

**FILED**

**IN THE SUPREME COURT OF TENNESSEE  
AT KNOXVILLE**

2006 APR 18 PM 4:28

APPELLATE COURT CLERK  
KNOXVILLE

Bee Deselm, James Gray, )  
John Schmid and Carl Seider )

Appellants )

v. )

No: \_\_\_\_\_

Timothy Hutchison, )  
Knox County Tennessee, )  
Knox County Election )

CA: E2006-00681-COA-R10-CV  
E2006-00778-COA-R3-CV  
E2006-00776-COA-R3-CV  
E2006-00777-COA-R3-CV

Commission, )  
Brook Thompson, Tennessee )  
Coordinator of Elections )  
and Michael W. Moyers )

Defendants )

**T.R.A.P. 10(b) AND T.R.A.P. 11 APPEALS FROM THE ORDERS OF THE  
TENNESSEE COURT OF APPEALS APRIL 17, 2006  
AND  
APPLICATION TO THE SUPREME COURT FOR A WRIT OF MANDAMUS PURSUANT  
TO T.C.A. 16-2-202<sup>1</sup>**

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<sup>1</sup> This application was prepared to be filed as a T.C.A. § 16-3-301(d) and (e) motion prior to the receipt of the Court of Appeals Orders on April 18, 2006 denying the appeals in these actions.

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AT KNOXVILLE**

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John Schmid and Carl Seider	)	
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**JOINT MOTION OF APPELLANTS**

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<sup>1</sup> This application was prepared to be filed as a T.C.A. § 16-3-301(d) motion prior to the receipt of the Court of Appeals Orders on April 17, 2006 denying the appeals in these actions.

**JOINT MOTION OF APPELLANTS**

Appellants DeSelm, Gray, Schmid and Seider jointly apply to this Court for a writ of mandamus to the Knox County Election Commission to conduct a Knox County Charter Article VII, § 7.01 Primary Election that protects Tennessee and Federal Constitutional rights of the voters, candidates, taxpayers and people of Knox County.<sup>2</sup>

Appellants DeSelm, Gray and Schmid jointly appeal pursuant to T.R.A.P. 10(b) from denial by the Tennessee Court of Appeals a Petition to Rehear the denial of T.R.A.P. 10(a) Appeal in *DeSelm v. Hutchison* on April 17, 2006 in E2006-00681-COA-R10-CV.

Appellant Seider appeals pursuant to T.R.A.P. 10(b) from the denial by the Tennessee Court of Appeals from his T.R.A.P. 10(a) Appeal on April 17, 2006 E2006-00776-COA-R10-CV.

Appellants DeSelm, Gray and Schmid jointly appeal pursuant to T.R.A.P. 11 from the denial by the Tennessee Court of Appeals two T.R.A.P. 3 appeals in *Gray et al. v. Hutchison*, No. E2006-00778-COA-R3-CV and *Schmid v. Knox County Election Commission* No. E2006-0075-COA-R3-CV on April 17, 2006.

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<sup>2</sup> see *Meighan v. U. S. Sprint Communications*, 942 S.W.2d 470, 483 (1997) ("In extraordinary cases, including class actions, this Court may, and properly should, issue a writ of mandamus if that action is necessary to protect its jurisdiction or accomplish substantial justice.")

Appellants jointly move this Court take jurisdiction of this appeal pursuant to T.R.A.P. 10(b) and Supreme Court Rule 10, Canon 3 E. to arbitrate this Court Rule for disqualification of the trial judge.

**A. Core Issues**

1. Do the Constitutions of Tennessee and the United States permit an election to be held on a ballot that contains disqualified candidates to hold offices they seek?

2. Do State and Knox County election mechanic laws unduly burden Tennessee and Federal Constitutional rights of voters and candidates at a May 2, 2006 primary election.<sup>3</sup>

3. Is a special election required to protect the Tennessee and Federal Constitutional rights of voters and candidates in Knox County at a Knox County Charter VII, § 7.01 Primary Election.

4. Is the Knox County Chancery Court disqualified by Tennessee's Constitution Article VI, § 11 and this Court's Rule 10, Canon 3 E.

**B. Jurisdiction**

1. This Court has jurisdiction to issue writs of mandamus pursuant to T.C.A. § 16-3-201(3).

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<sup>3</sup> *Anderson v. Celebrezze*, 460 U.S. 780 (1983)

2. T.R.A.P. 10(a) provides this Court may issue whatever order is necessary to implement review under T.R.A.P. 10.

3. This Court has authority to issue an order to implement review under T.R.A.P. 10(a) to consider these matters to implement this Court's jurisdiction pursuant to T.C.A. § 16-3-201(c), (d)(1) through (4).

4. Tennessee Code Annotated Chapter 3. Supreme Court:

Part 2. Powers and Duties

**§ 16-3-201. Jurisdiction**

(a) The jurisdiction of the court is appellate only, under such restrictions and regulations as may from time to time be prescribed by law; but it may possess such other jurisdiction as is now conferred by law upon the present supreme court.

(b) The court has no original jurisdiction, but appeals and writs of error, or other proceedings for the correction of errors, lie from the inferior courts and court of appeals of law and equity, within each division, to the supreme court as provided by this code.

(c) The court also has jurisdiction over all interlocutory appeals arising out of matters over which the court has exclusive jurisdiction.

(d)(1) The supreme court may, upon the motion of any party, assume jurisdiction over an undecided case in which a notice of appeal or an application for interlocutory or extraordinary appeal is filed before any intermediate state appellate court after June 22, 1992.

(2) The provisions of subdivision (d)(1) apply only to cases of unusual public

importance in which there is a special need for expedited decision and which involve:

(A) State taxes;

(B) The right to hold or retain public office; or

(C) Issues of constitutional law.

(3) The supreme court may, upon its own motion, when there is a compelling public interest, assume jurisdiction over an undecided case in which a notice of appeal is filed with an intermediate state appellate court.

(4) The supreme court may by order take such actions necessary or appropriate to the exercise of the authority vested by this section.

5. This Court has jurisdiction to adjudicate its rule provided for in Supreme Court Rule 10, Cannon 3 E.

## 6. The Problem

1. A minimum of 13, and potentially 20 to 32, candidates for elected offices in Knox County are on a ballot for a Primary Election in Knox County for May 2, 2006 but are disqualified to serve if elected because of Knox County Charter Term Limits.

2. There exist insecurity, incurable uncertainty, confusion, misinformation, traps and chaos in Knox County pertaining to its May 2, 2006 primary election.<sup>4 5</sup>

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<sup>4</sup> see *Barry v. Lauck*, 45 Tenn. 588 \*3 (1868)

3. The will of the people of Knox County is not being carried out.<sup>6</sup>

4. The fair exercise of the franchise of the voters in Knox County is not being held to be a matter of substance necessary to establish the validity of the qualifying and voting for offices in Knox County.<sup>7</sup>

5. The Knox County Election Commission is unduly burdening State and Federal Constitutional rights of Knox County voters and candidates by applying State and Knox County election mechanic deadlines to refuse to remove disqualified candidates from a May 2, 2006 ballot.

6. The Knox County Election Commission is unduly burdening State and Federal Constitutional rights of Knox County voters and candidates by applying State and Knox County election mechanic dates to refuse to adjust the date of a primary election from May 2, 2006 to provide the people of Knox County an opportunity to qualify to be on the ballot as political party nominees for Knox County elected offices.

