

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART IV**

**ROBERT STARBUCK NEWSOM,** )  
**aka ROBBY STARBUCK,** )

**Plaintiff,** )

**vs.** )

**CASE NO. 22-0735-IV**

**TENNESSEE REPUBLICAN PARTY;** )  
**and the TENNESSEE REPUBLICAN** )  
**PARTY STATE EXECUTIVE** )  
**COMMITTEE,** )

**Defendants.** )

**ORDER**

This dispute involves a political party removing a candidate from the ballot, without explanation, upon the bare determination that the candidate was not a bona fide member of the political party. Apart from questions related to subject matter jurisdiction and laches, the substantive issue before the Court is whether a political party's decision to have a candidate for the United States House of Representatives removed from the ballot in a non-public meeting is void under the Tennessee Open Meetings Act.

The plaintiff is also seeking temporary injunctive relief on non-statutory breach of contract and promissory estoppel claims. Upon review, the Court concludes that these non-statutory claims do not support the issuance of a temporary injunction, given the realistic probability that Plaintiff has an adequate remedy at law. Also, the measure of administrative burden and potential disruption that a temporary injunction of this nature<sup>1</sup> would cause militates against the Court issuing a temporary injunction based on a preliminary determination that the political party violated its by-laws under contract or estoppel principles, especially given that such a determination would be based on an

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<sup>1</sup> The temporary injunction would have the effect of allowing the plaintiff to be put back on the ballot.

abbreviated evidentiary record that includes untested, anecdotal proof. Finally, and most significantly, in the temporary injunction context, the non-statutory claims bring the Court into uncomfortable proximity to the autonomy and prerogative of the political party to determine who is, and who is not, a bona fide member of that party, absent a compelling evidentiary record and/or an opportunity for full discovery. For these reasons, the Court respectfully declines to enter a temporary injunction on either the breach of contract claim or the promissory estoppel claim under the unique circumstances of this case.

On May 20, 2022, Plaintiff, Robert Starbuck Newsom, also known as Robby Starbuck (“Plaintiff” or “Mr. Starbuck”), sued Defendants, Tennessee Republican Party (“TRP”) and the Tennessee Republican Party State Executive Committee (“SEC”) (collectively “Defendants” or “the Party”), seeking declaratory relief, monetary damages, and other relief. On that same date, Mr. Starbuck applied for a temporary injunction, seeking relief that would effectively allow him to be placed back on the ballot as a candidate for the United States House of Representatives to represent the 5<sup>th</sup> District of Tennessee in the Republican Primary scheduled for August 2022. Mr. Starbuck alleges that Defendants’ conduct in causing him to be removed from the ballot violated the Tennessee Open Meetings Act (“TOMA”) and the Party’s Bylaws in such a fashion that Defendants should be held liable for breach of contract and/or promissory estoppel. The Court conducted a non-evidentiary hearing on Mr. Starbuck’s application for a temporary injunction on June 2, 2022 at 9:30 a.m.

This is Plaintiff’s second lawsuit in this election cycle addressing this issue. Previously, Plaintiff sued in federal court asserting three federal claims and the three state law claims asserted here. The federal court denied Plaintiff’s application for a temporary injunction, addressing only the federal claims. In its Order, the federal court suggested

that Plaintiff pursue his state law claims in state court.<sup>2</sup> Accordingly, Plaintiff non-suited his federal lawsuit and re-filed his state law claims here.

### **Findings of Fact**

Based on the current evidentiary record, the Court hereby makes the following preliminary findings of fact:

1. Plaintiff qualified to be placed on the ballot for the Republican Primary for the United State House of Representatives. This primary election is scheduled for August 4, 2022.
2. On April 11, 2022, the Party decided that Mr. Starbuck was not a bona fide member of the Republican Party, giving no explanation for this determination. This decision was made in a non-public meeting of the Party's decisionmakers.
3. Mr. Starbuck is claiming that he is a lifelong Republican and that he is widely known to be a Republican. *See* Verified Complaint, ¶¶ 3, 16-22, 50.
4. The record is not clear about the procedural processes the TRP uses, under its Bylaws or otherwise, to consider or deliberate as to whether a candidate is considered a bona fide Republican. In Mr. Starbuck's case, he described the following developments:

The TRP then proceeded to violate TOMA. During a call with Mr. Starbuck in March, the TRP first indicated its meeting to decide the merits of the complaint against him (which would eventually take place on April 19, 2022) would be public. However, just days before the April 19 meeting, the TRP informed Mr. Starbuck he could participate by Zoom – but it would not be a public meeting. And, in fact, within 24 hours of that meeting, the TRP informed Mr. Starbuck that his representatives could not join him if he attended. And, ultimately, on the day of the meeting, the TRP told him he could not participate, either.

