Minutes State Election Commission Meeting July 13, 2015

The State Election Commission meeting was called to order by Chairman Kent Younce at 12:15 p.m., Central Standard Time, July 13, 2015. The following members and staff were present: Chairman Younce; Commissioners Barrett, Blackburn, McDonald, Wallace and Wheeler; Coordinator of Elections Mark Goins, Mary Beth Thomas, General Counsel for the Secretary of State and Kathy Summers, Elections Specialist.

Commissioner McDonald made a motion to adopt the minutes from May 4, 2015, Commissioner Barrett seconded the motion and the minutes were unanimously approved. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

Commissioner Blackburn made a motion to adopt the minutes from June 22, 2015, Commissioner Wallace seconded the motion and the minutes were unanimously approved. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

Commissioner Wheeler made a motion to adopt the minutes from June 30, 2015, Commissioner Barrett seconded the motion and the minutes were unanimously approved. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

Commissioner Barrett made a motion pursuant to T.C.A. § § 2-12-101 and 2-12-106, seconded by Commissioner Wallace and unanimously approved by the Republican members to accept the Republican nomination(s) for county election commission appointments as submitted, and to leave the nomination process open until 4:30 p.m. Central Standard Time Monday, July 13, 2015. (Aye votes: Barrett, Blackburn, Wallace and Younce; No votes: None; Abstention: None.) (See attached list of Republican appointments made.)

Commissioner McDonald made a motion pursuant to T.C.A. § § 2-12-101 and 2-12-106, seconded by Commissioner Wheeler and unanimously approved by the Democratic members to accept the Democratic nomination(s) for county election commission appointments as submitted, and to leave the nomination process open until 4:30 p.m. Central Standard Time Monday, July 13, 2015. (Aye votes: McDonald and Wheeler; No votes: None; Abstention: None.) (See attached list of Democratic appointments made.)

Old Business

Unisyn OpenElect 1.2 – Discuss Viewing of Voting Machines in Vigo County, Indiana on May 5, 2015, for use of ballot on demand and Unisyn OpenElect 1.3 upgrade. Todd Mullen of RBM, who represents Unisyn Voting Systems, indicated the reason for the visit was to view the ballot on demand portion of the machine. Coordinator Goins indicated the machine was being marketed a little differently than originally certified and therefore needed further review. Commissioner McDonald reviewed the machines along with Coordinator Goins and Chairman Younce. Commissioner McDonald indicated the machine has features which he likes. He specifically liked that a voter can view and verify their ballot before they take the ballot to the election official to be counted. Commissioner McDonald was concerned regarding the size of the ballot box which contained voted ballot boxes. Mr. Mullen understood Commissioner McDonald's concerns and indicated the county election commission should have had additional ballot boxes available to lock voted ballots inside. Chairman Younce likes the voting machines and indicates there is less waste with the ballots printed on demand.

Commissioner Wheeler made a motion to approve the Unisyn OpenElect 1.2 voting machine ballot on demand portion of the machine, seconded by Commissioner Wallace and unanimously approved by all commissioners present. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

• MicroVote Voting Machine – Infinity 4.1 – Request for approval and use of firmware upgrade. – Coordinator Goins discussed this request. MicroVote has received preliminary approval for Infinity 4.1 but has not received actual board approval. MicroVote will bring this request back to the State Election Commission after final approval. (See attached letter.)

New Business

• Joseph Johnston – Administrative Complaint – Mr. Johnston has qualified as a write-in candidate for Metro Council at Large for the August 6, 2015, Metro Nashville Davidson County General Election. Mr. Johnson indicated this is a Petition for Declaratory Order and not an administrative complaint and he wants the commission to clarify the law. Mr. Johnson stated that TCA § 2-7-133(i) deals with counting ballots and requires write-in candidates to submit notification to the county election commission to have their name counted. It is Mr. Johnston's desire that the county election commissions be required to notify

voters of write-in candidates and that the State Election Commission require the counties, specifically Davidson County, to provide such information to the voters.

Chairman Younce asked Coordinator Goins and Mary Beth Thomas, General Counsel for the Secretary of State, if the State Election Commission has the authority to require the county election commissions to do what Mr. Johnston is requesting. Coordinator Goins indicated what Mr. Johnston is trying to do is make a requirement or duty to post or instruction voters of write-in candidates which goes beyond the law.

The State Election Commission went into Executive Session to discuss with Mary Beth Thomas their duties related to Mr. Johnston's request.

A motion was made by Commissioner Barrett and seconded by Commissioner Wheeler to deny Mr. Johnston's petition for Declaratory Order due to lack of jurisdiction. The motion to deny was unanimously approved. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

- Donna DeStefano Tennessee Disability Coalition Mrs. DeStafano gave a presentation on web experience for persons with disabilities. (A copy of the information provided is attached to the minutes.)
- **Jefferson County** State Election Commission members discussed the request made by Charles Gibson, Administrator of Elections for Jefferson County Election Commission. Mr. Gibson would like to be excused from the 2015 Election Seminar.

A motion was made by Commissioner Wheeler and seconded by Commissioner Blackburn to excuse Charles Gibson from the seminar. The motion was unanimously approved. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

• 2015 – TACEO – AOE Attendance Record – Attendance records for those attending the 2015 Election Seminar were presented to the commission.

A motion was made by Commissioner Wheeler and seconded by Commissioner Blackburn to accept the attendance records for the 2015 Election Seminar. The motion was unanimously approved. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

• Wendell Moore – ES&S - State Election Commission Policy for Certifying Voting Machines – Mr. Moore discussed the voting machine certification process and issues vendors have with getting

their voting machines certified in Tennessee. There are concerns regarding finding elections which are not on the same day as Tennessee elections and an election that would satisfy the commission's policy for certification.

Coordinator Goins said MicroVote also has concerns regarding the certification process and MicroVote is suggesting the State Election Commission move to an "end-to end regression test." The end to end regression test could be repeated for the State Election Commission to view and the vendor would absorb the cost. Currently, MicroVote has a request to provide Van Buren with voting machines to replace those destroyed by a fire. MicroVote does not have certain components to build to the current approved machine as the shelf life on certain components has expired. (See attached letter.)

Chairman Younce suggested the commission set up a committee to review the voting machine policy and named the following members to the committee: Commissioner Donna Barrett, Commissioner Judy Blackburn and Commissioner Mike McDonald. The Committee will meet on August 19, 2015.

• Unisyn OpenElect 1.3 – Todd Mullen of RBM, who represents Unisyn Voting Systems, indicated OpenElect 1.3, has received certification by the EAC and he has provided the commission with letters of recommendation from other users in other jurisdictions for approval. (See letters attached.)

Commissioner Wheeler made a motion to approve the upgraded Unisyn OpenElect 1.3 voting machine, seconded by Commissioner Wallace and unanimously approved by all commissioners present. (Aye votes: Barrett, Blackburn, McDonald, Wallace, Wheeler and Younce; No votes: None; Abstention: None.)

Coordinator Update

- Legislation Update Coordinator Goins provided members with a list of pending legislation. A copy of the pending legislation is attached to the minutes.
- Sunset Hearing The State Election Commission is set for Sunset Review on August 19, 2015 at 9:00 a.m. central time. Coordinator Goins provided the members with a copy of the questions and current responses. A copy of the information provided is attached to the minutes.
- Wayne Pruett HAVA Coordinator Coordinator Goins advised Wayne Pruett is retiring and his last day will be at the end of the year.

Commissioner McDonald requested a letter for State Election Commission members to sign commending Mr. Pruett for his service. Chairman Younce requested Mr. Pruett be invited to the next meeting of the State Election Commission.

• Hamilton County - Ballot Bags — Hamilton County uses a separate ballot bag than other counties and in the past their bags have been approved under pilot project basis. Hamilton County would like to have their bags approved for permanent use and would like to appear at the next State Election Commission to address the commission.

The next regularly scheduled meeting is set for October 12, 2015 and will be held in the William R. Snodgrass – Tennessee Tower, Nashville Room - 3rd floor at 12:00 Noon Central Standard Time.

Chairman Younce adjourned the meeting.

Respectfully submitted,

Tom Wheeler, Secretary State Election Commission

10/12/15

Donna Barrett 2225 SE Broad Street Murfreesboro, TN 37127 (615) 896-5571

Judy H. Blackburn 1011 Heykoop Drive Morristown, TN 37814 (423) 586-5828

Gregory M. Duckett, Esq. 350 N. Humphreys Blvd Memphis, TN 38120 (901) 227-5233

Michael R. McDonald 1695 A.B. Wade Road Portland, TN 37148 (615) 888-3081

State of Tennessee



State Election Commission
312 Rosa L. Parks Avenue, 7th Floor
Nashville, Tennessee 37243-1102

Jimmy Wallace 428 Wiley Parker Road Jackson, TN 38305 (731) 668-2700

Tom Wheeler 1196 Blockhouse Valley Road Clinton, TN 37716 (865) 548-6159

> Kent D. Younce 423 Fairway Drive LaFollette, TN 37766 (423) 871-0245

NOTICE

NOTICE IS HEREBY GIVEN THAT THE STATE ELECTION COMMISSION WILL MEET MONDAY, JULY 13, 2015 AT NOON, CENTRAL DAYLIGHT TIME IN THE NASHVILLE ROOM – 3rd FLOOR, WM. R. SNODGRASS – TN TOWER NASHVILLE, TN TO MAKE ANY COUNTY ELECTION COMMISSION APPOINTMENTS PURSUANT TO TCA § § 2-12-101 AND 2-12-106, AND TO CONDUCT ANY BUSINESS THAT MAY COME BEFORE THE COMMISSION AT THAT TIME.

IF A PHYSICAL QUORUM IS NOT PRESENT, AN EMERGENCY SHALL BE DECLARED TO EXIST AND THE MEETING SHALL PROCEED ELECTRONICALLY.

Any individuals with disabilities who wish to participate in these proceedings should contact the Department of State to discuss any auxiliary aids or service needed to facilitate such participation. Such initial contact may be in person, in writing, by telephone, or otherwise, and should be made prior to July 13, 2015, to allow time for the Department of State to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator, at Suite 700, William R. Snodgrass - Tennessee Tower, Nashville, TN 37243: (615) 741-7411, Tennessee Relay Center TDD 1-800-848-0298, Voice 1-800-848-0299.

Contact for all other requests not listed above: Elections Division – 615-741-7956



State of Tennessee
Department of State
Division of Elections
312 Rosa L. Parks Avenue
7th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243
Phone: (615) 741-7956 Fax: (615) 741-1278

STATE ELECTION COMMISSION MEETING

July 13, 2015

NOON - Central Time

Nashville Room – 3rd Floor - Wm. R. Snodgrass – TN Tower

AGENDA

- 1. Approve Minutes From:
 - May 4, 2015 Regular Meeting
 - June 22, 2015 Telephonic Meeting
 - June 30, 2015 Telephonic Meeting
- 2. <u>County Election Commission Appointments Pursuant to TCA § § 2-12-101</u> and 2-12-106.
- 3. Old Business
 - Discuss Vigo County, Indiana Election Unisyn Voting Machine –
 Open Elect version 1.2 for use of ballot on demand.
 - Unisyn Voting Machine Open Elect 1.3 Request for approval.
 - MicroVote Voting Machine Infinity 4.1 Request for approval and use of firmware upgrade.
- 4. New Business
 - Joseph Johnston Administrative Complaint
 - Donna DeStefano Tennessee Disability Coalition
 - Jefferson County Charles Gibson Request to be excused from TACEO Seminar.
 - 2015 TACEO AOE Attendance Record
 - Wendell Moore ES&S Regarding Certification Process
- 5. <u>Coordinator Update</u>
- 6. Next Meeting
 - October 12, 2015 Nashville Room 3rd Floor Wm. R. Snodgrass TN Tower – NOON – Regular Meeting
- 7. Adjourn

Vacant Status

13-Jul-15

Marshall

D Mike McDonald

R Donna Barrett

R

Total Vacancies: 1

Holdover Status

13-Jul-15

		Appointment	Reappointment
Fentress			
D Tom Wheeler R Kent Younce			
D	Rodney W. Foy	9/17/2002	5/13/2013
D	Yvonne McDaniel Gernt	5/9/2011	5/13/2013
Henry			
D Greg Duckett R Jimmy Wallace			
D	Steven Wright	1/14/2013	4/1/2013
D	Sylvia C. Humphreys	5/19/1998	4/1/2013
White			
D Mike McDonald R Kent Younce			
D	James Allen Simpson	2/17/2004	4/1/2013
Total Holdovers: 5			

New Appointment Status

1	4-,	Ju	ıl-	1	

			Appointment
Henry	D Greg Duc	kett / R Jimmy Wallace	
	D D	Sabra Fuller	7/13/2015
	D	Sylvia C. Humphreys	7/13/2015
Marshall	D Mike McI	Oonald / R Donna Barrett	
	R	Jim Spires	7/13/2015
Total Now Com	missionaus 2		

Total New Commissioners: 3



Tre Hargett, Secretary of State

State of Tennessee



Division of Elections 312 Rosa L. Parks Avenue, 7th Floor Nashville, Tennessee 37243-0305

Mark Goins Coordinator of Elections

615-741-7956 Mark.Goins@tn.gov

July 21, 2015

Chris Ortiz, Certification Manager Unisyn Voting Solutions 2310 Cousteau Court Vista, CA 92081

Dear Mr. Ortiz:

This letter is to inform you of the certification of the Unisyn OpenElect 1.3 (Modification), bearing the EAC Certification Number: 04211950-1.3 by the State Election Commission on July 13, 2015. This is a software update for your voting machine which was previously certified on June 18. 2012.

Thank you for your cooperation in the certification process.

Sincerely,

Mark Goins

Coordinator of Elections

Attachment: EAC Certification Number 04211950-1.3



United States Election Assistance Commission

Certificate of Conformance



Unisyn OpenElect 1.3 (Modification)

tification Program Manual and the conclusions of the testing laboratory in the test report are consistent with has been verified by the EAC in accordance with the provisions of the EAC Voting System Testing and Certhe evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Govevaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the 2005 Voluntary Voting System Guidelines (2005 VVSG). Components ernment and no warranty of the product is either expressed or implied.

Product Name: OpenElect

Model or Version: Version 1.3 (Modification)

Name of VSTL: NTS Huntsville

EAC Certification Number: 04211950-1.3

Date Issued: 01/12/2015

Chief Operating Officer & Acting Executive Director U.S. Election Assistance Commission

Scope of Certification Attached

Manufacturer: Unisyn Voting Solutions, Inc.

System Name: OpenElect Voting System 1.3

Certificate:

04211950-1.3

Laboratory: NTS Huntsville

Standard:

VVSG 1.0 (2005)

Date:

01/12/2015



Scope of Certification

This document describes the scope of the validation and certification of the system defined above. Any use, configuration changes, revision changes, additions or subtractions from the described system are not included in this evaluation.

Significance of EAC Certification

An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting system standards. An EAC certification is **not**:

- An endorsement of a Manufacturer, voting system, or any of the system's components.
- A Federal warranty of the voting system or any of its components.
- A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
- A substitute for State or local certification and testing.
- A determination that the system is ready for use in an election.
- A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

Representation of EAC Certification

Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

System Overview:

The Unisyn OpenElect Voting System 1.3, herein referred to as OVS 1.3, is a modification to the certified OVS 1.2. The OVS 1.3 Voting System is a paper-ballot based optical scan voting system consisting of four major components:

- 1. OpenElect Central Suite (OCS)
- 2. OpenElect Voting Optical (OVO)
- 3. OpenElect Voting Interface (OVI-7 or OVI-VC)
- 4. OpenElect Voting Central Scan (OVCS)

The Unisyn OVS 1.3 voting system Technical Data Package (TDP) was the source for much of the information in this document.

OpenElect Central Suite (OCS)

The OCS consists of the eight components running as either a front-end/client application or as a back-end/server application: Ballot Layout Manager (BLM), Election Manager (EM), Election Server (ES), Tabulator Client (TC), Tabulator, Adjudicator, Tabulator Reports (TR) and Software Server (SS).

OpenElect Voting Optical (OVO)

The OVO device is a precinct-level optical scan ballot counter (tabulator) designed to perform the following major functions: ballot scanning, tabulation, and second chance voting.

The OVO is a full-page, dual-sided optical scan ballot system which scans and validates voter ballots and provides a summary of all ballots cast. The election is loaded from the OVS Election Server over a secure local network or via a USB thumb drive. On Election Day, an OVO at each polling location scans and validates voters' ballots, and provides precinct tabulation and reporting. The OVO unit is also paired with the OVI for early voting to scan and tabulate early voting ballots. OVO units can also be used at election headquarters to read absentee, provisional, or recount ballots in smaller jurisdictions.

OpenElect Voting Interface (OVI)

The OVI supports both ADA and Early Voting requirements. The OVI enables voters during early voting to cast regional ballots and voters with special needs to prepare their ballots independently and privately on Election Day. The OVI unit features a 7-inch or optional 15-inch full-color touch-screen display. The OVI will present each contest on the correct ballot to the voter in visual and (optionally) audio formats. The voter with limited vision navigates through the ballot using the audio ballot and the ADA keypad or touchscreen input to make their selections. The voter validates his or her selections by listening to the audio summary, printing the ballot, and inserting it into the OVO. Two OVI models are included in the OVS 1.3 voting system, the OVI-7 which has a 7" LCD screen and the OVI-VC which has a 15" LCD screen.

The OVI facilitates special needs voters through a variety of methods including wheelchair access, sip & puff, zoom-in ballot function, and audio assistance for the visually impaired. The OVI provides for write-in candidates when authorized by the jurisdiction. Voters input candidates' names via the ADA keypad, touchscreen or sip & puff device. Each OVI can support multiple languages for both visual and audio ballots, allowing the voter to choose their preferred language.

OpenElect Voting Central Scanner (OVCS)

The OVCS resides at election headquarters designated to read absentee, provisional, or recount ballots in large jurisdictions, or read the entire election's ballots at a central count location in smaller jurisdictions. The OVCS also captures write-in data images and produces a write-in

image report for manual processing upon request. The OVCS system consists of the following components: OVCS Workstation and Canon DR-X10C Scanner.

Certified System before Modification:

Unisyn Voting Solutions OpenElect 1.0

Certificate ID: UNS10121966-OE

Unisyn Voting Solutions OpenElect 1.0.1 Certificate ID: UNS10121966-OE-WI

Unisyn Voting Solutions OpenElect 1.1 Certificate ID: UNS10121966-OE-1.1

Unisyn Voting Solutions OpenElect 1.2 Certificate ID: UNS10121966-OE-1.2

Anomalies and/or Additions addressed in OpenElect 1.3:

The OVS 1.3 provides enhancements from the OVS 1.2 to the OVS 1.3 system. This update includes functional and hardware modifications to the EMS, OVO, OVI, and OVCS.

Mark definition:

The Unisyn Open Elect system will consistently recognize a 1mm wide line across the full length of the target area. Marks must be made with a marking device with sufficiently low reflectance in the visible red band and is of sufficient density/color such that the scanner registers it as black. Most blue, black and green ballpoint pens and markers also meet necessary reflectance requirements and may be used.

Tested Marking Devices:

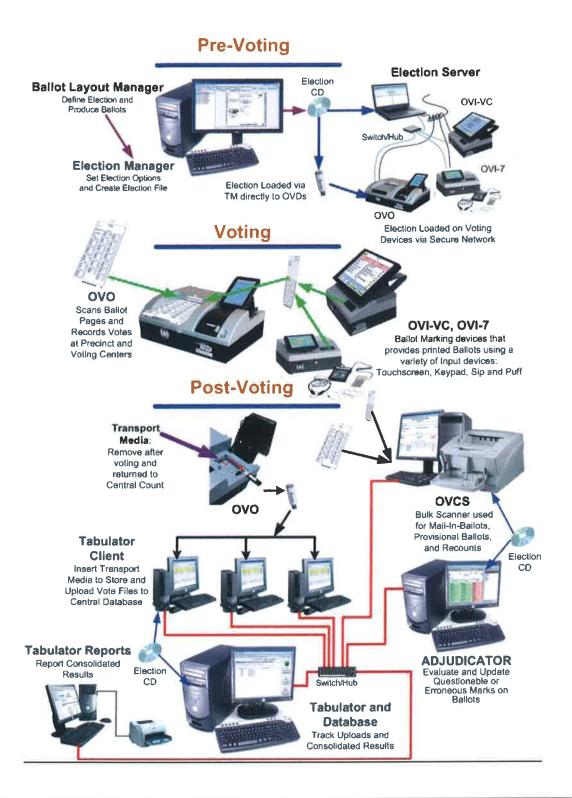
- BIC Grip Roller
- EF Felt Tip Pen

Language capability:

System supports Armenian, Cambodian, Chinese (Cantonese and Mandarin dialects), English, Japanese, Korean, Russian, Spanish, Tagalog, and Vietnamese.

Components Included:

This section provides information describing the components and revision level of the primary components included in this Certification.



System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
OVO	1.3.0	Rev A, E	Linux CentOS 5.0, 6.3	
OVI-7	1.3.0	Rev F	Linux CentOS 5.0	

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
OVI-VC	1.3.0	Rev A, B	Linux CentOS	
	1.0.0	16071,2	5.0, 6.3	
OVCS	1.3.0	ImageFORMULA	Linux CentOS	
		DR-X10C	5.7, 6.5	
Adjudicator	1.3.0			
Ballot Layout	1.3.0			
Manager				
Common	1.3.0			•
(Library)	1.010			
Election Manager	1.3.0			
Election Server	1.3.0			
OCS Installer	1.3.0			
Regkey Builder	1.3.0			
Software Server	1.3.0			
Tabulator	1.3.0			
Tabulator Client				
Tabulator Client Tabulator	1.3.0			
	1.3.0			
Reports	100			
OVCS	1.3.0			
Application	100			
OVI Firmware	1.3.0			
OVO Firmware	1.3.0			
Scripter	1.3.0			
Validator	1.3.0			
Logger (Library)	1.3.0			
COTS Components				
CentOS Linux	5.0, 5.7, 6.3, 6.5			
Java JRE +	1.6.0_02			
Unlimited				
Cryptographic				
Extension				
Apache Tomcat	6.0.13			
Application				
Server				
MySQL Database	5.0.45-7, 5.1.71-1			
JasperReports	2.0.5			
Desktop for non-		Dell OptiPlex		
redundant				
solutions				
Desktop for		Dell Precision		
redundant				
solutions				
Canon Scanner		Canon DR-X10C		
Transport Media		STEC- Industrial		
		Grade	18.7	

System Component	Software or Firmware Version	Hardware Version	Operating System or COTS	Comments
Laptop		Dell Latitude	COTS	

System Limitations

This table depicts the limits the system has been tested and certified to meet.