7. Knox County taxpayers are being required pay between \$275,000.00 and \$300,000.00 for an unconstitutional,

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<sup>5</sup> Knoxville News-Sentinel articles published since this Court's ruling in *Bailey* are attached. Counsel calls the Court's attention to \_\_\_\_\_.

<sup>6</sup> *see Barry v. Lauck*, 45 Tenn. 588 \*3 (1868)

<sup>7</sup> *see Barry v. Lauck*, 45 Tenn. 588 \*3 (1868)

unlawful and void primary election if held on May 2, 2006 that constitutes a misappropriation of public money.

8. An election with an impure ballot containing a minimum of 13 and potentially 20 to 32 disqualified candidates on May 2, 2006 will cause voters to throw their votes away for disqualified candidates or at a void election.

9. Holding a void election will disenfranchise voters of Knox County to the elect their party nominees and give that right to political committees contrary to the Knox County Charter in Article VII § 7.01.

10. Holding a void election will deny candidates for office access to the ballot and permit party nominees the right to control the ballot at a general contrary to the Knox County Charter in Article VII § 7.01.

11. A disqualified judge is procedurally preventing Appellants from being heard to protect their Constitutional rights and the constitutional rights of the voters, candidates, taxpayers and office holders.<sup>8</sup>

### **C. Summary Of Issues**

1. *Bailey* resulted in State and Knox County qualifying election mechanics for a May 2nd primary between November 18, 2005 and February 16, 2006 being unconstitutional,

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<sup>8</sup> Tennessee Constitution Article VI, § 11; Supreme Court Rule 10, Canon 3 E.



unlawful and void because the Election Commission allowed a minimum of 13 and potentially 20 to 32 incumbent Knox County office holders that disqualified by Knox County Charter Term Limits to qualify for a May 2nd primary.<sup>9</sup>

2. The ballot for the May 2nd primary created by the Election Commission was based on the unconstitutional, unlawful and void qualifying election mechanism is void.

3. The Election Commission Knox is misappropriating between \$275,000 and \$300,000 of Knox County taxpayer's money to conduct a unconstitutional, unlawful and void May 2nd primary election.

4. Access to the ballot by Appellant Seider and other qualified candidates was unduly burdened by the failure of the Election Commission to conduct a constitutional, lawful and valid qualifying period between November 18, 2005 and February 16, 2006.

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<sup>9</sup> see Chart of disqualified incumbents, *infra*.

5. Access to the ballot by Appellant Seider and other qualified candidates is being unduly burdened by being required to run as write-in candidates at the May 2nd primary and not having their name on the ballot.

6. Knox County voters are being disenfranchised by being required to throw away their votes for disqualified candidates on a May 2nd ballot who can not serve if elected.

7. Knox County voters are being disenfranchised of write-in votes for 42 qualified write-in candidates by the Election Commission's application of State election mechanics to require a write-in candidate obtain 5% of the vote, if no other person qualified during the Election Commission's unconstitutional, unlawful and void qualifying period where no such requirement is found in the Knox County Charter, Article VII.

8. Knox County voters are being disenfranchised of write-in votes for 42 qualified write-in candidates by the Election Commission's application of State election mechanics requiring a write-in candidate to get more votes than a disqualified opponent to get their name on the August 2006 general election ballot as a political party nominee, although no such requirement is found in the Knox County Charter, Article VII.

9. Knox County voters are being disenfranchised of Knox County Charter Article VII, §§ 7.01 and 7.04 rights to elect their political party nominees to be on a August 2006 general election ballot.

10. Knox County voters franchise under Knox County to vote for their political party nominees is, by the Election Commission's application of State law, being taken from the voters and given to political committees contrary to Knox County Charter VII, §§ 7.01 and 7.04.

11. The State of Tennessee permitted the adjustment of an election date in a municipal election Jackson Tennessee where necessary to protect the constitutional rights of the people of the City of Jackson to vote but is denying the people of Knox County equal protection of the laws guaranteed them by the Constitution of Tennessee Article I, § 8 and the Fourteenth Amendment to the United States to the same opportunity in Knox County Primary Election.<sup>10</sup>

12. Access to the August 2006 general election ballot for all offices in Knox County Tennessee is being unduly burdened.

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<sup>10</sup> Senior Counsel for the Attorney General informed the trial court on April 10, 2006 that the Attorney General permitted and assisted the City of Jackson to alter the date of an election where a tornado interfered with the voters rights. *see Bush v. Gore*, 531 U.S. 98 (2000).

**D. Statement of Facts and the Case**

1. On July 5, 2005, after the Shelby Chancery Court opinion in *Bailey* on June 26, 2005, Appellant DeSelm demanded the Knox County Law Director enforce Knox County Charter Term Limits to remove Knox County Sheriff Timothy Hutchison from office as having, at the August 2002 election, served more than one full term in the last two terms of that office in violation of Knox County Charter Term Limits.

2. On July 8, 2005 Appellant DeSelm filed the same demand on the Knox County District Attorney General.

3. Several amendments followed because of procedural issues raised by the Knox County Law Director and Knox County District Attorney General.

4. On July 12, 2005 Appellant DeSelm filed a *quo warranto* action in the Knox County Chancery Court as a civic minded citizen<sup>11</sup> that was assigned to Knox County Chancellor John F. Weaver.

5. Chancellor Weaver previously on May 16, 2002 recused himself in litigation between Knox County Commissioner Wanda Moody for declaratory judgment and injunctive relief against Knox County Sheriff Timothy Hutchison because of

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<sup>11</sup> *see Bennett v. Shutts*, 521 S.W.2d 575, 577 (1975)

Chancellor Weaver's relationship with his court bailiffs who were employees at will of Defendant Hutchison.<sup>12</sup>

6. Appellant DeSelm suggested in her July 12, 2005 Complaint that all Knox County judges recuse themselves because of a potential argument that Knox County's Charter Term Limits may apply to some or all of the Knox County Judiciary created by Knox County Charter Article IV.

7. The day after Appellant DeSelm filed her suit, on July 13, 2005, Knox County Law Director presented a copy of a paper he claimed was the Knox County Term Charter provision.

8. The paper presented by Law Director Moyers was materially different from the ballot question in 1994, including that the ballot question did not exclude judges but the paper presented by Law Director Moyers did.<sup>13</sup>

9. Appellant DeSelm amended her complaint to seek declaratory judgment as to whether the ballot question or the paper presented by Law Director Moyers constituted Knox County Charter limits.

10. Both the Knox County Law Director and Knox County District Attorney refused to act or seek declaratory judgment as to Knox County's Charter Term Limits and opposed Ms. DeSelm in her effort to do so.

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<sup>12</sup> Transcript May 16, 2001 attached.

<sup>13</sup> Attachment Tab 1 and 2 April 4, 2006 Application.

11. Various procedural issues delayed action on Appellant DeSelm's suggestion of disqualification.

12. On August 25, 2005 Appellant DeSelm filed a specific motion to disqualify Chancellor Weaver.

13. On September 7, 2005 Chancellor Weaver declined to disqualify himself.

14. On November 19, 2005 Chancellor Weaver held that Appellant DeSelm did not have standing.

15. Appellant DeSelm moved to amend her complaint to seek a T.R.Civ.P. 65.04 mandatory injunction to Knox County Law Director to support and defend Knox County Charter Limits and for damages for his failure to perform the duties of his office.

