

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

RON LITTLEFIELD,)
)
Plaintiff,)
) No. 10C1078
vs.)
) DIVISION <u>1</u>
HAMILTON COUNTY)
ELECTION COMMISSION,)
)
Defendant.)

ANSWER OF INTERVENOR
JAMES A. FOLKNER

Comes the Intervenor, James A. Folkner, as the Petitioner for the Recall of Mayor Littlefield and for his answer to the Complaint filed by the original Plaintiff states as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

This Court lacks subject matter jurisdiction of this cause.

THIRD DEFENSE

James A. Folkner is identified by the Election Commissioner as the "Petitioner" and the Petition to recall Mayor Littlefield was issued by the Election Commission to James A. Folkner.

FOURTH DEFENSE

Intervenor avers that he has at all times complied with the pertinent City Charter and statutory requirements as directed by the specific instructions of the Election Commissioner and the Administrator of Elections.

FIFTH DEFENSE

It is admitted that the petition format approved by the Election Commission and issued to this Intervenor contained a space for a date beside each signature. However, Intervenor avers that upon submitting the first completed petitions to the Administrator of Elections, Charlotte Mullis-Morgan, he was advised by Ms. Mullis-Morgan that the dates were unnecessary. Accordingly, thereafter, Intervenor did not insist upon signees of the Petition dating their signatures.

SIXTH DEFENSE

Intervenor avers that he relied upon the specific instructions of the Administrator of Elections (and this fact is not disputed and is admitted in the Answer of the Election Commission).

SEVENTH DEFENSE

Intervenor avers that it was reasonable and appropriate to follow the specific instructions of the Administrator of Elections. Therefore, the absence of a date beside each signature cannot be used as a basis to invalidate an otherwise valid signature.

EIGHTH DEFENSE

Intervenor specifically avers that the original Plaintiff, the Election Commission, any governmental entity or court is estopped from insisting upon or using the lack of date beside a signature as a basis for invalidating any signatures upon the petition. Intervenor has demonstrated that he relied upon specific instructions of the Administrator of Elections, was given incorrect information, but he relied upon this information to his detriment. And, in this instance the governmental entity Election Commission is estopped from insisting upon any technical statutory requirement of dated signatures.

NINTH DEFENSE

Intervenor avers that the only reason for dated signatures is to demonstrate that the signatures were obtained within the seventy-five (75) day statutory period. *TCA § 2-5-151(f)(2)*. Here, there is no question that the signatures were timely secured because the Petition could not be signed until approved by the Election Commission and each page submitted to the Election Commission was logged or date stamped thereby demonstrating beyond dispute that signatures were obtained and filed within the statutory period. Therefore, the reason for the date requirement has been met and certainly constitutes substantial compliance. Intervenor further avers that the structure and language of *TCA § 2-5-151* regarding the date requirement for signatures is ambiguous.

TENTH DEFENSE

Intervenor avers that the Chattanooga City Charter Provision §3.18 governs the number of signatures required for the recall. It is undisputed that the entire Chattanooga City Charter was re-adopted and adopted by a ballot initiative referendum by the citizens of Chattanooga in calendar year 2002. This was after the 1997 passage of *TCA §2-5-151(j)* and constitutes a "re-enactment" of the City Charter provision (*§ 3.18*) and the City Charter provision governs the number of signatures required to recall the current Mayor.

ELEVENTH DEFENSE

Intervenor avers that there is no requirement in the statute that the election only take place at a general municipal or county general election and that proceeding in the November election is proper.

TWELFTH DEFENSE

Intervenor avers that the language of the petition, whether stated in the form of a question or statement, is clear and unequivocal. The Petition clearly conveys that it seeks the recall of the current Mayor of Chattanooga, Ron Littlefield. Accordingly, this constitutes compliance and certainly substantial compliance with *TCA §2-5-151*.

THIRTEENTH DEFENSE

Intervenor specifically avers that there has been substantial compliance with all pertinent City Charter or statutory provisions and the Recall Petition should not be blocked for alleged technical requirements that serve no purpose in this instance.

FOURTEENTH DEFENSE

All allegations not heretofore admitted, denied or otherwise explained are denied in order to place same at issue.

WHEREFORE, premises considered, INTERVENOR prays as follows:

1. That the Court advance this matter on its docket and conduct an expedited hearing;
2. That the Court declare that the Petitioner has substantially complied with the provisions of the Chattanooga City Code and state law;
3. That the recall petitions are valid and that the election shall go forward to recall the current Mayor of Chattanooga upon the November ballot;
3. That the costs of this cause are to be taxed against the original Plaintiff;

4. And that this Intervenor have such other and further relief as the Court deems just, proper and equitable.

Respectfully submitted:

By: 

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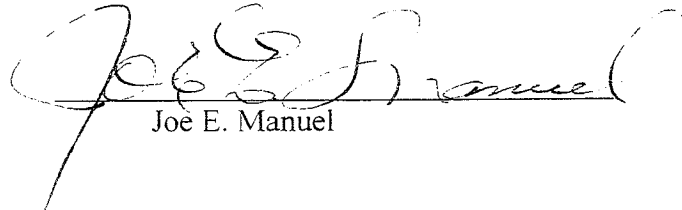
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this pleading has been served upon the parties listed below this 1st day of September, 2010.

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