Characteristic	Limiting Component	Limit	Comment
Maximum Elections	BLM	8	
Maximum Precincts	BLM	2000	
Maximum Splits per Precinct	BLM	9	
Maximum Districts	BLM	400	
Maximum Contests per District	BLM	20	
Maximum Parties	BLM	24	
Maximum Parties in primary	BLM	12	
Maximum Parties w/ Straight Ticket	BLM	12	
Maximum District types	BLM	25	
Maximum Languages	BLM	15	
Maximum Ballot styles per Election	BLM	400	
Maximum Contests per Election	BLM	150	
Maximum Measures per Election	BLM	30	
Maximum Instruction Blocks per Election	BLM	5	
Maximum Headers per Election	BLM	50	
Maximum Candidates per Contest	BLM	120	
Maximum Ballot Pages	BLM	3	
Maximum Votes for N of M	BLM	25	
Maximum Ballot sheets per OVO	BLM	5000	
Maximum Units simultaneously loading	BLM	20	
Maximum Precincts initialized per OVO on Election Day	BLM	30	
Maximum Precincts initialized per OVI-7/OVI-VC on Election Day	BLM	2000	
Maximum Precincts initialized per OVO/OVI-7/OVI-VC in early voting	BLM	2000	
Maximum 11" Ballot positions	BLM	38 x 3	Limit
Maximum 14" Ballot positions	BLM	50 x 3	Limit
Maximum 17" Ballot positions	BLM	62 x 3	Limit
Maximum 19" Ballot positions	BLM	70 x 3	Limit

Functionality

2005 VVSG Supported Functionality Declaration

Feature/Characteristic	Yes/No	Comment
Voter Verified Paper Audit Trails		
VVPAT	No	Not applicable
Accessibility		
Forward Approach	No	
Parallel (Side) Approach	No	
Closed Primary		
Primary: Closed	Yes	
Open Primary		
Primary: Open Standard (provide definition of how supported)	Yes	A registered voter may vote in any party primary regardless of his own party affiliation
Primary: Open Blanket (provide definition of how supported)	No	
Partisan & Non-Partisan:		
Partisan & Non-Partisan: Vote for 1 of N race	Yes	
Partisan & Non-Partisan: Multi-member ("vote for N of M") board races	Yes	
Partisan & Non-Partisan: "vote for 1" race with a single candidate and write-in voting	Yes	
Partisan & Non-Partisan "vote for 1" race with no declared	Yes	
candidates and write-in voting		
Write-In Voting:		
Write-in Voting: System default is a voting position identified for write-ins.	Yes	
Write-in Voting: Without selecting a write in position.	No	
Write-in: With No Declared Candidates	Yes	
Write-in: Identification of write-ins for resolution at central count	Yes	
Primary Presidential Delegation Nominations & Slates:		
Primary Presidential Delegation Nominations: Displayed delegate slates for each presidential party	Yes	
Slate & Group Voting: one selection votes the slate.	No	
Ballot Rotation:		
Rotation of Names within an Office; define all supported rotation	Yes	Top to Bottom By
methods for location on the ballot and vote tabulation/reporting		Precinct grouping
Straight Party Voting:		
Straight Party: A single selection for partisan races in a general election	Yes	
Straight Party: Vote for each candidate individually	Yes	
Straight Party: Modify straight party selections with crossover votes	Yes	
Straight Party: Modify straight party selections with crossover votes Straight Party: A race without a candidate for one party		
oriaight i arty. A face without a candidate for one party	Yes	

Feature/Characteristic	Yes/No	Comment
Straight Party: Excludes a partisan contest from the straight party	V	
selection	Yes	
Cross-Party Endorsement:		
Cross party endorsements, multiple parties endorse one candidate.	No	
Split Precincts:		
Split Precincts: Multiple ballot styles	Yes	
Split Precincts: P & M system support splits with correct contests and	Vac	
ballot identification of each split	Yes	
Split Precincts: DRE matches voter to all applicable races.	No	
Split Precincts: Reporting of voter counts (# of voters) to the precinct	Vac	
split level; Reporting of vote totals is to the precinct level	Yes	
Vote N of M:		
Vote for N of M: Counts each selected candidate, if the maximum is	Voc	
not exceeded.	Yes	
Vote for N of M: Invalidates all candidates in an overvote (paper)	Yes	
Recall Issues, with options:		
Recall Issues with Options: Simple Yes/No with separate	Yes	
race/election. (Vote Yes or No Question)	res	
Recall Issues with Options: Retain is the first option, Replacement		
candidate for the second or more options (Vote 1 of M)	Yes	
Recall Issues with Options: Two contests with access to a second		
contest conditional upon a specific vote in contest one. (Must vote	No	
Yes to vote in 2 nd contest.)		
Recall Issues with Options: Two contests with access to a second		
contest conditional upon any vote in contest one. (Must vote Yes to	No	
vote in 2 nd contest.)		
Cumulative Voting		
Cumulative Voting: Voters are permitted to cast, as many votes as		
there are seats to be filled for one or more candidates. Voters are not	No	
imited to giving only one vote to a candidate. Instead, they can put		
multiple votes on one or more candidate.		
Ranked Order Voting		
Ranked Order Voting: Voters can write in a ranked vote.	Yes	
Ranked Order Voting: A ballot stops being counting when all ranked		
choices have been eliminated		
Ranked Order Voting: A ballot with a skipped rank counts the vote	Vo-	
for the next rank.	Yes	

Feature/Characteristic	Yes/No	Comment
Ranked Order Voting: Voters rank candidates in a contest in order of		
choice. A candidate receiving a majority of the first choice votes		
wins. If no candidate receives a majority of first choice votes, the last		
place candidate is deleted, each ballot cast for the deleted candidate	Yes	
counts for the second choice candidate listed on the ballot. The		
process of eliminating the last place candidate and recounting the		
ballots continues until one candidate receives a majority of the vote		
Ranked Order Voting: A ballot with two choices ranked the same,		
stops being counted at the point of two similarly ranked choices.	Yes	
Ranked Order Voting: The total number of votes for two or more		
candidates with the least votes is less than the votes of the candidate		
with the next highest number of votes, the candidates with the least	Yes	
votes are eliminated simultaneously and their votes transferred to		
the next-ranked continuing candidate.		
Provisional or Challenged Ballots		
Provisional/Challenged Ballots: A voted provisional ballots is		
identified but not included in the tabulation, but can be added in the	Yes	
central count.		
Provisional/Challenged Ballots: A voted provisional ballots is		
included in the tabulation, but is identified and can be subtracted in	No	
the central count		
Provisional/Challenged Ballots: Provisional ballots maintain the		
secrecy of the ballot.	Yes	
Overvotes (must support for specific type of voting system)		
Overvotes: P & M: Overvote invalidates the vote. Define how		Supported. Overvotes
overvotes are counted.		are tabulated for each
	Yes	office as an Over /
		Under Vote report in
		Vote Tabulation
Overvotes: DRE: Prevented from or requires correction of		
overvoting.	No	
Overvotes: If a system does not prevent overvotes, it must count		
them. Define how overvotes are counted.	No	
Overvotes: DRE systems that provide a method to data enter		
absentee votes must account for overvotes.	No	
Undervotes		
Undervotes: System counts undervotes cast for accounting purposes		Supported.
,		Undervotes are
		tabulated for each
	Yes	office as an Over /
		Under Vote report in
		Vote Tabulation
		voic rabulation

Feature/Characteristic	Yes/No	Comment
Blank Ballots		
Totally Blank Ballots: Any blank ballot alert is tested.	Yes	
Totally Blank Ballots: If blank ballots are not immediately processed,	ν.	
there must be a provision to recognize and accept them	Yes	
Totally Blank Ballots: If operators can access a blank ballot, there	7/	
must be a provision for resolution.	Yes	
Display/Printing Multi-Lingual Ballots	Aude	encelly and bress from
Spanish	Yes	
Alaska Native (Other Group specified)	No	
Aleut	No	
Athabascan	No	
Eskimo	No	
Native (Other Group Specified)	No	
Chinese	Yes	
Filipino	Yes	
Japanese	Yes	
Korean	Yes	
Vietnamese	Yes	
Apache	No	
Cent/So American	No	
Cheyenne	No	
Chickasaw	No	
Choctaw	No	
Navajo	No	
Other Tribe-Specified	No	
Paiute	No	
Pueblo	No	
Seminole	No	
Shoshone	No	
Sioux	No	
Tohono O'Odham	No	
Tribe not specified	No	
Ute	No	
Yaqui	No	
Yuman	No	
Demonstrates the voting system capability to handle the designated	140	
language groups		
Default language (English)	Yes	
Secondary language using a Western European font	Yes	
Ideographic language (such as Chinese or Korean),	Yes	
Non-written languages requiring audio support	Yes	

ALLAMAKEE COUNTY AUDITOR

Denise Beyer, Auditor Chris Gavin, First Deputy 110 Allamakee St, Waukon, IA 52172 PH: 563-568-3522 Fax: 563-568-4978 Email: dbever@co.allamakee.ia.us

Kelly Ryan-Urell, Claims Clerk Janel Egiseder, Payroll Clerk

May 21, 2015

To Whom It May Concern:

Allamakee County, Iowa owns the OpenElect Voting System, manufactured by Unisyn Voting Solutions, Inc, which is supported by Henry M. Adkins and Sons, Inc. We purchased the equipment in 2013 and have been very happy with the training and support we receive, as well as how the equipment functions and the features that it offers.

We first used the OpenElect Voting System in September 2013 and have used the equipment a total of 5 times with very successful results, including the November 2014 General Election. Most recently, we successfully used the newest software version, Version 1.3, for a Special election on May 5, 2015.

From public testing of our OpenElect Voting equipment to training of poll workers and on to the polling sites, we are very pleased with the equipment. Along with the equipment, Henry M. Adkins and Sons staff have proven to be very knowledgeable and experienced, able to answer any question that comes up.

Please feel free to contact me if you need anything further.

Regards,

Denise Beyer

Allamakee County Auditor and Commissioner of Elections

Denise Abeger



WINNEBAGO COUNTY IOWA

KARLA WEISS – Auditor

Karla.Weiss@winnebagocountyiowa.gov

May 20, 2015

Dear Election Official,

Winnebago County, Iowa located in Forest City, Iowa has used the OpenElect Voting System manufactured by Unisyn Voting Solutions, Inc; and installed and supported by Henry M. Adkins & Sons, Inc. Henry M. Adkins & Sons has provided training and election support services for our county for more than 10 years. Their support and ballot printing services has been consistently of the highest quality. Their staff is very experienced and knowledgeable of Iowa election laws and practices.

We purchased the new OpenElect Optical Scan Voting system and software through Adkins during 2012 and have utilized the system quite successfully over 10 elections since that time including the Primary and General Elections in 2014.

The system has performed flawlessly and eliminates many of the issues we continued to experience with our former optical scan system including a touch screen voting unit for the ADA voter. Election preparation and post-election auditing is much simpler and less time consuming.

The voters and election poll workers have taken to the new system quite seamlessly. We are extremely pleased we made the switch to the new system.

Please feel free to contact me at any time.

Sincerely,

Karla Weiss

Auditor and Commissioner of Elections

- Jane Langerud - Deputy Auditor • Kris Wempen - Finance Deputy • Chelsey Ostrander - Election Clerk



July 13, 2015

To: Tennessee State Election Commission c/o Mark Goins, Coordinator of Elections for State of Tennessee Office of Tennessee Secretary of State Tre Hargett **Elections Division** Wm R.. Snodgrass - Tennessee Tower. 7th Floor 312 Rosa L. Parks Ave Nashville, TN 37243

Dear State Election Commissioners:

MicroVote General Corporation has been a trusted vendor in the State of Tennessee for over two decades and currently supports 45 Tennessee counties which utilize our Infinity Voting System. Historically, MicroVote has successfully introduced two unique voting systems and to each multiple upgrades and revisions. We view ourselves as a cooperative partner with both state and county-level election officials assuring successful and accurate elections. We respectfully ask that our positive history in Tennessee be considered with the following suggestions regarding changes to the existing criteria in the state's voting system certification process, in particular the requirement to visit an out-ofstate jurisdiction's use of a voting system prior to in-state certification.

Without an elaborate "pass/fail" examination by highly qualified persons, the out-of-state observation renders itself to more of a tradition rather than a test of the voting system. Therefore we suggest that the bar be raised to a higher level that incorporates the most qualified experts, the federal testing laboratories. Near the final stages of laboratory certification examination is a test known as the "end-to-end regressive test". In simplest terms, it is the point when the laboratory takes all the components of the voting system (documentation, manuals, software, firmware, and hardware) and assembles all components "independent" of the vendor and executes an election. Even though this test is completed prior to the completion of the final report and Certificate of Conformance, it could be repeated for the sake of State Election Commission (SEC) with the cost being absorbed by the vendor. (If this suggestion is adopted, the observation could take place prior to submission of the report, thus simplifying future Tennessee certifications). We respectfully suggest this approach because it removes vendor influence, allows the state's examination board the opportunity to work directly with highly trained experts, and demonstrate Tennessee specific elections (of their choice) with the volume of votes and offices that would satisfy the commission. Since all federally certified laboratories are outside of Tennessee (MicroVote uses NTS in Huntsville, Alabama), this higher-level examination remains out-of-state.



MicroVote believes that incorporating SEC observation of the higher-level "end-to-end regressive test" with Tennessee specific election data exceeds current certification requirements since multiple election types can be determined and examined by the SEC independent of the vendor. However, if a field test is still required in conjunction with the observation of a Tennessee specific "end-to-end regressive test", MicroVote suggests an in-state observation of an actual Election Day performance would be more valuable to the SEC.

Again, we at MicroVote respectfully submit these suggestions and request that they be considered with a degree of urgency. We currently have an existing customer who lost their voting system due to a fire and have multiple other counties seeking an upgrade of their voting system to the latest VVSG standard prior to the 2016 Presidential Election cycle.

Sincerely,

William Whitehead

MicroVote Project Manager, State of Tennessee

Tre Hargett, Secretary of State

State of Tennessee





Division of Elections 312 Rosa L. Parks Avenue, 7th Floor Nashville, Tennessee 37243-0305

Mark Goins Coordinator of Elections 615-741-7956 Mark.Goins@tn.gov

July 7, 2015

Joseph H. Johnston P.O. Box 120874 Acklen Station Nashville, TN 37212

Dear Mr. Johnson,

This letter is to advise you the State Election Commission will review your administrative complaint at their meeting on July 13, 2015. I have attached the meeting notice and agenda for your review.

If you have any questions regarding the meeting location and time you may contact Kathy Summers at (615) 253-4585.

Please contact me should you have additional questions.

Sincerely,

Mark K. Goins

State Coordinator of Elections

Attachments: State Election Commission Meeting Notice

State Election Commission Agenda

MKG:krs

Before the Tennessee State Election Commission

Joseph H. Johnston, Write-In Candidate)	2016 JUL 10 FM 2: 46
for Councilman at Large, Metropolitan)	No
Nashville, Davidson County)	LLECTICAS

MEMORANDUM IN SUPPORT OF PETITION FOR DECLARATORY ORDER

Your Petitioner is a registered voter in Davidson County, Tennessee, and has qualified as a write-in candidate under Tenn. Code Ann §2-7-133(i) for the office of councilman at large in the August 6, 2015 general election. Your Petitioner is therefore an "affected person" within the scope of the Uniform Administrative Procedures Act, Tenn. Code Ann. §4-5-223 as it relates to the statutory restrictions on the rights of voters to cast ballots for write-in candidates.

On May 18, 2015, your Petitioner filed this Petition for Declaratory Order with the Tennessee State Election Commission, with a copy served on the Davidson County Election Commission through the Metropolitan Legal Department.

I. The Issue

The issue is whether the State Election Commission and the Davidson County Election Commission have a statutory duty to educate the public on the general assembly's mandate that limits the right to vote for a write-in candidate to those write-in candidates who have pre-registered with the county election commission no later than fifty (50) days before the election in question, and whether there is a statutory duty to inform the general voting public of the names of those write-in candidates who have complied with the requirements of Tenn. Code Ann. §2-7-133(i) to post their names at every polling place.

II. The Law

Tenn. Code Ann. §2-7-111(a) provides in part that the officer of elections shall have "voting instructions" . . . "placed in conspicuous positions inside the polling place for the use of voters." In addition, Tenn. Code Ann. §2-12-201(a)(12) provides that election administrators have duties, which include:

"Having knowledge of all current laws pertaining to the election process and any changes mandated by the general assembly, and apprising the election commission, office staff, candidates, the press and the public I general of this information"

At present the general voting population of Davidson County is not aware that casting a vote for a write-in candidate who has not pre-registered with the County Election Commission fifty (50) days before the election is a nullity and is not included in the total number of votes cast for that particular office.

The restrictions on the right to cast write-in votes contained in Tenn. Code Ann. §2-7-133(i) apply state wide and therefore the Davidson County Election Commission has already determined that it has no authority to publish information regarding the existence of this restriction on the right to vote, much less on how it applies in Davidson County elections. [See Transcript, Sept 10, 2014].

Because of this lack of knowledge among the general voting public about the restrictions on their right to cast votes for the write-in candidates, they are denied the right to cast an informed vote and may unwittingly cast a vote that is a "nullity."

Thus, the Tennessee State Election Commission has a statutory duty to inform the general public about the restrictions on their right to cast votes for write-in candidates. Failure to educate the public about these changes mandated by the general assembly constitutes a breach of this statutory duty and amounts to a constructive fraud on those

voters who unwittingly cast votes for unqualified write-in candidates. Furthermore, this statutory duty includes a duty to inform the voting public of the names of those qualified write-in candidates who have pre-registered with the county election commission and the office which they are seeking so that the voters can make an informed decision if they choose to cast a write-in vote.

III. Remedy Sought

Petitioner requests this Commission to issue a declaratory order under Tenn. Code Ann. §4-5-223 to rule on the applicability of Tenn. Code Ann. 2-7-133(i) to elections state wide in general and in Davidson County in particular; that this Declaratory Order be posted in every polling place across Tennessee, including Davidson County; that the names of qualified write-in candidates for election office be posted and placed in conspicuous places inside polling places for use of voters as required by Tenn. Code Ann. §2-7-111(a) and §2-12-201(a)(12).

If the Commission accepts the Petition, it must convene a contested case hearing pursuant to Tenn. Code Ann. §4-5-223(a)(1) and issue a declaratory order subject to review in the Chancery Court of Davidson County in the manner provided for review of contested cases. Notice shall be given to the Davidson County Election Commission pursuant to Tenn. Code Ann §4-5-224, supra.

IV. Procedures

Tenn. Code Ann. §4-5-223 provides as follows:

- (a) Any affected person may petition an agency for a declaratory order as to validity or applicability of a statute, rule or order within the primary jurisdiction of the agency. The agency shall:
- (1) Convene a contested case hearing pursuant to this chapter and issue a declaratory order, which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by

statute, in the manner provided for the review of decisions in contested cases; or

- (2) Refuse to issue a declaratory order, in which event the person petitioning the agency for a declaratory order may apply for a declaratory judgment as provided in §4-5-225.
- (b) A declaratory order shall be binding between the agency and parties on the state of facts alleged in the petition unless it is altered or set aside by the agency or a court in a proper proceeding.
- (c) If an agency has not set a petition for a declaratory order for a contested case hearing within sixty (60) days after receipt of the petition, the agency shall be deemed to have denied the petition and to have refused to issue a declaratory order.
- (d) Each agency shall prescribe by rule the form of such petitions and the procedure for their submission, consideration and disposition.

Tenn. Code Ann. §4-5-224 provides in pertinent part:

- (a) Whenever an agency is petitioned for a declaratory order, that agency shall:
- (1) Submit electronically to the secretary of state the notice of hearing for publication in the notice section of the administrative register web site and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative web site; and
- (2) Take such other steps as it deems necessary to convey effective notice to other agencies and professional associations that are likely to have an interest in the declaratory order proceedings.
- (b) Such notices shall include specific information relating to the declaratory order request, including, but not limited to:
- (1) Name of petitioner and an explanation of whom such person or entity purports to represent;
- (2) A summary of the relief requested, including the specific nature of the requested order, and the conclusion or conclusions the petitioner requests that the agency reach following the declaratory proceeding; and
- (3) A detailed outline and summary of the statutes or regulations that the agency is called upon to interpret or upon which it is to rule.
- (c) Notwithstanding §4-5-223(a)-(c), except in the case of an emergency proceeding that meets the conditions of §4-5-208, no declaratory order proceeding that calls for a title 63 agency to rule on the meaning of any provision of a licensee's professional licensing act may be set until at least forty-five (45) days after the notice required by this section has been filed with the secretary of state.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served upon the following on this / value day of July, 2015 via hand delivery:

Nicki Eke, Esq. Metro Legal Department Metropolitan Courthouse Nashville, Tennessee 37201

Jim DeLanis, Esq.
Tricia Hearzfeld, Esq.
Jennifer Lawson, Esq.
A.J. Stalling, Esq.
Kent Wall, Administrator
Davidson County Election Commission
800 2nd Avenue South
Nashville, Tennessee 37210

Mr. Ronald Buchanan Chairman, Davidson County Election Commission 800 2nd Avenue South Nashville, Tennessee 37210

Joseph H. Johnston

rent. of elections

n Comm'n, -IS 664 (Tenn. Sevier County 7, 2008 Tenn. uly 31, 2008).

7), appeal de-L TXIS 831

d with a ballot ch length that n five minutes nutes or more legal would be for something control nor the lence that any it did so for an son other than t v. Anderson ₩.3d 683, 2009 App. Feb. 27,

US 664 (Tenn.

votes cast was 1 County Elec-007 Tenn. App. pr. 13, 2007), 97, 2007 Tenn. 2007), rehear-07 Tenn. App.)7), appeal den. LEXIS 831

2-7-132. Completion of duplicate tally sheets — Certification — Final proclamation of vote.

King v. Sevier County Election Comm'n, 282 Cited:

S.W.3d 37, 2008 Tenn. App. LEXIS 443 (Tenn. Ct. App. July 31, 2008).

2-7-133. Ballots which may be counted.

(a) Only ballots provided in accordance with this title may be counted. The judges shall write "Void" on others and sign them.

(b) If the voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the voter's choice for any office to be filled or on a question, the voter's ballot shall not be counted for such office and shall be marked "Uncounted" beside the office and be signed by the judges. It shall be counted so far as it is properly marked or so far as it is possible to determine the voter's choice.

(c) If two (2) ballots are rolled up together or are folded together, they shall not be counted. The judges shall write on them "Void" and the reason and sign

(d) Any ballot marked by the voter for identification shall not be counted. The judges shall write on it "Void" and the reason and sign it. them.

(e) Ballots which are not counted shall be kept together and shall be bundled separately from the ballots which are counted.

(f) Notwithstanding any other provision of law to the contrary, a vote shall be counted if a recount is undertaken on a punchcard ballot under the following conditions:

(1) When at least two (2) corners of the chad are detached;

(3) An indentation of the chad from the stylus or other object is present

and indicates a clearly ascertainable intent of the voter to vote.

(g) Notwithstanding any other provision of law to the contrary, if a voter marks a paper or optical scan ballot with a cross, "x", checkmark or any other appropriate mark within the square, circle or oval to the right of the candidate's name, or any place within the space in which the name appears, indicating an intent to vote for that candidate, it is a vote for the candidate whose name it is opposite. Underlining or circling the candidate's name would also constitute a vote. Any apparent erasure of a mark next to the name of a candidate may not be counted as a vote for that candidate if the voter makes another mark next to the name of one (1) or more different candidates for the same office and counting of the mark would result in an excess number of votes cast for the office.

(h) If a voter casts more than one (1) vote for the same candidate for the same office, the first vote is valid and the remaining votes are invalid.

(i) Any person attempting to be elected by write-in ballots shall complete a notice requesting such person's ballots be counted in each county of the district no later than twelve o'clock (12:00) noon, prevailing time, fifty (50) days before the general election. Such person shall only have votes counted in counties where such notice was completed and timely filed. The notice shall be on a form prescribed by the coordinator of elections and shall not require signatures of

EXHIBITA

any person other than the write-in candidate requesting ballots be counted.

Section 2-8-1072-8-108 2-8-111. 2-8-113

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2-8-10

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The coordinator of elections shall distribute such form to the county election commissions. Upon timely receiving the notice required by this subsection (i), the county election commission shall promptly inform the state coordinator of elections, the registry of election finance, as well as all other candidates participating in the affected election. A write-in candidate may withdraw the notice by filing a letter of withdrawal in the same manner as the original notice was filed no later than the fifth day before the election.

History.

Acts 1972, ch. 740, § 1; T.C.A., § 2-733; Acts 2001, ch. 413, § 1; 2001, ch. 465, §§ 2-4; 2003, ch. 307, § 4; 2005, ch. 302, § 1; 2007, ch. 125, § 6; 2008, ch. 928, § 15; 2009, ch. 218, § 6.

Amendments.

The 2005 amendment added the last sen-

tence in (i). The 2007 amendment substituted "fifty (50) days before the general election" for "twenty (20) days before the general election" at the end of the first sentence in (i).

The 2008 amendment added the last sen-

tence of (i). The 2009 amendment inserted "twelve o'clock (12:00) noon, prevailing time," in the first sentence of (i).

Acts 2005, ch. 302, § 3. July 1, 2005. Acts 2007, ch. 125, § 10. July 1, 2007. Acts 2008, ch. 928, § 18. July 1, 2008. Acts 2009, ch. 218, § 10. July 1, 2009.

Attorney General Opinions.