16. On August 5, 2005 Appellant filed a T.R.Civ.P. 52.02 motion to amend to re-instate her *quo warranto* action as a civic minded citizen.<sup>14</sup>

17. On November 19, 2006 Chancellor Weaver denied Appellant DeSelm's motion to reinstate *quo warranto* claims and reaffirmed his denial of standing to Appellant DeSelm.

18. On November 22, 2005 the Court of Appeals in Jackson in *Bailey* held that home rule county term limits were unconstitutional.

19. On December 19, 2005 Appellant DeSelm moved pursuant to T.R.Civ.P. 52.02 to enter final judgment on

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<sup>14</sup> see *Bennett v. Shutts*, 521 S.W.2d 575, 577 (1975)

disqualification, standing, *quo warranto*, declaratory judgment, the denials of her motions to amend.

20. On December 19, 2005 Appellant DeSelm filed a second motion to disqualify adopting prior grounds and asserting that Knox County Law Director Moyers qualified to be a candidate for Chancellor of Part III of the same Chancery Court Chancellor Weaver was Chancellor of Part I.

21. On February 27, 2006 Chancellor Weaver denied Appellants motion for T.R.Civ.P. 52.02 final judgment as to disqualification, standing, *quo warranto*, declaratory judgment and denial of amendments.

22. On March 28, 2006 Appellant DeSelm filed a third motion to disqualify adopting prior grounds and asserting that Law Director Moyers was unopposed in his bid for Chancellor of Part III of the Chancery Court and would serve on the same court with Chancellor Weaver.

23. On March 29, 2006 Chancellor Weaver heard arguments on Knox County's and Mr. Moyer's motions to dismiss remaining claims on Appellant DeSelm's complaints for a mandatory injunction to Knox County Law Director Mike Moyers to command him to support and defend Knox County Charter Term Limits and damages for his failure to do so.

24. This Court's opinion in *Bailey* was released during the March 29th DeSelm hearing.

25. Appellant DeSelm's attorney brought the opinion to the attention of opposing counsel and Chancellor Weaver during the hearing.

26. Chancellor Weaver took the March 29th issues, including disqualification, "under advisement" and to date has not ruled.

27. After the release of *Bailey* in the late afternoon of on March 29th, Knox County Law Director Moyers advised the Knox County Election Commission to remove the names of Twelve (12) disqualified Knox County Commissioner's from the May 2nd 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 candidates for other Knox County offices.

28. Knox County Law Director Moyers then on March 29th recused himself from any further actions on *Bailey* issues and the May 2nd election.

29. On March 29th the Election Commission preliminarily considered removing the names of twelve (12) Knox Count Commission candidates from the May 2nd primary ballot; reopening qualifying until April 8th; creating a new ballot by April 11th; and sending the new ballot to persons who had voted by absentee to revote.



30. The Election Commission did not address the office of sheriff, school board or any other elected office of Knox County.

31. On the morning of March 30, 2006, Appellant DeSelm, relying on *Bailey*, filed a Motion to Alter or Amend Chancellor Weaver's prior rulings denying her standing to enforce Knox County Term Limits and to reinstate her *quo warranto* action as a civic minded person<sup>15</sup> to remove Appellant Hutchison from office as having served more than one term in the past two terms of the office of sheriff at his August 2002 election; his holding that office being void; and the office of sheriff being vacant.<sup>16</sup>

32. Also, on the morning of March 30, 2006, Appellant DeSelm, relying on *Bailey* and Knox County's Charter Term Limits, gave notice in the pending case of *DeSelm v. Hutchison* that she would appear before the Court at 1:30 p.m. on March 31, 2006 to apply for a T.R.Civ.P. 65.04 mandatory injunction to remove Timothy Hutchison's name from the May 2nd ballot.

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<sup>15</sup> *see Bennett v. Shutts*, 521 S.W.2d 575, 577 (1975)

<sup>16</sup> *Comer v. Ashe*, 514 S.W.2D 730 (1974)

33. Appellant Gray, asserting additional standing as Chairman of the Democratic Party of Knox County, filed a separate action on the morning of March 31, 2006 and provided notice that he would present an application for T.R.Civ.P. 65.04 mandatory injunction to Chancellor Weaver at 1:30 p.m. that afternoon seeking the same relief as Appellant DeSelm.

34. Also on the morning of March 31st, Appellants DeSelm and Gray filed a call for a special election with the Election Commission.<sup>17</sup>

35. On March 31st at 1:30 p.m., Appellants, Knox County Deputy Law Directors, an attorney representing Knox County Law Director Moyers personally; and an attorney representing Appellant Hutchison personally appeared before Chancellor Weaver on Appellants DeSelm and Gray's notice for a T.R.Civ.P. 65.04 mandatory injunction. Attorneys for the Tennessee Coordinator of Elections and Knox County Election Commission from Nashville had contacted Appellant DeSelm and Gray's Counsel and agreed to a hearing on the T.R.Civ.P. 65.04 injunction on Monday, April 3, 2006.

36. Chancellor Weaver refused to set a hearing on Appellant DeSelm and Gray's T.R.Civ.P. 65.04 injunction applications for April 3rd as agreed by the parties and *sua sponte* applied T.R.Civ.P. 6.04 to require five (5) days notice

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<sup>17</sup> Attachment \_\_\_\_\_.

for Appellant's application for a T.R.Civ.P. 65.04 injunction to be heard.<sup>18</sup>

37. Appellants DeSelm and Gray, after the appearance on March 31st, filed a motion to shorten any requirement under T.R.Civ.P. 6.04 for notice for an application for T.R.Civ.P. 65.04 injunctive relief.

38. Later during the afternoon of March 31st Chancellor Weaver entered an Order placing Appellant DeSelm and Gray's motions to shorten the time to hear Appellant DeSelm's March 30th and Appellant Gray's March 31st applications for T.R.Civ.P. 65.04 injunctions on to be heard on April 3, 2006 at 10:00 a.m.

39. At approximately 5:00 p.m. on March 31st the Election Commission met and reversed its March 29th preliminary intention to remove disqualified candidates from the May 2nd ballot and did nothing leaving the May 2nd primary election ballot with the twelve (12) disqualification County Commissioners to be presented at the May 2nd primary election.

40. The Election Commission did not act on the call filed by Appellants DeSelm and Gray for a special election filed earlier that morning.

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<sup>18</sup> Appellants assert that T.R.Civ.P. 6.04 does not apply to T.R.Civ.P. 65.04 applications for temporary injunctions and that Chancellor Weaver failed to construe T.R.Civ.P. 65.04 as required by T.R.Civ.P. 1 to secure a "speedy, just and inexpensive" determination of the matter.

41. During the weekend of April 1st, Appellants Gray and DeSelm served a T.R.Civ.P. 15.01 amendment as of right to Gray's March 31st Complaint seeking a writ of mandamus in response to the Election Commission's refusal to act to command the Election Commission to remove the names of candidates, including Appellee Hutchison, disqualified by Knox County's Charter Term Limits.

