

IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

TENNESSEE DEMOCRATIC PARTY and
MARQUITA BRADSHAW FOR SENATE,

Plaintiffs,

v.

MARK GOINS, Coordinator of Elections
and TRE HARGETT, Secretary of State for
the State of Tennessee, each in their official
capacity for the State of Tennessee,

Defendants.

No. 20-1073-I

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF
AND DECLARATORY JUDGMENT

TO THE CHANCELLORS OF THE DAVIDSON COURT OF TENNESSEE FOR THE
TWENTIETH JUDICIAL DISTRICT AT NASHVILLE:

Plaintiffs, by and through their respective undersigned counsel, file their Complaint for Injunctive Relief and Declaratory Judgment against defendants Mark Goins, Coordinator of Elections for the State of Tennessee and Tre Hargett, Tennessee Secretary of State, both in their official capacities, and state as follows:

PARTIES AND JURISDICTION

1. Plaintiff Tennessee Democratic Party (the "TNDP") is a political party duly organized under the laws of the State of Tennessee. The TNDP seeks standing in this case to pursue the rights of its members and its candidate for the U.S. Senate, Marquita Bradshaw.

2. Plaintiff Marquita Bradshaw for Senate is the official campaign committee for Marquita Bradshaw (the "Bradshaw Campaign"). Marquita Bradshaw is the democratic

candidate for the U.S. Senate for the State of Tennessee and is a resident of Shelby County, Tennessee. Marquita Bradshaw is the duly certified candidate appearing on the ballot as the Democratic Party nominee for the United States Senate for the November 3, 2020 General Election (the “Election”).

3. Defendant Tre Hargett is the Secretary of State of the State of Tennessee and is sued in his official capacity. The Secretary appoints the Coordinator of Elections who serves “at the pleasure of the secretary of state” and may only make regulations necessary to carry out the election code with “the concurrence of the secretary of state.” Tenn. Code Ann. § 2-11-201(a), (c).

4. Defendant Mark Goins is the Coordinator of Elections for the State of Tennessee and is sued in his official capacity. The Coordinator is “the chief administrative election officer of the state” charged with “obtain[ing] and maintain[ing] uniformity in the application, operation and interpretation of the election code.” Tenn. Code Ann. § 2-11-201(b); see also *id.* §§ 2-11-202, 2- 2-115. As Coordinator, Goins is also authorized to investigate or direct local authorities to investigate “the administration of the election laws.” *Id.* § 2-11-202(a)(5).

5. This Court has jurisdiction in this action pursuant to T.C.A. § 8-44-106(a), T.C.A. § 2-3-101 et seq., T.C.A. § 2-3-201 et seq. and Article I, Section 5 and Article IV, Section 1 of the Tennessee Constitution.

6. Venue of this action is proper in this Court because this Court is the situs of the Government of the State of Tennessee.

FACTUAL BACKGROUND

7. On Friday October 30, 2020, the Bradshaw Campaign requested from county election commission’s across the State of Tennessee to be provided absentee voter information to

provide mail-in absentee voter information, specifically, the Bradshaw Campaign requested to be provided the names of individuals that have requested a mail-in ballot but have yet to return such a ballot.

8. Knox County provided this information without incident, but virtually all other counties have denied these requests. Upon information and belief, the Secretary of State and Defendants Goins and Hargett have directed County Election Commission's across the State of Tennessee to deny requests for this information. Knox County was able to provide this information within approximately 45 minutes of being asked, and upon information and belief, most if not all County Election Commission's have ready access to this information in the voter file.

9. Following their request denials at the county election commissions, the Bradshaw Campaign contacted the offices of Defendants Tre Hargett and Mark Goins and were told that they would not provide the requested information.

10. The Bradshaw Campaign seeks this information to contact voters and help them ensure timely return of their absentee ballots. Some of these voters intend to and would cast ballots for Marquita Bradshaw in the Election.

11. The United States Post Office has indicated to elected officials in the State of Tennessee that ballots mailed this late for the Election may not arrive on time, and the Secretary of State has published information on where to take absentee ballots in each county for those who have yet to mail them timely before the Election.

12. The TNDP and the Bradshaw Campaign seek to educate voters on this process and help them ensure timely return of their absentee ballots. This cannot be done economically or feasibly without the information contained in the requests.

13. Upon information and belief, this information is readily in the possession, custody, or control of the Defendants or the Defendants have the authority and jurisdiction to command County Election Commissions across the State of Tennessee to provide this information.

COUNT I –
VIOLATION OF TENN. CODE ANN § 2-6-202(c)(6); TN OPEN RECORDS ACT; and
TENN. CODE ANN. § 1-3-121

14. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1 through 13.

15. Tennessee Code Annotated § 2-6-202(c)(6) provides that information concerning absentee ballots requests and applications becomes available at the end of the early voting period through an Open Records Request made pursuant to Title 10, Chapter 7 of the Tennessee Code Annotated.