Notice requirement for write-in candidates is defensible, OAG constitutionally (2/12/04).

Cited:

King v. Sevier County Election Comm'n, 282 S.W.3d 37, 2008 Tenn. App. LEXIS 443 (Tenn. Ct. App. July 31, 2008).

Collateral References.

Challenges to Write-in Ballots and Certification of Write-in Candidates. 75 A.L.R.6th 311.

2-7-137. Items to be locked in ballot box after certification of the completed tally sheets.

Section to Section References. This section is referred to in § 2-7-139.

2-7-140. Procedures for certain inactive voters.

Section to Section References. This section is referred to in §§ 2-2-106,

(2-109, 2-2-129, 2-2-130, 2-6-109, 2-6-202, 5 112, 2-7-115.

2-1-141. Procedures for certain active voters.

ection to Section References. This section is referred to in § 2-7-112.

2-7-142. [Repéaled.]

Compiler's Notes. Former § 2,1-142 (Acts 2001, ch/465, § 5), concerning notices for polling places utilizing a punchcard system of voting, was repealed by Acts 2009, cp. 218, § 7, effective July 1, 2009.

CHAPTER 8

DETERMINATION OF RESULTS

2-8-101. Meeting of county election commission following election. 2-8-104. Comparing votes from tally tapes to tabulated election results. plaint, the contestant failed to demonstrate that a purge of those ballots would have changed the result of the election of rendered its outcome uncertain. Therefore, the court had no choice but to conclude that the chancellor correctly dismissed the complaint for failure to state a claim. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

The allegations of the complaint were insufficient to show, district-wide, that the election was so permeated by fraud or illegality as to render the results incurably uncertain or to thwart the will of the electorate. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

Collateral References. Conduct of election

2-7-116. Examination and final preparation of machines. — (a) The officer shall give the sealed voting machine keys to the judges to prepare the machines for voting. The envelope containing the keys may not be opened until machines have examined it to see that it has not been opened and that the the judges have examined it to see that it has not been opened and that the number registered on the protective counter and the number on the seal with which the machine is sealed correspond with the numbers written on the envelope containing the keys.

envelope containing the keys.

(b) If the envelope has been torn open, or if the numbers do not correspond, or if any other discrepancy is found, the judges shall immediately inform the voting machine technician of the facts. The voting machine technician or the technician's assistant shall promptly examine the machine and certify whether it is proporty examine.

it is properly arranged.

(c) If the number on the seal and the protective counter are found to agree with the numbers on the envelope, the judges shall then open the door concealing the counters and carefully examine every counter to see that it registers zero (000) and shall also allow the watchers to examine them. The registers shall then sign a certificate showing the delivery of the keys in a sealed judges shall then sign a certificate showing the delivery of the keys in a sealed envelope, the number on the seal, the number registered on the protective counter, that all the counters are set at zero (000), and that the ballot labels are properly placed in the machine.

properly placed in the machine.

(d) If any counter is found not to register at zero (000) and if it is impracticable for the voting machine technician to arrive in time to adjust the counters before the time set for opening the polls, the judges shall immediately make a written statement of the designating letter and number, if any, of such counter, together with the number registered thereon, and shall sign and post the statement on the wall of the polling place where it shall remain throughout the election day. In filling out the tally sheets, they shall subtract such number from the number then registered on such counter. [Acts 1972, ch. 740, § 1; T.C.A., § 2-710.]

Collateral References. Conduct of election

2-7-111. Posting of sample ballots and instructions — Arrangement of polling place — Restrictions. — (a) The officer of elections shall have the sample ballots, voting instructions, and other materials which are to be posted, placed in conspicuous positions inside the polling place for the use of voters. The officer shall measure off one hundred feet (100') from the entrances to the

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building in which the election is to be held and place boundary signs at that

(b)(1) Within the appropriate boundary as established in subsection (a), and distance. the building in which the polling place is located, the display of campaign posters, signs or other campaign materials, distribution of campaign materials, and solicitation of votes for or against any person, political party, or position on a question are prohibited. No campaign posters, signs or other campaign literature may be displayed on or in any building in which a polling

(2) Except in a county with a population of not less than eight hundred place is located. twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census, a solicitation or collection for any cause is prohibited. This does not include the normal activities that may occur at such polling place such as a church, school, grocery, etc.

(3) Nothing in this section shall be construed to prohibit any person from wearing a button, cap, hat, pin, shirt, or other article of clothing outside the established boundary but on the property where the polling place is located.

(c) The officer of elections shall have each official wear a badge with that official's name and official title.

(d) With the exception of counties having a metropolitan form of government, any county having a population over six hundred thousand (600,000) according to the 1970 federal census or any subsequent federal census, and counties having a population of between two hundred fifty thousand (250,000) and two hundred sixty thousand (260,000) by the 1970 census, any county may, by private act, extend the one hundred foot (100') boundary provided in this section. [Acts 1972, ch. 740, § 1; T.C.A., § 2-711; Acts 1980, ch. 543, §§ 1, 2; 1987, ch. 362, §§ 1, 2, 4; 1993, ch. 465, §§ 1, 2; 1993, ch. 518, §§ 11, 21; 1994, ch. 582, § 1; 2003, ch. 307, § 6.]

Compiler's Notes. This section was held unconstitutional in Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990). See heading "Constitutionality" under Notes to Decisions. However, the decision by the Tennessee supreme court was reversed on appeal by the United States supreme court on May 26, 1992. See Burson v. Freeman, 504 U.S. 191, 112 S. Ct. 1846, 119 L.

Ed 2d 5 (1992). For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its sup-

Amendments. The 2003 amendment deleted the former last sentence in (a), which provided for counties with certain populations where the officer of elections was required to measure off three hundred feet (300') from the

entrances to the building in which the election was to be held and to place boundary signs at

that distance. Effective Dates. Acts 2003, ch. 307, § 7.

July 1, 2003 Cross-References. Violation of this section a misdemeanor, § 2-19-119.

Section to Section References. This section is referred to in §§ 2-3-108, 2-19-119.

Attorney General Opinions. Extension of boundary at polling place prohibited, OAG 97-128 (9/22/97).

The 100 foot "campaign-free" zone on election day does not extend to private property adjacent to and within 100 feet of the entrance to the polling place, OAG 02-118 (10/24/02).

NOTES TO DECISIONS

Constitutionality.

The exercise of free speech rights conflicts with another fundamental right, the right to cast a ballot in an election free from the taint of intimidation and fraud. Some restricted zone around polling places is necessary to protect that fundamental right. Given the conflict between these two rights, requiring solicitors to

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security of may use in commission

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n any county ss than eight (825,000) nor rty thousand federal census

2011. 25, 2013.

NOTES TO DECISIONS

Trial court erred in granting the city's motion Authority. for summary jungment and in denying the county election commission's motion for sum-

mary judgment in the comprission's action seeking a declaration of its rights under election statutes, T.C.A. § 2-3,001 et seq. and § 26-101 et seq., lecause the commission had the sole responsibility to designate polling locations, and it was the duty of public building authorities to make public buildings available for voting. Williamson County Election Comm'n v. Webb, — S.W.3d —, 2013 Tenn. App. LEXIS 202 (Tenn. Ct. App. Mar, 22, 2013).

2-12-117. Development of Internet based electronic filing process.

(a) Each county election commission is authorized to develop, with the advice, assistance and approval of the registry of election finance, an Internet based electronic filing process for use by candidates for local public office and all political campaign committees for a local election in such county or in the municipalities located in such county that are required to file statements and reports with such county election commission.

(6) Such system shall provide each candidate and political campaign compattee with secure access to the electronic filing system and provide safe-

guards against efforts to tamper or change the data in any way.

(c) Once the electronic filing system is completed and tested, the county election commission shall provide public notice that the system is operational and available for filers to commence use.

(d) If a county election commission decides to develop such an internet based electronic filing process, any and all costs for such development and Internet posting shall be an expenditure of such county election commission.

History. Acts 2004, ch. 898, § 1. Effective Dates. Acts 2004, ch. 898, § 2. June 8, 2004.

PART 2

REGISTRARS

2-12-201. Employment of election administrators and clerical assistants.

(a) The commission shall appoint an administrator of elections who shall be the chief administrative officer of the commission and who shall be responsible for the daily operations of the office and the execution of all elections. The duties of the administrator of elections may, upon the administrator's discretion, be performed by a designee. Such duties include, but are not limited to, the following:

(1) Employment of all office personnel; after July 1, 2011, administrators of elections may not appoint or hire, except in the event of and during an emergency, members of the county election commission, or spouses, parents, brothers, sisters or children, including in-laws of commission members or spouses, parents, brothers, sisters or children, including in-laws of the administrator of elections as deputies, clerical assistants, absentee voting deputies, machine technicians, poll officials or as members of the absentee Exhbir C counting board;

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2007 Ю7 Т (2) Preparation of the annual operating budget and presentation of such

budget to the election commission for approval; (3) Upon approval by the county election commission, presentation of the annual budget to the county commission or other legislative body for

(4) Requisition and purchase of any supplies necessary for the operation funding; of the election commission office and the conduct of all elections;

(5) Maintenance of voter registration files, campaign disclosure records,

and any other records required by this title; (6) Conducting of instruction class for poll workers or designation of

another qualified person to conduct such class; (7) Preparation of all notices for publication required by this title;

(8) Preparation and maintenance of all fiscal records necessary for the daily operation of the election commission office and all elections. This may include any requests for funding or changes in funding, if necessary, after adoption of the current fiscal budget;

(9) Compilation, maintenance and dissemination of information to the public, the candidates, the voters, the press and all inquiring parties in regard to all aspects of the electoral process on all governmental levels;

(10) Promotion of the electoral process through supplemental registrations, public functions, press releases and media advertising whenever possible;

(11) Attendance at any required seminar and other educational seminars, as funding permits, to gain knowledge beneficial to the administration of the election commission office or to the electoral process;

(12) Having knowledge of all current laws pertaining to the election process and any changes mandated by the general assembly, and apprising the election commission, office staff, candidates, the press and the public in general of this information;

(13) Assistance in the planning and implementation of any plan of apportionment or reapportionment of any governmental entity involved in

(14) The county election commissioners may not employ themselves or the electoral process; any of their spouses, parents, siblings, in-laws or children as administrator; (15) Preparation of a plan for placing precinct voting locations and

presentation of such plan to the election commission for approval;

(16) Preparation of a plan for early voting sites and presentation of such plan to the election commission for approval; and

(17) Upon request, assist the:

(A) City councils, as appropriate, for cities located in the county;

(B) County legislative body;

(D) Members of the general assembly representing the county, concerning redistricting in 2012, and thereafter every two-year period following each decennial census taken by the United States census bureau.

(b) [Deleted by 2013 amendment, effective April 25, 2013.]

BEFORE THE TENNESSEE STATE ELECTION COMMISSION

Joseph H. Johnston, Write-In Candidate)		
for Councilman at Large, Metropolitan)	No.	
Nashville, Davidson County	Ś	-	

NOTICE OF FILING CONDENSED TRASCRIPT AS PART OF ADMINISTRACTIVE RECORD

To All Counsel of Record:

Please take Notice that Petitioner Joseph H. Johnston is hereby filing a copy of a condensed transcript of an excerpt of the Davidson County Election Commission Meeting, September 10, 2014, wherein the Davidson County Election Commission considered the questions raised as to the duty to educate the public about Tenn. Code Ann. §2-7-133 and the statutory limitations imposed on the right to cast write-in votes. [Transcript attached as Exhibit A hereto].

The Davidson County Election Commission stated that it had no authority to interpret a statute that had State wide application and that these questions should be decided at the State level. [Trans. pp. 22-26].

Petitioner requests that the transcript be made part of the Administrative Record in support of his Petition for Declaratory Order whether or not Petitioner is granted an Administrative Hearing as provided by Tenn. Code Ann. §4-5-223 and §4-5-224. [See copies attached as collective Exhibit B].

Excerpt of Davidson County Election Commission Meeting September 10, 2014

> DEBRA R. CARNEY, RPR, LCR, CCR Accurate Court Reporting The Pilcher Bullding 144 Second Avenue North, Sulte 230 Nashville, TN 37201 (615) 244-DEPO or 244-3376

(The Davidson County Election Commission 2 meeting convened on September 10, 2014, at 3:00 p.m., at 3 1417 Murfreesboro Pike, Nashville, Tennessee. Said 4 meeting was conducted as follows:) MR. CHAIRMAN: Welcome to our meeting. We're 6 glad to have you. You don't just have to come and 7 complain. You can come any time you want to. MR. JOHNSTON: Thank you, Your Honor. With me 9 today is Mr. Denty Cheatham, also an attorney who had a 10 similar experience and complaint, but we appreciate the 11 opportunity to address the Commission with our concerns. MR. CHAIRMAN: Thank you. We are going to take 13 you out of order so we don't take up all of your time and 14 your attorney's expense listening to matters that are 15 mundame. So if -- if you would like to address us with 16 your complaint or your attorney, either one, I will be 17 glad to hear what you have to say, and then we will 18 discuss it. MR. JOHNSTON: Thank you, Your Honor. First of 20 all, Mr. Cheatham is not my attorney in this action. He 21 actually -- when he found out what I had done and he 22 related to a similar experience that he had had, he has 23 prepared his own complaint, which if the Commission will 24 indulge us just a few minutes, I'm sure he can explain

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1	APPEARANCES	
2	Davidson County Election Commission:	
3	•	
4	Ronald B. Buchanan, Chairman Kent Wall, Administrator Nicki Eke, Metropolitan Counsel	
5	Jim DeLanis, Commissioner	
6	Tricia Herzfeld, Commissioner Jennifer Lawson, Commissioner A. J. Starling, Commissioner	
7	ATT 25 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	
8	Also Present:	
10	Joseph Johnston, Esquire 2400 Crestmoor Road	
11	Nashville, TN 37215 - and -	
12	David Cheatham, Esquire Cheatham, Palermo & Garrett Law	
13	109 Jennings Street Franklin, TN 37064	
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25	ExhibiTA	

what we have here is an administrative 2 complaint addressed to this Commission because you have 3 jurisdiction over Davidson County. It was my experience 4 in the August 7th election that there were a number of 5 vacancies of positions that were open that only had one 6 candidate, and there was an opportunity for a write-in, 7 and there must have been at least a dozen or more. The problem that I had experienced before was 9 that I knew that if I voted for, not the candidate, but 10 wrote in somebody, unless that person had preregistered 11 with the Election Commission 50 days before the election, 12 my vote would not be counted. So I asked the officer for 13 the poll if there was a list of qualified candidates who 14 had, in fact, complied with the statute. And she said, 15 "Well, I have seen the list, but I don't have a copy of 16 it." well, I was in a position where I could not make an 17 informed vote with respect to anybody that might be 18 qualified to run against those dandidates that were 19 running in the polls. One example of how this can cadse problems, 21 Judge Casey Moreland got into some difficulty, which is 22 not uncommon for judges from time to time. But it became 23 very controversial, and his -- his proble∰developed less 24 than 50 days before the election. And so even though a 25 number of people were upset with him running for

25 very briefly.

Respectfully submitted,

Joseph H. Johnston

P.O. Box 120874

Acklen Station Nashville, Tennessee 37212

(615) 947-6363

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served upon the following on this ______day of June, 2015 by first-class postage prepaid U.S. Mail:

Davidson County Election Commission c/o Metropolitan Legal Department P.O. Box 196300 Nashville, Tennessee 37219

oseph H. Johnsto

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1 re-election, he was unopposed and nobody could run
2 against him because they hadn't qualified under this
3 50-day rule.

50 what I have asked the Commission to consider 5 doing is to direct the administrator here to do two 6 things. One is to post instructions for -- at every 7 polling place explaining the significance of the statute 8 that regulates the write-in votes, write-in candidates. 9 And, secondly, to have a list of those candidates that 10 have qualified for various offices that are not on the 11 ballot, but at least they would have that information 12 available to them through the poll workers so that when 13 they were -- when they asked about how to do a write-in, 14 the poll workers could explain to them, "Well, you can 15 write in, but these are the only people that are 16 qualified for that."

To -- to continue to have elections without

18 that additional explanation, I would contend is really

19 deceptive and works what we call constructive fraud on -
20 on the electorate. It may not make a difference in the

21 outcome of the election generally, but, occasionally, you

22 are going to have votes that are so close that people

23 voting for a write-in, not knowing that their votes won't

24 be counted at all, reduces the total number of votes that

25 will be counted. And in a very close election, that

1 I had served on the democratic executive committee, been 2 elected to it, 1974, 1980, 1984 and -- and all up to 3 1992. In '92 I said -- I think a friend of mine wanted 4 to run, a younger attorney said he wanted to run. I 5 said, "well, I won't run. I will let you run for it." 6 And I dropped out, and I have been dropped out since. But when I saw -- in 2012 I saw the ballot. It 8 indicated nobody had qualified for committeeman or 9 committeewoman from the 25th district. So I wrote -- I 10 saw that I could type in a name, write in a vote. So I 11 typed my name in. I type my wife's name in as 12 committeewoman since I thought there was no candidate for 13 that, and I never heard anything more. And I thought, 14 well, maybe I didn't get enough votes. Maybe somebody 15 else got written in more. I hadn't thought a thing about 16 it after that.

1 could make a difference.

So I appreciate your -- your listening to this
complaint. And the easiest thing to do would be just to
direct the administrator of elections to just follow the
statute and provide the instructions and list for the
next election. I would like to defer to Mr. Cheatham for
a few minutes, and he can explain his concerns.

MR. CHEATHAM: I just want to say this, that

6 next election. I would like to defer to Mr. Cheatham for 7 a few minutes, and he can explain his concerns.

8 MR. CHEATHAM: I just want to say this, that 9 this is something I became aware of, I think, Monday 10 because I just got back from vacation. I met with Joe. 11 He told me about it. It was a light to me because I 12 didn't understand -- I didn't know we had this write-in 13 law that had been written, I understand, by the 14 legislature in 2003 that says that if you -- it changes 15 the law. I mean, I am 72 years old, and I always 16 understood that the purpose of that write-in was where 17 somebody had not qualified to run for whatever reason, 18 you could vote for them by casting a write-in ballot. 19 But this statute that the legislature passed in 20 2003 changes all this in that now no write-in vote is 21 counted unless you have registered 50 days before the 22 election as a write-in candidate. And so if you vote for

23 somebody as a write-in -- in 2012, the 2012 primary, I 24 went, I looked through the ballot and when I got down to

25 the bottom, I got to the democratic executive committee.

1 I don't know whether anybody qualified for that.

But it was strange to me because the way this 3 law works, if you -- if you qualify -- say there is an 4 office nobody is qualified for like these committee 5 positions. You can go to the register's office, register 6 as a qualified write-in vote, and you can vote for 7 yourself and get elected and nobody can defeat you 8 because if you are the only qualified write-in person, 9 that one vote counts. Any write-in votes for anybody 10 else don't even count. So somebody could get 10,000 11 votes, write-in votes, and none of them would count. And 12 that one person who registered would get his one vote and 13 win. so it's a sham election the way this thing works. And then in addition to that, as I understand 15 it, the Commission takes the position that they don't 16 have any duty to inform the voters as to who 15 17 qualified. Well, that makes it even worse because if you 18 don't even know who is qualified, if you go to:the polls 19 and somebody has qualified as a write-in candidate so 20 that you know you can vote for that person and it will be 21 counted, then -- then you ought to be able to do that if 22 you want to do it. But you can't if they are not 23 informed -- if you are not informed, and you won't be 24 informed.

In other words, you have got two classes of

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1 qualified voters here. One is the ones that are getting
2 the petition, 50 signatures or 25 signatures, turn it in,
3 get qualified, get on the ballot. Then there is this
4 other stealth candidate who's on the ballot who's really
5 qualified because he's registered, but he is not on the
6 ballot, and the voters don't even know he exists. They
7 don't even know they can vote for him.
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So I think the Commission, of course, doesn't 9 have any authority as far as this law is concerned. I 10 mean, to me, it ought to be declared unconstitutional 11 because it makes for sham elections. And, again, it goes

12 against what we've always understood to be a write-in 13 candidate. In other words, what is a write-in? A write-in 15 is somebody who you write in who didn't qualify as a 16 voter -- I mean, as a candidate for whatever reason 17 previously. And -- and so, you know, now there is only 18 one qualified write -- there is only -- if you register, 19 then you are a qualified write-in voter [sic], but nobody 20 else is. So you have got a different class. Again, 21 you've got a gualified voter -- I mean, qualified 22 candidate who qualified by registering, and the voters 23 don't even know he exists. They don't even know that 24 they can vote for him.

So -- so at the very least, the Commission

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1 you can't now unless they -- somebody has registered as a
2 write-in candidate. And so this is something I think the
3 Commission should address. I prepared an administrative
4 complaint, but I didn't get it ready in time to file.
5 I'll be happy to file it.
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MR. CHAIRMAN: That's fine. I don't think it 7 needs to go to that level just as long as you give us a 8 written, you know, complaint is what it is. I don't 9 think it has any more significance if it's a letter or in 10 the form of a legal pleading, but we -- let me just 11 respond first, and then I'll open it up to the other 12 commissioners. We are obligated to follow state law, 13 whether we agree with it or not. So in terms of 14 qualifying for write-in candidates and that type thing, 15 our hands are bound on that. We have got to comply with 16 state law.

Now, that may be something that you all want to 17 18 challenge the state law to have it declared 19 unconstitutional. And if you all want to do that, you 20 know, I am not going to encourage you, but I'm not going 21 to discourage you either. That's your right. But we, as 22 the Commission here in Davidson County, what are your 23 suggestions that we can do other than disregard state 24 law? 25

MR. CHEATHAM: Well, our suggestion is that you

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1 ought to educate the voters on that -- that there is --
2 you know, that only a person who is registered can -- can
3 cast a -- you can only cast a vote for somebody who is
4 registered as a write-in voter, and all others will not
5 be counted because you have got, like I say, machines
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6 that make it easy to write somebody's name. You just 7 type the name in, the way the machine -- the way the 8 ballot is in the machine. But as I say, you are not told that's not going 10 to count, and you are not told that you could make a vote 11 for somebody that would count. So I think that the 12 public should be informed and the voters should be 13 informed. Otherwise, we are going to have sham 14 elections. We may already have had some, as far as I 15 know, for this office. I mean, somebody could have 16 qualified. I don't know whether they did or not. If 17 they qualified for committeeman by registering, as I say, 18 they could get elected just by voting for themselves 19 because, again, nobody else could be voted for. Now, Mr. Johnston has also pointed out the 21 other thing is that in a case where a voter -- where a 22 candidate is unopposed, if you don't like that candidate, 23 you want to vote against that candidate, in the past, you 24 could vote, cast a write-in vote against him and just

25 register your disapproval if you disapprove of him. But

1 make a duty -- make an effort to inform the voters by 2 having available the list of, say, qualified write-in 3 candidates at the polls and possibly tell them that under 4 state law, they cannot vote -- they cannot write -- their 5 write-in votes will not count unless the person is 6 registered.

MR. CHAIRMAN: I had a fairly long conversation 8 this afternoon with Mark Goins, the State election 9 coordinator, about that, and they are very sensitive 10 about any of our poll workers saying anything to the 11 voters that might indicate a preference to vote for a 12 write-in candidate or democratic or republican or 13 independent or libertarian or anybody else. So we have 14 basically instructed poll workers, "You can't talk to the 15 voters in terms of who the candidates are or what" -- you 16 know, anything like that. That's the voters' obligation 17 to educate himself before he goes to the polls. so we are handicapped in that regard also as 18 19 trying to say anything inside. If you go outside the

20 100-yard boundary on the campaign and everything, it's a 21 different situation. But inside that room is a 22 sanctuary. MR. CHEATHAM: I know this, Mr. Johnston has

24 said that he interpreted the statute to say that you do 25 have an obligation to inform on this matter.