42. Appellants sought additional relief to hold a special Knox County Charter Article VII, § 7.01 primary election Preferred to by Plaintiffs as the "Citizen's Election Plan"<sup>19</sup>

43. Knox County Commissioner John Schmid, who is a term limited County Commissioner whose name remains on the ballot as a result of the failure to act by the Election Commission on March 31st, served a motion to intervene as of right pursuant to T.R.Civ.P. 24.01 and an Intervening Complaint

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<sup>19</sup> 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 into a public office by taking advantage of the current election disorder to obtain political appointments.

in Appellant Gray's Complaint as amended as of right, seeking the same relief sought by both Appellants DeSelm and Gray.

44. Appellants DeSelm, Gray and Schmid made oath to each Complaint and amendment; moved to intervene in each case; moved to shorten any time under T.R.Civ.P. 6.04 to apply for a writ of mandamus; and moved to consolidate the cases.

45. 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*.

46. Although Knox County Law Director Moyers had recused himself from any matters pertaining to *Bailey* and the May 2nd election, Knox County Chief Deputy Law Director John Owings appeared on April 3, 2006 and objected to Appellants DeSelm, Gray and Schmid having standing.

47. Upon appearance of Chief Deputy Owings, Appellants again demanded the Knox County Law Director request the court to declare the rights of the parties pending before the Court since July 12, 2005 and support and defend Knox County Charter Term Limits however, the Chief Deputy Owings and Law Director Moyers continued to refuse to support and defend Knox County Charter Term Limits.

48. On April 3, 2006 Chancellor Weaver refused to hear Appellant Gray's amended Complaint as of right; motions of DeSelm and Schmid to intervene; any applications for writ of mandamus; any motions to shorten time for writ of mandamus; or other motions pertained to the Election Commissions March 31st about-face on 5:00 p.m. to not remove the names of disqualified commissioners and allow the May 2nd primary to proceed with disqualified candidates because those matters "were not on the docket."<sup>20</sup>

49. On April 3, 2006 Chancellor Weaver took procedural issues pertaining to pre-March 31st Election Board non-action under advisement including Appellant DeSelm and Gray's standing.

50. Appellants DeSelm, Gray and Schmid filed T.R.A.P. 10 Extraordinary Appeal and T.R.A.P. 2 Motion to Suspend the Appellate Rules in the Court of Appeals on April 3, 2006.

51. Appellants DeSelm, Gray and Schmid filed a T.C.A. § 16-6-301(d) motion for this Court to assume jurisdiction on April 4, 2006.

52. On April 4, 2006 the Court of Appeals denied T.R.A.P. 10 Extraordinary Appeal.

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<sup>20</sup> Appellants assert that Chancellor Weaver's actions were contrary to the provisions of T.R.Civ.P. 1 requiring that the Rules of Civil Procedure be construed to provide for a "just, speedy and inexpensive determination" of the matter.

53. Appellants DeSelm, Gray and Schmid filed T.R.A.P. 10(b) appeal to this Court on April 5, 2006.

54. While T.R.A.P. 10(b) and T.C.A. § 16-6-301 motions were pending in this Court Chancellor Weaver entered orders denying Appellants DeSelm and Gray standing.

55. After ruling that DeSelm and Gray did not have standing, Chancellor Weaver *sua sponte*, without due process notice or any opportunity to be heard, and by *obiter dictum* suggested in a Memorandum Opinion that Knox County's Charter was invalid.

56. In addition, although Chancellor held Appellants DeSelm and Gray did not have standing, Chancellor Weaver in his April 5th Memorandum Opinion declared the office of Knox County sheriff created by Knox County Charter Article III, § 3.09 can not be made subject to Term Limits.

57. On April 6, 2006 this Court entered an order consolidating the T.R.A.P. 10(b) and T.C.A. § 16-6-301 motion and denied both.

58. On April 6, 2006 Appellants obtained a hearing for Monday April 10th to address pleadings Chancellor Weaver refused to hear on April 4, 2006.

59. Appellants asserted by supplement additional standing to support and defend the Knox County Charter against Chancellor Weaver's April 5th attacks in his Memorandum Opinion.

60. Appellants on April 7, 2006 moved to disqualify Chancellor Weaver 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; and Article VI, § 11 actual interest because Timothy Hutchison is an officer of the Chancery Court; that the Chancery Court is and it dependant on Timothy Hutchison 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 that pertain to all Knox County office holders; that a Knox County judge has a political interest in office holders the judge is politically affiliated<sup>21</sup> with and shares political party campaign funds; that the Knox County Law Director Mike Moyers is currently Chancellor-elect of the same court as the Chancellor

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<sup>21</sup> 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 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.



and is a named Defendant by Bee DeSelm for personal liability for his failure and neglect to support and defend the Knox County Charter.

61. The State Coordinator of elections conceded that Appellant Schmid had standing in a response submitted during the weekend of April 8th.

62. On April 10th Chancellor Weaver held a lengthily hearing on Appellant's motion to disqualify.<sup>22</sup>

63. At the April 10th hearing it was established that Chancellor Weaver's Court Bailiff, Rex Stooksbury, is a candidate for school board election on May 2, 2006 against an incumbent that is disqualified and if qualifying is not re-opened and the election takes place on May 2nd Chancellor Weaver's bailiff wins the office by default.

64. Chancellor Weaver ruled that he would not disqualify himself from ruling on "preliminary matters" and that he would take under advisement the motion to disqualify himself after ruling on "preliminary matters."

65. Thereafter the parties were heard on the issues presented for mandatory injunctions and a writ of mandamus.

66. On April 11th Chancellor Weaver ruled on "preliminary matters" that Commissioner Schmid made a "legal mistake" by qualifying while the Court of Appeals decision in

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<sup>22</sup> Transcript attached.

Bailey was in place; that it was "too late" to change the May 2nd election date; reaffirmed the sheriff was not an office that could be subject to home rule county Term Limits; reaffirmed his memorandum opinions that the Knox County Charter was invalid; and reaffirmed that Appellants DeSelm and Gray do not have standing.

67. On April 12, 2006 Carl Seider filed suit against the Knox County Election Commission as a qualified write-in candidate against Timothy Hutchison in the Republican primary and sought an alternative writ of mandamus to either command the Election Commission to remove Timothy Hutchison's name from the May 2, 2006 ballot or to show cause why the writ should not issue.<sup>23</sup>

68. Chancellor Weaver denied the alternative writ of mandamus and required Appellant Seider to give notice of a hearing to the Election Commission to contest whether the writ of alternative mandamus by command or show cause should issue.<sup>24</sup>

69. Counsel obtained the agreement of the attorney for the Election Commission to be heard on April 12, 2006 on Appellant Seider's application for writ of alternative mandamus.

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<sup>23</sup> Attachment Tab \_\_\_\_\_.

<sup>24</sup> Attachment Tab \_\_\_\_\_.

70. Chancellor Weaver then required that the attorney for the Election Commission sign a written agreement to waive 30 days the Election Commission had to answer the Complaint before he would set a hearing on the application for an alternative writ of mandamus and the attorney for the Election Commission would not be permitted to be heard by telephone conference from Nashville but would be required to personally appear.

71. On April 12, 2006, upon being advised of the Chancellor's conditions, the Election Commission declined to waive the 30 day's provided by Chancellor Weaver.

