

IN THE CHANCERY COURT FOR KNOX COUNTY TENNESSEE

Bee Deselm,)
James Gray and John Schmid,)
)
Plaintiff and)
Intervening Plaintiffs,)
)
v.) No. 164615-1
)
Timothy Hutchison,)
Knox County Tennessee,)
Michael W. Moyers, and)
Randall E. Nichols,)
)
Defendants.)

James Gray,)
Bee DeSelm and John Schmid,)
)
Plaintiff and)
Intervening Plaintiffs,)
)
v.) No. 166649-1
)
Timothy Hutchison,)
Knox County Tennessee, and)
Knox County Election Commission)
)
Defendants.)

John Schmid,)
Bee DeSelm and James Gray)
)
Plaintiff and)
Intervening Plaintiffs,)
)
v.) No. 166706-1
)
Knox County Election Commission)
and Brook Thompson)
)
Defendants.)

AFFIDAVIT OF JOHN SCHMID

JOHN SCHMID, after first being duly sworn, deposes and says as follows:

1. My name is John Schmid.
2. I am over 18 years of age and competent to make oath to the matters contained in this affidavit.
3. I was elected to the Fourth District of the Knox County Commission in 1998.
4. I am a taxpayer in Knox County.
5. I am a registered voter in Knox County.
6. I have a duty to represent the voters and taxpayers in the Fourth District of Knox County.
7. I ran for re-election to the office of Knox County Commissioner in 2002.
8. The Knox County Election Commission accepted my qualifying petition for re-election to run for re-election to a third term of the office of Knox County Commissioner.
9. The Knox County Election Commission accepted qualifying petitions for re-election of eleven (11) other Knox County Commissioners, including the other Commissioner in the Fourth District, Phil Guthe, to run for a third terms or more of the office of Knox County Commissioner.

10. The Knox County Election Commission accepted the qualifying petition of Timothy Hutchison to seek re-election to a fifth (5th) term of Knox County Charter § 3.09 office of sheriff of Knox County.

11. Qualifying for my office, the office of the eleven (11) other Knox County Commissioners and the Knox County Charter § 3.07 office of Knox County sheriff closed pursuant to State law at noon on February 16, 2006.

12. Knox County Commissioner Phil Guthe holds a Knox County Commission office for the Fourth District.

13. Fourth District Commissioner Guthe had qualified prior to February 16, 2006 for re-election for a third term.

14. As of the closing for qualifying for offices in Knox County on February 16, 2006, the Tennessee Court of Appeals in the Western Section of Tennessee had ruled in *Bailey v. Shelby County* that Tennessee Home Rule Charter counties, such as Knox County, could not impose term limits on County Commissioners such as myself and Fourth District Commissioner Guthe.

15. On March 29, 2006 the Tennessee Supreme Court in *Bailey v. Shelby County* held that Home Rule Charter counties in Tennessee could impose term limits on County Commissioners such as myself and Fourth District Commissioner Guthe.

16. The March 29, 2006 holding of the Tennessee Supreme Court created an unanticipated political event in Knox County.¹

17. Because of the unanticipated political event created by *Bailey*, the Knox County Law Director on March 29, 2006 stated that I, and Fourth District Commissioner Guthe, and ten (10) other Knox County Commissioners, are disqualified by Knox County Charter Term Limits to hold the office of Knox County Commissioner for a third term.

18. Because of the ~~was~~^{was} unanticipated political event created by *Bailey*, the attorney for the Knox County Election Commission advised that body on March 31, 2006 that I, and Fourth District Commissioner Guthe and ten (10) other Knox County Commissioners, are disqualified to hold the office of Knox County Commissioner for a third term.

19. Because of the was an unanticipated political event created by *Bailey*, the Tennessee Coordinator of Elections advised the Knox County Election Commission on March 31, 2006 that I, and Fourth District Commissioner Guthe and ten (10) other Knox county Commissioners are disqualified to hold the office of Knox County Commissioner for a third term.

¹ see *Anderson v. Celerezze*, 460 U.S. 780, 785 (1983)

20. On March 31, 2006 the Tennessee Coordinator of Elections advised the Knox County Election Commission that my name, Fourth District Commissioner Guthe, and the names of ten (10) other Knox County Commissioner's disqualified because of the unanticipated political event created by *Bailey* are required to stay a May 2, 2006 ballot because of a State election law that establishes a deadline after which a candidate's name can not be removed from a ballot.

21. The Knox County Election Commission failed to act on March 31, 2006 to remove my name and the name of eleven (11) Knox County Commissioners from the Knox County Charter § 7.01 May 2, 2006 Primary Election.