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MR. JOHNSTON: Well, it might be helpful if the
  2 Commission were to publish educational materials about
  3 write-in votes and write-in candidates and have that
  4 available at the Commission offices and before the
  5 election, certainly 50 days before the election, so that
 6 the persons who might be considering making themselves a
 7 write-in candidate would know what the law is. That
 8 wouldn't have -- I don't think violate your rules about
 9 polling inside the poll place. But also, the large
10 majority of the public doesn't realize this statute even
11 exists, so they are just typing in a name and it's a
12 nullity. To let it go on without question, I think is --
13 is not following the statute, and I would encourage you
14 to take a second look.
             MR. CHAIRMAN: All right. I'm going to open it
15
16 up to the commissioners. Commissioner Tricia.
             COMMISSIONER HERZFELD: Tricia? Tricia, why
18 don't you ask your question.
             I just have a question about this
20 administrative complaint versus a previous lawsuit that
21 was filed against this Commission for the same
22 generalized ideas. And it looks like in that previous
23 opinion from the Court of Appeals -- that appears to have
24 not been appealed to the Tennessee Supreme Court -- is
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25 that the Court of Appeals already dealt with this issue

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1 fraudulent result, which is what I would contend you have
 2 here. You have to have a representation that is wrong or
 3 an omission that is wrong that is justifiably relied upon
 4 by the plaintiff to his detriment. And what we have here
 5 is -- and there has to be a duty. There has to be a duty
 6 that was breached which resulted in this -- in this harm.
             COMMISSIONER HERZFELD: I'm sorry to interrupt.
 8 so is it your allegation that the duty is for us to post
 9 those names?
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             MR. JOHNSTON: Yes.
             COMMISSIONER HERZFELD: Just to short-circuit
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12 that a little bit.
            MR. JOHNSTON: Okay.
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             COMMISSIONER HERZFELD: So I guess my question
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15 is that the Court of Appeals specifically found that they
16 reject the notion that the Davidson County Election
17 Commission has that duty. So if that's the underlying
18 basis for your claim of fraud, are you asking us to make
19 a decision that is opposite that of what the Court of
20 Appeals has already found?
            MR. JOHNSTON: The Court of Appeals said that
22 they have searched the entire Code and could not find any
23 language creating a duty to educate the public. What I
24 have done in the attachment to the petition is to
25 highlight those sections of the Code that were.
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1 square on. So I guess I am either reading your 2 administrative complaint wrong or is there a difference 3 between that opinion and what it is you are asking for 4 now? 5 MR. JOHNSTON: Yes. COMMISSIONER HERZFELD: What is it? MR. JOHNSTON: The -- first of all, the lawsuit 8 that challenged the constitutionality of the statute is 9 pending before the Tennessee Supreme Court under Rule 11 10 application --11 COMMISSIONER HERZFELD: So the decision hasn't 12 been granted yet? MR. JOHNSTON: It has not been granted. Now, 14 with respect to the decision of the Court of Appeals, 15 they addressed two issues. One was, was the statute 16 unconstitutional on its face. And they said, no, it's 17 not unconstitutional on its face. Then they said -- then 18 the second question was, was it unconstitutional as 19 applied. And they said, no, it's not unconstitutional as 20 applied. What I have raised in this petition is not a 21 constitutional question. It's a question of constructive 22 fraud, which is a State claim independent of any 23 constitutional issue. Now, for a constructive fraud to occur -- and 25 this does not require intent -- it can -- it just has a

1 obviously, overlooked by the Court of Appeals. So in 2 light of the fact that the black letter law says you do 3 this, you do have a duty, I think you don't have to pay 4 that much attention to the Court of Appeals because they 5 were dealing with constitutional issues. This is a 6 constructive fraud issue. COMMISSIONER HERZFELD: So your position is 8 they missed something, and you found other duties that 9 they just didn't find? MR. JOHNSTON: Yes. And if you look at the law 11 that is cited in the administrative complaint -- and 12 copies of which are attached as Collective Exhibit C to 13 the complaint -- you will find underlined there the duty 14 to educate the public, inform the publication 15 laws. I don't know how much clearer you can be than 16 that. MR. CHAIRMAN: All right. Excuse me. Are 18 you --COMMISSIONER HERZFELD: I'm finished. COMMISSIONER LAWSON: The one sentence that 21 jumped out at me in the opinion was, "We_reject the 22 notion that the Election Commission has a duty to post 23 the notice that Mr. Johnston suggests." So the Court of 24 Appeals has said that the Election Commission does not

25 have a duty to post the notice that you would like to

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1 have posted.
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- MR. JOHNSTON: There are two notices, and I'm 3 not sure which notice the Court was talking about. The 4 first notice is advising the public what the law is with 5 respect to write-in candidates. Okay. The second notice 6 was requesting a notice of those persons who had, in 7 fact, qualified for write-ins. Now, if they are talking 8 about the second one, that doesn't preclude the 9 Commission from acting on the first one.
- COMMISSIONER LAWSON: I believe the Court also 10 11 held that, "It is necessary for a write-in candidate to 12 publicize and garner support for his or her candidacy 13 just as it is for a candidate who has filed a qualifying 14 petition and is identified on the printed ballot."
- So the Court of Appeals has held, whether it 15 16 was an actual holding or whether it was dicta, that 17 Tennessee state law says a write-in candidate's duty is 18 to inform the public and to garner support based upon 19 that candidate's activities.
- 20 MR. JOHNSTON: The statute doesn't say that. COMMISSIONER LAWSON: Would you agree that the 21 22 Court of Appeals opinion says that?
- MR. JOHNSTON: I agree that they say that. 23 24 Now, there are a number of people who qualify as
- 25 candidates, and they may not win their election, but they

1 them for it or do you want us to post it somewhere? MR, JOHNSTON: I think it should be posted, and 3 if somebody has a question, then the -- not all the poll 4 workers, obviously, but the election officials in charge 5 of that particular polling place should be educated 6 enough to explain what it's all about. MR. CHEATHAM: I would like to throw in the 8 fact that -- I mean, I don't necessarily agree with the 9 Court of Appeals opinion, but if the Court of Appeals 10 opinion says you don't have a duty to do something. 11 doesn't mean you can't do it. COMMISSIONER DELANIS: I understand. MR. CHAIRMAN: We understand that. COMMISSIONER DELANIS: I think you said that 15 the basis of this complaint is constructive fraud. MR. JOHNSTON: Yes. COMMISSIONER DELANIS: Fraud on the electorate? 17 MR. JOHNSTON: Yes. On me in this instance and

- 19 on Mr. Cheatham in his instance. COMMISSIONER DELANIS: That's, as I understand 21 it, kind of a tort concept.
- MR. JOHNSTON: It is.
- COMMISSIONER DELANIS: And I have read a lot of 24 legislative history, and I know statutes get passed that 25 are not just constructively fraudulent in terms of what

1 are registered on the ballot. And they don't make an 2 effort to -- to educate the public as to their candidacy. 3 They are still on the ballot, and they can still receive

4 votes that are counted.

MR. CHAIRMAN: Go ahead. Are you through? COMMISSIONER LAWSON: Yes.

COMMISSIONER DELANIS: How are you? You have 8 suggested to us that the remedy here should be that the 9 poll workers would have a list of qualified write-in 10 candidates?

11 MR. JOHNSTON: Yes.

12 COMMISSIONER DELANIS: It may not be everything 13 you are saying, but it's -- but it's one --

MR. JOHNSTON: Posted somewhere inside. If 15 they ask for it, it's there.

COMMISSIONER DELANIS: How is that different 17 than having a ballot? It's a list of candidates. Isn't 18 that very similar to the ballot that the write-in

19 candidates haven't gotten on?

MR. JOHNSTON: No, because it is -- it will be 21 a separate list. You don't -- you don't vote, cast a 22 vote on that list. You still have to take whatever

23 information that is on the list and then type it in.

24 COMMISSIONER DELANIS: Is it your position that 25 this list should only be available when somebody asks

1 was represented about them, but it sounds to me as if 2 this constructive fraud theory is actually a tort theory. 3 Have you ever seen a case that applied it to a situation 4 where a statute is being challenged or a procedure is 5 being challenged as opposed to seeking a remedy and 6 damages or some other tort type record? MR. JOHNSTON: Yes. I don't have the case with 8 me. It's Parks versus Alexander, 1980 Tennessee Supreme 9 Court case. I was a plaintiff in that case as well, as a 10 matter of fact. It was challenging the amendment to the 11 state constitution dealing with the subject of public 12 education and whether or not the language was broader 13 than what the call of the convention had been. And the 14 Court discussed in that opinion constructive fraud but 15 dismissed the case for lack of standing. So it has been 16 used in the election context. COMMISSIONER DELANIS: But never as part of a 17 18 court's holding? MR. JOHNSTON: No. Well, not -- not in 10 20 Tennessee. COMMISSIONER DELANIS: You've pointed us to 21 22 some statutes that you think create a duty for us to

ACCURATE COURT REPORTING (615)244-DEPO or 244-3376

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23 educate the electorate.

MR. JOHNSTON: Yes.

COMMISSIONER DELANIS: Didn't you have an

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1 opportunity to cite those same statutes to the Court of
2 Appeals in this Johnston versus Davidson County Election
3 Commission case?
4 MR. JOHNSTON: We did.
5 COMMISSIONER DELANIS: And didn't you have an
6 opportunity to cite them to the Supreme Court in your
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- 8 MR. JOHNSTON: We have.
- 9 COMMISSIONER DELANIS: So you have -- you have
- 10 cited the same statutes to them?
- 11 MR. JOHNSTON: Yes.
- 12 COMMISSIONER DELANIS: And didn't you, in your
- 13 complaint in this previous case, raise the issue of
- 14 constructive fraud?

7 application for --

- 15 MR. JOHNSTON: Yes, but it was not ruled on by 16 the Court.
- 17 COMMISSIONER DELANIS: Okay. Is it still part
 18 of your case then to the Tennessee Supreme Court?
- 19 MR. JOHNSTON: I don't believe so. I think the
- 20 case before the Supreme Court now deals strictly with the
- 21 two articles in the state constitution we believe do not
- 22 permit this statute to --
- 23 COMMISSIONER DELANIS: Did you abandon that
- 24 argument before the Supreme Court?
- 25 MR. JOHNSTON: No. I don't know that we have

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1 said, we get directed from the State on how we implement 2 any policy. It has to be approved, and if we were to 3 grant it, we would definitely have to get approval from 4 the State to do this. So I am just trying to see if -- 5 if this complaint really should have went to the State 6 where it would have statewide implications.
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- 7 MR. JOHNSTON: That's an interesting question.
 8 You can argue round or flat. To pursue claims like this,
 9 you have to exhaust your administrative remedies. Where
 10 does the administrative remedy reside with respect to my
 11 personal injury, which is this Commission. So out of
 12 abundance of caution, I started at the bottom. And -13 and, you know, if we are not able to get a satisfactory
 14 resolution here, then the next step will be at the State
 15 level.
- 16 COMMISSIONER STARLING: Yeah. I am not
 17 necessarily against the complaint. I totally understand
 18 what you are talking about. I totally understand it, but
 19 I am just trying to protect on if we did something -20 they could -- even if we voted to grant the complaint, I
 21 am almost certain that the State coordinator wouldn't
 22 allow us to implement it.
- 23 MR, JOHNSTON: Yes, I understand. I appreciate 24 that.
- 25 MR. CHAIRMAN: That's consistent with my

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- 1 abandoned that argument before the Supreme Court. The 2 unconstitutional as applied makes the same claim except
- 3 in constitutional terms as opposed to tort terms.
- 4 COMMISSIONER DELANIS: Okay. But it was part 5 of your case to the Court of appeals, and it's not part 6 of your case to the Supreme Court?
- 7 MR. JOHNSTON: With respect to the Supreme
- 8 Court, we wanted to narrow it to the one constitutional $% \left\{ \left(1,0\right) \right\} =\left\{ \left(1,0\right) \right\} =$
- 9 issue that we thought would get their attention.
- 10 COMMISSIONER DELANIS: Thanks.
- 11 MR. CHAIRMAN: Any other...
- 12 COMMISSIONER STARLING: Well, being --
- 13 Mr. Johnston, how are you doing? Being a nonlawyer, this
- 14 is like my second tryout. If we were to -- to grant your
- 27 15 11th my second cryoder 27 We here to grant your
- 15 complaint, how does that affect other County Election
- 16 Commissions? Will we be doing something, providing
- 17 information that the other 94 counties would not be 18 doing?
- 19 MR. JOHNSTON: Well, that's a good question. I
- 20 don't know what the policy at the State level is except 21 what the Chairman offered just a few minutes ago. It may
- 22 be, for it to have statewide application, it would have
- 22 be; for the co-nave statewing application, it would be
- 23 to come from the State office.
- 24 COMMISSIONER STARLING: Yeah. The reason why I
- 25 am asking that is because we get -- like Mr. Buchanan

1 conversation with him earlier today, was that they want 2 all 95 counties to be uniform in the way they conduct 3 elections.

- MR. JOHNSTON: Nobody has come up with a reason 5 why that the statute is not more widely publicized and 6 understood by the public. It's been on the book since 7 2003, and -- and people are -- are writing in votes all 8 the time with the expectation, not that their candidate 9 is going to win, but as an expression of their dissent or 10 their dissatisfaction.
- 11 MR. CHAIRMAN: I understand where you are
 12 coming from. It's not without some sympathy on behalf of
- 13 the commissioners that they have received this
- 14 information. The problem is, at the last meeting -- and
- 15 I will ask for Nicki to respond -- we asked her to sort
- 16 of tell us what the legal ramifications would be if we
- 17 did something like this. And I will tel™you that in my
- 18 conversation with Mr. Goins -- well, and the staff, one
- 19 is, we don't even know who the write-in candidates are
- 20 for, what, when, two days before the election?
- MS. NIXON: Uh-huh.

 MR. CHAIRMAN: 50 we have very limited ability
- 23 to publicize it or print materials, because the campaign 24 workers come in a week before to get all their literature
- 25 to take to the polling places. So we don't even know who

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1 they are. This past election that you complained about,
  2 we had no write-in or no qualified write-in candidates.
 3 So your -- your complaint may be moot because we didn't
 4 have any qualified write-in candidates.
             MR. JOHNSTON: Well, that is an interesting
 6 point, and maybe the reason that there were no qualified
 7 write-in candidates is because there was no information
 8 published as to the procedure to qualify 50 days before
 9 the election.
             MR. CHAIRMAN: But then you get into the
10
11 question of what responsibility do we have to educate the
12 public as to the possibility of qualifying --
             MR. JOHNSTON: That's the bottom line.
13
             MR. CHAIRMAN: -- versus all the other statutes
14
15 that apply to people qualifying to vote and voting,
16 et cetera. And if you say, well, you have got an
17 obligation to affirmatively inform people about this
18 right, what other rights would we have that obligation?
19 We are going into uncharted territory here. So that's
20 our problem from this perspective.
             MR. JOHNSTON: Well, my -- my role here today
22 is just to point out the problem, try to establish an
23 administrative record of some sort so that if a higher
24 authority has to review the issues, they will know it has
25 been thoroughly discussed at this level, and a proper
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1 people really definitely do not understand that there is
 2 this requirement in the law, and I am very sympathetic to
 3 that. But it seems like maybe your appropriate remedy
 4 might be legislative. You know, perhaps if you were to
 5 go to the various legislators and explain that issue, you
 6 could modify or repeal the law that you had as opposed to
 7 trying to challenge it on various grounds of the court.
             I mean, I think it's pretty clear we're being
 9 set up to be sued at this point, which I'm sympathetic
10 to, and I have certainly done in my career. But it seems
11 like maybe you might actually get legislators and people
12 who are running for office to be sympathetic to that
13 cause.
             MR. JOHNSTON: I would -- I would love to
15 believe that would be practical. However, I have read
16 the legislative history that went back on how this was
17 initially proposed in 2003, and the short name for this
18 statute was called the Income -- I'm sorry, the Incumbent
19 Protection Act. Now, you are asking me to go to those
20 incumbents and ask them to undo something that is to
21 protect them. Probably not.
            MR. CHAIRMAN: All right. Any further
23 discussion?
            COMMISSIONER DELANIS: Will the Chair want us
25 to give us -- give our reasons why we vote? This is
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26 1 decision has been made and be proffered for further 2 review. MR. CHEATHAM: If there were no qualified 4 write-in candidates, that means that there was no 5 election on this committee, the post I am talking about, 6 because -- because nobody could cast -- if they casted a 7 write-in vote, got counted. MR. CHAIRMAN: That's back to the statute you 9 cited about the 50 days, et cetera, which is a State 10 statute that we have no control over. It seems to be the 11 statute that needs to be addressed, and you perhaps 12 already addressed it unfavorably. MR. CHEATHAM: As I understand the law, I think 14 this issue could be raised again if it were raised on 15 a -- by a different person in a different situation. 16 Maybe you would have that precedent to argue against. If 17 you could make a better argument, you might win. MR. CHAIRMAN: Mr. Johnston, how do you take 18 19 that? MR. JOHNSTON: I take it on the chin. 20 COMMISSIONER HERZFELD: If I could just make 22 one comment. 23 MR. CHAIRMAN: Yeah. COMMISSIONER HERZFELD: I do agree that people

25 are sympathetic to what you are saying. A whole lot of

1 going to be going somewhere else potentially. MR. CHAIRMAN: If you would like to, I am more 3 than open to have -- first, we need a motion to do 4 something and then a second and then a discussion, and 5 then we'll take the vote. So do I have a motion on the 6 complaint by Mr. Johnston? COMMISSIONER STARLING: Okay. I am trying to 8 figure out what the motion would be. COMMISSIONER DELANIS: If this is a complaint 10 that we can act upon, then I move that we -- we state 11 that we have considered it and that we have decided not 12 to take any action in response to it. MR. CHAIRMAN: Okay. That is a motion that we 14 have received the complaint. We have listened to the 15 complainants on it and that the Commission take no action 16 at this time. Did I correctly state that?: COMMISSIONER DELANIS: Yes. 17 MR, CHAIRMAN: And do I have a second to that 18 19 motion? COMMISSIONER HERZFELD: I'll second it. 20 MR. CHAIRMAN: We got a motion and a second. 22 Now any discussion as to why you feel like the motion 23 should pass or fail, if you would like to state your

COMMISSIONER DELANIS: The State has passed a

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24 position on it.

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1 very extensive set of statutes on this issue, and the
2 election laws are voluminous. Each of us has got a thick
3 book that sets forth the election laws, and we cannot
4 take on the job of educating the public on all of those
5 provisions. In addition, those statutes do provide that
6 there is a ballot, and write-in candidates, even if they
7 qualify, are not on the ballot. For us to essentially
8 create our own ballot on a separate piece of paper a day
9 or two before the election and then post it, I suggest
10 would create more problems than it would solve and put us
11 in a difficult position.
12 The election laws seem to put the burden on the
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The election laws seem to put the burden on the candidate to publicize the fact that they are running, and that's probably the appropriate place to put the burden. A write-in candidate -- a qualified write-in candidate has the duty to tell the public that he is running. And at this point, the election laws do not put that burden on us. And I think even though it has been stated we are sympathetic to the issue that has been raised, I think it would be dangerous to take on the duty of publicizing any candidate's write-in candidacy.

I've got some difficulty with the standing

23 issue and some of the legal aspects of this that go

24 beyond the substance of the question that has been

25 raised. This is essentially the same question that has

1 that really needs some discussion and some work on in the 2 statute. I just think the venue is the wrong place. I 3 think the venue should be the State coordinator because 4 of statewide implications. And I understand you have to start at a certain 6 point and, but it does need some attention from the State 7 coordinator on a State Election Commission to deal with 8 that issue because it's an issue that's out there that 9 really is not educating the public the way it should be. 10 But I don't think it's Davidson County's responsibility 11 totally to do that. I think it's for the State Election 12 Commission to do that with some guidelines. So that's 13 the reason why I am voting the way I am voting. MR, CHAIRMAN: Okay. Any other comments? I have sympathy for your position also, and I 16 vote against it today doing anything, but I think at 17 least it's educated me that -- and this probably won't be 18 the last time something along those lines will be brought 19 up. I mean, if we can do some sort of brochure on 20 absentee -- I mean, write-in voting or something we can 21 hand out or publish on the website or do something like

22 that that is not going to put us in jeopardy but just, as

23 you say, an educational -- I think that's something that

24 we might could explore. But it wouldn't need -- it would

25 be a more administrative decision. We don't approve the

1 been raised at least once before. It's part of a pending 2 application for permission to appeal to the Tennessee 3 Supreme Court. Evidently, this issue was expressly 4 raised in the Court of Appeals. There was a negative 5 decision rendered in that case, and then counsel, for 6 strategic reasons, decided not to raise this very same 7 issue before the Tennessee Supreme Court. The statutory time to challenge the election 9 has passed, and for those reasons, I think that there has 10 been a waiver or some -- there are procedural questions 11 with this -- with this petition to us. The position 12 taken by Mr. Cheatham that the law as it exists now, the 13 procedure as it exists now could create a sham election 14 and stealth elections. I am not so sure that what he 15 suggests would create equal if not worse danger. And, finally, the cause of action for 17 constructive fraud, as I understand it, has never been 18 recognized in Tennessee as a basis to challenge a statute 19 or a procedure. It's a tort concept. So those are my 20 reasons for making the motion. MR. CHAIRMAN: All right. Any other 22 discussion? Anybody else want to say anything? COMMISSIONER STARLING: Yeah. I just want to 24 say that I think that the complaint is a good complaint

25 in the sense that it's bringing attention to an issue

1 website to start with. So, but, yeah, I appreciate you 2 bringing it to our attention. No further discussion, we will vote on the 4 motion. All those in favor of the motion, say eye. (The commissioners say Eye.) MR. CHAIRMAN: Any opposed, no. Let the record 7 reflect it passed unanimously. Thank you all for coming. We appreciate your 9 time as concerned citizens. MR. JOHNSTON: Thank you. 10 11 (This concludes this section of the meeting.) 12 14 15 16 17 18 19 20 21 22 23 24 25

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  1 STATE OF TENNESSEE )
  2 COUNTY OF DAVIDSON 5
           I, DEBRA R. CARNEY, LCR #303, RPR #030481, CCR
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  5 for the State of Tennessee, do hereby certify that the
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  7 32 pages of the transcript is a true and accurate record
  8 to the best of my knowledge, skills, and ability.
           I further certify that I am not related to nor an
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 11 nor am I in anyway financially interested in the outcome
12 of this case.
           I further certify that I am duly licensed by the
14 Tennessee Board of Court Reporting as a Licensed Court
15 Reporter as evidenced by the LCR number and expiration
16 date following my name below.
           IN WITNESS WHEREOF, I have hereunto set my hand and
17
18 affixed my notarial seal this 19th day of September,
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History.

Acts 1982, ch. 874, § 30; 1996, ch. 779, §§ 1, 2, 4; 2009, ch. 566, § 15; 2010, ch. 1070, § 1; 2014, ch. 782, §§ 4, 5.

Amendments.

The 2014 amendment substituted "seven (7) days" for "five (5) business days" in the first sentence of (a); and substituted "four (4) days" for two (2) business days" in the penultimate sentence of (b).

Effective Dates.

Acts 2014, ch. 782, § 6. July 1, 2014.

Law Reviews.

Adding It Up: Implications of Tennessee's New High School Transition Policy and Graduation Requirements for Students with Disabilities (Kenlyn Foster-Spence), 76 Tenn. L. Rev. 447 (2009).

Cited

State v. Russell, — S.W.3d —, 2012 Tenn. Crim. App. LEXIS 161 (Tenn. Crim. App. Mar. 15, 2012).

4-5-223. Declaratory orders.

(a) Any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency. The agency shall:

(1) Convene a contested case hearing pursuant to this chapter and issue a declaratory order, which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by statute, in the manner provided for the review of decisions in contested cases; or

(2) Refuse to issue a declaratory order, in which event the person petitioning the agency for a declaratory order may apply for a declaratory judgment as provided in § 4-5-225.

(b) A declaratory order shall be binding between the agency and parties on the state of facts alleged in the petition unless it is altered or set aside by the agency or a court in a proper proceeding.

(c) If an agency has not set a petition for a declaratory order for a contested case hearing within sixty (60) days after receipt of the petition, the agency shall be deemed to have denied the petition and to have refused to issue a declaratory order.

(d) Each agency shall prescribe by rule the form of such petitions and the procedure for their submission, consideration and disposition.

History

Acts 1982, ch. 874, § 34.