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<sup>2</sup> The federal court decision denying Mr. Starbuck's application for a temporary injunction is *Newsom v. Golden*, No. 3:22-CV-00318, 2022 WL 1500860, at \*1 (M.D. Tenn. May 12, 2022).

Verified Complaint, ¶ 29.

5. The Party's Bylaws read, in pertinent part:

The TRP hereby defines the term 'bona fide Republican' as: . . . *either* . . . [an] individual who has voted in at least three of the four most recent Statewide Republican primary election; *or* [an] individual who is vouched for in writing . . . by **an** officer of the TRP or a member of the CEC [Party County Executive Committee] . . . of the County and/or District where said individual resides.

Verified Complaint, ¶ 35 (quoting Bylaws, Art. IX, § 1 (Exhibit A)(emphasis added)).

6. Mr. Starbuck made several efforts to address complaints and concerns about whether he was a Republican in writing and in conversations. Mr. Starbuck characterized the decision to recommend the suspension of his candidacy in the following manner:

Nevertheless, a subset of the TRP's SEC held a non-public meeting on April 11, 2022, and voted to "recommend the suspension" of Mr. Starbuck's candidacy. Mr. Starbuck was formally notified of his "recommended suspension" for not being a real Republican after the meeting in an April 11, 2022 letter from Mr. Golden. The letter stated that: (1) his candidacy had been "properly protested" and challenged on the basis that he was not a "bona fide" Republican; (2) the SEC of the TRP had determined that his "candidacy did not currently meet the bonafide [sic] standard of the Tennessee Republican Party"; and (3) the SEC had recommended the suspension of [his] candidacy."

Verified Complaint, ¶ 34 (citing Exhibit 1 (April 11, 2022 Bona Fide Challenge Notice Letter))(footnote omitted).

7. Based on the Party's decision, Mr. Starbuck was removed from the ballot.
8. Mr. Starbuck described his written submissions to demonstrate that he was a bona fide Republican as follows:

Mr. Golden and the SEC failed to meet these conditions because nine local TRP leaders and CEC members from Tennessee's 5th congressional district and Williamson County have vouched in writing that Mr. Starbuck was a bona fide Republican, specifically:

- a. Mr. Sean A. Raesemann, First Vice Chairman of the Williamson County Republican Party and CEC member;
- b. Mr. Jim Garrett, Chairman of the Davidson County Republican Party and CEC member;
- c. Ms. Julie Quan, Chairwoman of the Marshall County Republican Party and CEC member;
- d. Ms. Wendi Strauch, Davidson County Executive Committee Communications Secretary and CEC member;
- e. Ms. Shannon McGuffin, Davidson County Republican Party Treasurer and CEC member;
- f. Mr. Cody Mitchell, Chairman of the Lewis County Republican Party and CEC member;
- g. Ms. Debbie Matthews, Chairwoman of the Maury County Republican Party;
- h. Mr. Bart Smith, Second Vice Chairman of the Davidson County Republican Party; and
- i. Mr. Nathan Green, Chairman of the Nashville Young Republicans.

Verified Complaint, ¶ 43.

9. The appropriate state officials indicated in the federal court case that June 10, 2022 would be the deadline for a decision putting Mr. Starbuck back on the ballot in terms of administration and logistics.

### **Temporary Injunction Standard**

In deciding a motion for temporary injunction, the inquiry is based on the language of Tenn. R. Civ. P. 65.04(2), which reads in its entirety as follows:

A temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

*Id.* In following this language, Tennessee appellate courts have distilled four factors for the Court's consideration in determining whether to grant a temporary injunction:

- 1) The threat of irreparable harm to the applicant if the injunction is not granted;

- 2) The balance between the harm the applicant is seeking to prevent and the injury that granting the injunction would inflict on the party the applicant is proposing to enjoin;
- 3) The probability that the applicant will succeed on the merits; and
- 4) The public interest.

*See Moody v. Hutchison*, 247 S.W.3d 187, 199-200 (Tenn. Ct. App. 2007). These factors are considerations, not a hard and fast test. Ultimately, the above-quoted language of Tenn. R. Civ. P. 65.04(2) controls the Court's disposition of a temporary injunction request. Under Tenn. R. Civ. P. 65.04(6), the Court is required to "set forth findings of fact and conclusions of law which constitute the grounds of its action." *Id.*

### **Discussion**

#### **Subject Matter Jurisdiction and Laches**

Defendants assert that Plaintiff's lawsuit is purely political and that this Court does not have subject matter jurisdiction. The Court disagrees, especially given that this Court is only examining Mr. Starbuck's claim under TOMA for purposes of his temporary injunction application. By its terms, TOMA confers jurisdiction on this Court. Defendants assert that no justiciable controversy exists because Mr. Starbuck did not name the Tennessee Coordinator of Elections as a party. The Court disagrees. If Defendants violated TOMA, then Defendants' challenged decision is void; that is, it is treated, as a matter of law, as if it were never made. That would require that Mr. Starbuck be restored to the ballot as a matter of law. If Defendants are not subject to TOMA, then this Court would obviously not be authorized to grant Mr. Starbuck's application for a temporary injunction on the basis of TOMA.

