clerk, Circuit and Civil General Sessions Court Clerk, Public Defender or District Attorney.

8. The chart on the following page contains candidates for offices in Knox County who have served at least more than one full term in the last two terms of their offices who have qualified and are on the May 2, 2006 ballot for re-election to another term.

9. CANDIDATES ON MAY 2, 2006 BALLOT⁷

Office	Name	Terms Since 1990 Home Rule⁸
Sheriff:	Timothy Hutchison	Fifth Term
Commissioner:	Billy Tindell	Fifth Term
	John Mills	Fifth Term
	Mary Lou Horner	Fifth Term
	Wanda Moody	Fifth Term
	Mark Cawood	Fifth Term
	Mike McMillian	Fifth Term ⁹
	John Griess	Fourth Term
	Diane Jordan	Fourth Term
	David Collins	Third Term
	John Schmid	Third Term
	Larry Clark	Third Term
	Phil Guthe	Third Term
Trustee	Mike Lowe	Third Term
Register	Steve Hall	Fifth Term
County Clerk	Mike Padgett	Fifth Term
Criminal and Fourth Circuit Court Clerk	Martha Phillips	Fifth Term
Circuit, Civil Sessions and Juvenile Court Clerk	Kathy Quist	Third Term
Board of Education	Sam Anderson	Fifth Term
	Diane Dozier	Third Term

⁷ A chart of judges, district attorney and public defenders potentially affected because the ballot question did not exclude judges is contained at the end of this motion.

⁸ This number represents the term for which the candidate has qualified to be re-elected.

⁹ Commissioner McMillian was elected in 1992 to serve a remaining term until 1994.

10. This Court's opinion in *Walter Bailey et al v. County of Shelby*, No. W2005-01508-SC-R11-CV filed March 29, 2006 has a potential effect to disqualify each of the above 20 persons who are on the Knox County primary ballot for May 2, 2006.

11. This Court's ruling in *Bailey v. Shelby County* has a potential effect to disqualify approximately 32¹⁰ of the candidates on the ballot for the May 2, 2006 primary election being either disqualified resulting in their election being void.

12. The elected Knox County Law Director failed and refused to support Knox County's Charter Term Limits.

13. The elected Knox County Law Director opposed Knox County Charter's Term Limits.

14. Because the elected Knox County Law Director failed and refused to support and defend Knox County Charter Term Limits the rights of voters, office holders and candidates for Knox County offices were not before this Court in *Walter*

¹⁰ This figure includes the Knox County judiciary that were not excluded on the ballot approved by the voters. Excluding judges, this number would be 20.

Bailey et al v. County of Shelby, No. W2005-01508-SC-R11-CV filed March 29, 2006.¹¹

15. Plaintiffs assert the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office" the Constitution of Tennessee to "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office"¹² as well as the Constitutional guarantees to voters and candidates to the equal protections of the law, trump Tennessee Election Laws and Knox County Charter provisions that would otherwise prohibit an alteration to the May 2, 2006 primary election or are insufficient to provide a constitutional election on May 2, 2006.

¹¹ After the Chancery Court opinion in *Bailey v. Shelby County*, Bee DeSelm filed the demands under attachment 1 on the elected Knox County Law Director and Knox County District Attorney on July 5, 2005 and July 8, 2005 to apply Knox County's Term Limits to Knox County Sheriff Timothy Hutchison who was in his third term. Neither acted. On July 12, 2005 Ms. DeSelm filed a complaint seeking *inter alia* to declare the office of sheriff vacant and for a mandatory injunction requiring the Knox County Law Director file a declaratory judgment as to Knox County's Term Limit Charter to be considered as *Bailey v. Shelby County* was being reviewed. To date the Knox County Law Director and Knox County District Attorney have failed to act.

¹² Constitution of Tennessee Article I, Section 5; Article IV, Section 2.

16. Plaintiffs assert this Court's opinion in *Bailey v. Shelby County* makes Knox County's primary election qualifying period between November 16, 2006 and February 16, 2006 unconstitutional.

17. Plaintiffs assert this Court's ruling in *Bailey v. Shelby County* makes Knox County's ballot for the May 2, 2006 primary election unconstitutionally impure.