Section to Section References.

This section is referred to in §§ 4-5-102,

4-5-106, 4-5-224, 4-6-105, 40-28-104, 63-3-202, 63-4-103, 63-6-101, 63-7-207, 63-24-111, 63-27-104, 63-30-113, 69-3-105, 69-7-207, 71-5-1004, 71-5-2704.

NOTES TO DECISIONS

Analysis

- 2. Jurisdiction.
- 3. Criminal Sentencing.
- 6. Ripeness.

2. Jurisdiction.

Trial court properly dismissed an inmate's petition under T.C.A. §§ 27-8-101 and 27-9-101 for common law writ of certiorari against the Tennessee Department of Correction's (TDOC) and TDOC officials because the inmate failed to seek a declaratory order from TDOC as re-

quired by the Uniform Administrative Procedures Act, T.C.A. § 4-5-225(b); therefore, the trial court lacked subject matter jurisdiction of the claims against TDOC and TDOC officials. Stewart v. Derrick, 368 S.W.3d 457, 2012 Tenn. LEXIS 376 (Tenn. May 25, 2012).

Petition under T.C.A. § 4-5-322 gave a chancery court no jurisdiction to review an agency's refusal to hear a landowner's declaratory order petition because (1) T.C.A. § 4-5-223 said the proper procedure was to seek a T.C.A. § 4-5-225 declaratory judgment, (2) T.C.A. § 4-5-225 did not let the court reverse the refusal, since

Exclubit B

promulgated while it was the sole state agency in charge of administering the Medicaid program. The health department was the agency with primary jurisdiction over the case pursuant to T.C.A. § 4-5-223(a) of the Uniform Administrative Procedures Act. Baptist Hosp. v. Tennessee Dep't of Health, 982 S.W.2d 339, 1998 Tenn. LEXIS 718 (Tenn. 1998).

Inmate was not entitled to a declaratory judgment stating that because of his medical condition he should be drug tested by patch rather than urine sample when the Declaratory Judgment Act, T.C.A. § 29-14-101 et seq., did not permit the filing of a suit against the state to construe statutes; moreover, the chancery court lacked the jurisdiction to hear a declaratory judgment action against the department of correction, as T.C.A. §§ 4-5-223 and 4-5-225 did not apply to the internal management of state government if the policy did not affect the private rights, privileges, or procedures available to the public. Fuller v. Campbell, 109 S.W.3d 737, 2003 Tenn. App. LEXIS 36 (Tenn. Ct. App. 2003), appeal denied, — S.W.3d —, 2003 Tenn. LEXIS 533 (Tenn. May 27, 2003), appeal denied, -S.W.3d -, 2003 Tenn. LEXIS 564 (Tenn. 2003).

Trial court erred in dismissing colleges' declaratory judgment action against the Tennessee Higher Education Commission for lack of subject matter jurisdiction because pursuant to the Uniform Administrative Procedures Act, T.C.A. § 4-5-225(a), the trial court had subject matter jurisdiction over the colleges' complaint for declaratory judgment even though the administrative proceedings had not been resolved when the lawsuit was commenced; however, under § 4-5-225(b), the trial court was not permitted to render declaratory judgment until the statutory exhaustion requirement had been met. Nat'l College of Bus. & Tech. & Remington College v. Tenn. Higher Educ. Comm'n, S.W.3d -, 2010 Tenn. App. LEXIS 205 (Tenn. Ct. App. Mar. 18, 2010).

3. Criminal Sentencing.

Where an agency is petitioned to issue a declaratory order pursuant to T.C.A. § 4-5-223 and the agency declines to convene a contested case hearing and issue the declaratory order, the petitioner is not subject to the 60-day statute of limitations established by T.C.A. § 4-5-322(b)(1); rather, a complaint for declaratory judgment under T.C.A. § 4-5-225 is governed by Tennessee's general ten-year statute of limitations, codified at T.C.A. § 28-3-110(3). Hugh-

ley v. State, 208 S.W.3d 388, 2006 Tenn. LEXIS 1108 (Tenn. 2006).

Prisoner's declaratory judgment action was not time-barred under T.C.A. § 4-5-223(a) in that it was filed after sixty days from the date that it dependent of corrections in a letter stated that it denied the prisoner's application for a declaratory order because the letter did not constitute a final order under T.C.A. § 4-5-322(b)(1) and T.C.A. § 4-5-314(c); rather, the provisions of T.C.A. § 4-5-225 applied, and because there was no express limitation period under the provisions, the general ten-year limitations period of T.C.A. § 28-3-110 applied. Hughley v. State, 208 S.W.3d 388, 2006 Tenn. LEXIS 1108 (Tenn. 2006).

4. Standing.

In a dispute arising out of the expansion of a landfill, an environmental group did not have standing to seek review of a decision of the Water Quality Control Board of the Tennessee Department of Environment to uphold issuance of a permit to a waste company because T.C.A. § 69-3-105 applied and the group was neither a permittee or applicant, Public Emples, for Envtl. Responsibility v. Tenn. Water Quality Control Bd., — S.W.3d —, 2009 Tenn. App. LEXIS 371 (Tenn. Ct. App. June 10, 2009), appeal denied, Public Emples, for Envtl. Responsibility v. Tenn. Dep't of Env't & Conservation, — S.W.3d —, 2010 Tenn. LEXIS 219 (Tenn. Jan. 25, 2010).

5. DHS Rules Invalid.

Policies and procedures in the Department of Human Services' Child Care Certificate Program Policy and Procedures Manual relied upon by the Department to terminate the child care centers from the Child Care Certificate Program constituted "rules," as that term was defined in T.C.A. § 4-5-102, and the "rules" relied upon by the Department to terminate the centers were not were not promulgated as the APA required, T.C.A. § 71-1-105(5)(B). Because the rules were not promulgated as rules in accordance with the Uniform Administrate Procedures Act, they were invalid and could not have served as the basis for the centers' termination, T.C.A. § 4-5-216; based upon the clear meaning of T.C.A. § 4-5-216, the grant of the centers' Tenn. R. Civ. P. 12.03 motion for judgment on the pleadings was affirmed. Heritage Early Childhood Dev. Ctr., Inc. v. Tenn. Dep't of Human Servs., - S.W.3d -, 2009 Tenn. App. LEXIS 636 (Tenn. Ct. App. Sept. 22, 2009).

4-5-224. Declaratory order request — Notices.

- (a) Whenever an agency is petitioned for a declaratory order, that agency shall:
 - (1) Submit electronically to the secretary of state the notice of hearing for publication in the notice section of the administrative register web site and,

if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative register web site; and

(2) Take such other steps as it deems necessary to convey effective notice to other agencies and professional associations that are likely to have an interest in the declaratory order proceedings.

(b) Such notices shall include specific information relating to the declaratory order request, including, but not limited to:

(1) Name of petitioner and an explanation of whom such person or entity purports to represent;

(2) A summary of the relief requested, including the specific nature of the requested order, and the conclusion or conclusions the petitioner requests that the agency reach following the declaratory proceeding; and

(3) A detailed outline and summary of the statutes or regulations that the agency is called upon to interpret or upon which it is to rule.

(c) Notwithstanding § 4-5-223(a)-(c), except in the case of an emergency proceeding that meets the conditions of § 4-5-208, no declaratory order proceeding that calls for a title 63 agency to rule on the meaning of any provision of a licensee's professional licensing act may be set until at least forty-five (45) days after the notice required by this section has been filed with the secretary of state.

History.

Acts 1997, ch. 162, § 1; 2009, ch. 566, §§ 17,

Compiler's Notes.

Former § 4-5-224, concerning declaratory judgments, was transferred to § 4-5-225 pursuant to Acts 1997, ch. 162, § 1.

Acts 2009, ch. 566, § 25 provided that the act

shall apply to all rules and regulations filed with the secretary of state after July 1, 2009.

Cited

Rhoden v. State Dep't of Correction, 984 S.W.2d 955, 1998 Tenn. App. LEXIS 686 (Tenn. Ct. App. 1998); Smith v. Campbell, 995 S.W.2d 116, 1999 Tenn. App. LEXIS 105 (Tenn. Ct. App. 1999)

NOTES TO DECISIONS

Analysis

- 1. Constitutional Questions.
- Construction.
- 3. Mootness.
- 4. Jurisdiction

1. Constitutional Questions.

Inmates were not entitled to bring a declaratory judgment proceeding to declare a statute unconstitutional where they had not sought a declaratory order from the agency that exercised primary jurisdiction over the statute. Davis v. Sundquist, 947 S.W.2d 155, 1997 Tenn, App. LEXIS 130 (Tenn. Ct. App. 1997).

2. Construction.

Notice requirement of T.C.A. § 4-5-224 pertains to the scheduling of a hearing, not the filing of a petition, and only requires that the agency petitioned for declaratory order provide notice of the hearing, not the filing of a petition; the petition was dismissed prior to the sched-

uling of a hearing and the agency was under no duty to send out notice. Tenn. Envtl. Council v. Tenn. Water Quality Control Bd., 254 S.W.3d 396, 2007 Tenn. App. LEXIS 631 (Tenn. Ct. App. Oct. 3, 2007), appeal denied, — S.W.3d —, 2008 Tenn. LEXIS 174 (Tenn. Mar. 10, 2008).

3. Mootness.

Claims of a state employee challenging her termination and seeking back pay, expungement of employment records, and attorney's fees were not moot because she had already been terminated, since, even if she could not convince a court to set aside her termination or grant monetary relief, she might be entitled to judicial relief with regard to other rights under T.C.A. § 8-30-312. Cashion v. Robertson, 955 S.W.2d 60, 1997 Tenn. App. LEXIS 198 (Tenn. Ct. App. 1997), rehearing denied, — S.W.2d —, 1997 Tenn. App. LEXIS 241 (Tenn. Ct. App. Apr. 11, 1997).

Before the Tennessee State Election Commission

Joseph H. Johnston, Write-In Candidate)		
for Councilman at Large, Metropolitan)	No.	
Nashville, Davidson County)		

PETITION FOR DECLARATORY ORDER

Comes Now Petitioner, Joseph H. Johnston, and hereby petitions the Tennessee State Election Commission for a Declaratory Order, pursuant to Tenn. Code Ann. §4-5-233 defining the duties of the Davidson County Election Commission to explain to voters at the polls during the upcoming August 6, 2015 municipal elections, that write-in votes will only be counted for Write-In Candidates who have pre-registered with the Davidson County Election Commission fifty (50) days before the election and that write-in votes for Candidates who have not pre-registered will not be counted.

- 1. Petitioner Joseph H. Johnston is a citizen of Davidson County. He is taxpayer and a registered voter residing at 2815 Belmont Boulevard, Nashville, Tennessee 37212. His voter I.D. No. is 00138728. [Exhibit A].
- 2. On May 4, 2015, Petitioner went to the Davidson County Election Commission and pre-registered as a Write-In Candidate for the office of Councilman at Large for the municipal election to be held on August 6, 2015. [Exhibit B].
- 3. In previous elections in Davidson County, the poll workers have been very diligent in instructing voters how to cast write-in votes on the electronic voting machines. However, they do not advise voters that unless the vote is for a "qualified" Write-in Candidate who has pre-registered with the Davidson County Election Commission, the write-in vote will not be counted nor will it be counted as part of the total votes cast in the election.

- 4. Not only are poll workers ignorant of the requirements of Tenn. Code Ann. §2-7-133(1), there have been no written instructions explaining the Statute in the form of public information pamphlets or other printed educational materials available at polling places.
- 5. In previous elections in Davidson County, there have been no lists of "qualified Write-in Candidates" posted at the polling places to instruct voters of the names of Write-In Candidates who had properly qualified, or whether or not any Write-ing Candidates had qualified for a particular office.
- 6. Petitioner is concerned that voters in the August 6, 2015 municipal election who wish to cast a write-in vote for anyone other than the official candidates of the ballot will not understand that their write-in votes will only be counted in the election if they vote for a qualified Write-in Candidate such as Petitioner. Many times this decision to cast a write-in vote is not made until the voter is already at the poll or in the voting booth.
- 7. The Tenn. Code Ann. §2-7-111(a) requires the Office of Elections to have voting instructions posted conspicuously at each polling place. [Exhibit C].
- 8. Tenn. Code Ann. §2-12-201(a)(12) provides that the Administrator of Elections has a duty to know the current laws pertaining to elections and to apprise the public in general of this information. [Exhibit D].
- 9. Petitioner avers that such a flaw in the election process will constitute a constructive fraud on the voters of Davidson County who will be deprived of an opportunity to cast a vote for such Write-in Candidates who may have complied with the fifty (50) day rule.

- 10. Further, the County Administrator of Elections has a statutory duty to educate the public regarding the election laws. The failure to provide this information constitutes a breach of that duty that has effectively denied the voters their Constitutional right to cast an informed vote. This also amounts to a constructive fraud.
- 11. Finally, the voters who cast their vote for an unqualified Write-in Candidate will not have their vote counted in the total votes cast. The number of votes cast for unqualified Write-in Candidates against the nominated candidates who were running "unopposed", will not be reported to the public.
- 12. Petitioner intends to give notice of his Write-in Candidacy in futures elections until these issues have been resolved.

Prayer for Relief

Petitioner prays that:

- 1. This Petition be served on the Davidson County Election Commission through its County Administrator of Elections and the Metropolitan Legal Department.
- 2. A Declaratory Order be issued, pursuant to Tenn. Code Ann. §4-5-253, for the Davidson County Administrator of Elections to comply with all statutory requirements relating to educating the public about Tenn. Code Ann. §2-7-133(i) and post instructions at all polling places regarding its limitations on voters' right to cast informed votes in the August 6, 2015 election and all future elections.
- 3. Furthermore, the Declaratory Order should direct the Davidson County Administrator of Elections to post the names of all "qualified Write-in Candidates", including Petitioner Joseph H. Johnston, at each polling place where such elective offices are to be voted on.

4. Such other relief as may be necessary and proper including an evidentiary hearing before an Administrative Law Judge, if necessary.

Joseph H. Johnston

Verification

I declare under penalty of perjury that the facts in the foregoing Petition are true to my knowledge.

Joseph H. Johnston

Certificate of Service

I hereby certify that the foregoing document has been served upon the following on this / day of May, 2015 by first-class postage prepaid U.S. Mail:

Davidson County Election Commission c/o Metropolitan Legal Department P.O. Box 196300 Nashville, Tennessee 37219 SARA GLEBERA



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Certificate of Write-In Candidacy

State of Tennessee

In order for write-in ballots to be counted, this form must be filed no later than twelve o'clock (12:00) noon, prevailing time, on the fiftieth (50th) day before the election, in each county that makes up the district of the listed office. For the offices of Governor, US Senate, and US House of Representatives, this form must be filed with the Tennessee Coordinator of Elections.

	Name of Candidate:	Wose Al H. Johnston	
	Nickname: (if applicable)	2015 MAY	1
	Residential Address:	2815 Belmont Blud.	17
		Nashville Termerice 37212	
	Contact Phone Number:	615-947-6363	
	Office Sought:	Councilman at Large	
	Division/Part/District: (if applicable)	Metro polition Nashvillepavilism County	
	Check appropriate box:	□ Democratic Primary □ Republican Primary	
		☐ General Election ☑ Municipal Election	
I, the count	e above-named candid nted in the primary/gen ug unf , 20 1 5	5/4/15	· ·
For (
	Office Use:	71.0 1 10 -	
This o	Office Use : certificate was received	by Kelley A. Harrison on the	
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plaint, the contestant failed to demonstrate that a purge of those ballots would have changed the result of the election of rendered its outcome uncertain. Therefore, the court had no choice but to conclude that the chancellor correctly dismissed the complaint for failure to state a claim. Forbes v. Boll, 816 S.W.2d 716 (Tenn. 1991).

2-7-110

The allegations of the complaint were insufficient to show, district-wide, that the election was so permeated by fraud or illegality as to render the results incurably uncertain or to thwart the will of the electorate. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

Collateral References. Conduct of election = 144.197-234.

2-7-116. Examination and final preparation of machines. — (a) The officer shall give the sealed voting machine keys to the judges to prepare the machines for voting. The envelope containing the keys may not be opened until the judges have examined it to see that it has not been opened and that the number registered on the protective counter and the number on the seal with which the machine is sealed correspond with the numbers written on the envelope containing the keys.

(b) If the envelope has been torn open, or if the numbers do not correspond, or if any other discrepancy is found, the judges shall immediately inform the voting machine technician of the facts. The voting machine technician or the technicians assistant shall promptly examine the machine and certify whether it is properly arranged.

(c) If the number on the seal and the protective counter are found to agree with the numbers on the envelope, the judges shall then open the door concealing the counters and carefully examine every counter to see that its registers zero (000) and shall also allow the watchers to examine them. The judges shall then sign a certificate showing the delivery of the keys in a sealed envelope, the number on the seal, the number registered on the protective counter, that all the counters are set at zero (000), and that the ballot labels are properly placed in the machine.

(d) If any counter is found not to register at zero (000) and if it is impracticable for the roting machine technician to arrive in time to adjust the counters before the time set for opening the polls, the judges shall immediately make a written statement of the designating letter and number, if any, of such counter, together with the number registered thereon, and shall sign and post the statement on the wall of the polling place where it shall remain throughout the election day. In filling out the tally sheets, they shall subtract such number from the number then registered on such counter. [Acts 1972, ch. 740, § 1; T.C.A., § 2-710.]

Collateral References. Conduct of election ≈ 144.197-234.

2-7-111. Posting of sample ballots and instructions — Arrangement of polling place — Restrictions. — (a) The officer of elections shall have the sample ballots, voting instructions, and other materials which are to be posted, placed in conspicuous positions inside the polling place for the use of voters. The officer shall measure off one hundred feet (100') from the entrances to the

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building in which the election is to be held and place boundary signs at that

(b)(1) Within the appropriate boundary as established in subsection (a), and the building in which the polling place is located, the display of campaign posters, signs or other campaign materials, distribution of campaign materials, and solicitation of votes for or against any person, political party, or position on a question are prohibited. No campaign posters, signs or other campaign literature may be displayed on or in any building in which a polling place is located.

(2) Except in a county with a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census, a solicitation or collection for any cause is prohibited. This does not include the normal activities that may occur at such polling place such as a church, school, grocery, etc.

(3) Nothing in this section shall be construed to prohibit any person from wearing a button, cap, hat, pin, shirt, or other article of clothing outside the established boundary but on the property where the polling place is located.

(c) The officer of elections shall have each official wear a badge with that official's name and official title.

(d) With the exception of counties having a metropolitan form of government, any county having a population over six hundred thousand (600,000) according to the 1970 federal census or any subsequent federal census, and counties having a population of between two hundred fifty thousand (250,000) and two hundred sixty thousand (260,000) by the 1970 census, any county may, by private act, extend the one hundred foot (100') boundary provided in this section. [Acts 1972, ch. 740, § 1; T.C.A., § 2-711; Acts 1980, ch. 543, §§ 1, 2; 1987, ch. 362, §§ 1, 2, 4; 1993, ch. 465, §§ 1, 2; 1993, ch. 518, §§ 11, 21; 1994, ch. 582, § 1; 2003, ch. 307, § 6.]

Compiler's Notes. This section was held unconstitutional in Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990). See heading "Constitutionality" under Notes to Decisions. However, the decision by the Tennessee supreme court was reversed on appeal by the United States supreme court on May 26, 1992. See Burson v. Freeman, 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed 2d 5 (1992).

For tables of U.S. decennial populations of Tennessee counties, see Volume 13 and its supplement.

Amendments. The 2003 amendment deleted the former last sentence in (a), which provided for counties with certain populations where the officer of elections was required to measure off three hundred feet (300') from the

entrances to the building in which the election was to be held and to place boundary signs at that distance.

Effective Dates. Acts 2003, ch. 307, § 7. July 1, 2003.

Cross-References. Violation of this section a misdemeanor, § 2-19-119.

Section to Section References. This section is referred to in §§ 2-3-108, 2-19-119.

Attorney General Opinions. Extension of boundary at polling place prohibited, OAG 97-128 (9/22/97).

The 100 foot "campaign-free" zone on election day does not extend to private property adjacent to and within 100 feet of the entrance to the polling place, OAG 02-118 (10/24/02).

NOTES TO DECISIONS

. Constitutionality.

The exercise of free speech rights conflicts with another fundamental right, the right to cast a ballot in an election free from the taint of

intimidation and fraud. Some restricted zone around polling places is necessary to protect that fundamental right. Given the conflict between these two rights, requiring solicitors to nating polling my boards and oll workers as

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NOTES TO DECISIONS

1. Authority.

Trial court erred in granting the city's motion for summary judgment and in denying the county election commission's motion for summary judgment in the commission's action seeking a declaration of its lights under election statutes, T.C.A. § 2-3 101 et seq. and § 2-

6-101 et seq., because the commission had the sole responsibility to designate polling locations, and it was the duty of public building authorities to make public buildings available for voting. Williamson County Election Comm'n v. Webb. — S. W.3d. —, 2013 Tenn. App. LEXIS 202 (Tenn. Ct. App. Mar. 22, 2013).

2-12-117. Development of Internet based electronic filing process.

(a) Each county election commission is authorized to develop, with the advice, assistance and approval of the registry of election finance, an Internet based electronic filing process for use by candidates for local public office and all political campaign committees for a local election in such county or in the municipalities located in such county that are required to file statements and reports with such county election commission.

(b) Such system shall provide each candidate and political campaign compattee with secure access to the electronic filing system and provide safeguards against efforts to tamper or change the data in any way.

(c) Once the electronic filing system is completed and tested, the county election commission shall provide public notice that the system is operational and available for filers to commence use.

(d) If a county election commission decides to develop such an internet based electronic filing process, any and all costs for such development and Internet posting shall be an expenditure of such county election commission.

History. Acts 2004, ch. 898, § 1.

Effective Dates.
Acts 2004, ch. 898, § 2. June 8, 2004.

PART 2

REGISTRARS

2-12-201. Employment of election administrators and clerical assistants.

(a) The commission shall appoint an administrator of elections who shall be the chief administrative officer of the commission and who shall be responsible for the daily operations of the office and the execution of all elections. The duties of the administrator of elections may, upon the administrator's discretion, be performed by a designee. Such duties include, but are not limited to, the following:

(1) Employment of all office personnel; after July 1, 2011, administrators of elections may not appoint or hire, except in the event of and during an emergency, members of the county election commission, or spouses, parents, brothers, sisters or children, including in-laws of commission members or spouses, parents, brothers, sisters or children, including in-laws of the administrator of elections as deputies, clerical assistants, absentee voting deputies, machine technicians, poll officials or as members of the absentee counting board;

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(2) Preparation of the annual operating budget and presentation of such budget to the election commission for approval;

(3) Upon approval by the county election commission, presentation of the annual budget to the county commission or other legislative body for funding;

(4) Requisition and purchase of any supplies necessary for the operation of the election commission office and the conduct of all elections;

(5) Maintenance of voter registration files, campaign disclosure records, and any other records required by this title;

(6) Conducting of instruction class for poll workers or designation of another qualified person to conduct such class;

(7) Preparation of all notices for publication required by this title;

(8) Preparation and maintenance of all fiscal records necessary for the daily operation of the election commission office and all elections. This may include any requests for funding or changes in funding, if necessary, after adoption of the current fiscal budget;

(9) Compilation, maintenance and dissemination of information to the public, the candidates, the voters, the press and all inquiring parties in regard to all aspects of the electoral process on all governmental levels;

(10) Promotion of the electoral process through supplemental registrations, public functions, press releases and media advertising whenever possible;

(11) Attendance at any required seminar and other educational seminars, as funding permits, to gain knowledge beneficial to the administration of the election commission office or to the electoral process;

(12) Having knowledge of all current laws pertaining to the election process and any changes mandated by the general assembly, and apprising the election commission, office staff, candidates, the press and the public in a general of this information:

(13) Assistance in the planning and implementation of any plan of apportionment or reapportionment of any governmental entity involved in the electoral process;

(14) The county election commissioners may not employ themselves of any of their spouses, parents, siblings, in-laws or children as administrators

(15) Preparation of a plan for placing precinct voting locations and presentation of such plan to the election commission for approval;

(16) Preparation of a plan for early voting sites and presentation of such plan to the election commission for approval; and

(17) Upon request, assist the:

(A) City councils, as appropriate, for cities located in the county;

(B) County legislative body;

(C) Local board of education; and

(D) Members of the general assembly representing the county, concerning redistricting in 2012, and thereafter every two-year period following each decennial census taken by the United States census bureau.