22. Although not qualified, my name, Fourth District Commissioner Guthe, the names of ten (10) other Knox County Commissioners, and the name of Timothy Hutchison were accepted by the Knox County Election Commission during the Knox County Charter § 7.03 qualifying for offices of Knox County between November 16, 2006 until February 16, 2006.

23. Although not qualified to serve if elected, because of deadlines created by State and Knox County Charter law insufficient to address the unanticipated political event, my name, the names of eleven (11) other Knox County Commissioners, and the name of Timothy Hutchison are on a Primary Election ballot scheduled for May 2, 2006.

24. My constitutional rights as a candidate and my constitutional rights as a voter are the same.²

25. I am being required to throw away my vote for myself and Fourth District Commissioner Guthe on May 2, 2006.

26. My basic constitutional rights as a candidate and as a voter are impacted by the unanticipated political event created by *Bailey* and State and Knox County Charter laws insufficient to protect, and being applied to deny, me my constitutional rights.³

27. I do not support the political views of the person who qualified to run against me for the Fourth District Knox County Commission Republican nomination.

28. I intend to vote in the Knox County Charter § 7.01 Republican Primary election.

29. I intend to vote for myself for Republican nominee for Fourth District County Commissioner in the Republican Primary election.

30. I support the political views of Fourth District Knox County Commissioner Guthe.

31. I intend to vote for Fourth District Knox County Commissioner Guthe for Republican nominee for Fourth District County Commissioner in the Republican Primary election.

² *see Anderson v. Celerezze*, 460 U.S. 780, 786 (1983)

³ *see Anderson v. Celerezze*, 460 U.S. 780, 786 (1983)

32. I do not support the political views of Timothy Hutchison as sheriff of Knox County.

33. I would vote for any candidate for the Republican nomination for sheriff of Knox County except Timothy Hutchison.

34. Requiring names of disqualified candidates, including mine, the twelve other disqualified County Commissioners, and Timothy Hutchison to be on a ballot presented to the voters disenfranchises myself and the voters from our right to elect our Republican party nominees for offices in Knox County by election as provided by Knox County Charter § 7.01 rather than by political party nomination.

35. Because my opponent qualified for the Republican Primary and I will be disqualified after the Republican primary, my opponent will be elected by default as the Republican nominee and all those persons voting for me, including myself, will be disenfranchised.

36. Because Fourth District Commissioner Guthe will be disqualified after a Primary Election I will be disenfranchised from voting for my County Commissioner from the Fourth District.

37. I represent the views of those who support me for political office.

38. My supporters do not support the political views of the person who qualified to run against me for the Fourth District Knox County Commission Republican nomination.

39. Had Fourth District Commissioner Guthe and myself not been allowed to qualify under Knox County Charter § 7.03 for re-election by the Knox County Election Commission, other persons who hold my political views would have qualified prior to February 16, 2006 for the Republican nomination for Fourth District Knox County Commission offices held by myself and Commissioner Guthe.

40. Except for the Knox County Charter § 7.03 deadline date for qualifying for offices in Knox County, a new qualifying period can be established because of the unanticipated political event created by *Bailey v. Shelby County* to provide all qualified candidates and voters in Knox County their constitutional rights to run for or vote for a qualified candidate for offices in Knox County and not be required to vote on an impure ballot or throw away their vote for a disqualified candidate.⁴

⁴ see Constitution of Tennessee Article I, § 5; Article IV, § 2; Article I, § 8; and the First and Fourteenth Amendments to the United States Constitution.

41. Except for a deadline created by State law for removing names of disqualified candidates from a ballot, my name, Fourth District Commissioner Guthe, the name of the ten (10) other disqualified Commissioners, and the name of Timothy Hutchison can be removed from the May 2, 2006 ballot to provide myself, and all candidates and voters in Knox County their constitutional rights to vote for qualified candidates for offices in Knox County and not be required to vote on an impure ballot or throw away their vote for a disqualified candidate.⁵

42. Absent the Knox County Charter § 7.02 deadline for the Knox County Commission to establish a different date to hold a Knox County Primary Election that is "most economical and convenient for the citizens of Knox County", a new date of June 19, 2006 or earlier can be established for a Knox County Primary Election whereby all candidates and voters in Knox County can be afforded their constitutional rights to vote for qualified candidates for offices in Knox County and not be required to vote on an impure ballot or throw away their vote for a disqualified candidate.

43. Knox County Charter § 7.04 requires all persons designated as a party nominee at the August 2006 general election be elected at a primary election except where "impossible".