18. Plaintiffs assert that the Constitution of Tennessee to "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office" provides the Courts of this State authority, in the event of an emergency and for unforeseen necessity, to alter the statutory election mechanisms to provide the people their franchise to vote in a "free and equal" election and on a pure, certain and lawful ballot.

19. Plaintiffs assert that the election mechanics provided for by state and Knox County law cannot trump the right of the people to "free and equal" elections; "[being] entitled to vote"; and to "purity of the ballot box for office".

20. T.C.A. § 16-3-201(d)(1) provides this Court jurisdiction to assume jurisdiction over a pending T.R.A.P. 10 Extraordinary Appeal in an appellate court and T.C.A. § 16-3-201(d)(2)(B) provides this Court jurisdiction to do so where there is a case of "unusual public importance" concerning "the right to hold or retain public office."

21. In *Memphis v. Shelby County Election Commission*, 146 S.W.3d 531 (Tenn.204) this Court applied its "reach down" jurisdiction in a case similar to this case.

22. Because of the extraordinary circumstances of unusual public importance since March 29, 2006 there exist confusion and uncertainty pertaining to May 2, 2006 the Knox County election and impurity of the Knox County ballot creating a need for expedited appellate resolution of the issues.

23. Because of the extraordinary circumstances of unusual public importance since March 29, 2006 Knox County voters are being required to either "throw away their vote" for candidates that are disqualified or to speculate whether a candidate they vote for may, at a later date, be disqualified and their vote thrown away creating a need expedited appellate resolution of the issues.

24. Because of the extraordinary circumstances of unusual public importance since March 29, 2006 Plaintiff Schmid is being required to remain on a ballot for an office which he is disqualified and can not serve if elected creating a need expedited appellate resolution of the issues.

25. There exist no direct precedent in Tennessee law where an emergency or unforeseen event impedes the rights of voters, office holders and candidates for office Constitutional guarantees for "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office."¹³

26. There exists no direct precedent in Tennessee law to provide for the effect this Court's opinion in *Bailey v. Shelby County* is having on Knox County voters, officer holders and candidates for offices.

27. The Tennessee Constitutional rights of the voters, office holders and candidates for office can be harmonized with the election mechanics of State law and Knox County law to protect the rights of those affected by this Court's March 29, 2006 Opinion in *Bailey v. Shelby County*.

¹³ For example, a natural disaster or a terrorist attack that may have interfered with the May 2, 2006 election.

28. Denying a request made in *Bailey v. Shelby County* this Court held:

Nor are we inclined, in the absence of a compelling reason to interfere with the election process as scheduled.

29. Implicit in this ruling Tennessee Courts, for compelling reasons, have authority to alter the election mechanics to protect the constitutional rights of the voters, office holders and candidates.

30. Defendants assert that in response to this Court's March 29, 2006 opinion in *Bailey v. Shelby County*, that Tennessee Election Laws and Knox County Charter can not be altered to conform, or harmonize, 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".

31. Plaintiffs disagree and assert that where State and Knox County laws are insufficient to comply with the Constitution, Court's have authority in the case an emergency or unavoidable unforeseen event to make alterations and adjustments to the election laws to provide for the requirements of the Constitution.

32. Plaintiffs assert that the "Citizen's Election Plan" provides for alterations and adjustments to the election mechanics that comply with the constitution and the rights of all those affected by this Court's decision in *Bailey v. Shelby County*.

33. Defendants assert that the taxpayers of Knox County Tennessee are required by Tennessee and Knox County election law to bare the expense of a unconstitutional, unlawful and void primary election.

34. Plaintiffs disagree and assert that it would be a misappropriation of the public's funds pay the expense of an unconstitutional, unlawful and void primary election.

35. Plaintiffs assert that the "Citizen's Election Plan" provides for alterations and adjustments to the election mechanics that comply with the constitution and the rights of all those affected by this Court's decision in *Bailey v. Shelby County* and avoids waste of public funds for an unconstitutional, unlawful and void election.