72. On April 13, 2006 Appellant Seider amended his Complaint as of right to assert Timothy Hutchison is disqualified to be on the ballot for sheriff pursuant to T.C.A. §§ T.C.A. 8-8-102(a)(5) and 8-8-102(b)(1) because on February 12, 2003 Timothy Hutchison was convicted 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).

73. Chancellor Weaver has not ruled on Appellant DeSelm's motions to disqualify Chancellor Weaver took under advisement on March 29, 2006 or disqualification beyond "preliminary matters" Chancellor Weaver took under advisement in Appellant Gray and Schmid's cases.

74. Disqualification in DeSelm, Gray or Schmid would also disqualify Chancellor Weaver in Appellant Seider's case.

75. On April 17, 2006 Appellants' Counsel reviewed in the mail an Order entered *sua sponte* by Chancellor Weaver after Appellants had filed a notice of appeal setting aside the Final Judgments he entered on April 12, 2006 and declaring that the cases remained in his court and would be heard in the future.<sup>25</sup>

76. On April 17, 2006 apparently the Court of Appeals *sua sponte* obtained a copy of the April 17, 2006 Orders of Chancellor Weaver and entered Orders in the Court of Appeals dismissing T.R.A.P. 3 appeals filed on notices of appeal that had been filed prior to Chancellor's Weaver's April 17, 2006 Orders.

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<sup>25</sup> Order Attached. Chancellor Weaver had no jurisdiction after the notice of appeal was filed. Pursuant to Tennessee Supreme Court Rule 10, Canon 3 E this *sua sponte* action can only be viewed as a new attempt by Chancellor Weaver to prevent an appeal of the issues that face the voters and candidates in Knox County. This Order provides additional grounds for a reasonable person to question whether Chancellor is impartial. Chancellor Weaver's *obiter dicta* in the Order that he was misled is mistaken because (1) Counsel did not appear before Chancellor Weaver but provided the Judgments to his secretary who returned them to the undersigned Counsel and (2) the first sentence of the Judgment contradicts any suggestion that he was misled. Chancellor Weaver's *obiter dicta* that he was misled provides additional grounds for a reasonable person to question whether he harbors a bias against Plaintiffs or their Counsel.

77. Appellant's Counsel on April 17, 2006 placed in the Court's after hours box a T.R.A.P. 24(e) filing of the April 17, 2006 Orders of Chancellor Weaver with a memorandum as to those orders being entered when he no longer had jurisdiction and as additional grounds for disqualification.

**E. T.R.A.P. 16 Joinder and Consolidation Criteria**

1. These appeals and application for writ of mandamus have common questions of law and common facts as whether Knox County Chancellor John F. Weaver is "interested" and thereby disqualified under the Tennessee Constitution Article VI, § 11.

2. These appeals and application for writ of mandamus have common questions of law and common facts as whether Knox County Chancellor John F. Weaver is disqualified pursuant to this Court's Rule 10, Canon 3 E. because his "impartiality might reasonable be questioned."<sup>26</sup>

3. These appeals and application for writ of mandamus have common questions of law and common facts to the application of State and Knox County election law mechanisms that have, and are continuing to, unduly burden the Constitutional rights of Appellants and the voters, candidates

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<sup>26</sup> This Court is the arbiter of its own rules. *see Petition of Gant*, *Petition of Gant* 937 S.W.2d 842, 846 (1996); *In Re: Petition of Tennessee Bar Ass'n*, 539 S.W.2d 805 (Tenn.1976); *Allen v. McWilliams*, 715 S.W.2d 28 (Tenn.1986).

for office, office holders, taxpayers and people of Knox County Tennessee.<sup>27</sup>

4. These appeals and application for writ of mandamus have common questions of law and common facts pertaining to State laws; the right to hold and retain public office; and Tennessee and Federal Constitutional rights.<sup>28</sup>

5. These appeals and application for writ of mandamus have common questions of law and common facts that are of unusual importance<sup>29</sup> for which there is a special need for expedited decision<sup>30</sup> to protect the people of Knox County to their Tennessee and Federal Constitutional rights to their county Charter Government.<sup>31</sup>

6. These appeals and application for writ of mandamus have common questions of law and common facts that are of unusual importance for which there is a special need for

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<sup>27</sup> *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983).

<sup>28</sup> T.C.A. § T.C.A. § 16-3-201(d).

<sup>29</sup> Attachment Tab \_\_\_\_\_ are newspaper articles that have chronicled the Knox County Term Limit cases.

<sup>30</sup> Appellants specifically refers the Court to the columns of Sam Venable titled "Stock pick of the week" that describes the May 2nd in satire and the April 16, 2006 column of the Editor of the Knoxville News-Sentinel that refers to "the chaos of this years election" and encourages people not to early vote.

<sup>31</sup> see Attachment \_\_\_\_\_: Memorandum Opinion of Knox County Chancellor John E. Weaver dated April 5, 2006 *sua sponte* and by *obiter dictum* suggesting that Knox County Charter's is invalid. [Attachment 1]

expedited decision to protect Knox County voters, candidates, public office holders, taxpayers and people from an unconstitutional, unlawful and void Knox County Charter Article VII Primary Election scheduled for May 2, 2006.<sup>32</sup>

**F. There Is A Special Need For Expedited Decision**

1. In 1990 the people of Knox County adopted a Charter pursuant to the authority granted them by Tennessee's Constitution Article IV, § 1, ¶ 3.<sup>33</sup>

2. Knox County's Charter was not before this Court on March 29, 2006 at the time of the Court's opinion in *Bailey*.

3. The Knox County Law Director and Knox County District Attorney General have refused and continue to refuse to support or defend Knox County's Charter.

4. The Knox County Law Director and Knox County District Attorney General have refused and continue to refuse to act to protect the constitutional rights of Appellants and the voters, candidates, taxpayers, office holders, and people of Knox County to a constitutional and lawful 2006 Knox County Charter Article VII Primary Election for offices of Knox County.<sup>34</sup>

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<sup>32</sup> see *Memphis v. Shelby County Election Commission*, 146 S.W.3d 531 (2004)

<sup>33</sup> Attachment \_\_\_\_\_

<sup>34</sup> *Ibid* footnote \_\_\_\_\_: see Tab 1, April 5, 2006 Motion to Assume Jurisdiction.

5. There is no one to represent the interest of the voters, candidates, taxpayers, office holders and people of Knox County if Appellants can not do so.

6. Any further attempts by Appellants to cause the Knox County Chancery Court to provide a hearing for relief to Appellants or voters, candidates, taxpayers, office holders and the people of Knox County are futile.

7. Applications to appeal to this Court by any party aggrieved by any action in the trial court is inevitable and by the passage of time would defeat Appellants efforts to protect Constitutional rights at the May 2, 2006 election.

8. There exist a potential of federal litigation on issues presented by an aggrieved party in these cases which, if pursued, would most probably result in a certified question by a federal court back to this Court creating more delay.<sup>35</sup>

9. Knox County Term limits apply to all elected offices in Knox County pursuant to both the 1994 ballot approved by the people and the document presented by Knox County Law

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<sup>35</sup> Federal Courts have jurisdiction in cases involving voter's rights, undue burdens created by State election mechanisms, and access to the ballot under the First and Fourteenth Amendment Federal Constitutional protections and 42 U.S.C. § 1983. see *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Bush v. Gore*, 531 U.S. 98 (2000).



