

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

RON LITTLEFIELD,)	
)	No. 104078
Plaintiff,)	
v.)	DIV. _____
)	
HAMILTON COUNTY ELECTION COMMISSION,)	
)	
Defendant.)	

ANSWER

Comes now the Defendant, the Hamilton County Election Commission, and files its Answer to the Complaint filed against it and states as follows:

I.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Defendant on which relief can be granted.

II.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to bring before this Court an indispensable party, James Folkner, who was the individual who originally filed the recall petition against Mayor Ron Littlefield.

III.

THIRD AFFIRMATIVE DEFENSE

In specifically responding to the numbered paragraphs of plaintiff's complaint, defendant shows to the Court the following:

Parties, Jurisdiction and Venue

1. Defendant admits the factual allegations as stated in paragraph 1 of the Complaint.
2. Defendant admits the factual allegations as stated in paragraph 2 of the Complaint.
3. Defendants deny the allegations as stated in paragraph 3 of the Complaint. This matter does involve actions taken by the Election Commission with regard to a recall effort against Chattanooga Mayor Ron Littlefield. This defendant takes issue with the characterization that this defendant has “threatened” any entity. The Election Commission is simply attempting to carry out its obligation to hold elections as required by the Tennessee law.
4. Defendant is without sufficient information to admit or deny the allegation of jurisdiction as alleged in paragraph 4 of the Complaint. Chancery Court has exclusive jurisdiction over election contests pursuant to T.C.A. Section 2-17-101. To the extent this could be considered an election contest then Chancery Court would have exclusive jurisdiction. The extent this is not an election contest then this Circuit Court would have jurisdiction.

Facts

5. Defendant admits the allegations as stated in paragraph 5 of the Complaint.
6. Defendant admits the allegations as stated in paragraph 6 of the Complaint.
7. Defendant admits the allegations as stated in paragraph 7 of the Complaint.
8. Defendant admits the allegations as stated in paragraph 8 of the Complaint.
9. Defendant admits the allegations as stated in paragraph 9 of the Complaint.
10. Defendant admits the allegations as stated in paragraph 10 of the Complaint.

11. Upon information and belief the allegations contained in paragraph 11 of the Complaint are admitted.

12. Defendant denies the allegations as stated in paragraph 12 of the Complaint.

13. Defendant admits the allegations as stated in paragraph 13 of the Complaint.

14. Defendant admits the allegations as stated in paragraph 14 of the Complaint.

15. Defendant admits the allegations as stated in paragraph 15 of the Complaint.

16. Defendant admits the allegations as stated in paragraph 16 of the Complaint.

Count 1

17. Plaintiff does not allege any factual allegations in paragraphs 17, 18 and 19. Tennessee Code Annotated and the Chattanooga Charter speak for themselves. To the extent it is necessary to respond to paragraphs 17, 18 and 19 of the Complaint such allegations are denied.

18. Defendant denies the allegations as stated in paragraph 20 of the Complaint.

19. Defendant denies the allegations as stated in paragraph 21 of the Complaint.

20. Defendant denies the allegations as stated in paragraph 22 of the Complaint.

Defendant would assert that T.C.A. Section 2-5-151 does not specify the form of a recall question. If the petition were certified then the “question” on the ballot pursuant to T.C.A. Section 2-5-151 and Chattanooga Charter provision 3.18 would be which candidate the voters wished to select to be mayor. Defendant would show that dozens of municipalities have similar recall provisions. And, the Tennessee Supreme Court has validated similar provisions in *State ex rel Brown vs. Howell Election Commissioners*, 183 S.W. 517, (1916 Tennessee).

21. Defendant denies the allegations as stated in paragraphs 23 and 24 of the

Complaint.

22. Defendant denies the allegations as stated in paragraphs 25 of the Complaint. Defendant would assert that said process has been consistently applied by dozens of local municipalities in Tennessee pursuant to *State ex rel Brown vs. Howell Election Commissioners*, 183 S.W. 517, (1916 Tennessee).

23. Defendant admits the allegations as stated in paragraph 26 of the Complaint.

24. Defendant admits the allegations as stated in paragraph 27 of the Complaint.

25. Defendant is without sufficient information to admit or deny the allegations as contained in paragraph 28 of the Complaint. Accordingly, such allegations are denied and strict proof thereof is demanded. To the extent such allegations require a legal conclusion this defendant relies upon the discretion and rulings of this Court.

26. Defendant is without sufficient information to admit or deny the allegations as contained in paragraph 29 of the Complaint. Accordingly, such allegations are denied and strict proof thereof is demanded. To the extent such allegations require a legal conclusion this defendant relies upon the discretion and rulings of this Court.