(b) [Deleted by 2013 amendment, effective April 25, 2013.]

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votes cast was in County Elec-2007 Tenn. App. Apr. 13, 2007), 297, 2007 Tenn. 5. 2007), rehear-1007 Tenn. App. 107) neal dein. IS 831

2-7-132. Completion of duplicate tally sheets — Certification — Final proclamation of vote.

Cited: S.W.5
King v. Sevier County Election Comm'n, 282
Ct. A

S.W.3d 37, 2008 Tenn. App. LEXIS 443 (Tenn. Ct. App. July 31, 2008).

2-7-133. Ballots which may be counted.

(a) Only ballots provided in accordance with this title may be counted. The judges shall write "Void" on others and sign them.

(b) If the voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the voter's choice for any office to be filled or on a question, the voter's ballot shall not be counted for such office and shall be marked "Uncounted" beside the office and be signed by the judges. It shall be counted so far as it is properly marked or so far as it is possible to determine the voter's choice.

(c) If two (2) ballots are rolled up together or are folded together, they shall not be counted. The judges shall write on them "Void" and the reason and sign.

(d) Any ballot marked by the voter for identification shall not be counted. The judges shall write on it "Void" and the reason and sign it.

(e) Ballots which are not counted shall be kept together and shall be bundled separately from the ballots which are counted.

(f) Notwithstanding any other provision of law to the contrary, a vote shall be counted if a recount is undertaken on a punchcard ballot under the following conditions:

(1) When at least two (2) corners of the chad are detached;

(2) Light is visible through the hole; or

(3) An indentation of the chad from the stylus or other object is present and indicates a clearly ascertainable intent of the voter to vote.

(g) Notwithstanding any other provision of law to the contrary, if a voter marks a paper or optical scan ballot with a cross, "x", checkmark or any other appropriate mark within the square, circle or oval to the right of the candidate's name, or any place within the space in which the name appears, indicating an intent to vote for that candidate, it is a vote for the candidate whose name it is opposite. Underlining or circling the candidate's name would also constitute a vote. Any apparent erasure of a mark next to the name of a candidate may not be counted as a vote for that candidate if the voter makes another mark next to the name of one (1) or more different candidates for the same office and counting of the mark would result in an excess number of votes cast for the office.

(h) If a voter casts more than one (1) vote for the same candidate for the same office, the first vote is valid and the remaining votes are invalid.

(i) Any person attempting to be elected by write-in ballots shall complete a notice requesting such person's ballots be counted in each county of the district no later than twelve o'clock (12:00) noon, prevailing time, fifty (50) days before the general election. Such person shall only have votes counted in counties where such notice was completed and timely filed. The notice shall be on a form prescribed by the coordinator of elections and shall not require signatures of

Carried Williams

any person other than the write-in candidate requesting ballots be counted.

The coordinator of elections shall distribute such form to the county election

commissions. Upon timely receiving the notice required by this subsection (i),

the county election commission shall promptly inform the state coordinator of

elections, the registry of election finance, as well as all other candidates participating in the affected election. A write-in candidate may withdraw the

notice by filing a letter of withdrawal in the same manner as the original notice

Section 2-8-107. 2-8-108 2-8-111. 2-8-113.

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Acts 2009, ch. 218, § 7, effective July 1, 2009.

CHAPTER 8

DETÉRMINATION OF RESULTS

2-8-101. Meeting of county election commission following election. Section 2-8-104. Comparing votes from tally tapes to tabulated election results.

Acts 1972, ch. 740, § 1; T.C.A., § 2-733; Acts 2001, ch. 413, § 1; 2001, ch. 465, §§ 2-4; 2003, ch. 307, § 4; 2005, ch. 302, § 1; 2007, ch. 125, § 6; 2008, ch. 928, § 15; 2009, ch. 218, § 6.

was filed no later than the fifth day before the election.

Amendments.

The 2005 amendment added the last sentence in (i).

The 2007 amendment substituted "fifty (50) days before the general election" for "twenty (20) days before the general election" at the end of the first sentence in (i).

The 2008 amendment added the last sentence of (i).

amendment inserted "twelve The 2009 o'clock (12:00) noon, prevailing time," in the first sentence of (i).

Effective Dates.

Acts 2005, ch. 302, § 3. July 1, 2005. Acts 2007, ch. 125, § 10. July 1, 2007. Acts 2008, ch. 928, § 18. July 1, 2008. Acts 2009, ch. 218, § 10. July 1, 2009.

Attorney General Opinions.

Notice requirement for write-in candidates is defensible, OAG constitutionally (2/12/04).

Cited:

King v. Sevier County Election Comm'n, 282 S.W.3d 37, 2008 Tenn. App. LEXIS 443 (Tenn. Ct. App. July 31, 2008).

Collateral References.

Challenges to Write-in Ballots and Certification of Write-in Candidates. 75 A.L.R.6th 311.

2-7-137. Items to be locked in ballot box after certification of the completed tally sheets. Section to Section References. This section is referred to in § 2-7-139.

112, 2-7-115.

2-7-140. Procedures for certain inactive voters. 2-2-109, 2-2-129, 2-2-130, 2-6-109, 2-6-202

Section to Section References.

This section is referred to in §§ 2-2-106,

2-7-141. Procedures for certain active voters.

Section to Section References. This section is referred to in § 2-7-112.

2-7-142. [Repéaled.]

Compiler's Notes. Former § 2,1-142 (Acts 2001, ch/465, § 5), concerning notices for polling places utilizing a



State of Tennessee



Tre Hargett Secretary of State Department of State State Capitol Nashville, TN 37243-0305 (615) 741-2819

Mary Beth Thomas General Counsel

July 14, 2015

Joseph H. Johnston, Esq. P.O. Box 120874 Acklen Station Nashville, Tennessee 37212

Mr. Johnston,

Enclosed please find the State Election Commission's Order denying your Petition for Declaratory Order.

Sincerely,

Mary Beth Thomas
General Counsel

cc: State Election Commission (via email)

Mark Goins, Esq. (via email) Coordinator of Elections



BEFORE THE STATE ELECTION COMMISSION

In re: Joseph H. Johnston, Write-In)
Candidate for Councilman at Large,)
Metroplitan Nashville, Davidson County)
Petitioner)
)

ORDER DENYING DECLARATORY RELIEF

This cause came to be heard before the State Election Commission on July 13, 2015. Petitioner Joseph H. Johnston served a Petition for Declaratory Relief upon Mark Goins, Coordinator of Elections for the State of Tennessee, on May 19, 2015. Mr. Johnston's Petition seeks a declaratory order from the State Election Commission, pursuant to Tenn. Code Ann. § 4-5-223, instructing "the Davidson County Administrator of Elections to comply with all statutory requirements relating to educating the public about Tenn. Code Ann. § 2-7-133(i) and post instructions at all polling places regarding its limitations on voters' right to cast informed votes in the August 6, 2015 election and all future elections," and further ordering that the "Davidson County Administrator of Elections post the names of all 'qualified Write-In Candidates' including Petitioner Joseph H. Johnston, at each polling place where such elective offices are to be voted on." Petition, p. 3, ¶ 3.

Tenn. Code Ann. § 4-5-223 provides that "any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency." Mr. Johnston's Petition does not seek an order with regard to the validity or applicability of a statute; rather, it seeks an order that would impose additional obligations on the Davidson County Administrator of Elections above what present law requires. Because Mr. Johnston's requested relief is akin to injunctive relief, and not an order regarding



the validity or applicability of a statute, the State Election Commission is completely without authority and jurisdiction to grant it.

Further, the State Election Commission does not have any duty – statutory or otherwise – to perform the functions requested by Mr. Johnston's Petition. The State Election Commission does not administer election laws; rather, it appoints individuals to serve on the Davidson County Election Commission.

For the above stated reasons, the State Election Commission finds that Mr. Johnston's Petition is not well taken and should be denied.

It is, therefore, ordered that the Petition for Declaratory Order filed by Mr. Johnston with the State Election Commission be denied.

Entered this ____/ 34h

day of July, 2015.

Kent Younce, Chairman State Election Commission

312 Rosa L. Parks Ave., 7th Floor

William R. Snodgrass Tower Nashville, Tennessee 37243

(615) 741-2819

CERTIFICATE OF SERVICE

I certify that a true and exact copy of this Order was served on Joseph H. Johnston on this day of July, 2015 via first class mail, postage prepaid.

Mary geth Thomas (TNBPR#23003)

General Counsel

Secretary of State

State Capitol, First Floor

Nashville, Tennessee 37243

(615) 741-2819

mary.beth.thomas@tn.gov

PROCEDURES FOR CERTIFYING VOTING MACHINES BY THE TENNESSEE STATE ELECTION COMMISSION

All voting machines/vendors must receive certification from the state election commission and the coordinator of elections efore any voting machines or systems may be sold in the State of Tennessee.

First Step:

Any interested vendor should submit a written request to the coordinator of elections and the state election commission requesting certification of your company together with the EAC certification number, a financial report and a list of all states that have already bought your voting machines or systems. If you would like to demonstrate your product at a meeting of the state election commission, please make that request in your letter. You will be notified of the date, time, and place of the meeting where you may make your presentation.

Second Step:

A. Voting Machine Procedure

Following verification of EAC certification and an initial presentation of your product and/or services, you would need to arrange for at least two (2) State Election Commissioners (of opposite parties) and the coordinator of elections (or designee) to view your machines or system in use in an election of a substantial size in another state. An election of a substantial size involves at the minimum the following characteristics:

- The jurisdiction has a population of at least 10,000 persons;
- The jurisdiction has at least two (2) or more district races on the ballots; and
- There are at least two (2) contested races involving both at large and district races on the ballot.

B. Voting Machine Software Systems Upgrade

- EAC Certification:
- Presentation of software upgrade before State Election Commission at a monthly meeting; and
- Viewing of upgrade in another state (In lieu of viewing machine in another state, at the discretion of the State Election Commission, letters of recommendation from users in other jurisdiction may be used as support for approval.)

C. De Minimis Voting System Changes

Any De Minimis change to an EAC certified voting system shall be submitted to the state election commission and
coordinator of elections to be approved. For purposes of approval of the de minimis change to the voting system,
all that will be required is a letter from the EAC stating the change is de minimis, unless further information is
requested by the state election commission or coordinator of elections.

Third Step:

The State Election Commission must vote to certify the machine in order for the machines to be used in an election in Tennessee.

You may send any correspondence for both the state election commission and the coordinator of elections to the following address:

312 Rosa L.Parks Avenue, 7th Floor William R. Snodgrass Tower Nashville, Tennessee 37243 (615) 741-7956

If you have any further questions regarding certification of your company, please feel free to contact the office of the state election coordinator at the phone number listed above.

Kathy Summers

rom:

Wayne Pruett

ent:

Tuesday, June 16, 2015 12:27 PM

To:

Mark Goins; Kathy Summers

Subject:

Attendance Report and Electronic Record

Attachments:

2015 Seminar Attendance Report.xls; 2015 AOE Attendance Sheets.pdf

Mark and Kathy,

The two documents deal with the AOEs 2015 Seminar Attendance Records. We have 93 scanned attendance sheets in one file.

I have an excel report in one file.

We had five AOEs not in attendance (Davidson, Fayette, Jefferson, Johnson and Lake).

The person that will be the AOE in Fayette County was in attendance – he comes into the office on July 6th. He signed no form (Warren Adams).

Chad Gray will be the AOE in Williamson County in July – he was in attendance. He signed no form. Ann Beard is the AOE in Williamson and provided a signed form.

Three people were present wishing to maintain their certification: Suzanne Smith from Cumberland AOE tenure, Tammy Smith from Macon AOE tenure and Nicole Lester from Rutherford AOE tenure. We have a signed form on each of the 'hree and they are the last three documents in the 93 attendance sheet document.

I hope this helps. If we need to change something please let me know. wbp

Wayne B. Pruett
HAVA Coordinator
Division of Elections
Office of Tennessee Secretary of State Tre Hargett
Office Phone 615.532.0719
Fax # 615.741.1278
Mobile Phone 615.268.8404

This electronic mail may be subject to the Tennessee Public Records Act, Tenn. Code Ann. 10-7-503. Any reply to this email may also be subject to this act.

The mission of the *Office of the Secretary of State* is to exceed the expectations of our customers, the taxpayers, by operating at the highest levels of accuracy, cost-effectiveness, and accountability in a customer-centered environment.

ADATrainer Network
Module 7e

The Web Experience for People
with Disabilities

Donna DeStefano
Tennessee Disability Coalition
Assistant Director

Assistant Director

National Network
Tennessee Disability Coalition
Assistant Director

Disclaimer

information, materials, and/or technical assistance are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA.

The Southeast ADA Center Is authorized by the National Institute on Disability and Rehabilitation Research (NIDRR) to provide information, materials, and technical assistance to individuals and entitles that are covered by the ADA. The contents of this document were developed under a grant from the Department of Education, NIDRR grant number H133 A110020. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.

3



National Network

People who are Blind

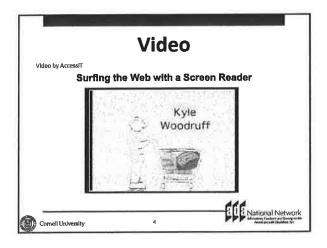
- · Do not use a mouse
- May use a screen reader to listen to the content
- May use a refreshable Braille display



- ✓ All content must be accessible from the keyboard only
- √ Images, photos and graphics are unusable
- √ Colors are unusable
- ✓ Navigation may be difficult / confusing

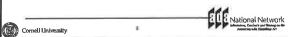






People with Low Vision

- May use screen magnification software
- Only a small portion of the screen is seen at a time
- ✓ Images, photos and graphics may become unusable when enlarged
- ✓ Navigation may be difficult / confusing if it occurs in multiple locations along the outer edges of the web page

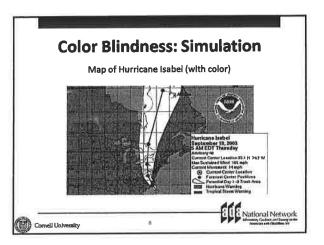


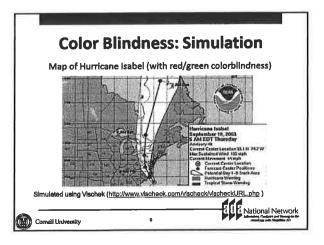


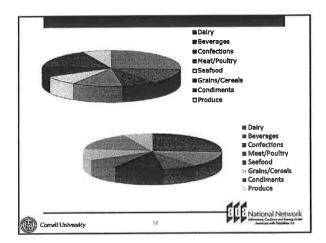
Color Blindness

- Approximately 8-10% of ✓ Reds and greens are the male population and about 0.5% of the female population experience some form of color deficiency.
 - often indistinguishable
 - ✓ Other colors may be indistinguishable









People with Mobility Impairments

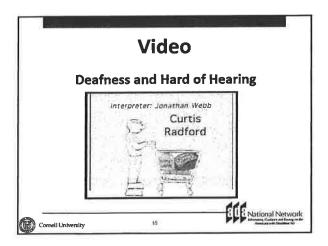
- May use only the keyboard for navigation
- May tire quickly
- May not have fine motor control when using a mouse
- ✓ All content must be accessible from the keyboard
- ✓ Lengthy navigation may cause fatigue
- ✓ Small or moving links are difficult to select



Mobility Impairments: Assistive Technology - Head wand - Mouth stick - Adaptive Keyboard Comell University 12



People who are Deaf or Hard of Hearing Access Considerations Video clips that include audio are unusable Audio clips are unusable Audio clips are unusable

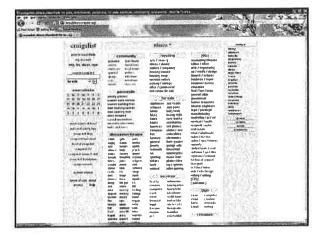


People with Cognitive Impairments

- May be easily distracted
- Complex layouts may lead to confusion
- Text-only content may be limiting
- √ Animated images may be distracting
- ✓ May be difficult to identify important content on a busy page
- ✓ Use graphics when they support content
- ✓ Use recognizable key words

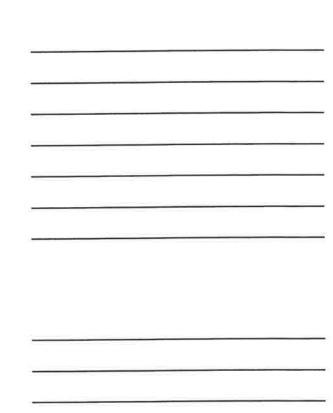


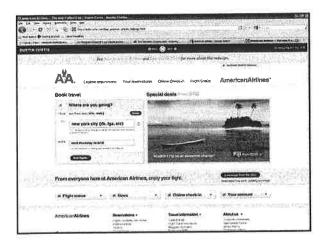


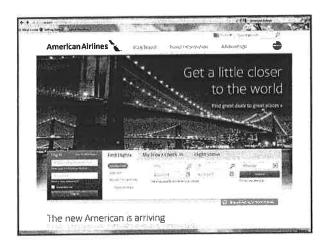




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People with Photosensitive Epilepsy

- Strobe or flickering content may cause seizures
- Avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz







Episode 12 Resources: Web Accessibility

Table of Contents

Getting Started with Web Accessibility	.1
Policy and Related Information	. 2
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Tutorials and Courses	6

Getting Started with Web Accessibility

. Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C)

The W3C Web Accessibility Initiative develops strategies, guidelines, and resources to help make the Web accessible to people with disabilities.

- Getting Started with Web Accessibility Using the Web and Accessibility Basics
 Link: w3.org/WAI/gettingstarted/Overview.html
- W3C Web Content Accessibility Guidelines (WCAG) 2.0
 Link: w3.org/TR/WCAG20
- How to Meet W3C Web Content Accessibility Guidelines 2.0 Quick Reference
 Link: w3.org/WAI/WCAG20/quickref
- W3C Web Accessibility Initiative Resources
 Link: w3.org/WAI/Resources
- Designing for Disabilities: Section 508 Accessibility for Beginners

An introduction to Section 508 accessibility requirements for Federal agencies and other federally funded organizations.

Source: Sitepoint

Link: sitepoint.com/designing-disabilities-section-508-international-accessibility-compliance-beginners/

Policy and Related Information

• Website Accessibility under Title II of the ADA

The Department of Justice (DOJ) ADA Best Practices Tool Kit for State and Local Governments discusses how Title II of the Americans with Disabilities Act applies to state and local government websites.

Source: Department of Justice

Link: ada.gov/pcatoolkit/chap5toolkit.htm

Checklists for Section 508 from U.S. Department of Health and Human Services

Checklists for creating accessible documents, including Word, Excel PowerPoint HTML (webpage) and Multimedia files.

Source: U.S. Department of Health and Human Services

Link: hhs.gov/web/508/accessiblefiles/checklists.html

Section508.gov - Opening Doors to IT

Resources for understanding and implementing Section 508.

Source: Section 508 of the US Rehabilitation Act

Link: section508.gov

<u>U.S. Access Board - About the Section 508 Standards for Electronic and Information Technology Accessibility</u>

Source: U.S. Access Board

Link: access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-

508-standards

U.S. Access Board - Section 508 Guidelines for Web-based Information and

<u>Applications</u>

Source: U.S. Access Board

Link: access-board.gov/sec508/guide/1194.22.htm

Organizations and Technical Assistance

• Web Accessibility in Mind (WebAIM)

Renown organization on web accessibility. Extensive resources, blog, newsletter and tutorials on their website. Services provided include: accessibility training, technical assistance, accessible site certification, evaluation and reporting.

Source: Web Accessibility in Mind (WebAIM)

Link: webaim.org

The Web Design Group (WDG)

A range of free technical specification references for HTML authoring plus online checking tools for verifying compatibility with relevant web design standards.

Source: The Web Design Group (WDG)

Link: htmlhelp.com

• <u>Universal Design Guidelines and Standards for Information and Communication</u> <u>Technology (ICT)</u>

A plain English interpretation of the W3C guidelines together with the reasons behind why each checkpoint is important.

Source: Centre for Excellence in Universal Design **Link:** universaldesign.ie/guidelinesampstandards/ict

• Usability Guidelines for Accessible Web Design

A free report that presents techniques and design guidelines for creating websites for people who use assistive technology for browsing websites, including supplemental discussions, screenshots and photographs. Developed by the Nielsen Norman Group (NN/g) which provides articles, news, and evidence=based user experience research, training, and consulting on accessibility and usability.

Source: Nielsen Norman Group (NN/g)

Link: nngroup.com/reports/usability-guidelines-accessible-web-design/

Juicy Studio

Users can access free accessibility tools such as a readability test, a luminosity color contrast analyzer, and an image analyzer. Juicy Studio also features articles about best practices in web development, with accessibility as a prime focus.

Source: Juicy Studio

Link: juicystudio.com/services.php

Accessibility Evaluation Tools

Checklists for manual tests

Section 508 Checklist from WebAIM

Source: Web Accessibility in Mind (WebAIM). **Link:** webaim.org/standards/508/checklist

Manual Evaluation Checklist for Web Accessibility

Source: California State University, Los Angeles (CAL State LA).

Link: web.calstatela.edu/accessibility/manual.php

Section 508 Manual Website Evaluation

Source: California State University (CSU) – Accessible Technology Initiative.

Link: calstate.edu/Accessibility/webaccessibility/evaluation/index.shtml

Tools for automatic checking

Complete List of Web Accessibility Evaluation Tools

Source: W3C - Web Accessibility Initiative. **Link:** w3.org/WAI/ER/tools/complete.html

• Web Development Tools at UITest.com

Comprehensive list of Web development testing tools from accessibility to validation.

Source: UITest Link: uitest.com

WAVE — Web Accessibility Evaluation Tool

Source: Web Accessibility in Mind (WebAIM)

Link: wave.webaim.org

• Cynthia Says ™ from HiSoftware ®

Free online service that checks one webpage and generates a report based on conformance to Section 508 or the W3C Web Content Accessibility Guidelines (WCAG).

Source: HiSoftware **Link:** cynthiasays.com

AMP Express

Free online service that checks up to 10 pages of a website and generates a report based on conformance to Section 508 and the W3C Web Content Accessibility Guidelines (WCAG).

Source: SSB Bart Group

Link: amp.ssbbartgroup.com/express

• Web Accessibility Toolbar (WAT) for Internet Explorer

Free tool that assists in evaluating a web page for compliance to the W3C Web Content

Accessibility Guidelines version 2.0 (WCAG 2.0)

Source: The Paciello Group

Link: paciellogroup.com/resources/wat/

Photosensitive Epileptic Analysis Tool (PEAT)

Free tool to check whether animations or video in web content is likely to cause seizures.

Source: TRACE Center University of Wisconsin/ Madison

Link: trace.wisc.edu/peatColor Contrast Checker

Source: Web Accessibility in Mind (WebAIM) **Link:** webaim.org/resources/contrastchecker

• Check My Colours - Color Contrast

Free online tool to check the contrast between foreground and background colors.

Source: Developed by Giovanni Scala

Link: checkmycolours.com
 Color Blind Web Page Filter

Free online tool that allows you see how a webpage may appear to individuals who have color-

blindness.

Source: Aware Color Lab **Link:** colorfilter.wickline.org

Readability Test

Free online tool to help check the reading level of a website.

Source: Juicy Studio

Link: juicystudio.com/services/readability.php

• WebAnywhere- Virtual Screen Reader

Using WebAnywhere you can interact with the Web in a similar way as other screen readers, such as JAWS or Window-Eyes.

Source: University of Washington Computer Science & Engineering

Link: wa.cs.washington.edu

Image Analyser

Free online tool to help check the images on a webpage for accessibility issues.

Source: Juicy Studio.