Director Moyers after *DeSelm v. Hutchison* was filed July 12, 2005.<sup>36</sup>

10. Knox County's Charter provides for elected Knox County offices in Article II, § 2.01 of County Commission; in Article III, § 3.02 for a Mayor; in Article III, § 3.08 for a Law Director; in Article III, § 3.09 for a sheriff; in Article IV for judges; and in Article V for its Board of Education.<sup>37 38</sup>

11. Knox County's Charter does not create an office of Trustee, Register, Assessor of Property or County Clerk provided for in Tennessee's Constitution Article VII, § 1, ¶ 1, however, said offices are on the ballot required for all elected Knox County offices by Knox County Charter Article VII, § 7.01.

12. Knox County's Charter does not create an office of Criminal and Fourth Circuit Court Clerk, Circuit and Civil General Sessions Court Clerk, Public Defender or District Attorney General, however, said offices are on the May 2, 2006 Knox County Primary Ballot required by Knox County Charter Article VII, § 7.01.

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<sup>36</sup> *Ibid* footnote \_\_\_\_: see Tab \_\_, April 5, 2006 Motion to Assume Jurisdiction.

<sup>37</sup> *Ibid.*, footnote \_\_\_\_: Tab \_\_\_\_

<sup>38</sup> The 1994 ballot did not exclude judges. The document presented by Law Director Moyers after declaratory judgment filed in *DeSelm v. Knox County* was published in Charter § 8.17 and does exclude judges.

13. A 2006 Knox County Charter Article VII, § 7.01 Primary Election is set for May 2, 2006 for all elected offices for Knox County except its Law Director and Assessor of Property.<sup>39</sup>

14. The chart on the following page list candidates for offices in Knox County who had served more than one full term in the last two terms of their offices<sup>40</sup> that qualified and are on the 2006 Knox County Primary May 2nd ballot.

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<sup>39</sup> It is unclear to Appellant's Counsel why the Knox County Law Director and Knox County Assessor of Property are on a different election cycle.

<sup>40</sup> A number of incumbents, including Appellee Timothy Hutchison, had at the August 2002 election served more than one full term in the last two terms of their office.

15. CANDIDATES ON MAY 2, 2006 BALLOT<sup>41</sup>

Office	Name	Terms Since Home Rule <sup>42</sup>	Political Party <sup>43</sup>
<b>Sheriff:</b>	Timothy Hutchison	Fifth Term	Republican
<b>Commissioners:</b>	Billy Tindell	Fifth Term	Democrat
	John Mills	Fifth Term	Republican
	Mary Lou Horner	Fifth Term	Republican
	Wanda Moody	Fifth Term	Republican
	Mark Cawood	Fifth Term	Democrat
	Mike McMillian	Fifth Term <sup>44</sup>	Republican
	John Griess	Fourth Term	Republican
	Diane Jordan	Fourth Term	Democrat
	David Collins	Third Term	Republican
	John Schmid	Third Term	Republican
	Larry Clark	Third Term	Republican

<sup>41</sup> 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.

<sup>42</sup> This number represents the term for which the candidate has qualified to be re-elected.

<sup>43</sup> This column has been added to the chart presented in the April 5, 2006 motion because of equal protections provided for associations of political parties recognized in *Anderson v. Celebrezze*, 460 U.S. 780 (1983); .

<sup>44</sup> Commissioner McMillian was elected in 1992 to serve a remaining term until 1994.

	Phil Guthe	Third Term	Republican
<b>Trustee</b>	Mike Lowe	Third Term	Republican
<b>Register</b>	Steve Hall	Fifth Term	Republican
<b>County Clerk</b>	Mike Padgett	Fifth Term	Democrat
<b>Criminal and Fourth Circuit Court Clerk</b>	Martha Phillips	Fifth Term	Republican
<b>Circuit, Civil Sessions and Juvenile Court Clerk</b>	Kathy Quist	Third Term	Republican
<b>Board of Education</b>	Sam Anderson	Fifth Term	Non- partisan
	Diane Dozier	Third Term	Non- partisan

15. Knox County Charter Term Limits disqualifies a minimum of 13 and potentially 20 to 32 of incumbent candidates for elected offices in Knox County on the May 2nd ballot.<sup>45</sup>

16. An unconstitutional, unlawful and void election on May 2, 2006 will disenfranchising voters of Knox County to

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<sup>45</sup> The number of offices potentially affected would be 32 if Knox County's Article IV Judiciary, or Juvenile, General Sessions or Fourth Circuit Court's specifically provided for by Article IV, are included.

elect a minimum of 13 and potentially 20 to 32 office holders and give that franchise to political committees in violation of Knox County Charter VII § 7.01.

17. Knox County is predominately a Republican county providing a Republican candidate placed on a general election ballot a distinct advantage for being elected.

18. An unconstitutional, unlawful and void election on May 2, 2006 will permit the Republican party and undue advantage of access to the ballot by being permitted to appoint potentially 14 candidates for the August 2006 general election ballot and the Democratic party only 4.

#### **G. Refusal Of Public Officials To Act**

1. The elected Article III, § 3.08 Knox County Law Director Mike Moyers opposes Knox County Charter Term Limits adopted by over 75 % of Knox County's voters in 1994.<sup>46</sup>

2. Knox County Law Director Moyers has in the past and continues to violate his oath of office to support and defend the Knox County Charter as required by Knox County Charter Article VIII, § 8.07.

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<sup>46</sup> The Law Director supported the 1995 opinion of the Tennessee Attorney General that Knox County could not adopt term limits; did not publish Knox County Charter Term Limits provision after 75 % of the Knox County voters approved the ballot question in 1994 until after Appellant DeSelm filed her action on July 12, 2005; and in 2004 initiated a ballot question to amend Knox County's Charter to make his office of the Law Director subject to the "same term limits" applicable to other Knox County offices.

3. Knox County Law Director Moyers abdicated his sworn duty to support and defend Knox County Charter Term Limits and left the rights of the voters, candidates, taxpayers, office holders, and people of Knox County offices unrepresented before this Court in *Bailey*.<sup>47</sup>

4. Knox County Law Director Moyers abdicated his sworn duty to support and defend Knox County Charter Term Limits after *Bailey* and has left the rights of the voters, candidates, taxpayers, office holders, and people of Knox County unrepresented.

5. The State and Federal Constitutional rights of the voters and candidates for office in Knox County are unrepresented by any governmental authority.

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<sup>47</sup> After the Shelby County Chancery Court opinion in *Bailey v. Shelby County*, Appellant DeSelm filed demands 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 Fourth term. Neither acted. On July 12, 2005 Appellant 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 et al. v. County of Shelby et al.* was being reviewed. To date the Knox County Law Director and Knox County District Attorney continue to refuse to act although Appellant's have repeatedly demanded they do so and all pleadings have been served on both.

## H. Standing

1. The attached affidavits of Appellant DeSelm, Gray and Schmid were filed in support of their standing.<sup>48</sup>

2. Appellant DeSelm, Gray and Schmid's standing and Appellant Seider's standing as a candidate opposing Timothy Hutchison in the Republican primary election, are clearly established is clearly established by *Citizens for Legislation Choice et al. v. Miller*, 993 F. Supp. 1041 (D.C.Mich.1998) and *Citizens for Legislation Choice et al. v. Miller*, 144 F.3d 196 (6th. Cir. 1998) and *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

3. The Knox County Law Director has and continues to oppose Appellants standing in opposition to clearly established Tennessee Constitutional under Article I, § 8 and Federal Constitutional rights under the First and Fourteenth Amendments.

