

IN THE CHANCERY COURT FOR KNOX COUNTY TENNESSEE

John Schmid,)
as a Knox County)
Commissioner affected by)
Knox County Charter Term)
Limits;)
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 for the)
Fourth District)
Primary Election; and)
on Relationship to)
Knox County and)
the State of Tennessee)

Plaintiff)

v.)

Knox County Election)
Commission and)
Brook Thompson in)
his Capacity as)
Coordinator of)
Elections for Tennessee)

Defendants)

No. _____

COMPLAINT OF JOHN SCHMID

John Schmid sues declaratory judgment pursuant to T.C.A. § 29-14-101 et seq.; writ of mandamus pursuant to T.C.A. § 29-25-101 et seq.; and mandatory injunction pursuant to T.R.Civ.P. 65.04 in aid of declaratory judgment.

1. Plaintiff name is on a May 2, 2006 Knox County Charter § 7.01 Primary Election ballot for a third term of the office of Knox County Commissioner for the Fourth District of Knox County for which the Knox County Law Director provided an opinion on March 29, 2006 Plaintiff is disqualified to serve by application of the March 29, 2006 opinion in *Bailey v. Shelby County* to Knox County Charter Term Limits and the March 29, 2006 opinion of the Knox County Law Director.

2. On March 29, 2006 Knox County Law Director Moyers stated his opinion that Defendant Knox County Election Commission should remove Plaintiff, and eleven (11) other disqualified Knox County Commissioners, from the May 2, 2006 Knox County Charter Article VII, § 7.01 ballot.

3. On March 31, 2006 Defendant Brook Thompson, as Tennessee's Coordinator of Elections, stated his opinion to Defendant Knox County Election Commission that it could not under the Tennessee election law mechanics remove Plaintiff and the eleven (11) other disqualified Knox County Commissioners from the May 2, 2006 ballot and that State Primary Election laws would provide for Republican and Democratic nominations for Knox County's officer holder at the general election on August 3, 2006.

4. Plaintiff sues for declaratory judgment whether he is disqualified to serve a third term as Knox County Commissioner pursuant to Knox County Charter Term Limits.

5. If Plaintiff is disqualified to serve a third term as Knox County Commissioner, Plaintiff sues to remove his name, and the name of eleven (11) other disqualified Knox County Commissioners, from the May 2, 2006 ballot.

6. Plaintiff sues for declaratory judgment that the Knox County Charter § 7.01 qualifying procedure between November 16, 2005 and February 16, 2006 that permitted disqualified candidates to qualify for the office of Commissioner of Knox County was unconstitutional and void as being in violation of the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office"; and the guarantees of the Fourteenth Amendment to the United States Constitution to the equal protection of the provisions of Tennessee's Constitution and Knox County Charter.

7. Plaintiff sues for declaratory judgment that a May 2, 2006 Knox County Charter § 7.01 ballot that contains the names of disqualified candidates for the office of Commissioner of Knox County is unconstitutional and in violation of the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity

of the ballot box for office"; and the guarantees of the Fourteenth Amendment to the United States Constitution to the equal protection of the provisions of Tennessee's Constitution and Knox County Charter.

8. Plaintiff sues as a lawfully qualified Knox County Commissioner to prevent misapplication of Knox County public's funds for a May 2, 2006 Knox County Charter § 7.01 Primary Election that is unconstitutional, unlawful and void.

9. Plaintiff sues as a Knox County Taxpayer to prevent misapplication of the citizens of Knox County's public funds for a May 2, 2006 Knox County Charter § 7.01 Primary Election that is unconstitutional, unlawful and void.¹

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); *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

10. Plaintiff sues as a Knox County registered voter that he not be required to throw away his vote, or risk throwing away his vote because of uncertainty, for himself or other candidates running for offices in Knox County at a May 2, 2006 Knox County Charter § 7.01 Primary Election that contains his name and the name of eleven (11) other Knox County Commissioners who are disqualified to serve in the office if elected.²

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)

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 potential candidate was found to have standing to challenge a state statute ballot requirement. see also *Legislative Choice v. Miller*, 45 F.Supp. 1041, aff. 144 F.3d 916 (6th.Cir1998).

11. Plaintiff sues as a civic minded citizen where all public officials who have authority to act to protect the rights of the citizens of Knox County have failed and refused to act.³

12. Plaintiff sues because he has an additional interest not shared by Knox County taxpayers and voters in general to enforce Knox County's Charter Term Limits because Plaintiff qualified for his office after his predecessor, Bee DeSelm, complied with Knox County Charter Term Limits and did not seek another term thereby allowing Plaintiff to seek and be elected to the Office Commissioner DeSelm vacated.

