

**IN THE TENNESSEE COURT OF APPEALS  
EASTERN SECTION**

CARL R. SEIDER	)	
	)	
Appellant	)	
v.	)	COA _____
	)	Knox Chancery 166736-1
	)	
	)	
KNOX COUNTY ELECTION COMMISSION	)	
	)	
Appellee.	)	

**T.R.A.P. 10(a) APPLICATION FOR EXTRAORDINARY APPEAL**

Appellant Carl R. Seider makes application pursuant to T.R.A.P. 10(a) for Extraordinary Appeal from the ruling of the Chancery Court for Knox County on April 11 and 12, 2006.

1. Appellant qualified to run against Timothy Hutchison as a write-in candidate for the Republican nomination for Sheriff of Knox County.

2. Timothy Hutchison is disqualified by Knox County Charter Term Limits

3. Timothy Hutchison is disqualified by T.C.A. § 8-8-102(a)(5) and T. C. A. § 8-8-102(b)(1) Disqualification as having been convicted of of six (6) counts of criminal contempt of court for willfully making false statements to obstruct and interfere with the processes of the Court constituting violations of Tennessee Rules of Criminal Procedure 44 and T.C.A. § 29-9-102(1) and (4)

4. On April 11, 2006 Appellant applied for a writ of alternative mandamus to require the Knox County Election Commission to answer or show cause why it should not be commanded to remove Timothy Hutchison's name from the May 2, 2006 ballot because he is disqualified by Knox County Charter Term Limits.<sup>1</sup>

5. The action was assigned to Knox County Chancellor John F. Weaver who has presided over litigation raising common questions of law and fact in *DeSelm v. Hutchison* Knox County Chancery 164615-1 pending in this Court on Motion for T.R.A.P. 39 Rehearing; *Gray et al. v. Hutchison* Knox County Chancery 166491-1 pending in this Court on T.R.A.P. 3 appeal; and *Schmid et al. v. Hutchison*, Knox County Chancery 166706-1 pending in this Court on T.R.A.P. 3 appeal.

6. Chancellor Weaver overruled motions that he disqualify himself to preside over "preliminary matters" in *Gray and Schmid* and currently has had a motion to disqualify in *DeSelm* argued March 29, 2006 under advisement.

7. Chancellor Weaver is disqualified pursuant to the Constitution of Tennessee Article VI, § 11 and Tennessee Supreme Court Rule 10, Canon 3 E.

---

<sup>1</sup> Complaint and Amended Complaint as of right attached.

8. No exception exist for a disqualified judge to rule on "preliminary matters".

9. Chancellor Weaver continues to rule on significant issues while disqualified including Appellant's application for a writ of alternative mandamus to the Knox County Election Commission to answer or show cause why it should not be commanded to remove the name of Timothy Hutchison from the May 2, 2006 ballot.

10. Even though disqualified, Chancellor Weaver on April 11, 2006 refused to issue an alternative writ of mandamus to require the Knox County Election Commission answer or show cause why it should not be commanded to remove the name of Timothy Hutchison from the May 2, 2006 ballot.<sup>2</sup>

11. Chancellor Weaver required Appellant's Counsel to give notice prior to a hearing on issuance of an alternative writ of mandamus to answer or show cause.

12. Appellant's Counsel obtained the agreement of Counsel for the Election Commission for a hearing on April 12, 2006 on the issuance of the alternative writ of mandamus to answer or show cause.<sup>3</sup>

---

<sup>2</sup> Order attached.

<sup>3</sup> T.R.A.P. 24(c) Statement Attached.

13. Chancellor Weaver then ruled that Counsel for the Election Commission would be required to sign a written waiver of thirty (30) days notice prior to Chancellor Weaver setting a hearing on the application for alternative writ of mandamus to answer or show cause.<sup>4</sup>

14. Upon learning of Chancellor Weaver's conditions for a hearing on the application for alternative writ of mandamus to answer or show cause Counsel for the Knox County Election Commission declined to agree to a waiver of Chancellor Weaver's conditions.<sup>5</sup>

15. A writ of alternative mandamus to answer or show cause is made on *ex parte* sworn application as was done by Appellant.

16. There is no requirement of notice for the issuance of a writ of alternative mandamus to a public official to answer or show cause.

17. There is no requirement for thirty days notice for a hearing for a writ of alternative mandamus to a public official to answer or show cause.

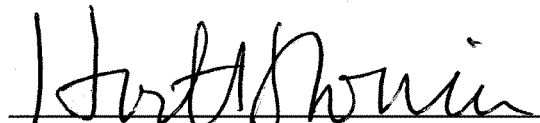
18. Chancellor Weaver has imposed conditions designed to deny Appellant relief by procedural delay until after May 2, 2006.

---

<sup>4</sup> *Ibid.* footnote 3.

19. Chancellor Weaver has so far departed from the accepted and usual course of judicial proceedings as to require immediate review.

20. This extraordinary appeal is also necessary for a complete determination of the pending appeals that have common questions of law and facts.



HERBERT S. MONCIER  
Attorney for Plaintiff

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

---

<sup>5</sup> *Ibid.* footnote 3.

**CERTIFICATE OF SERVICE**

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

1. James Murphy, attorney for the Knox County Election Commission;

2. Janet Kleinfelter, Senior Counsel, Tennessee Attorney General's Office, Attorney for Coordinator of Elections for the State of Tennessee.

3. Knox County Law Director Mike Moyers;

4. Knox County District Attorney Randall E. Nichols;

  
HERBERT S. MONCIER