16. Under Tenn. Code Ann. § 10-7-503(a)(2)(B) Tenn. Code Ann. (B), these records now must be promptly made available for inspection as the Open Records Act commands that “[t]he custodian of a public record or the custodian's designee shall promptly make available for inspection any public record not specifically exempt from disclosure.” (emphasis added). At the end of the early voting period, these absentee records became subject to a prompt inspection.

17. Pursuant to Tennessee law, on October 30, 2020, one day after the early voting period ended for the November 2020 election ended, Plaintiffs submitted an open records request to Defendants Linda Phillips, Jeff Roberts, Maybell Stewart and Kim Buckley and requested that Defendants provide them with information concerning the information for voters who had not returned their absentee ballot to their respective election commission offices. This was done in an effort to target potential voters and encourage them to participate in the electoral process by

timely submitting their absentee ballots. Defendants denied Plaintiffs' requests in violation of Tennessee law.

18. Plaintiffs then contacted the offices of Defendants Tre Hargett and Mark Goins and were told that they would not provide the requested information, also in violation of Tennessee law.

19. Upon information and belief, and more disturbingly, Defendants Hargett and Goins directed other Election Administrators throughout the State of Tennessee to not provide the requested information concerning unreturned absentee ballots in direct violation of Tennessee law.

20. Plaintiffs are citizens of Tennessee whose right of access to said information is guaranteed by Tennessee statute and their individual rights have been affected by the violations of Defendants and their outright refusal to comply with State law.

21. Without Court intervention, the rights of Plaintiffs and other members of the public to access information that is guaranteed by Tennessee law have been, are being, and will continue to be violated by the actions of Defendants.

22. Upon information and belief, Plaintiffs and other members of the public will suffer immediate and irreparable injury, loss, or damage before notice can be served and a hearing held on the request for injunctive relief in this matter. Accordingly, no adequate remedy at law exists to protect the rights of Plaintiffs and other members of the public under Tennessee law without Court intervention.

23. Pursuant to Tenn. Code Ann. § 8-44-106(c), Defendants should be preliminarily and permanently enjoined from committing any further violations of the Tennessee law pursuant to T.C.A. 2-6-20(c)(6), the Tennessee Open Records, and any other state statute that allows for

inspection of this information. To the extent necessary, Plaintiffs also seek a declaration and injunction under Tenn. Code Ann. § 1-3-121 that the withholding of this information prior to the Election is arbitrary and capricious and does not serve the interests of justice. The Plaintiffs seek entry of injunctive relief as set forth more fully in the prayer for relief below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand and pray that this Court:

1. Issue a judgment declaring that:
 - a. The conduct of two or more of the defendants in prohibiting Plaintiffs to access information regarding absentee ballots constitutes a violation of Tenn. Code Ann. § 2-6-202(c)(6) and/or the Tennessee Open Records Act;
 - b. That the instructions given to county election administrators to refuse to provide said information concerning absentee ballots by Defendants Hargett and Goins are *ultra vires*, void, and of no effect;
2. Immediately issue an order temporarily restraining Defendants and any other persons in active concert or participation with them who receive actual notice of this Court's order, from prohibiting, or directing others to prohibit, Plaintiffs and those similarly situated from receiving information concerning absentee ballots pursuant to Tenn. Code Ann. § 2-6-202(c)(6);
3. Immediately issue an order requiring Defendants within one hour to produce the records requested by the Plaintiffs and specifically a list of all voters who have requested an absentee ballot but have failed to return such a ballot and direct that all county election commission's across the State of Tennessee immediately make this information available to whoever requests it;

4. Immediately issue an order temporarily restraining all defendants, and any other persons in active concert or participation with them who receive actual notice of this Court's order, from taking any action to enforce, effectuate, or implement the directions of Defendants to prohibit Plaintiffs from accessing said information concerning absentee ballots.

5. Enter temporary and permanent injunctions enjoining Defendants and any other persons in active concert or participation with them who receive actual notice of this Court's order, from any other violations of Tenn. Code Ann. § 2-6-202(c)(6) and the aforementioned provisions of the Tennessee Constitution.

6. Grant Plaintiffs an award of their reasonable fees and expenses incurred in bringing this action;

7. Order the Defendants to provide the information requested by Plaintiffs concerning all absentee ballots that have not been returned to the respective Election Commission offices.

8. Pursuant to Tenn. Code Ann. § 8-44-106(d), retain jurisdiction over the parties and subject matter for a period of one year from the date of entry of its final judgment, and order the defendants Shelby County Election Commissioners to report in writing semi-annually to the Court on compliance with the Tennessee Open Meetings Act; and

9. Grant Plaintiffs such general and further relief to which they may be entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CASE.

Dated: November 1, 2020

Respectfully submitted,

By: /s/ Benjamin A. Gastel

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 1, 2020, the foregoing document was served via electronic mail upon:

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