27. Defendant is without sufficient information to admit or deny the allegations as contained in paragraph 30 of the Complaint. Accordingly, such allegations are denied and strict proof thereof is demanded. To the extent such allegations require a legal conclusion this defendant relies upon the discretion and rulings of this Court.

28. Defendant denies the allegations as stated in paragraphs 31 of the Complaint. Defendant would show that “county election” does not necessarily refer to an election with county officials running for office. Instead, “county election” has consistently been used to refer

to any election for any office that is held county wide in Hamilton County. Accordingly, November 2, 2010 is, in fact, a county election within the definition of T.C.A. Section 2-5-151.

29. Defendant admits that Plaintiff is entitled to a declaratory judgment. Defendant denies that Plaintiff is entitled to the legal conclusions alleged in paragraph 32 of the Complaint.

30. Defendant denies that Plaintiff is entitled to an injunction as alleged in paragraph 33 of the Complaint. Defendant will follow any declaratory judgment issued by the Court.

Count II

31. Paragraph 34 of the Complaint makes no factual allegations. To the extent a response is required, Defendant denies the allegations contained in paragraph 34 and demands strict proof thereof.

32. Defendant admits the allegations as stated in paragraph 35 of the Complaint.

33. Upon information and belief Defendant admits the allegations as stated in paragraphs 36, 37, 38, 39, 40, and 41 of the Complaint.

34. Defendant denies the allegations as stated in paragraph 42 of the Complaint.

35. Defendant admits the allegations as stated in paragraph 43 of the Complaint.

36. Defendant denies the allegations as stated in paragraph 44 of the Complaint.

37. Defendant denies the allegations as stated in paragraph 45 of the Complaint.

Defendant would show this Court that the same Jerry Summers voted unanimously with all election commissioners to accept and enforce the Chattanooga Charter's decision to "enact" a lower number of required signatures.

38. Defendant denies the allegations as stated in paragraph 46 of the Complaint.

39. Defendant admits that Plaintiff is entitled to a declaratory judgment. Defendant

denies that Plaintiff is entitled to the legal conclusions as allegations in paragraph 47 of the Complaint.

40. Defendant denies that Plaintiff is entitled to an injunction as alleged in paragraph 48 of the Complaint. Defendant will follow any declaratory judgment issued by the Court.

Prayer for Relief

41. Defendant admits that Plaintiff is entitled to a declaratory judgment. Defendant denies that Plaintiff is entitled to the legal conclusions as allegations in paragraph 49 of the Complaint.

42. Defendant denies that Plaintiff is entitled to an injunction as alleged in paragraphs 50 of the Complaint. Defendant will follow any declaratory judgment issued by the Court.

43. Paragraph 51 of the Complaint makes no factual allegations. To the extent a response is required, Defendant denies the allegations contained in paragraph 51 and demands strict proof thereof.

44. Defendant denies the allegations as stated in paragraph 52 of the Complaint.

45. All other allegations of the Complaint, neither admitted, explained, nor denied, are here and now denied as if specifically denied herein.

NOW having answered as fully and completely as required by law Defendant demands the Plaintiff's Complaint be partially dismissed. Defendant joins Plaintiff in asking for a declaratory judgment as to the legal issues presented.

Respectfully submitted,

SAMPLES, JENNINGS, RAY & CLEM, PLLC

By: 

J. CHRISTOPHER CLEM, BPR# 015793

Attorneys for Defendant

Hamilton County Election Commission

130 Jordan Drive

Chattanooga, TN 37421

(423) 892-2006

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following named persons with a true and exact copy of this pleading by placing a true and exact copy of said pleading in the United States mail, addressed to said counsel at his office, with sufficient postage thereon to carry the same to its destination at the following addresses:

Hal North, Esq.
Fred Hitchcock, Esq.
Tom Greenholtz, Esq.
1000 Tallan Building
Two Union Square
Chattanooga, Tennessee 37402

Joe Manuel, Esq.
240 Forest Ave. Suite 301
Chattanooga, TN 37405

This the 31st day of Aug, 2010.

SAMPLES, JENNINGS, RAY & CLEM, PLLC

BY: 

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

RON LITTLEFIELD,)
) No. 104078
 Plaintiff,)
 v.) DIV. _____
)
 HAMILTON COUNTY ELECTION COMMISSION,)
)
 Defendant.)

Memorandum of Law Submitted by Hamilton County Election Commission

Comes now the Defendant, the Hamilton County Election Commission, and files this Memorandum of Law in opposition to Plaintiff's Motion for a Temporary Injunction.