Link: juicystudio.com/services/image.php

Training Resources

Accessible Technology On-Line Webinar Series

A series of webinars to increase awareness of technology accessibility for people with disabilities. Sponsored by the Great Lakes ADA Center, a member of the ADA National Network. The sessions are 90 minutes in length. Real-Time captioning is available for each session and will be broadcast via the webinar platform. A telephone option for receiving audio is also available (non-toll free number).

Source: Great lakes ADA Center

Link: ada-audio.org/Webinar/AccessibleTechnology/Schedule

Section 508 Best Practices Webinar Series

A series of webinars that address a variety of issues associated with ensuring federal agencies have the knowledge to meet their obligations under Section. Co-sponsored by the ADA National Network, the U.S Access Board, the Accessibility Committee of the CIO Council, and eFedLink/ODEP. The sessions are 90 minutes in length. Real-Time captioning and Video Sign Language Interpreter are available for each session and will be broadcast via the webinar platform. A telephone option for receiving audio is also available (non-toll free number).

Source: ADA National Network, the U.S Access Board, the Accessibility Committee of the CIO Council, and eFedLink/ODEP

Link: adaconferences.org/CIOC

Accessible Technology in the Workplace

Resources, news and frequently asked questions on accessible technology, assistive technology, and the use of information technology that is universally accessible. Developed by the Pacific ADA Center and Great Lakes ADA Center, both are members of the ADA National Network.

Source: Pacific ADA Center and Great Lakes ADA Center

Link: accessibletech.org

• EASI: Equal Access to Software and Information Webinars

A non-profit organization that offers webinars and courses on a variety of accessibility-related topics.

Source: EASI: Equal Access to Software and Information

Link: easi.cc/clinic.htm

Section 508 Universe Training

A central hub for U.S. General Service Administration's (GSA) Section 508 training and information resources, including topic-specific courses that address Section 508 implementation as well as Web links and a glossary of 508-related terms.

Source: U.S. General Service Administration's Section 508

Link: training.section508.gov

• Web Accessibility 101 Video Series

A YouTube video series from the SSB BART Group that features introductory level videos demonstrating assistive technology and common accessibility challenges.

Source: SSB Bart Group

Link: youtube.com/channel/UCMaj9TLWOF6fx-bFdapY1AA

Tutorials and Courses

How-To Guide for Creating Accessible Online Learning Content

This online guide, Web Accessibility for Online Learning, explores accessibility issues and provides straightforward advice and guidance about creating usable content whether you are a novice or advanced author of course content.

Source: CANnet

Link: projectone.cannect.org

How to Make a Website More Accessible

Source: Online Web Design Degree.

Link: onlinewebdesigndegree.com/resources/how-to-make-a-website-more-accessible

• Dive Into Accessibility: 30 days to a more accessible web site

Online book which discusses accessible design issues and techniques.

Source: Mark Pilgrim

Link: diveintoaccessibility.info

• Web Accessibility for Section 508 Tutorial

Source: JimThatcher.com.

Link: jimthatcher.com/webcourse1.htm

• WCAG 2.0 tutorial- Web accessibility made easy

Online tutorial that introduces and summarizes the W3C Web Content Accessibility Guidelines and its four principles:

1) Perceivable, 2) Operable, 3) Understandable, 4) Robust.

Source: Olga Revilla

Link: oneguidelineaday.com

• Introduction to Web Accessibility Course

In this online course you will discover fast and simple ways to make websites more accessible and tools using Google Chrome extensions that allow you to easily inspect accessibility.

Source: Google Accessibility

Link: webaccessibility.withgoogle.com/course

Excerpt from SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND PENNINGTON COUNTY, SOUTH DAKOTA UNDER THE AMERICANS WITH DISABILITIES ACT --DJ# 204-69-49 http://www.ada.gov/pennington_co/pennington_sa.html

B. JURISDICTION

The ADA applies to Pennington County because it is a "public entity" as defined by title II. 42 U.S.C. § 12131(1).

The United States is authorized under 28 C.F.R. Part 35, Subpart F, to determine the compliance of Pennington County with title II of the ADA and the Department of Justice's title II implementing regulation, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring a civil action enforcing title II of the ADA.

I. WEB-BASED SERVICES AND PROGRAMS

37. Within twelve (12) months of the effective date of this agreement, the County will retain an independent consultant, approved by the United States, who is knowledgeable about accessible website development, Title III of the ADA, and WCAG 2.0 to evaluate Pennington County's website and any proposed online services for compliance with the ADA and, at minimum, WCAG 2.0 Level A and Level AA Success Criteria and other Conformance Requirements (WCAG 2.0 AA), and who shall be responsible for the annual website accessibility evaluation. Pennington County will bear all costs and expenses of retaining and utilizing this independent consultant, including the costs and expenses of any staff. Pennington County will compensate this independent consultant

38. Within twelve (12) months of the effective date of this Agreement, and annually thereafter, Pennington County will:

without regard to the outcome.

a. Adopt, implement, and post online a policy that its web pages will comply with WCAG 2.0 AA, published by the World Wide Web Consortium (W3C), Web Accessibility Initiative (WAI), available at www.w3.org/TR/WCAG;

- Distribute the policy to all employees and contractors who design, develop,
 maintain, or otherwise have responsibility for its websites, or provide website
 content, technical support, or customer service;
- c. Provide training to website content personnel on how to conform all web content and services with, at minimum, WCAG 2.0 AA, Title II of the ADA, and the terms of this Agreement;
- 39. Within thirty (30) months of the effective date of this Agreement, and annually thereafter, Pennington County will:
 - a. Incorporate provisions ensuring that all of Pennington County's webpage's comply with WCAG 2.0 AA into the performance evaluations of the web accessibility coordinator and all employees and contractors who design, develop, maintain, or otherwise have responsibility for its websites, or provide website content, technical support, or customer service;
 - b. Assess all existing web content and online services for conformance with, at minimum, WCAG 2.0 AA, by: (1) performing automated accessibility tests of its website and all online services, using an automated tool approved by the United States, to identify any accessibility barriers; and (2) enlisting individuals with different disabilities, including at a minimum individuals who are blind, deaf, and have physical disabilities (such as those limiting the ability to use a mouse), to test its pages for ease of use and accessibility barriers;
 - c. Provide a notice, prominently and directly linked from its homepage, instructing visitors to its websites on how to request accessible information. The link shall provide several methods to request accessible information, including an accessible form to submit feedback, an email address, and a toll-free phone

- number (with TTY) to contact personnel knowledgeable about the accessibility of the website; and
- d. Provide a notice, prominently and directly linked from its homepage, soliciting feedback from visitors to its websites on how to improve website accessibility. The link shall provide several methods to provide feedback, including an accessible form to submit feedback, an email address, and a tollfree phone number (with TTY) to contact personnel knowledgeable about the accessibility of the website.
- 40. Within thirty (30) months of the effective date of this Agreement, Pennington County will:
 - a. Ensure that its websites and all online services, including those websites or online services provided by third parties upon which Pennington County relies to provide services or content, comply with, at minimum, WCAG 2.0 AA; and
 - b. Assess all proposed online services before they are made available to the public for conformance with, at minimum, WCAG 2.0 AA, by: (1) performing automated accessibility tests, using an automated tool approved by the United States, to identify any accessibility barriers; and (2) enlisting individuals with different disabilities, including at a minimum individuals who are blind, deaf, and have physical disabilities (such as those limiting the ability to use a mouse), to test its pages for ease of use and accessibility barriers.



JEFFERSON COUNTY ELECTION COMMISSION

P.O. Box 177

Dandridge, Tennessee 37725

Phone: 865-397-3440

Fax: 865-397-5062

Carolyn Etherton, Member

Charles Gibson, AOE

John (Jack) Kramer, Jr. Member

Phyllis McCracken, Chairperson Betty Watkins, Secretary A.C. Carr, Member

June 2, 2015

State Election Commission Division of Elections 312 Rosa L. Parks Avenue 7th Floor, Snodgrass Tower Nashville, Tennessee 37243-0309

Dear Sirs,

I respectfully request to be excused from the annual State T.A.C.E.O. Seminar to be held June 7^{th} -10th, 2015 in Nashville, TN. This request is due to medical reasons. Thank you.

Charles R. Gibson

Administrator of Elections

Jefferson County

Sincerely,

2015 JUN 10 PM 1: 18

First Last In Attendance	Tim Sweat Yes - Certified	Leigh Schlager Yes - Certified	Craig Story Yes - Certified	Gaye Treadwell Yes - Certified	Tim Clark Yes - Certified	Steve Gaddis Yes - Certified	Debbie Steidl Yes - Certified	Tom Davis Yes - Certifled	Charles Holiway Yes - Certified	Cathy Hamsley Yes - Certified	Alan Farley Yes - Certified	Gabe Krahn Yes - Certified	Jerrie Hickey Yes - Certified	Ed Kuncitis Yes - Certified	Rich Holden Yes - Certified	Yvonne Gibbs Yes - Certified	Nellie Anderson Yes - Certified	Jason Booher Yes - Certified	Lori Atchley Yes - Certified	Neil Bell Yes - Certified	Steven Paxton Yes - Certified	Sarah Bailey Yes - Certified	Debbie Viles Yes - Certified	Wayne Simons Yes - Certified	Donna Smith Yes - Certified	Maybell Stewart Yes - Certified	Lillie Ruth Brewer Yes - Certified	Barbara Castleman Yes - Certified	Dorcas Marcum Yes - Certified	Ann Beard Yes - Certified	Chad Gray Incoming Present
County	Morgan	Obion	Overton	Perry	Pickett	Polk	Putnam	Rhea	Roane (Robertson	Rutherford	Scott	Sequatchie	Sevier	Shelby	Smith	Stewart	Sullivan	Sumner	Tipton	Trousdale	Unicoi	Union	Van Buren	Warren	Washington	Wayne	Weakley	White	Williamson	Williamson
In Attendance	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	EXCUSE Filed	EXCUSED	Yes - Certified	EXCUSED	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified
Last	Steelman	Greer	Moore	Cronise	Sharp	Smothers	Miller	Thompson	Davis	Robinson	Bullion	Thaxton	Gibson	Long	Rodgers	Morgan	Crain	White	Ferguson	Allen	Harrison	Doss	Buckley	Reames	Arnold	Baxter	Williams	Collins	McAllister	Brown	Koelman
First	Kerry	Sue	Amber	Jeanette	Donna	Andrea	Dan	Darrin	Martie	Gay	Joann	Clay	Charles	Mike	Cliff	Michelle	Memory	Tanya	Connie	Shelia	Susan	Barry	Kim	Gary	Tristan	Todd	Kris	Joanie	Judy	James	Vickie
County	Hamilton	Hancock	Hardeman	Hardin	Hawkins	Haywood	Henderson	Henry	Hickman	Houston	Humphreys	Jackson	Jefferson	Johnson	Knox	Lake	Lauderdale	Lawrence	Lewis	Lincoln	Loudon	Macon	Madison	Marion	Marshall	Maury	McMinn	McNairy	Meigs	Monroe	Montgomery
In Attendance	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - New Appt	Yes - Certified	Yes - Certified	Yes - New Appt	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - New Appt	Absent - Not Cert'	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Incoming Present	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified	Yes - Certified
Last	Stephens	Leverette	Ward	Wheeler	Hughes	Green	Ayers-Colvin	Teply	Taylor	Harris	Cherry	White	O'Dell	Daniels	Slagle	Davis	Lott	Davis	Wall	Holbert	Stanley	Hagewood	Fowlkes	Adams	Williams	Ottley	Bailey	Bassham	Winstead	Burgner	Basham
First	Mark	Summer	Mark	Lisa	Susan	Fran	Ann	Matt	Vince	Tracy	Sandy	Michele	Carolyn	Wanda	Joyce	Vernita	Lori	ij	Kent	Melanie	Dennis	Roxanna	Anita	Warren	Joey	Margaret	Molly	Kathy	Kathy	Donna	Donna
County	Anderson	Bedford	Benton	Bledsoe	Blount	Bradley	Campbell	Cannon	Carroll	Carter	Cheatham	Chester	Claiborne	Clay	Cocke	Coffee	Crockett	Cumberland	Davidson	Decatur	Dekalb	Dickson	Dyer	Fayette	Fentress	Franklin	Gibson	Giles	Grainger	Greene	Grundy

Prepared 6/10/2015

	3 AOEs Ma	intained	3 AOEs Maintained Certified Status
FORMER AGE	Suzanne	Smith	Former Certified
FORMER AGE	Tammy	Smith	Former Certified
FORMER AGE	Nicole	Lester	Former Certified





HAMILTON COUNTY ELECTION COMMISSION

700 RIVER TERMINAL ROAD
CHATTANOOGA, TENNESEE 37406
TELEPHONE (423) 493-5100 • FAX (423) 493-5101
TTY (423) 493-5100, EXT. 254
Website: elect.hamiltontn.gov

ELECTIONS

July 8, 2015

State Election Commission Division of Elections 312 Rosa L. Parks Avenue 7th Floor, Snodgrass Tower Nashville, Tennessee 37243

Dear Commissioners,

We, the Hamilton County Election Commission (HCEC), are writing to express our full support for the permanent approval of our utilization of Provisional Ballot Bags. Since 2012, the State Election Commission has approved temporary usage on three occasions subject to re-approval in subsequent election cycles. The safety, security, and durability of Hamilton County's uniquely designed bag make it far superior to any other ballot bag on the market.

In 2006 Administrator Bud Knowles sought an alternative to the heavy, cumbersome, and often destructive metal provisional ballot boxes that are deployed to all of Hamilton County's polling sites. Administrator Knowles, in collaboration with bank security bag provider A. Rifkin Co., custom designed a thick, rugged canvas ballot bag with a modified locking mechanism to include at least the minimum number of locks and seals required by state election law. The locking system includes a heavy duty master lock, along with a third security seal. Rifkin also incorporated a baffle inside the deposit slot making it virtually impossible to extract a provisional ballot without breaking three(3) seals and two(2) locks.

Upon review of Administrator Knowles' proposal, the HCEC received the full support of then-State Election Coordinator Brooke Thompson to transition to provisional ballot bags on a pilot project basis. In fact, Coordinator Thompson provided federal HAVA funds for Hamilton County to proceed with the purchase. At the 2015 TACEO summer seminar it became apparent that Hamilton County has been mistakenly linked to a substandard ballot bag manufactured by PrintElect. State Election Coordinator Mark Goins demonstrated how the PrintElect bag was easily compromised and the contents altered without breaking a seal or destroying a lock. Frankly, there is no comparison of the substandard PrintElect bag to Hamilton County's superior custom designed bag.

If this was intended to be a pilot project, we believe it is reasonable to affirm the HCEC has demonstrated success. In 25 elections over the last 9 years, we have successfully deployed provisional ballot bags to all 130 voting precincts without incident. We recognize that meeting our mission of conducting fair and impartial elections is contingent on the integrity of every ballot cast. We have established extraordinary security measures above and beyond what is required by law, and we respectfully request the State Election Commission permanently approve the Hamilton County Election Commission's Provisional Ballot Bag.

Sincerely,

Michael S. Walden, Chairman

Hamilton County Election Commission

Jerry Summers, Secretary

Ruth Braly

Chris Clem

Kelvin Scott

Sunset Public Hearing Questions for STATE ELECTION COMMISSION

Created by Section 2-11-101, *Tennessee Code Annotated* (Sunset Termination June 2016)

- 1. Provide a brief introduction to the State Election Commission, including information about its purpose, statutory duties, and staff.
- 2. What is the role of the Coordinator of Elections and what is the relationship between the coordinator and the commission?
- 3. Provide a list of current members of the commission and describe how membership complies with Sections 2-11-102, 103, 104, and 112, *Tennessee Code Annotated*. Are there any vacancies on the commission? If yes, what is being done to fill those vacancies?
- 4. How many times did the commission meet in fiscal years 2014 and 2015? How many members were present at each meeting?
- 5. What were the commission's revenues (by source) and expenditures (by object) for fiscal year 2014 and 2015?
- 6. What compensation is paid to commission members under the provisions of Section 2-11-107, *Tennessee Code Annotated*? What travel reimbursements do members receive? How much was paid to commission members in fiscal years 2014 and 2015?
- 7. What procedures does the commission have in place for the disclosure of conflicts of interest by staff members?
- 8. What were the major accomplishments of the commission during fiscal years 2014 and 2015?
- 9. What reports does the commission prepare on its operations, activities and accomplishments, and who receives these reports?
- 10. Describe the relationship between the State Election Commission and the county election commissions, including any issues that arise within that relationship.
- 11. Section 2-12-101(a), *Tennessee Code Annotated*, states that the State Election Commission appoints members of the various county election commissions. Other than the residency requirements in Section 2-12-102 of the code, what criteria are used in appointing members to the county election commissions?
- 12. Section 2-12-101 (b), *Tennessee Code Annotated*, also gives the State Election Commission the power to remove or otherwise discipline members of the county election commissions. How many county election commissioners have been disciplined or removed during the last two fiscal years and what was the basis for the disciplinary action(s) taken?

- 13. Where do the powers and duties of the Coordinator of Elections and the State Election Commission intersect and how do the two entities function in relationship to each other?
- 14. Is the commission subject to Sunshine law requirements (per Section 8-44-101 et seq., Tennessee Code Annotated) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the commission have for informing the public of its meetings and making its minutes available to the public?
- 15. Describe any items related to the commission that require legislative attention and your proposed legislative changes.
- 16. Should the commission be continued? To what extent and in what ways would the absence of the commission affect the public health, safety, or welfare?
- 17. Has the commission developed and implemented quantitative performance measures for ensuring it is meeting its goals? (Please answer either yes or no). If the commission has developed and implemented quantitative performance measures, answer questions 18 through 25. If the commission has not developed quantitative performance measures, proceed directly to question 26.
- 18. What are your key performance measures for ensuring the commission is meeting its goals? Describe so that someone unfamiliar with the program can understand what you are trying to measure and why it is important to the operation of your program.
- 19. What aspect[s] of the program are you measuring?
- 20. Who collects relevant data and how is this data collected (e.g., what types information systems and/or software programs are used) and how often is the data collected? List the specific resources (e.g., report, other document, database, customer survey) of the raw data used for the performance measure.
- 21. How is the actual performance measure calculated? If a specific mathematical formula is used, provide it. If possible, provide the calculations and supporting documentation detailing your process for arriving at the actual performance measure.
- 22. Is the reported performance measure result a real number or an estimate? If an estimate, explain why it is necessary to use an estimate. If an estimate, is the performance measure result recalculated, revised, and formally reported once the data for an actual calculation is available?
- 23. Who reviews the performance measures and associated data/calculations? Describe any process to verify that the measure and calculations are appropriate and accurate.

- 24. Are there written procedures related to collecting the data or calculating and reviewing/verifying the performance measure? Provide copies of any procedures.
- 25. Describe any concerns about the commission's performance measures and any changes or improvements you think need to be made in the process.
- 26. Please list all commission programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

If the commission <u>does</u> receive federal assistance, please answer questions 27 through 34. If the commission <u>does not</u> receive federal assistance, proceed directly to question 33.

- 27. Does the commission prepare a Title VI plan? If yes, please provide a copy of the most recent plan.
- 28. Does the commission have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.
- 29. To which state or federal agency (if any) does the commission report concerning Title VI? Please describe the information your commission submits to the state or federal government and/or provide a copy of the most recent report submitted.
- 30. Describe the commission's actions to ensure that association staff and clients/program participants understand the requirements of Title VI.
- 31. Describe the commission's actions to ensure it is meeting Title VI requirements. Specifically, describe any commission monitoring or tracking activities related to Title VI, and how frequently these activities occur.
- 32. Please describe the commission's procedures for handling Title VI complaints. Has the commission received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).
- 33. Please provide a breakdown of current commission staff by title, ethnicity, and gender.
- 34. Please list all commission contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner.

Bill Number	Composite Abstract	Last Action	Dafe	ï
SB0840by Yager HB1352by Alexander	Election Laws - As introduced, allows counties to participate in pllot project for establishing convenient voting centers for use on election day upon super majority vote of the county election commission Amends TCA Title 2. Chapter 3.	SB0840: Sponsor(s) Added. HB1352: Taken off notice for cal in s/c Local Government.	3/25/2015	î -
SB1291by Hensley HB1189by VanHuss	Election Laws - As introduced, authorizes a referendum in order to renew the contract of a director of schools Amends TCA Title 49.	SB1291: Assigned to General Subcommittee of Senate Education Committee	4/1/2015	
		HB1189: Action Def. in s/c Education Administration & Planning Subcommittee to 2016	03/24/2015	
SB0658by Kyle	Election Laws - As introduced, authorizes any person over the age of 17 by election day to serve as a poll watcher or poll worker; provided, that the person has not been convicted of violation of any election law Amends TCA Title 2.	Passed on Second Consideration, refer to Senate State and Local Government Committee	2/18/2015	
SB0739by Southerland HB0668by Hawk	Election Laws - As introduced, closes public schools on any day on which a primary election, general election, or special election is held throughout the state or school district Amends TCA Title 49, Chapter	SB0739: Assigned to General Subcommittee of Senate Education Committee	4/1/2015	
	6, Part 30.	HB0668: Taken off notice for cal in s/c Education Administration & Planning Subcommittee of Education Administration & Planning	03/31/2015	
SB0779by Beavers HB1350by Weaver	Election Laws - As introduced, creates term of office for county administrator of elections to coincide with the term of the county election commission; allows county election commission to consider political party affiliation when appointing an administrator of elections Amends TCA Title 2, Chapter 12.	SB0779: Rcvd. from S., held on H. desk. HB1350: Failed in Local Government Committee	3/23/2015 03/31/2015	
SB0553by Niceley HB0510by Spivey	Election Laws - As introduced, decreases, from three to two and one-half hours, the amount of time a person may be absent from employment to vote on election day without any penalty or reduction in	SB0553: Passed on Second Consideration, refer to Senate State and Local Government Committee	2/12/2015	
	pay; revises an exception to the absence authorization to coincide with reduction in time Amends TCA Title 2 and Title 3.	HB0510: Assigned to s/c Local Government Subcommittee	02/18/2015	
SB0971by Kelsey HB1143by Lynn	Election Laws - As introduced, enacts the "Local Political Party Financial SB0971: Assigned to General Subcommittee of Senate State and Local Management Act." - Amends TCA Title 2, Chapter 10 and Title 2, Chapter 13.	SB0971: Assigned to General Subcommittee of Senate State and Local Government Committee	4/6/2015	
		HB1143: Taken off notice for cal in s/c Local Government Subcommittee of Local Government Committee	04/01/2015	
SB1068by Harris HB0688by Powell	Election Laws - As introduced, increases, from 15 days to 30 days, the amount of time in which to cure a defect in the documentation required to initiate a petition for a recall election Amends TCA Title 2; Title 3;	SB1068: Passed on Second Consideration, refer to Senate State and Local Government Committee	2/18/2015	
	Title 4; Title 5; Title 6; Title 7; Title 8; Title 17; Title 18 and Title 49.	HB0688: Assigned to s/c Local Government Subcommittee	02/19/2015	