4. The Chancellor denied Appellants DeSelm, Gray and Schmid standing departs from the accepted and usual course of judicial proceedings established by clearly established State and Federal constitutional law.

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<sup>48</sup> Attached Tab \_\_\_\_\_.

## I. Arguments

1. The Tennessee Constitution guarantees "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office."<sup>49</sup>

2. The Tennessee Constitution guarantees the people of Knox County the equal protections of the law of the land to their constitutional rights to "free and equal" elections; "every person [being] entitled to vote"; and "purity of the ballot box for office."<sup>50</sup>

3. The First and Fourteenth Amendments to the United States Constitution guarantees the people freedom of political association and the Fourteenth Amendment guarantees the people the equal protection of the laws.<sup>51</sup>

4. Courts of this State have authority, in the event of an emergency or unanticipated political occurrence creating necessity, to alter statutory election mechanisms to provide the people their rights to constitutional elections.<sup>52</sup>

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<sup>49</sup> Article I, § 5; Article IV § 1.

<sup>50</sup> Article I, § 8; *Gates v. Long*, 113 S.W.2d 388 (1938); *cf. Barry v. Lauk*, 45 Tenn. 588, 592, 1868 WL 2159 \*4 (1868).

<sup>51</sup> *Anderson v. Celebrezze*, 460 U.S. 760, 767 (1983)

<sup>52</sup> *cf. Barry v. Lauk*, 45 Tenn. 588, 592, 1868 WL 2159 \*4 (1868).



5. Appellants assert the Knox County Charter Article VII Primary Election qualifying election mechanism between November 18, 2005 and February 16, 2006 is unconstitutional, unlawful and void.<sup>53</sup>

6. Appellants assert the Election Commission's Charter Article VII Primary Election ballot for the May 2nd primary election is unconstitutionally impure and void.<sup>54</sup>

7. Plaintiffs assert Tennessee or Knox County Charter election law mechanics of deadlines and dates cannot trump, or unduly burden, State and Federal Constitutional rights of the people.<sup>55</sup>

8. There exist confusion and uncertainty pertaining to May 2nd Knox County Charter Article VII Primary Election and impurity of the ballot creating a need for resolution of the issues.

9. Voters are being required to either throw away their vote for candidates that are disqualified or to speculate whether a candidate they vote, or write-in may, at a later date, be disqualified and their vote thrown away.

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<sup>53</sup> *cf. Comer v. Ashe*, 514 S.W.2d 730 (1974).

<sup>54</sup> *cf. Comer v. Ashe*, 514 S.W.2d 730 (1974).

<sup>55</sup> *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983).

10. Appellant Schmid is being required to remain on a ballot for an office which he is disqualified, and can not serve if elected, and thereby assure the election of his opponent who he does not support.

11. There is no direct precedent by this Court or in Tennessee law where an emergency or unanticipated political occurrence unduly burdens the constitutional rights of voters, candidates, taxpayers, office holders, and the people at a scheduled election.<sup>56</sup>

12. There is no direct precedent by this Court or in Tennessee law where an emergency or unanticipated political occurrence unduly burdens the constitutional rights of voters, candidates, taxpayers, office holders and the people to protect undue burdens on their elections.<sup>57</sup>

13. This Court in denying a request made in *Bailey et al. v. County of Shelby et al.* held:

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

14. Implicit in this ruling, this Court for compelling reasons, views that it does have authority to alter election mechanics to protect the constitutional rights of the

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<sup>56</sup> For example, a natural disaster or a terrorist attack that may have interfered with the May 2, 2006 election.

<sup>57</sup> *cf. Anderson v. Celebrezze*, 460 U.S. 780 (1983).

voters, candidates, taxpayers, office holders, and people to their elections.

**J. Appellants And Defendants Arguments**

**"State and Knox County Laws Trump Constitutional Rights"**

1. Defendants assert that election mechanics of the Tennessee General Assembly and Knox County Charter of deadlines and dates are mandatory and can not be adjusted to conform, or harmonize, with Tennessee and Federal Constitutional rights of the voters, candidates, taxpayers, office holders and people of Knox County to fair and equal elections.

2. Appellants disagree and assert Court's have the authority to make adjustments to protect the voters, candidates, taxpayers, office holders and people of Knox County to fair and equal election protections of the Tennessee and Federal Constitutions where State and Knox County election deadlines or dates are insufficient, in conflict with or unduly burden the Tennessee and Federal Constitutions in the case an emergency or unanticipated political occurrence.

**"State and Knox County Laws Require Knox County Taxpayers Pay For A Void Election"**

3. Defendants assert Tennessee and Knox County election law mechanics require Knox County taxpayers bare the expense of a unconstitutional, unlawful and void primary election on May 2nd.

4. Plaintiffs disagree and assert that it constitutes a misappropriation of taxpayers funds to pay the expense of an unconstitutional, unlawful and void May 2nd primary election.

"State and Knox County Laws Require The Knox County Charter Right Of Voters To Elect Political Party Nominees Be Taken From The Voters And Given To Political Party Committees"

5. Appellants assert that State and Knox County election mechanics require that a unconstitutional, unlawful and void May 2, 2006 election occur and that thereafter, candidates on the August 3, 2006 Knox County general election ballot be selected by political party caucuses or committees.

6. Appellants disagree and assert that Knox County Charter §§ 7.01 and 7.04 grants voters of Knox County the franchise right to elect candidates for Knox County offices at a primary election and does not provide for party caucus or committee appointments for a general election to appoint political party nominees.

"Placing A Square Peg In A Round Hole"

7. Appellees, after the unanticipated political occurrence of *Bailey*, are attempting to superimposing State and Knox County election mechanisms over the Tennessee and Federal Constitutional rights of the voters, candidates, taxpayers,

office holders and people of Knox County to fair and equal elections.<sup>58</sup>

8. Appellants this is the equivalent of attempting to place a square peg in a round hole.

9. Appellants assert Tennessee and Federal Constitutional rights of the voters, candidates, taxpayers, office holders and people of Knox County to fair and equal elections are required to be superimposed over any State or Knox County election mechanics that unduly burden those rights.

"Appellant Hutchison Asserts The Office Of Sheriff Of Knox County Is Exempted From This Court's Opinion In *Bailey*"

10. Appellee Hutchison, Knox County's Sheriff seeking to run for a fifth term, asserts this Court's opinion in *Bailey* constitutes authority that Knox County voters can not make the office of sheriff of Knox County subject to Term Limits.<sup>59</sup>

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<sup>58</sup> 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 County 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.

<sup>59</sup> 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 County 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.

11. Plaintiff disagrees and asserts that the office of sheriff is specifically made a Knox County office by Knox County Charter Article III, § 3.09; along with the office of mayor by Article III, § 3.01; the office of Law Director by Article II, § 3.08; the office of Commissioner by Article III, § 2.01; and the office of school board by Article V, § 5.01.