13. Plaintiff sues on relationship of Knox County Tennessee and on relationship to the State of Tennessee to determine his qualification to run for Primary Election pursuant to Knox County Charter § 7.01 under Knox County Charter Term Limits.

14. A result of the Knox County Election Commission and Tennessee Coordinator of Elections actions and inactions, Plaintiff is being required to throw away his vote for himself in a May 2, 2006 primary or, in order for his vote to count, Plaintiff is being required to vote for his opponent who is unopposed, thereby assuring that his opponent will become the

³ *Bennett v. Stutts*, 521 S.W.2d 575 (Tenn. 1975).

Republican Party nominee for Plaintiff's Commission office as required by Knox County Charter § 7.01.

Facts

15. Plaintiff has served two terms as Knox County Commissioner for the Fourth District of Knox County and his term of office ends on September 1, 2006.

16. Plaintiff is currently holding the office of Knox County Commissioner lawfully as at his August 2002 election not having, in the past two terms of office, served more than one term.

17. The Knox County Election Commission held a qualifying period between November 16, 2005 and February 16, 2006 for persons to run for elected offices for Knox County Tennessee pursuant to Knox County Charter § 7.01.

18. Plaintiff qualified to run in the Knox County Charter § 7.01 Primary Election for a third term as Knox County Commissioner for the Fourth District.

19. During the Knox County qualifying period for the Knox County Charter § 7.01 Primary Election the Knox County Election Commission did not enforce the Knox County Charter Term Limits.

20. The qualifying deadline of February 16, 2006 occurred before the decision by the Tennessee Supreme Court in March 29, 2006 of *Bailey v. Shelby County*.

21. Plaintiff would not have qualified for the office of Knox County Commission had Plaintiff been advised the Knox County Law Director or the Knox County Election Commission or its qualifying period that he was disqualified for a third term as Knox County Commission for the Fourth District because of Knox County Charter Term Limits.

22. Plaintiff would have supported and voted for others who share his political platform for Knox County to succeed Plaintiff in that office had Plaintiff been advised the Knox County Law Director, the Knox County Election Commission, the Tennessee Coordinator of Elections or the Tennessee Attorney General that he was disqualified for a third term as Knox County Commission for the Fourth District because of Knox County Charter Term Limits.

23. On March 29, 2006 Knox County Law Director provided an opinion to Defendant Election Commission that Plaintiff, and eleven (11) other Knox County Commissioners were disqualified pursuant to *Bailey v. Shelby County* and Knox County Charter Term Limits.

24. On March 29, 2006 Knox County Law Director provided an opinion to Defendant Election Commission that Defendant Election Commission was required to remove Plaintiff's name and the eleven other Knox County Commissioners' from the Knox County Charter § 7.01 May 2, 2006 Primary

Election Ballot and reopen qualification of persons to run in the Knox County Charter § 7.01 Republican primary for the seats of disqualified Commissioners.

25. On March 29, 2006 Knox County Election Commission's Director Greg MacKay provided his opinion to the Knox County Election Commission that if qualifying for offices affected by Knox County Term Limits were reopened until April 9, 2006 sufficient time would be available to print new ballots and to send new corrected ballot to absentee voters who had already been mailed a ballot prior March 29, 2006.

26. On March 31, 2006 Defendant Brook Thompson, in his capacity as the Tennessee Coordinator of Elections, advised the Knox County Election Commission that state law prohibited the Knox County Election Commission from removing the names of Plaintiff and the eleven (11) other Knox County Commissioners from the Knox County Charter § 7.01 Primary Ballot within forty (40) of the May 2, 2006 primary election being March 23, 2006.

27. Defendant Thompson advised Defendant Knox County Election Commission that Tennessee law makes no provision to remove the name of a disqualified candidate from a ballot within 40 days of an election for an unforeseen event or emergency.

The Constitution of Tennessee And The General Assembly's Laws

28. The Constitution of Tennessee in Article IV, Section 2 provides to the Tennessee General Assembly the "power

to enact laws . . . to secure the freedom of elections and the purity of the ballot box."

29. The Tennessee General Assembly failed its constitutional duty to provide a law to "secure the freedom of [the Knox County Charter § 7.01 Primary] elections and the purity of the [May 2, 2006 Knox Charter § 7.01 Primary] ballot box."

**Count One:
Declaratory Judgment**

30. The allegations of the foregoing paragraphs are adopted herein.

31. Plaintiff sues for declaratory judgment pursuant to T.C.A. § 29-14-101 et seq.

32. Plaintiff avers provisions the Tennessee General Assembly that require, or are being applied to require, that Plaintiffs name remain on a ballot for an office for which he is disqualified to serve are unconstitutional, or as applied are unconstitutional, and are void as being in violation of the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office"; and equal protection of the guarantees of the Constitution of Tennessee by the Fourteenth Amendment to the United States Constitution.