⁵ see Knox County Charter § 7.04.

44. It is possible for Knox County to hold a Primary Election on or before June 19, 2006 for political party nominees to be elected eliminating party convention appointments.

45. State and Knox County Charter deadlines are placing a heavy burden on my constitutional rights, and the constitutional rights of all candidates and voters of Knox County and my constituents, to support candidates or parties or both who come near to reflecting my policy preferences on contemporary issues.⁶

46. State and Knox County Charter deadlines are placing a heavy burden on my constitutional rights, and the constitutional rights of all candidates and voters of Knox County and my constituents to qualify for elected offices in Knox County.⁷

47. State and Knox County Charter deadlines are placing a heavy burden on my constitutional rights, and the constitutional rights of all candidates and voters of Knox County and my constituents at the May 2, 2006 primary election.⁸

⁶ see *Anderson v. Celerezze*, 460 U.S. 780, 787 (1983)

⁷ see *Anderson v. Celerezze*, 460 U.S. 780, 787 (1983)

⁸ see *Anderson v. Celerezze*, 460 U.S. 780, 787 (1983)

48. State and Knox County Charter deadlines are invalid restrictions on my constitutional rights, and the constitutional rights of all candidates and voters of Knox County at the May 2, 2006 primary election.⁹

49. State and Knox County Charter deadlines are burdening the signature-gathering efforts of persons to run for office in Knox County in violation of my constitutional rights, and the constitutional rights of all candidates and voters of Knox County at the May 2, 2006 primary election.¹⁰

50. State and Knox County Charter deadlines are making obstacles facing organizing efforts to obtain volunteers, media publicity, campaign contributions and create voter interest in violation of my constitutional rights, and the constitutional rights of all candidates and voters of Knox County at the May 2, 2006 primary election.¹¹

51. State and Knox County Charter deadlines are burdening my freedom of association for an election campaign for an effective platform for the expression of my views on the issues facing Knox County and as a rallying-point for like-minded citizens.¹²

⁹ *see Anderson v. Celerezze*, 460 U.S. 780, 789 (1983)

¹⁰ *see Anderson v. Celerezze*, 460 U.S. 780, 789 (1983)

¹¹ *see Anderson v. Celerezze*, 460 U.S. 780, 792 (1983)

¹² *see Anderson v. Celerezze*, 460 U.S. 780, 788 (1983)

52. I assert my right under the Constitution of Tennessee Article I, § 8 to due process of law and to the equal protection of the law to support and vote for qualified candidates in the primary election for the office of sheriff of Knox County and offices of Knox County Commission in the Fourth District of Knox County. *Gates v. Long*, 113 S.W.2d 388, 391 (Tenn.1938).

53. I assert my rights under the Constitution of Tennessee to free and equal elections and purity of the ballot box.¹³

54. I assert my right under the First and Fourteenth Amendment to the Constitution of United States to support candidates and vote for qualified candidates in the primary election for the office of sheriff of Knox County and offices of Knox County Commission in the Fourth District of Knox County.¹⁴

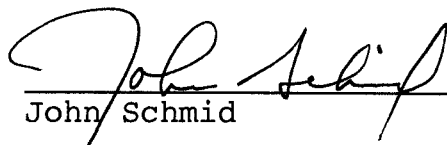
This Court's April 5, 2006 Memorandum Opinion

55. On April 5, 2006 this Court suggested that Knox County's Charter may be invalid.

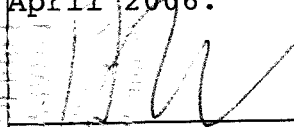
56. On April 5, 2006 this Court's suggestion, if correct, means the office that I currently hold may not exist under the Knox County's Charter.

¹³ Article I, § 5; Article IV, § 2.

¹⁴ *see Burdick v. Takushi*, 504 U.S. 428 (1992)


John Schmid

Sworn to and subscribed
before me this 9 day of
April 2006.

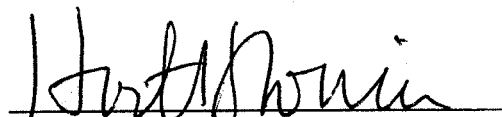

Notary Public

My Commission expires: 6-6-06

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been served upon the following:

1. Michael E. Moyers, The Knox County Law Director;
2. Robert H. Watson, Jr., Attorney for Timothy Hutchison;
3. Jerold Becker, personal 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. Randall E. Nichols, Knox County District Attorney General.


HERBERT S. MONCIER
Attorney for Plaintiff