Defendants also assert that the April 21, 2022 statutory deadline under Tenn. Code Ann. § 2-5-204(b)(2)(B) operates to render any decision allowing Mr. Starbuck to be restored to the ballot moot. This makes no sense and would operate to improperly

close the courts to Mr. Starbuck. An Order declaring Defendants in violation of TOMA for having a non-public meeting would have force and effect and would have to be honored by the parties and public officials who do the administrative work related to finalizing who is on the ballot. All of Defendants' other assertions that the Court lacks subject matter jurisdiction or that there is no justiciable controversy as to the TOMA claim are derivative of the foregoing arguments and are thus rejected as being without merit.

Defendants assert that Plaintiff's request for a temporary injunction is barred in this instance by the doctrine of laches - a negligent and unintentional failure to protect one's rights. *See Long v. Board of Prof'l Responsibility*, 435 S.W.3d 174, 181-82 (Tenn. 2014)(quoting *Dennis Joslin Co. v. Johnson*, 138 S.W.3d 197, 200 (Tenn. Ct. App. 2003)("Under the defense of laches, 'equity will not intervene on behalf of one who has delayed unreasonably in pursuing his rights.'")); *see also United States v. City of Loveland*, 621 F.3d 465, 473 (6th Cir. 2010)(quoting *Elvis Presley Enters., Inc. v. Elvisly Yours, Inc.*, 936 F.2d 889, 894 (6th Cir. 1991)("[L]aches is 'a negligent and unintentional failure to protect one's rights.'")); Mere delay is not enough; the doctrine "requires an unreasonable delay that prejudices the party seeking to employ laches as a defense, and it depends on the facts and circumstances of each individual case." *Long*, 435 S.W.3d at 181-82 (citing *Jansen v. Clayton*, 816 S.W.2d 59, 51 (Tenn. Ct. App. 1991)). Defendants argue Plaintiff unreasonably delayed in seeking judicial intervention in this Court.

The Court rejects Defendants' argument that Mr. Starbuck's statutory claim is barred by laches under the circumstances of this case. Mr. Starbuck brought his federal lawsuit with reasonable dispatch and then refiled his state claims fairly quickly in this Court after the federal court indicated that it was not going to entertain the state law

claims. Neither Mr. Starbuck's lawsuit nor his application for a temporary injunction are barred by the doctrine of laches.

### Tennessee Open Meetings Act

The Tennessee Court of Appeals wrote this succinct summary of the Tennessee Open Meetings Act:

Tennessee's Open Meetings Act is codified at Tennessee Code Annotated § 8-44-101, *et. seq.* The purpose provision of the Act states: "[I]t [is] to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret." T.C.A. § 8-44-101(a)(2002). To effectuate this purpose, the Act provides that "[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee." T.C.A. § 8-44-102(a)(2002). The term "meeting" is statutorily defined as "the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter." T.C.A. § 8-44-102(b)(2)(2002).

*Johnston v. Metropolitan Gov't of Nashville & Davidson Cty.*, 320 S.W.3d 299, 309 (Tenn. Ct. App. 2009). It is noteworthy that TOMA is remedial in nature and subject to liberal construction to promote openness and accountability in governments. *See Neese v. Paris Special Sch. Dist.*, 813 S.W.2d 432, 434 (Tenn. Ct. App. 1990).

Defendants assert that TOMA does not apply because this is a private, intra-party dispute about who is a bona fide Republican. Defendants make the thoughtful distinction between the executive committee and the state primary board, asserting that only the executive committee is empowered to remove someone from the ballot. In deciding that Mr. Starbuck was not a bona fide Republican, however, Defendants were admittedly acting under powers granted to them under Title 2 of the Tennessee Code.

Tennessee law requires that "[e]ach political party shall have a state executive committee which shall be the state primary board for the party." Tenn. Code Ann. § 2-13-102(a). Although the state primary board and the state executive committee often function as two bodies, the Court concludes, as asserted by Mr. Starbuck in his oral



argument, that “[e]ach political party shall have a state executive committee which shall be that state primary board for the party.” *Id.* Additionally, when carrying out the duties and exercising the powers of Title 2 of the Tennessee Code, the primary board is subject to TOMA. *See* Tenn. Code Ann. § 2-13-108(a)(2)(“Meetings of each state primary board shall be open and subject to title 8, chapter 44.”). Defendants assert that they were operating under the powers given them under Title 2 of the Tennessee Code when they determined that Mr. Starbuck was not a bona fide member of the Republican Party and that the attendant April 11, 2022 meeting was not open to the public.