36. Defendants assert that a unconstitutional, unlawful and void May 2, 2006 election must occur and thereafter political party caucus or committees select candidates to run for offices in Knox County at the August 3, 2006 Knox County general election.

37. Plaintiffs disagree and assert that Knox County Charter § 7.02 requires candidates for Knox County offices be elected at a primary election; § 7.02 does not provide for party caucus or committee appointments for a general election; and § 7.02 grants voters of Knox County a franchise right to elect political party nominees.

38. Plaintiffs assert that the "Citizen's Election Plan" provides for alterations and adjustments to the election mechanics that comply with the constitution and the rights of all those effected by this Court's decision in *Bailey v. Shelby County* and protects the voters franchise to vote for their political party representatives by election.

39. Defendant Hutchison, Knox County's Sheriff seeking to run for a fifth term, asserts this Court's opinion in *Bailey v. Shelby County* is authority that Knox County voters can not make the office of sheriff of Knox County subject to Term Limits because this Court held in *Bailey* that only County Commissioner's can be disqualified by Term Limits.¹⁴

¹⁴ Shelby County's Charter did not apply to its sheriff or to Shelby County offices other than its mayor and commission. Knox County's Charter applies to all elected offices of Knox County. Knox County Charter § 3.09 makes the office of sheriff a Knox County office. Offices of Knox County Court clerks, Knox County Clerk, Knox Count Trustee, Knox County Register of Deeds are not provided for by the Knox County Charter as is the office of Mayor, Commissioners, Sheriff and judges.

40. Plaintiff disagrees and asserts that the office of sheriff is specifically made a Knox County office by Knox County Charter § 3.09, along with the office of mayor by § 3.01, the office of Law Director by § 3.08 and the office of Commissioner by § 2.01.

41. Assertions of defendants and their respective attorneys are causing further confusion and uncertainty in an already chaotic election in Knox County.

42. Defendants assertions, unless a Court rules otherwise, will result in a unconstitutional, unlawful and void election on May 2, 2006 and disenfranchise the Knox County voters of their Knox County Charter § 7.02 right to elect their political party representative by primary elections rather than by political caucus or committee.

43. On April 3, 2006 the Knox County Chancellor refused to hear Plaintiffs' claims for a writ of mandamus because the matter "was not on the docket" although motions were filed to shorten the time to hear Plaintiff's claims and the claim, were properly before the court, and on the docket, by amended complaint filed pursuant to T.R.Civ.P. 15.01 prior to a responsive pleading being filed.

44. On April 3, 2006 the Knox County Chancellor took procedural issues "under advisement" and has not yet permitted Plaintiffs to be heard on procedural issues, including standing, as to the amendment for a writ of mandamus.

45. The Chancellor procedurally taking procedural issues under advisement and refusing to hear additional procedural issues, and not address the merits, is contrary to the provisions of T.R.Civ.P. 1 requiring that the procedural rules in civil cases be construed to provide for a "just, speedy and inexpensive determination" of the action.

46. The delay created by procedural issues in the Chancery Court are creating an effect of the issues becoming moot by the passage of time.

47. The attached T.R.A.P. 10 extraordinary appeal and T.R.A.P. 2 Motion to Suspend the Appellate Rules has been filed in the Court of Appeals.

48. 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".

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

50. 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.

51. 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" ¹⁵

¹⁵ 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

52. On March 29, 2006 Knox County Law Director Mike Moyers 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.

53. Knox County Law Director Mike Moyers then recused himself from any further action on the *Bailey v. Shelby County* cases that decision affected Knox County at the May 2, 2006 election.

54. On Wednesday, March 29, 2006 at approximately 5:00 p.m. the Knox County Election Commission Director Greg MacKay advised the Knox County Election Commission that qualifying in Knox County could be reopened for disqualified candidates and that he could have a new ballot out for the May 2, 2006 primary election on or before April 11, 2006.

55. On Friday, March 31, 2006, at approximately 5:00 p.m. after Plaintiff's initial complaints and before a responsive pleading was filed, the Knox County Election Commission refused to remove disqualified candidates and failed

into a public office by taking advantage of the current election disorder to obtain political appointments.

to act to correct the impure ballot for the May 2, 2006 primary election.

