

unmanageable complexity that would be caused by joining together all the papers filed by the plaintiff's counsel, Mr. Moncier, in all three cases commenced by Mr. Moncier.

In accordance with the foregoing, the Court will enter an order providing as follows:

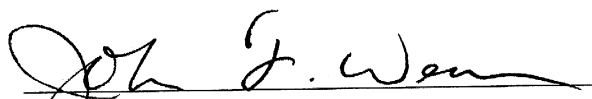
(1) That the prayers in the COMPLAINT OF JOHN SCHMID filed April 6, 2006 for preliminary injunctive relief, including relief by writ of mandamus and/or temporary injunction, are denied;

(2) That the plaintiff's MOTION TO CONSOLIDATE filed April 6, 2006, is denied;

(3) That the MOTION TO INTERPLEAD filed April 6, 2006, by Bee Deselm, is denied; and

(4) That the MOTION TO INTERPLEAD filed April 6, 2006, by James Gray, is denied.

Signed this 11th 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.

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

PART I

JAMES GRAY,

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

Plaintiff,

VS.

No. 166649-1

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

Defendants.

ENTERED

APR 11 2006

HOWARD G. HOGAN

ORDER

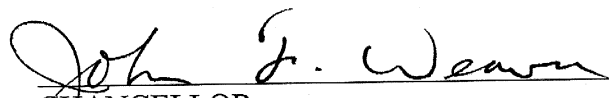
In accordance with the Court's memorandum opinion, filed contemporaneously herewith, which is adopted and incorporated herein by reference, it is, therefore,

ORDERED, ADJUDGED and DECREED as follows:

- (1) That the preliminary relief, sought by mandamus, is denied;
- (2) That the preliminary relief, sought by temporary injunction, is denied;
- (3) That the MOTION TO INTERPLEAD, filed April 3, 2006, by John Schmid, is denied;
- (4) That the MOTION TO INTERPLEAD, filed April 3, 2006, by Bee DeSelm, is denied;
- (5) That the "MOTION TO AMEND COMPLAINT," filed April 3, 2006, by the

plaintiff, James Gray, excluding the section entitled, "JOINDER BY BEE DESELM
AND JOHN SCHMID," is granted.

Enter this 11th 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.
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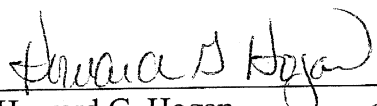
John E. Owings
Chief Deputy Law Director
400 Main Avenue, Suite 612
Knoxville, TN 37902

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

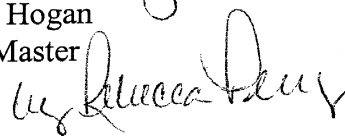
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This 12th day of April, 2006.



Howard G. Hogan
Clerk and Master



IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

PART I

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 prayers in the amended and supplemental complaint of the plaintiff, James Gray, Chairman of the Democratic Party of Knox County, Tennessee, for preliminary relief to stop the primary election scheduled in Knox County for May 2, 2006 and to substitute the plaintiff's "election plan" which would reschedule the primary election, remove candidates from the ballot, and reopen the qualifying period. The plaintiff is requesting that this Court declare Article VII of the Knox County Charter as unconstitutional and invalid as applied to the primary election scheduled for May 2, 2006. The plaintiff also requests that the Court declare applicable state election laws, at T.C.A. §§ 2-13-203(b); 2-5-204(a); and 2-5-101(g), as

unconstitutional and invalid as applied to the primary election scheduled for May 2, 2006.

The plaintiff, through his counsel, argues that he is either seeking a writ of mandamus or a temporary injunction including mandatory injunctive relief. An alternative writ of mandamus is issued at the commencement of an action compelling a defendant to perform an act required of him or to show cause why he should not perform the alternative writ of mandamus. *See* William H. Inman, Gibson's Suits in Chancery § 510 (7th ed.). However, no alternative writ of mandamus has been issued in this case. A peremptory writ of mandamus is issued at the conclusion of an action. *Id.* However, the matters presently before the Court are preliminary in nature and are not at the conclusion of the case. Regardless, it is doubtful that a mandamus would be available to compel the Knox County Election Commission to perform acts required by a private citizen's proposal. As a general rule, a mandamus will be granted "whenever a statute gives power to, or imposes an obligation on, a particular person to do some particular act, or perform some particular duty." *Id.* No provision of the Knox County Charter or the state election laws embodies a private citizen's election plan. The duties of the Knox County Election Commission are imposed by the Knox County Charter and state law. Knox County Charter, Article VII; T.C.A. §§ 2-13-203(d); 2-5-204(a); 2-5-101(g). The Knox County Election Commission is in compliance with its charter and state law duties.