Resulting Confusion, Uncertainty and Election Traps<sup>60</sup>

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

13. Appellants assert the Knox County Primary Election Plan they request provides adjustments and harmonizes Tennessee and Knox County election mechanics to comply with the Tennessee and Federal Constitutional rights of the voters, candidates, taxpayers, office holders and people of Knox County to fair and equal elections and avoids waste of public funds for an unconstitutional, unlawful and void election.

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<sup>60</sup> Appellants are attaching news articles that have run daily since this Court's opinion in *Bailey*. The political satire of columnist Sam Venable "Here's your stock pick of the week" on April 6, 2006 and the politician cartoon of Charlie Daniels depicting the voter's booth with a trap door that opens when voters attempt to vote capture the confusion, uncertainty and election traps that face the voters and candidates in Knox County at a May 2, 2006 election.

## K. Constitutional Issues

1. Tennessee Constitutional issues presented are whether, in the case of an emergency or for unanticipated political occurrence creating necessity, Tennessee's Constitutional guarantees<sup>61</sup> trump State and Knox County election mechanics laws for deadlines and dates which are insufficient to comply with, or that unduly burden, Tennessee's Constitutional Guarantees to the people, voters and candidates for offices in Knox County government.

2. Federal Constitutional issues presented are whether, in the case of an emergency or for unanticipated political occurrence creating necessity, Federal Constitutional rights<sup>62</sup> trump State and Knox County election trump State and Knox County election mechanics laws for deadlines and dates which are insufficient to comply with the rights of the people, voters and candidates for offices in Knox County government.

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<sup>61</sup> Tennessee Constitution Article I, § 5 "free and equal" elections; Article I, § 8 equal protection of the laws; and Article IV, § 1 "every person [being] entitled to vote" and "purity of the ballot box for office".

<sup>62</sup> First Amendment Freedom of Association and Fourteenth Amendment Due Process and Equal Protection of the Laws. see

**L. State and Knox County Law Election Mechanics Issues The Election Qualifying Period**

1. Whether the Election Commission's election mechanics for the qualifying period between November 18, 2005 and February 16, 2006 for a Knox County Charter Article VII Primary Election was unconstitutional, unlawful and void because candidates were allowed to qualify by the Election Commission who were disqualified by Knox County's Term Limits.<sup>63</sup>

The Election Ballot

2. Whether the Election Commission election mechanics Knox County Charter Article VII Primary Election ballot was unconstitutional, unlawful and void because candidates who were allowed to qualify who were disqualified by Knox County's Term Limits are on that ballot.

The Election Date

3. Whether the Knox County Election Commission election mechanics for a Knox County Charter Article VII Primary Election for May 2, 2006 is unconstitutional, unlawful and void because candidates on the ballot at that election are disqualified by Knox County's Term Limits requiring voters to throw away their votes; disenfranchising voters in Knox County

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<sup>63</sup> Comer v. Ashe, 514 S.W.2d 730 (1974).



their Knox County Charter Article VII, §§ 7.01 and 7.03 rights to elect their political party nominees for offices in Knox County.

**M. Knox County Charter Issues**

1. Knox County Charter issues presented are:

A. Whether twelve Knox County Commissioners are disqualified to be on a Knox County Charter Article VII Primary election the Knox County;<sup>64</sup>

B. Whether the Knox County Charter Article III, § 3.09 office of sheriff Knox County is subject to Knox County Charter Term Limits;

C. What other offices in Knox County are subject to Knox County Charter Term Limits.<sup>65</sup>

**N. Appellants' Requested Relief**

1. Appellants request this Court Order a Knox County Primary Election Plan be implemented by writ of mandamus to the Knox County Election Commission to harmonize State and Knox County election mechanic law deadlines and dates to protect the

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<sup>64</sup> *Walter Bailey v. Shelby County Tennessee,*

<sup>65</sup> After this Court's opinion in *Bailey v. Shelby County*, in effort to obtain an expedited resolution of the issues that had been pending since July 2005 in *DeSelm v. Hutchison*, this third issue was not been squarely presented by Appellants in their pleadings below. The application of Knox County Term Limits to offices in Knox County not specifically mentioned in the Knox County Charter is an inevitable issue that will must be resolved under the unanticipated political occurrence on March 29, 2006 making Knox County Charter Term Limits constitutional to at least its Mayor, Commissioners, Law Director and Sheriff.

Tennessee and Federal Constitutional rights of the voters, candidates for office, taxpayers, officer holders and people of Knox County.

2. The Knox County Election Commission be commanded by the writ of mandamus to:

i. Issue a writ for special primary election for the Knox County Charter Article VII § 7.01 Primary Election for all elected offices of Knox County to be held on June 19, 2006;<sup>66</sup>

ii. Conduct a new qualifying period for all elected offices of Knox County to open immediately and close at 12:00 noon on May 11, 2006 for the June 19, 2006 Knox County Charter Article VII Primary Election;<sup>67</sup>

iii. During the qualifying period the Election Commission 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 has, during the last two terms

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<sup>66</sup> June 19, 2006 is 45 days prior to the general election on August 3, 2006 and complies with Knox County Charter § 2.08 as to Commissioner vacancies and, as of April 5, 2006, would have been 75 days prior to the special primary election as provided for by T.C.A. § 2-14-102.

<sup>67</sup> 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.

of that office held more than one term, and is disqualified by Knox County Charter Term Limits to seek that office;<sup>68</sup>

iv. During the qualifying period the Election Commission Not accept a qualifying petition for the office of Knox County Commissioner from twelve (12) Knox County Commissioner who, during the last two terms of their office have held more than one term, and are thereby disqualified from seeking the office of Knox County Commissioner by Knox County Charter Term Limits;<sup>69</sup>

v. During the qualifying petition the Election Commission not accept a qualifying petition for any other elected office of Knox County:

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

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

or

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<sup>68</sup> Sheriff Hutchison has actually served four (4) previous terms and has qualified for a fifth (5) term.

<sup>69</sup> Eight (8) of the twelve (12) commissioners, have served more than two prior terms.

C. This Court designate a qualified judge<sup>70</sup> to retain jurisdiction in these cases in the Chancery Court to resolve on an expedited basis Knox County Charter Term Limit issues as to other offices in Knox County and provide for direct appeal to this Court by any party on issues adjudicated.

vi. That after the new qualifying period a new ballot for the Knox County Charter Article VII Primary Election be created;

vii. That the new Primary Election ballot be mailed to absentee and service persons with instructions that any prior ballot they submitted will not be counted and that they vote on the new ballot;

viii. That voters who voted in early voting be notified that they will be allowed to vote on the new ballot and that their votes cast on the prior ballot will not be counted.

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<sup>70</sup> 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.

WHEREFORE, Plaintiffs move this Court for a writ of mandamus and further appeal to this Court from the Orders of the Court of Appeals on April 18, 2006.

/s Herbert S. Moncier  
HERBERT S. MONCIER  
Attorney for Movants  
and Appellants

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. James Murphy, attorney for the Knox County Election Commission;
4. Janet Kleinfelter, Senior Counsel, Tennessee Attorney General's Office, Attorney for Coordinator of Elections for the State of Tennessee;
5. The Knox County Attorney General.

/s Herbert S. Moncier  
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**

<b>Office</b>	<b>Name</b>	<b>Terms Since 1990 Home Rule<sup>1</sup></b>
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