33. Defendants Knox County Election Commission and Tennessee Coordinator of Elections are unlawfully applying Tennessee's primary election laws to Knox County's May 2, 2006 Primary Election where Knox County Charter Article VII, § 7.01 provides that Primary Elections are required for all Knox County elected offices.

34. A dispute and uncertainty exist as what laws apply to Knox County Charter § 7.01 Primary election.

35. A dispute and uncertainty exist as to whether the General Assembly's laws are sufficient to comply with the Constitution of Tennessee.

36. A dispute and uncertainty exist as to whether Knox County Charter § 7.01 is sufficient to comply with the Constitution of Tennessee.

37. Plaintiff request declaratory judgment that T.C.A. § 2-13-203(d) does not apply to Knox County Primary elections because Knox County Charter Article VII, § 7.01 provides that all political party nominations for elected offices in Knox County are required to be by Primary Election.

38. Plaintiff request declaratory judgment that T.C.A. § 2-5-101(a)(2) does not apply to Knox County because Knox County Charter Article VII, § 7.01 provides that all political party nominations are required to be by primary election and for the timing of the required primary election.

39. T.C.A. § 2-4-101(g)(1) provides if a candidate in a primary election after the qualifying deadline "(E) is declared ineligible or disqualified by a court or disqualified by the political party executive committee under § 2-5-204". . . "leaving no candidate for nomination" additional candidates can qualify for that office no later than the "fortieth day before the election."

40. T.C.A. § 2-4-101(g)(1) makes no provision to comply with the constitutional requirements under the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; "purity of the ballot box for office"; and equal protection of the laws where a candidate is disqualified within the forty (40) day period.

41. Knox County's Charter Article VII, § 7.02 provides:

Where so authorized by State law, the County Commission may by Ordinance passed at least one (1) year before the proposed date, set the date for the County Primary on such date as the County Commission determines shall be the most economical and convenient for the citizens of Knox County.

42. The intent of the people and public policy of Knox County Article VII, Section 2 is to provide for a date to hold Knox County Charter Required Primary Elections on such date

as "most economical and convenient for the citizens of Knox County."

43. Because the forty (40) day period closed March 23, 2006 and the Tennessee Supreme Court did not rule in *Bailey v. Shelby County* until March 29, 2006 the voting mechanics established by the General Assembly are insufficient to protect Plaintiff and Knox County's voters rights to the Constitution of Tennessee guarantees of "free and equal" elections; "every person [being] entitled to vote"; "purity of the ballot box for office"; to the equal protection of the laws; or the Knox County citizens to the "most economical and convenient" Primary Election date.

44. Plaintiff avers that the provisions of the Tennessee General Assembly, as being applied by Defendant Knox County Election Commission and Tennessee Coordinator of Elections, fail to comply 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" are unconstitutional and are in violation of Knox County Charter Article VI.

45. Plaintiff avers that the rights guaranteed by the Constitution of Tennessee and Federal Constitution to Equal Protection of Tennessee's Constitution trump the laws of the General Assembly where those laws are insufficient to comply

with the provisions of Tennessee's Constitution under the circumstances of Plaintiff's disqualification, and the disqualification of eleven (11) other Knox County Commissioners by the opinion of the Tennessee Supreme Court on March 29, 2006 and Knox County Charter Term Limits.

46. Plaintiff avers that the provisions of the Knox County Charter Article VII requiring and providing for political parties to select candidates for Knox County offices by Primary election control in Knox County and trump the primary election laws of the General Assembly.

47. Plaintiff avers that the Knox County Election Commission qualifying period between November 16, 2005 and February 15, 2006 was unconstitutional and void because it allowed disqualified candidates to qualify for offices in Knox County Tennessee.

48. Plaintiff avers that the May 2, 2006 ballot created by the unconstitutional, unlawful and void Knox County Election Commission qualifying period between November 16, 2005 and February 15, 2006 is void.

49. Plaintiff avers Knox County Charter and the General Assembly's laws can be harmonized with the requirements of the Constitution of Tennessee to provide Plaintiff and the voters of Knox County a constitutional and lawful Primary

Election qualifying period and vote for their political nominees for the August 3, 2006 General Election.