1. Recall Process by State was designed as a 3 step process:

The recall process is governed by T.C.A. Section 2-5-151. State law was designed for a 3 step process. (1) File a petition for recall of an elected official and obtain sufficient number of signatures. (2) Election Commission then places question on the ballot at the next regularly scheduled election: "Shall _____ be recalled? Yes or No." If the voters vote "Yes" for recall then the elected official is recalled. The office is then vacated immediately. (3) Then a special election is called to fill the vacated office. Under this process the elected official who was removed is not allowed to run for the open seat.

2. Recall process allows local cities to modify 2 small sections of the state recall statute:

T.C.A. Section 2-5-151 expressly allows counties and cities to modify parts of the above process in two ways. (1) Local governments may alter or amend the 75 day time limit allowed to gather the recall signatures. (2) Local governments may alter or amend the number of signatures required for the recall. In the instant case, Chattanooga has not altered the 75 day time limit. However, Chattanooga has apparently lowered the number of required signatures. See paragraphs 37 and 38 of Plaintiff's Complaint.

3. Local Cities have also modified recall statute in a third way not expressly authorized by the state statute:

Local governments have also modified the process in a third way not expressly authorized by statute. Many local cities, including Chattanooga, have altered the above 3 step process by authorizing a two step process. Chattanooga (and many other Tennessee municipalities) have opted to for a two step process in order to save election costs by only requiring one election. The Chattanooga City Charter still requires the recall petition to be filed and authorized. However, after the petition is completed with the required number of signatures there is not "yes/no" vote for a recall. Instead, the recall is automatic. And, the next election allows candidates to run for the recalled office. The recalled official may also run for re-election (unlike under the 3 step process where the recalled official may not run).

While the 2-step process which eliminates the "yes/no" vote is not expressly authorized by statute, this process has been approved by the Tennessee Supreme Court in State ex rel Brown vs. Howell Election Commissioners, 183 S.W. 517, (1916). The reasoning of the court is that the

“question” called for in the 3 step process does not expressly say “yes/no” vote therefore it is within reason to allow local cities to shorten the process to rephrase the question by voting for candidates for the recalled office.

4. The other deadlines in State law never contemplated the 2 step process:

Federal law requires election offices to mail the finalized ballot to the military 45 days prior to an election. Election offices obviously have to finalize a ballot several days prior to that in order to send to printer prior to mailing to military.

T.C.A. Section 2-5-151 allows the “recall question” to be placed on the next election ballot provided that the recall petition is completed with the required number of signatures 60 days before the next election. It is easy to place a “yes/no” question on the ballot with a mere 60 days notice.

It is not easy to allow the 2 –step process with a petition filed 60 days prior to an election. Under the 2-step process the election commission must actually qualify candidates to run for office. This is obviously not needed under the 3 step process since the only question on the ballot is “vote yes or no on whether elected official should be recalled.”

T.C.A. Section 2-5-151 can easily place the issue on the ballot within 60 days if the question is “yes/no” on the recall. The Election Commission can not easily place this issue on the ballot if we have to actually qualify candidates to run for mayor within 60 days.

The State Legislature needs to require a 90 day or a 120 day deadline instead of a 60 day deadline if the 2-step process is being used by a local city. Election Commissions need more time to qualify candidate to run for the recalled office. Or, Election Commissions need express

authority to permit a 1 week qualifying deadline.

Simply put, the Election Commission can not comply with other state law deadlines of qualifying candidates for office while at the same time allowing the question to be placed on the ballot in 60 days.

Other sections of state law require 90 days to qualify for an elected office. If it is a special election the qualifying deadline is about 45 days. If the election commission is to comply with T.C.A. 2-5-151 then it must place the issue on the ballot since the petitioners did, in fact, file the petition more than 60 days prior to the election. However, there is no statutory authority in the TCA or in the Chattanooga Charter which sets any qualifying deadline for candidates to run in the 2-step process. Apparently, state law never contemplated a 2-step process. State law always contemplated a 3-step process.

Nevertheless, the Hamilton County Election Commission felt obligated to make every attempt to follow both the Chattanooga City Charter and the Tennessee Supreme Court's apparent approval of the 2-step process as explained in State ex rel Brown vs. Howell Election Commissioners, 183 S.W. 517, (1916).

5. Hamilton County Election Commission placed in a difficult position:

The Hamilton County Election Commission has therefore been placed in a difficult position. *The democrat and republican members of the commission have unanimously tried to comply with all provisions.* Since the petition was filed more than 60 days prior to an election the Commission has made every effort to place this issue on the November ballot. If the Commission was placing the "Yes/No" question on the ballot then the commission would have

little trouble. But, since the Chattanooga Charter calls for the 2-step process the Commission must also make an attempt to actually qualify candidates to run in November.