There is nothing to suggest that the primary election scheduled for May 2, 2006, is itself not permitted by state law or the Knox County Charter. The Knox County Charter provides that "[a]ll such elections shall be held in the manner provided for holding such primary elections by general law." Knox County Charter, Article VII, Section 7.01.

General state law and the Knox County Charter both require that the primary election proceed unaltered by the plaintiff. *See* T.C.A. § 2-5-204; Knox County Charter, Article VII, Section 7.01, *et seq.*

The Tennessee constitution entrusts the authority to control the conduct of elections with the General Assembly. Tennessee Constitution, Article IV, Section 1. “The authority of the Tennessee legislature to control the conduct of elections held in this state is manifest.” *Bemis Pentecostal Church v. State*, 731 S.W.2d 897, 901 (Tenn. 1987).

In the case before this Court, however, the plaintiff argues the public interest requires that the statutory scheme for the election process be interrupted so that good people can offer themselves as candidates and participate and so that the elective process can be maximized. That same argument was presented to the Tennessee Supreme Court in *State, ex rel, Ozment v. Rand*, 567 S.W.2d 759 (Tenn. 1978). The Tennessee Supreme Court held:

It is in the public interest that good people offer themselves as candidates for public office and maximum participation in the elective process is a worthy objective, but the orderly administration of the election laws of our state demands that statutory requirements relating to candidacy be met. There must be stability in the elective process. To this end the Legislature has wisely imposed conditions, restraints and deadlines.

State, ex rel, Ozment v. Rand, 567 S.W.2d 759, 761 (Tenn. 1978).

This Court would exceed its authority by accepting the plaintiff’s invitation to put aside the election laws and to interject itself into the primary election scheduled for May 2, 2006. In *Moyers v. Sherrod*, 525 S.W.2d 126, the Tennessee Supreme Court held:

Moreover, it is an established rule of law in this jurisdiction that the chancery court will not enjoin an election and that rule applies not only to the actual conduct of an election, but to any of the steps in the proceeding 'looking to or pertaining to an election'. The canvass and announcement of the result is an inseparable and integral part of an election. *O'Neil v. Jones, et al.*, 185 Tenn. 539, 206 S.W.2d 782 (1947). It necessarily follows that a certification of an election result is an integral part of an election and may not be enjoined. Further, no contest will lie until the returns have been canvassed and the certification has been made.

[4] [5] It therefore, results that this suit may not be treated as an election contest. Assuming, arguendo, that the allegations of the complaint are true and that they are sufficient to void the election, it does not follow that this suit may be prosecuted for the express purpose of vindicating a public wrong. If, as a result of the frauds and irregularities alleged to have been committed, the citizenry of Jefferson City has sustained an injury, it is one that is common to every citizen and resident and cannot be corrected or repaired by an action brought by a private citizen, but must be brought upon relation of the State of Tennessee.

* * *

Moyers v. Sherrod, 525 S.W.2d 126, 127-128 (Tenn. 1975).

The plaintiff's request for preliminary relief is otherwise problematic. The relief sought by the plaintiff would require the Knox County Election Commission to implement the plaintiff's "election plan" and to prohibit the Knox County Election Commission from permitting "Timothy Hutchison, the Twelve Commissioners nor any other candidate Term Limited" from qualifying for the plaintiff's primary. The plaintiff sued Timothy Hutchison in this case but did not sue any of the "Twelve Commissioners" or any other candidate alleged by the plaintiff as being term limited. As of this time, no court has adjudicated any of the candidates to be ineligible to serve.

The plaintiff argues that the application of the Knox County Charter and the Tennessee election laws is unconstitutional. However, the plaintiff does not point to any

discrimination from their application. Rather, the plaintiff argues that the purposes of the election laws, including stability, should give way to his views. However, the Tennessee Supreme Court, as discussed above, has ruled otherwise. *State, ex rel, Ozment*, at 761.

The plaintiff relies upon federal cases for the proposition that the Knox County charter and state election laws are unconstitutional as applied to the primary election scheduled for May 2, 2006. However, in one of the cases relied upon by the plaintiffs, the Sixth Circuit Court of Appeals held that “no one is guaranteed the right to vote for a specific individual.” *Zielasko v. State of Ohio*, 873 F.2d 957, 961 (6th Cir. 1989). In the case before this Court, no such specific individual is even identified. The Sixth Circuit Court of Appeals held that with there being no fundamental right to vote for a specific individual, claims of unconstitutionality would fail if any rational basis existed for the election law challenged in that case. *Zielasko*, 961-962. The Sixth Circuit Court of Appeals also stated that it was irrelevant as to whether the Court considered the “basis” to be unwise. *Id.* The Tennessee Supreme Court has already approved the basis of “stability” for the election laws applicable in this case.