50. Plaintiff request this Court harmonize the provision of the Knox County Charter and Tennessee law to provide a Constitutional Election Plan by adjusting the Knox County Charter § 7.01 primary election date from May 2, 2006 to June 19, 2006; reopen qualifying for offices in Knox County until 12:00 noon on May 11, 2006; provide new ballots to absentees and members of the armed forces thirty (30) days prior to June 19, 2006, or May 20, 2006, as provided for by T.C.A. § 2-6-503 that is necessary to protect the Tennessee Constitutional rights of Plaintiff and the voters in Knox County to a "free and equal" Knox County primary election; "every person [being] entitled to vote" and not throw their vote away at Knox County's primary election; and to assure "purity of the ballot box for office" for Knox County's primary election; and to protect the United States Constitutional Rights of Plaintiff and the citizens of Knox County to the equal protections of the guarantees of the Constitution of Tennessee.

51. 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.

52. Plaintiff moves for declaratory judgment and additional relief by writ of mandamus and mandatory injunction

in aide of declaratory judgment and attorney fees pursuant to T.C.A. 29-14-110.

**Count Two:
Taxpayer Action**

53. The allegations of the foregoing paragraphs are incorporated herein.

54. Plaintiff sues as a taxpayer, and on behalf of the taxpayers of Knox County on Plaintiff's relationship to Knox County and the State of Tennessee.

55. Plaintiff asserts it constitutes misappropriation of the publics funds for the Knox County Election Commission to spend public funds for a unconstitutional, illegal and void Knox County Charter § 7.01 Primary Election on May 2, 2006.

56. Pursuant to T.R.Civ.P. 65.04 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 funds of the citizens of Knox County to conduct an unconstitutional, unlawful and void Knox County Charter § 7.01 Primary Election on May 2, 2006.

57. Plaintiff prays for the such additional relief as he may be entitled as a taxpayer representative of the public.

**Count Three:
Voter Action**

58. The allegations of the foregoing paragraphs are adopted herein.

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

60. 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.

61. Plaintiff asserts that as a voter he, and other voters, should not be required to guess or risk their vote being thrown away for disqualified candidates because of uncertainty as to the qualifications of candidates the ballot to serve if elected.

62. Plaintiff asserts that it is unconstitutional and contrary to the principles of democracy and a democratic society for the Knox County Election Commission to present him, and the citizens of Knox County, an impure ballot to vote on.

63. Plaintiff request a mandatory injunction and preemptory writ of mandamus commanding the Knox County Election Commission remove his name, and the names of disqualified candidates for offices in Knox County, from the ballot for Knox County voters to vote in Knox County Charter § 7.01 Primary Election.

64. Plaintiff request a mandatory injunction and preemptory writ of mandamus commanding the Knox County Election Commission not to hold an election on May 2, 2006 on a ballot with the names of disqualified voters for him and the voters to vote on.

65. Plaintiff request such other relief to which he or the voters may be entitled.

**Count Four:
Quo Warranto**

66. The allegations of the forgoing paragraphs are incorporated herein.

67. Plaintiff, as a civic minded citizen and the Knox County Law Director and Knox County District Attorney General having failed to act to protect the citizens and voters of Knox County, sues to remove his name, and the name of eleven (11) disqualified County Commissioners from the 2006 Knox County Charter § 7.01 Primary Election.

WHEREFORE, Plaintiff prays:

1. For declaratory judgment requested as to the uncertainty and rights of the parties;

2. For a mandatory injunction in aide of declaratory judgment requested to command the Knox County Election to comply with the Tennessee Constitution, Federal Constitution and Knox County Charter;

3. For a writ of preemptory mandamus in aide of declaratory judgment to the Knox County Election Commission to command the Knox County Election to comply with the Tennessee Constitution, Federal Constitution and Knox County Charter as plead;

4. That the mandatory injunction and writ of mandamus command the Knox County Election Commission to harmonize Tennessee's insufficient election mechanics with the Constitution of Tennessee to protect the people's guarantees of "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for a Knox County Charter § 7.01 Primary Election to be held on June 19, 2006 and that qualifying for offices in Knox County be reopened to be closed on May 11, 2006 at 12:00 noon.

5. Plaintiff seeks such other and further relief as he may be entitled including attorney fees and cost.

APPLICATIONS ARE PENDING IN PART I OF THE KNOX COUNTY CHANCERY COURT FOR SIMILAR RELIED SOUGHT HEREIN IN *DESELM V. HUTCHISON*, KNOX COUNTY CHANCERY 164615-1 AND *GRAY V. HUTCHISON*, KNOX COUNTY CHANCERY 166649-1 PURSUANT TO T.R.CIV.P. 42.01

COST BOND

I hereby acknowledge myself surety for the cost of
this case as provided by law.

Herbert S. Moncier