At the September 8, 2010 Commission meeting the Commission will have 2 decisions:

A. Whether to certify the recall petition or not? If not, then no further action unless petitioners file suit.

B. If the Commission certifies the recall petition then the Commission will have to decide how best to place this issue on the November ballot. The Commission appears inclined to set a qualifying deadline of September 15th (one week from September 8th) with a withdraw deadline of September 16th. This would allow the Commission to have the finalized ballot sent to the printer and returned in time to mail to the military by September 18th in compliance with federal law.

6. Defects in Recall Petitions:

This recall petition for Mayor Littlefield was approved by the state attorney in Nashville, by the Hamilton County Election Attorney Chris Clem and by the Hamilton County Election Commission on June 16, 2010. This petition was then returned to the petitioners on June 16, 2010. The petitioners then had 75 days to return the petition with the appropriate number of signatures. This original recall petition was fully compliant with T.C.A. Section 2-5-151.

At some point in the month of July 2010 employees of the Hamilton County Election Office mistakenly informed petitioners that they did not need to have each signature dated. Qualifying petitions for candidates to run for office do not need to have each signature dated. Defendant admits that recall petitions do need to have each signature dated.

The petitioners then relied on this advice and modified the original petition which did

require each signature to be dated. Accordingly, of the approximately 15,000 signatures about 10,000 have been approved. However, about half of the 10,000 signatures were not dated and therefore are not fully in compliance with state law.

It is important to note that the evidence will clearly show that all signatures were acquired in the 75 day period even though they were not individually dated. Since the attorney's for the state and Hamilton County Election Attorney Chris Clem made edits and changes to the petition prior to it being approved by the Election Commission on June 16, 2010, it is not possible that any signatures on petitions with such wording could have been signed prior to those edits which were approved at the June 16, 2010, election commission meeting. Further, the petitions have been collected and stamped prior to the end of the 75 day period which ended August 31, 2010.

It also appears that at the Election Commission meeting of August 5, 2010, (primary day) that the petitioners gave the Election Administrator two new recall petitions: one for Councilman Rico and one for Councilman Benson. These petitions were not placed in each election commissioners folders. The Election Administrator and James Folkner then represented to the Election Commission that these two recall petitions were exactly the same as the correctly drafted Littlefield Recall petition. Based on that recommendation that the exact language (including the dates for each signature) the Election Commission approved both of those recall petitions. It now appears that the recall petitions for both Rico and Benson did not have places for each signature to be dated. Again, this defect appears to be due to advice given to the petitioners by the employees of the election commission. The original petitions given to them which were edited by Attorney Chris Clem did have dates for signatures and were in compliance with state law.

SUMMARY AND CONCLUSION

The Hamilton County Election Commission contends that the Chattanooga Charter can be enforced with the 2-step process and with the lower number of signatures required under the Chattanooga Charter. Defendant further contends that the original Recall Petition as attached in Exhibit B to the Complaint is a proper and valid petition.

On September 8, 2010 the Election Commission must decide whether to certify the recall petition considering the lack of dates for each signature. The Hamilton County Election Commission welcomes the opportunity for a Judge/Chancellor to issue a declaratory judgment. Defendant denies that any injunction is necessary since Defendant represents that it will follow the declaratory judgment.

The Hamilton County Election Commission would request that this Court make such a ruling immediately. Defendant must submit finalized ballots to the printer by September 16, 2010 and mail same to the military pursuant to federal law by September 18, 2010. If this Court permits the 2-step process as provided in the Chattanooga Charter then a certain amount of time will be needed to allow candidates to qualify for said election.

Respectfully submitted,

SAMPLES, JENNINGS, RAY & CLEM, PLLC

By: 

J. CHRISTOPHER CLEM, BPR# 015793

Attorneys for Defendant

Hamilton County Election Commission

130 Jordan Drive

Chattanooga, TN 37421

(423) 892-2006

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following named persons with a true and exact copy of this pleading by placing a true and exact copy of said pleading in the United States mail, addressed to said counsel at his office, with sufficient postage thereon to carry the same to its destination at the following addresses:

Hal North, Esq.
Fred Hitchcock, Esq.
Tom Greenholtz, Esq.
1000 Tallan Building
Two Union Square
Chattanooga, Tennessee 37402

Joe Manuel, Esq.
240 Forest Ave. Suite 301
Chattanooga, TN 37405

This the 31st day of Aug, 2010.

SAMPLES, JENNINGS, RAY & CLEM, PLLC

BY: 