This Court adopts and incorporates its MEMORANDUM OPINION filed April 5, 2006. The Knox County Charter, as well as state law, requires that the ballots and election process remain unchanged. Moreover, state law expressly provides the remedy in the event that any candidate is subsequently disqualified by a court. T.C.A. § 2-13-204. Disagreement with that statutory remedy does not render it unconstitutional. The Knox County Charter expressly renders itself subject to these provisions of general law. Knox County Charter, Article VII, Section 7.04.

For the plaintiff to obtain the preliminary injunctive relief sought by him in this action, it must be “clearly shown by verified complaint, affidavit or other evidence that the movant’s rights are being or will be violated by an adverse party and the movant 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 tend to render such final judgment ineffectual.” Tenn. R. Civ. P. 65.04 The plaintiff has failed to meet his burden.

Presently, the Court has nothing before it except preliminary relief. No final disposition is made as to any issue except that the plaintiff, at this time, is not entitled to preliminary relief sought, whether by mandamus or temporary injunction.

The Court also has before it two motions to intervene. On April 3, 2006, John Schmid filed a document entitled, “MOTION TO INTERPLEAD AND SHORTEN TIME FOR NOTICE BY JOHN SCHMID.” On the same date, Bee DeSelm also filed a document entitled, “MOTION TO INTERPLEAD AND SHORTEN TIME FOR NOTICE BY BEE DESELM.” The plaintiff and the movants all share common counsel, Mr. Moncier. Their common counsel has commenced three separate cases with three separate claims. However, the cases are not at the same stage. A barrage of papers has been filed in each case. The claims of Ms. DeSelm, relating to the rights of Timothy Hutchison to occupy the office of Sheriff, were dismissed per the Court’s memorandum opinion filed in that case on November 10, 2005 and order entered February 3, 2006. As recently as April 5, 2006, this Court dismissed a motion by Ms. DeSelm to consolidate her case with this case. In a separate action commenced April 6, 2006, by Mr. Moncier on behalf of John Schmid, civil action number 166706-1, Mr. Schmid states that he “has

pending motions to intervene as of right pursuant to T. R. Civ. P. 24.01 in DeSelm v. Hutchison, Knox County Chancery 164615-1 and Gray v. Hutchison to protect his interests.” He further states that his “separate action is filed in the event that Gray or DeSelm were denied standing and plaintiff’s intervening complaint was for any reasons procedurally insufficient to those cases to provide plaintiff the relief he seeks.” Mr. Schmid purports to give his own action the nature of a “contingency” action. However, Mr. Schmid has filed a motion to consolidate his separate action with the other two cases.

Many of the papers that have been filed in the above three cases are complex if not convoluted. The files are becoming unintelligible. Combining the cases, through intervention or consolidation, would unduly add to unnecessary and unmanageable confusion and complexity.

The original plaintiff, James Gray, also filed on April 3, 2006, a document entitled, “MOTION TO AMEND COMPLAINT.” Except for the section following the motion and entitled, “JOINDER BY BEE DESELM AND JOHN SCHMID,” the plaintiff’s motion to amend filed April 3, 2006, should be granted.

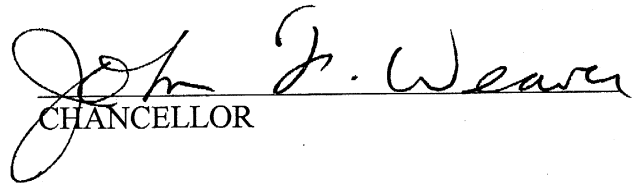
In accordance with the foregoing, the Court will enter an order providing as follows:

- (1) That the preliminary relief, sought by mandamus, is denied;
- (2) That the preliminary relief, sought by temporary injunction, is denied;
- (3) That the MOTION TO INTERPLEAD, filed April 3, 2006, by John Schmid, is denied;
- (4) That the MOTION TO INTERPLEAD, filed April 3, 2006, by Bee DeSelm, is

denied;

(5) That the "MOTION TO AMEND COMPLAINT," filed April 3, 2006, by the plaintiff, James Gray, excluding the section entitled, "JOINDER BY BEE DESELM AND JOHN SCHMID," is granted.

Signed this 11th day of April, 2006.


CHANCELLOR

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