The Court adopts the analysis set out in Plaintiff’s Reply brief:

The terms “executive committee” and “primary board” are not defined anywhere in Title 2 outside of Section 2-13-102. Section 2-13-102(a) states that the executive committee “shall be the state primary board for the party” and Section 2-13-102(b) tasks the primary board with “perform[ing] the duties and exercis[ing] the powers required by this title for its party.” A plain language reading of this language dictates that, for the purposes of the duties and powers set forth in Title 2, the “executive committee” and the “primary board” are synonymous. And when the executive committee serves as the primary board in acting under Title 2, it is subject to TOMA. Tenn. Code Ann. § 2-13-108(a)(2); *see also* Tenn. Op. Atty. Gen. No. 19-11, 2019 WL 3759102, at \*1 (“Th[e] primary board ‘shall perform the duties and exercise the powers’ of the party under state law.”). As Defendants admit, they derived their authority to remove Mr. Starbuck from the primary ballot from Sections 2-13-104 and 2-5-204, which are in Title 2 of the Tennessee Code. *See* Resp. at 13. Accordingly, when acting under these provisions of Title 2, the SEC was subject to TOMA.

Reply in Support of Request for Injunctive Relief, p. 11. This approach avoids the elevation of form over substance and is in keeping with the remedial purposes of TOMA. This is especially true where, as here, the office in question, the U.S. House of Representatives, is one of four public offices in Tennessee where a primary is mandatory. Tenn. Code Ann. § 2-13-202.

The Court opines that this conclusion is consistent with, and promotes, the express policy adopted by the legislature: “The general assembly hereby declares it to be

the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.” Tenn. Code Ann. § 8-44-101(a). The decision to have a candidate for the U.S. House of Representatives removed from the ballot because he is not a bona fide Republican is a public decision made under the authority of Title 2 of the Tennessee Code, and is, accordingly, public business within the meaning of TOMA.

### **Conclusions of Law**

Based on the foregoing findings of fact and the applicable law, the Court makes the following legal determinations and rulings under Tenn. R. Civ. P. 65.04:

1. For the reasons stated earlier in this Order on Pages 1-2, the Court respectfully declines to grant a temporary injunction based on Plaintiff’s breach of contract and promissory estoppel claims.
2. The Court believes that Plaintiff should be awarded a temporary injunction on his claim under the Tennessee Open Meetings Act. The Court concludes that Defendant violated TOMA; this satisfies the likelihood of success factor under Tenn. R. Civ. P. 65.04. Additionally, the Court concludes that Mr. Starbuck will suffer irreparable harm if he were forced to remain off the ballot given that he was excluded from the ballot through a procedure that violates the law. He would have to run for this position against whomever the incumbent is the next time he is able to do so instead of being permitted to run for the currently vacant seat in 2022. Given the public policy behind TOMA and given that this decision does not disturb Defendants’ prerogative and autonomy to decide who is, or who is not, a bona fide Republican, this decision is in the public interest. Also, given the indication in the federal court case that June 10, 2022 would be the deadline for appropriate officials to

implement a ruling that requires Mr. Starbuck to be restored to the ballot, this ruling does not cause undue harm to Defendants or public officials responsible for preparing the ballots. Accordingly, the balancing of harms militates in favor of this temporary injunction.

Under Tenn. Code Ann. § 8-44-105, Defendants' April 11, 2022 decision that Plaintiff was not a bona fide Republican, which was communicated to election and other public officials and acted upon by appropriate public authorities, is hereby DECLARED to violate the Tennessee Open Meetings Act and is hereby DECLARED to be null and void. All other appropriate public officials are expected to immediately take steps to treat the Defendants' April 11, 2022 decision as a nullity and to restore Plaintiff, Robert Starbuck Newsom, also known as Robby Starbuck, to the ballot as a Republican candidate for the United States House of Representatives in the 5<sup>th</sup> Congressional District of Tennessee, to the same extent and in the same particulars as Plaintiff was on the ballot before Defendants' April 11, 2022 decision was made and communicated.

### **Conclusion**

For the foregoing reasons and in the foregoing particulars, the Court hereby GRANTS Plaintiff's application for a temporary injunction. As surety for this temporary injunction, Plaintiff is directed to post a bond in the amount of \$500.00.

**IT IS SO ORDERED.**

*Russell T. Perkins*  
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RUSSELL T. PERKINS, CHANCELLOR

cc: Eric G. Osborne, Esq.  
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