56. On Monday, 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 Election Commission to act.

57. 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 address the amendment as of right.

58. 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 Knox County 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.

59. 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.

60. 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.

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

62. On April 3, 2006 after the Supreme Court opinion in *Bailey* Plaintiff DeSelm in her existing action presented the issue to the Chancery Court again for determination.

63. Plaintiff Gray filed a separate action on March 31, 2006 before the Knox County Election Commission met at 4:00 p.m. on March 31, 2006 and moved to consolidate with the pending action by Plaintiff DeSelm.

64. After the Friday 5:30 p.m. March 31, 2006 refusal of the Knox County Election Commission to act, during the weekend, Plaintiffs filed amended pleadings seeking a writ of mandamus and temporary injunction to address the March 31, 2006 5:00 p.m. failure to act and those amendments were filed at the opening of the Chancery Court shortly after 8:00 a.m. on Monday, April 3, 2006.

65. Although all parties were present and represented by counsel at the hearing held by the Chancery Court on April 3, 2006 at 10:00 a.m.; all parties had been provided notice; and the issues were the same that had been before the Court since

July 12, 2005 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."

66. Having publicly recused himself from the effect of *Bailey v. Shelby County* on Knox County voters, officer holders and candidates for office, on April 3, 2006 the Knox County Law Director appeared before the Chancery Court and asserted that none of the Plaintiffs had standing and that the issues should not be decided.

67. Upon the appearance of the Knox County Law Director at the hearing on April 3, 2006 Plaintiffs through his Chief Deputy John Owings, Plaintiffs again demanded that the Knox County Law Director request the court to declare the rights of the parties that had been before the Court since July 12, 2005, however, the Law Director continued to fail to support and defend the Knox County Term Limit Charter provision.

68. 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.

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

70. If and when the Chancery Court were to address the merits there will be an appeal by some party.

71. Any appeal will be *de novo*.

72. Plaintiffs 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 affiliated¹⁶ with and

¹⁶ Chancellor John Weaver is running for re-election for a second term in the Republican primary for Part I of the Knox County Chancery Court. Knox County Law Director Mike Moyers is

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.

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

74. 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.

running for the vacant Chancellor for Part III of the Knox County Chancery Court. Approximately 18 of the Knox County office holders, excluding judges, affected by this Court's opinion in *Bailey v. Shelby County*, are running for re-election in the Republican primary with Chancellor Weaver. Knox County Sheriff Timothy Hutchison is running for re-election unopposed in the Knox County Republican primary.

WHEREFORE, Plaintiffs moves that this Court pursuant to T.C.A. § 16-3-210(d) assume jurisdiction of the pending appeal from the Chancery Court of Knox County.

HERBERT S. MONCIER
Attorney for Plaintiffs

Herbert S. Moncier
Suite 775 Bank of America Center
550 Main Avenue
Knoxville, Tennessee 37902
(865) 546-7746
BPR # 1910

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 Attorney General.

HERBERT S. MONCIER

**CANDIDATES FOR KNOX COUNTY CHARTER § IV JUDICIAL OFFICES WHO
WOULD BE TERM LIMITED UNDER THE BALLOT QUESTION TO THE VOTERS
THAT DID NOT EXCLUDE JUDGES**

Office	Name	Terms Since 1990 Home Rule¹
Circuit Court Judge Division I:	Dale Workman	Third Term
Circuit Court Judge Division II:	Harold Wimberly	Third Term
Circuit Court Judge Division III:	Wheeler Rosenbaum	Third Term
Circuit Court Judge Division IV:	Bill Swann	Third Term
Criminal Court Judge Division I:	Richard Baumgartner	Third Term (served partial term and one full term thereafter)
Criminal Court Judge Division II	Ray Lee Jenkins	Third Term
Criminal Court Judge Division III	Mary Beth Leibowitz	Third Term (served partial term and one full term thereafter)
General Sessions Judge Division II	Geoff Emory	Third Term
General Sessions Judge Division III	Bob McGee	Third Term
District Attorney General	Randy Nichols	Third Term (served partial term and one full term thereafter)
Knox County Public Defender	Mark Stephens	Third Term