Bill Number	Composite Abstract	Last Action	Date
SB1253by Yarbro	Election Laws - As introduced, lengthens voter registration period to 15 days before an election instead of 30 days before an election Amends TCA Title 2.		2/18/2015
SB0552by Niceley HB0663by Alexander	Election Laws - As introduced, modifies the composition of the members of the board from nine appointed members to nine members elected by the people during the regular November elections; authorizes		4/1/2015
	the governor to fill any vacancies on the board, subject to confirmation by the senate Amends TCA Title 2 and Title 49.	HB0663: Taken off notice for cal in s/c Education Administration & Planning Subcommittee of Education Administration & Planning	03/24/2015
SB1210by Yarbro HB0553by Fitzhugh	Election Laws - As introduced, permits any registered Tennessee voter to vote absentee for any reason after providing evidence of identification in the application for a ballot, exempts certain absentee voters from the		4/21/2015
	evidence of identification requirement under certain circumstances Amends TCA Title 2.	HB0553: Taken off notice for cal in s/c Finance, 'Ways & Means Subcommittee of Finance, Ways & Means Committee	04/21/2015
SB1126by Yarbro HB0926by Hardaway	Election Laws - As introduced, permits the use of a photo identification card issued by this state, the United States, or an accredited postsecondary institution of education in this state for purposes of	SB1126: Passed on Second Consideration, refer to Senate State and Local Government Committee	2/18/2015
	verifying the identity of an eligible voter Amends TCA Title 2, Chapter 7 .	HB0926: Failed in s/c Local Government Subcommittee of Local Government Committee	03/25/2015
SB0138by Tate HB0916hy Faison	Election Laws - As introduced, prohibits a person or organization distributing or causing to be distributed a sample ballot from using the	SB0138: Rcvd. from S., held on H. desk.	3/26/2015
	name of any statewide political party on such ballot without written permission from the statewide political party Amends TCA Title 2, Chapter 10 and Title 2, Chapter 19.	HB0916: Def. to Summer Study	03/31/2015
SB0430by Briggs HB0215by Daniel	Election Laws - As introduced, prohibits the transfer of postage, printing, and office supply funds between members of the general assembly, limits a member's account balance of funds allotted for postage,	SB0430: Assigned to General Subcommittee of Senate State and Local Government Committee	3/17/2015
	printing, and office supply expenses to the total cumulative amount the member receives in the preceding five years Amends TCA Title 3, Chapter 1, Part 1.	HB0215: Taken off notice for cal in s/o State Government Subcommittee of State Government Committee	03/25/2015
SB0038by Kelsey HB0602by Durham	Election Laws - As introduced, removes prohibition on treasurer signing campaign finance disclosure statements as a witness Amends TCA Title 2 and Title 3.	SB0038: Assigned to General Subcommittee of Senate State and Local Government Committee	4/6/2015
		HB0602: Action Def. in s/c Local Government Subcommittee to 2016	04/01/2015
SB0947by Yarbro HB1065by Jernigan	Election Laws - As introduced, removes references to the Votomatic punch card voting system Amends TCA Title 1; Title 2 and Title 3.	SB0947: Passed on Second Consideration, refer to Senate State and Local Government Committee	2/18/2015
		HB1065: Assigned to s/c Local Government Subcommittee	02/24/2015

	E Chi						
Date	4/8/2015 04/21/2015 3/25/2015 02/24/2015	3/26/2015 03/25/2015 4/6/2015	04/21/2015	4/1/2015 02/19/2015	2/18/2015	4/6/2015 04/01/2015	3/17/2015
Last Action	SB0654: Action deferred in Senate Judiciary Committee to 1/12/2016 HB0852: Re-ref. Local Government Committee SB0970: Assigned to General Subcommittee of Senate State & Local Government Committee HB1138: Assigned to s/c Local Government Subcommittee	SB1188: Assigned to General Subcommittee of Senate State and Local Government Committee HB0939: Taken off notice for cal in s/c Local Government Subcommittee of Local Government Committee SB1219: Revd. from S., held on H. desk.	HB0681: Action Def. in s/c Finance, Ways & Means Subcommittee to 1/1/2016	SB0906: Sponsor(s) Added. HB0797: Assigned to s/c Local Government Subcommittee	SB0843: Passed on Second Consideration, refer to Senate State and Local Government Committee HB0303: Assigned to s/c Local Government Subcommittee	SB0826: Assigned to General Subcommittee of Senate State and Local Government Committee Government Committee HB0463: Taken off notice for cal in s/c Local Government Subcommittee of Local Government Committee	SB1116: Action deferred in Senate State and Local Government Committee to 3/24/2015 HB0831: Taken off notice for cal in s/c Local Government Subcommittee of Local Government Committee
Composite Abstract	Election Laws - As introduced, removes requirement that a person must SB0654: Action deferred in Senate Judiciary Committee to 1/12/2016 pay outstanding child support obligations that accumulated during any period of incarceration to have right of suffrage restored Amends TCA HB0852: Re-ref. Local Government Committee Title 40, Chapter 29, Part 2. Election Laws - As introduced, requires a person making disbursement SB0970: Assigned to General Subcommittee of Senate State & Local for electioneering communication to electronically file the report with the Government Committee registry of election finance within 24 hours; defines "electioneering communication." - Amends TCA Title 2, Chapter 10. HB1138: Assigned to s/c Local Government Subcommittee	Election Laws - As introduced, requires a person to declare a statewide political party affiliation before voting in a primary election Amends TCA Title 2. Election Laws - As introduced, requires a summary of a constitutional	amendment to precede the question on the ballot instead of requiring a summary for only those questions exceeding 300 words in length Amends TCA Section 2-5-208.	Election Laws - As introduced, requires certain counties to act upon SB0906: Sponsor(s) Added. request for voter registration lists within seven business days instead of seven days; allows reasons for rejection or modification of the request to HB0797: Assigned to s/c Local Government Subcommittee be sent via electronic mail or facsimile transmission Amends TCA Title 2, Chapter 2.	Election Laws - As introduced, requires election officials to inspect SB0843: Passed on Second C filings for sufficiency and timeliness; establishes conclusive presumption Local Government Committee that accepted filings are sufficient and timely filed Amends TCA Title 2. HB0303: Assigned to s/c Loca	Election Laws - As introduced, requires election officials to inspect filings for sufficiency and timeliness; establishes conclusive presumption that accepted filings are sufficient and timely filed Amends TCA Title 2.	Election Laws - As introduced, requires state election commission to provide online voter registration through the secretary of state's web site Amends TCA Title 2, Chapter 2.
Bill Number	SB0654by Kyle HB0852by Turner SB0970by Kelsey HB1138by Lynn	SB1188by Beavers HB0939by Matheny SB1219by Bell	HB0681by VanHuss	SB0906by Watson HB0797by Matlock	SB0843by Yager HB0303by Wirgau	SB0826by Yager HB0463by Ramsey	SB1116by Yarbro HB0831by Turner



PUBLIC CHAPTER NO. 20

SENATE BILL NO. 62

By Kelsey, Ketron

Substituted for: House Bill No. 649

By Wilburn

AN ACT to amend Tennessee Code Annotated, Section 2-13-305, relative to nominating petitions for delegates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-13-305(b)(1), is amended by deleting the language "one hundred (100)" and substituting instead the language "twenty-five (25)".

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.



PUBLIC CHAPTER NO. 24

SENATE BILL NO. 116

By Norris, Crowe, Bowling, Ketron, Watson

Substituted for: House Bill No. 105

By McCormick, Kevin Brooks, Spivey

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, for the sole purpose of changing the name of the Tennessee department of veterans' affairs to the department of veterans services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 25, is amended by deleting the language "veterans' affairs" wherever the language appears, except in Section 4-3-2503, and substituting instead the language "veterans services".

SECTION 2. Tennessee Code Annotated, Section 4-3-2503, is amended by deleting the section in its entirety and substituting instead the following:

The department of veterans services and the commissioner of veterans services are vested with all the authority, powers, and duties formerly imposed upon the staff division of veterans' affairs and the director of the department of veterans' affairs and as prescribed in title 58, chapter 3.

- SECTION 3. Tennessee Code Annotated, Section 4-3-101(24), is amended by deleting the language "veterans' affairs" and substituting instead the language "veterans services".
- SECTION 4. Tennessee Code Annotated, Section 4-3-111(22), is amended by deleting the language "veterans' affairs" and substituting instead the language "veterans services".
- SECTION 5. Tennessee Code Annotated, Section 4-3-104(m), is amended by deleting the subsection in its entirety and substituting instead the following:
 - (m) References to the staff division of veterans' affairs and references to the department of veterans' affairs are deemed references to the department of veterans services.
- SECTION 6. Tennessee Code Annotated, Section 4-3-113(n), is amended by deleting the subsection in its entirety and substituting instead the following:
 - (n) References to the director of veterans' affairs and references to the commissioner of veterans' affairs are deemed references to the commissioner of veterans services.
- SECTION 7. The Tennessee Code Commission is requested to change references in Tennessee Code Annotated, as volumes are replaced and supplements are issued, from "veterans' affairs" and "veterans affairs" to "veterans services" wherever the language appears in reference to the name or commissioner of the Tennessee department of veterans services.
- SECTION 8. The department of veterans services may exhaust the existing stock of office products having the designation of the department or commissioner of veterans' affairs prior to ordering new office products having the designation authorized by this act.

SECTION 9. This act shall take effect July 1, 2015, the public welfare requiring it.



PUBLIC CHAPTER NO. 38

SENATE BILL NO. 288

By Stevens

Substituted for: House Bill No. 653

By Wilburn

AN ACT to amend Tennessee Code Annotated, Title 8 and Title 17, relative to the administration of oaths of office.

WHEREAS, it is the intention of the General Assembly for efficiency purposes to provide a uniform list of those individuals who may administer the oath to publicly elected officers; now, therefore.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 17-1-104, is amended by deleting the last sentence and substituting instead the following language:

The oath shall be administered in accordance with title 8 or any other applicable law.

SECTION 2. Tennessee Code Annotated, Section 8-18-107, is amended by deleting the last two sentences of the section and substituting instead the following language:

The governor or an active or retired supreme court justice may administer the oath to a supreme court justice. The governor, an active or retired supreme court justice, an active or retired inferior court judge, or an active or retired general sessions judge may administer the oath to an inferior court judge. Except as otherwise provided by law, the governor, an active or retired supreme court justice, an active or retired inferior court judge, or an active or retired general sessions judge may administer the oath to any elected or appointed official. The oath may be administered at any time after an appointment, in the case of appointed officials, or in the case of elected officials after the election, but before the judge or public official assumes office, so long as the results of the election establishing that the person taking the oath won the election are certified by the appropriate legal authority. Even though an official may file an oath before the scheduled start of a term of office, the official may not take office until the term officially begins.

SECTION 3. Tennessee Code Annotated, Section 8-18-109, is amended by deleting subsection (a) and substituting instead the following:

Judges of courts of general sessions, revenue commissioners, sheriffs, constables, and other officers whose general duties are confined to a single county, as well as retired supreme court justices and retired inferior court or general sessions judges, shall, unless it is otherwise provided, file such oaths and certificate in the office of the county clerk.

SECTION 4. Tennessee Code Annotated, Section 8-18-109(b), is amended by deleting the second sentence and substituting instead the following:

The oath may be administered at any time after an appointment, in the case of appointed officials, or in the case of elected officials after the election, but before the judge or public official assumes office, so long as the results of the election establishing that the person taking the oath won the election are certified by the appropriate legal authority.

SECTION 5. This act shall take effect July 1, 2015, the public welfare requiring it.



PUBLIC CHAPTER NO. 50

SENATE BILL NO. 1356

By McNally

Substituted for: House Bill No. 469

By McCormick, Wirgau, Howell

AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7, Part 5, relative to confidentiality of bank account information.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 10-7-504, is amended by adding the following as a new, appropriately designated subsection:

() Notwithstanding any provision to the contrary, any bank account information that is received, compiled, or maintained by a state governmental agency, shall be confidential and shall not be an open record for inspection by members of the public. The bank account information that shall be kept confidential includes, but is not limited to, debit card numbers and any related personal identification numbers (PINs) or authorization codes, bank account numbers, and transit routing numbers.

SECTION 2. Tennessee Code Annotated, Section 10-7-504(a)(19), is amended by deleting the subdivision in its entirety and substituting instead the following:

(19) Credit card account numbers and any related personal identification numbers (PIN) or authorization codes in the possession of the state or a political subdivision thereof shall be maintained as confidential and shall not be open for inspection by members of the public.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.



PUBLIC CHAPTER NO. 177

HOUSE BILL NO. 817

By Representatives Cooper, Hardaway, Miller, Favors, Fitzhugh, Shepard

Substituted for: Senate Bill No. 733

By Senator Kyle

AN ACT to amend Tennessee Code Annotated, Title 2, relative to county election commissions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-12-117, is amended by adding the following language as a new subsection:

() If a county election commission develops and implements an Internet based electronic filing process pursuant to this section, then the county election commission shall notify the division of elections in the secretary of state's office at least ninety (90) days prior to its use.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring



PUBLIC CHAPTER NO. 184

SENATE BILL NO. 88

By Norris, Tracy, Yager

Substituted for: House Bill No. 78

By McCormick, Kevin Brooks, Dunn, Ragan, Hardaway

AN ACT to amend Tennessee Code Annotated, Section 49-6-6002, relative to testing schedules.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-6-6002(b), is amended by deleting the subsection in its entirety and substituting instead the following language:

(b) The commissioner of education shall establish a schedule for the administration of the Tennessee comprehensive assessment program assessments and meet the provisions of § 49-1-226. The commissioner shall have the authority to adjust the schedule for reasons including, but not limited to, natural disaster, prolonged inclement weather, or serious outbreaks of contagious illness.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

State of Tennessee Public Chapter No. 239

HOUSE BILL NO. 158

By Representative Casada

Substituted for: Senate Bill No. 183

By Senator Hensley

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 19, Part 2; Title 49, Chapter 2 and Title 49, Chapter 5, relative to public school employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-19-201(2), is amended by deleting the punctuation ";" and substituting instead the following:

. "Public lands, offices, buildings, vehicles, and facilities" include those owned and used by a local education agency (LEA);

SECTION 2. Tennessee Code Annotated, Section 2-19-201, is amended by adding the following language as a new, appropriately designated subdivision:

"Teacher" means any person employed in a public school system as a teacher, helping teacher, teacher's aide, librarian, principal, supervisor, director of schools, or member of the administrative staff.

SECTION 3. Tennessee Code Annotated, Section 2-19-201(3), is amended by deleting the language "teachers, as defined by § 49-1501,".

SECTION 4. Tennessee Code Annotated, Section 2-19-201(3), is further amended by deleting the punctuation "." at the end of the first sentence in the subdivision and substituting instead ", including teachers.".

SECTION 5. Tennessee Code Annotated, Section 2-19-206, is amended by adding the following language as a new, appropriately designated subsection:

(d)

- (1) Subsections (a), (b), and (c) shall not apply to teachers.
- (2) It is unlawful for any teacher to display campaign literature, banners, placards, streamers, stickers, signs, or other items of campaign or political advertising on behalf of any party, committee or agency, or candidate for partisan or nonpartisan public office elected by the people, on the premises of any building or land owned by a local education agency (LEA), or to use any of the facilities of the LEA, including equipment and vehicles, for such purposes. This subdivision (d)(2) does not apply to the display of campaign banners, placards, streamers, stickers, signs, or other items of campaign or political advertising on LEA-owned property or the use of LEA equipment, when the display or use is a part of and solely for the purpose of the LEA's program of student education relative to the electoral process. Except for the use of LEA-owned equipment and vehicles, this subdivision (d)(2) does not apply to a teacher during hours in which the teacher is not performing school duties.
- (3) This subsection (d) shall not be construed to prohibit any teacher from displaying a decal or bumper sticker on the teacher's personal vehicle while the vehicle is parked on LEA property.

SECTION 6. Tennessee Code Annotated, Section 2-19-207(b)(2), is amended by deleting the language "persons duly qualified as candidates for public office and teachers, as defined by § 49-1501," and substituting instead "and persons duly qualified as candidates for public office".

SECTION 7. Tennessee Code Annotated, Section 2-19-207, is amended by adding the following language as a new subsection (c):

(c

- (1) Subsections (a) and (b) shall not apply to teachers.
- (2) It is unlawful for any teacher employed by an LEA during those hours of the day when the LEA requires the teacher to be performing school duties to:
 - (A) Engage actively in a political campaign on behalf of any party, committee, organization, or agency;
 - (B) Engage in a campaign for a candidate for partisan or nonpartisan public office elected by the people;
 - (C) Attend political meetings or rallies;
 - (D) Use the teacher's employment to interfere with or affect the result of any regular or special primary election conducted within the state; or
 - (E) Perform political campaign duties or functions.
- (3) Nothing in this subsection (c) shall be construed to deprive a teacher from voting for the party or candidate of the teacher's choice or to deprive the teacher of the right to express the teacher's personal opinion concerning any political subject, party, or candidate.
- (4) A teacher on leave or during those hours in which the teacher is not required to be performing school duties is not subject to the restrictions in subdivision (c)(2). No policy or rule of an LEA shall be more restrictive of the political activity of a teacher on leave or during those hours in which the teacher is not required to be performing school duties than those restrictions set forth in this subsection (c).

SECTION 8. This act shall take effect July 1, 2015, the public welfare requiring it.



State of Tennessee PUBLIC CHAPTER NO. 243

HOUSE BILL NO. 523

By Representatives Lollar, Carr

Substituted for: Senate Bill No. 979

By Senator Norris

AN ACT to amend Tennessee Code Annotated, Title 6, relative to the powers of the board of commissioners of any municipality that adopts a city manager-commission charter.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 6, Chapter 20, Part 1, is amended by adding a new section:

(a) Subject to the further provisions of this section, the board of commissioners of any municipality incorporated under this charter that is located within a county that has adopted a charter form of government is authorized, upon its own initiative and upon the adoption of an ordinance by a two-thirds (2/3) vote at two (2) separate meetings, to establish term limits for the mayor and the board of commissioners of such municipality in such manner as shall be designated by the ordinance. The operation of the ordinance shall be subject to approval of the voters as required in subsection (b).

(b)

- (1) Any ordinance to establish term limits for the mayor and board of commissioners of any municipality to which subsection (a) applies shall not become operative until approved in an election herein provided in the municipality. Upon the adoption of the ordinance, the mayor shall notify the county election commission to hold an election as provided in this subsection (b).
- (2) After the receipt of a certified copy of such ordinance, the county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the ordinance, and a majority vote of those voting in the election shall determine whether the ordinance is to be operative.
- (3) If the majority vote is for the ordinance, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns; provided, however, that no term limits shall apply until the election of the mayor and board of commissioners held after the ordinance is operative.
- (4) If the majority vote is against the ordinance, no further elections on the question of term limits shall be held until at least four (4) years have expired from the previous election and only after the board of commissioners adopts a new ordinance for such purposes in accordance with subsection (a).
- (c) Any referendum required by this section may only be submitted to the voters at a regular August election, regular November election, or regularly scheduled municipal election.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring



HOUSE BILL NO. 1213

By Representative Doss

Substituted for: Senate Bill No. 1284

By Senator Hensley

AN ACT to amend Tennessee Code Annotated, Title 2; Title 6 and Title 7, relative to property rights voting.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 6-20-106, is amended by adding the following language as a new subsection:

(f

- (1) In any city incorporated under chapters 18–22 of this title having a population of not less than four hundred sixty (460) nor more than four hundred sixty-nine (469), according to the 2010 federal census or any subsequent federal census, registered voters who own real property located in any such city shall be entitled to vote in all municipal elections and municipal referenda held in such city; provided, that in cases of multiple ownership of real property, no more than two (2) owners who are registered voters shall be eligible to vote.
- (2) Subdivision (f)(1) shall have no effect unless it is approved by a two-thirds (2/3) vote of the board of commissioners of any city to which it applies. Its approval or nonapproval shall be proclaimed by the presiding officer of the board and certified by the presiding officer to the secretary of state.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.



HOUSE BILL NO. 707

By Representatives Lundberg, Hardaway

Substituted for: Senate Bill No. 687

By Senator Yager

AN ACT to amend Tennessee Code Annotated, Title 3, Chapter 6, Part 3, relative to restrictions on lobbyists.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 3-6-304(j), is amended by deleting the language "the governor or any member of the general assembly or any candidate for the office of governor, state senator or state representative" and substituting instead the language "the governor, any judge or chancellor, or any member of the general assembly, or any candidate for the office of governor, supreme court judge, court of appeals judge, court of criminal appeals judge, circuit court judge, chancellor, juvenile court judge, general sessions judge, state senator, or state representative".

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.



PUBLIC CHAPTER NO. 315

SENATE BILL NO. 597

By Kelsey

Substituted for. House Bill No. 988

By Littleton

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 7, Part 1, relative to the use of certain devices in polling places.

WHEREAS, the general assembly finds that Tennesseans are increasingly using their mobile electronic and communication devices to assist them in making election decisions; and

WHEREAS, the general assembly finds a voter's nondisruptive efforts to obtain election information are to be encouraged; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 2, Chapter 7, Part 1, is amended by adding the following as a new section thereto:

- (a) A county election commission shall not prohibit a voter from using a mobile electronic or communication device at a polling place for informational purposes to assist the voter in making election decisions. A county election commission may require that any mobile electronic or communication device be silenced while in use at the polling place.
- (b) Any voter using a mobile electronic or communication device as allowed in subsection (a) shall be prohibited from using the device for telephone conversations, recording, or taking photographs or videos while inside the polling place.

SECTION 2. This act shall take effect January 1, 2016, the public welfare requiring it.



PUBLIC CHAPTER NO. 348

SENATE BILL NO. 209

By Niceley

Substituted for: House Bill No. 198

By Goins, Rogers

AN ACT to amend Tennessee Code Annotated, Title 55, relative to driver licenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

- SECTION 1. Tennessee Code Annotated, Section 55-50-337, is amended by deleting subsection (a) and substituting instead the following:
 - (a) Every driver license issued by the department on or after January 1, 2016, shall be issued for a period of eight (8) years excluding Class P licenses, which shall expire one (1) year from the date of initial issuance. The commissioner may issue an initial license or renew a license that shall remain valid for three (3) to eight (8) years in order to transition licensees to an eight-year renewal cycle. License fees due under § 55-50-323 shall be prorated to reflect the appropriate fee for a renewal cycle of lesser length than eight (8) years; provided, that for Class D, Class M, and photo identification licenses, there shall be deducted from the gross prorated fee the amount of two dollars (\$2.00).
- SECTION 2. Tennessee Code Annotated, Section 55-50-323(a)(1), is amended by deleting the subdivision and substituting instead the following:
 - (1) The fees charged for eight-year driver licenses shall be as set by this subsection (a). For any license term other than eight (8) years, the fee shall be appropriately prorated; provided, that for Class D, Class M, and photo identification licenses, there shall be deducted from the gross prorated fee the amount of two dollars (\$2.00).
- SECTION 3. Tennessee Code Annotated, Section 55-50-323(a)(2), is amended by deleting subdivisions (A)–(D) and substituting instead the following:
 - (A) For Class A and renewal thereof, sixty-four dollars (\$64.00) until canceled, revoked, suspended, or expired:
 - (B) For Classes B and C and renewal thereof, fifty-six dollars (\$56.00) until canceled, revoked, suspended, or expired;
 - (C) For Class D and renewal thereof, twenty-six dollars (\$26.00) until canceled, revoked, suspended, or expired;
 - (D) For Class M and renewal thereof, twenty-six dollars (\$26.00) until canceled, revoked, suspended, or expired;
- SECTION 4. Tennessee Code Annotated, Section 55-50-323(a)(2)(J)(i), is amended by deleting the language "seven dollars and fifty cents (\$7.50)" and substituting instead the language "ten dollars (\$10.00)", and by deleting the language "five-year" and substituting instead the language "eight-year".
- SECTION 5. Tennessee Code Annotated, Section 55-50-323(c), is amended by deleting the language "five-year" and substituting instead the language "eight-year".
- SECTION 6. Tennessee Code Annotated, Section 55-50-331(g), is amended by deleting the language "five (5) years" and substituting instead the language "eight (8) years".

SECTION 7. Tennessee Code Annotated, Section 55-50-332(b), is amended by deleting the subsection and substituting instead the following:

(b) Duplicate licenses obtained during the normal eight-year cycle shall expire eight (8) years from the date of issuance, excluding Class P licenses, which shall expire one (1) year from the date of issuance.

SECTION 8. This act shall take effect January 1, 2016, the public welfare requiring it.



PUBLIC CHAPTER NO. 379

SENATE BILL NO. 674

By Dickerson

Substituted for: House Bill No. 701

By Faison

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 10, relative to digital currency.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-10-102(4), is amended by adding the language "digital currency," between the language "payment," and "gift,".

SECTION 2. Tennessee Code Annotated, Title 2, Chapter 10, Part 1, is amended by adding the following as a new section thereto:

- (a) A candidate or political campaign committee is allowed to accept digital currency as a contribution. Digital currency shall be considered a monetary contribution with the value of the digital currency being the market value of the digital currency at the time the contribution is received.
- (b) Any increase in the value of digital currency being held by a candidate or political campaign committee shall be reported as interest on any statement filed pursuant to § 2-10-105.
- (c) A candidate or political campaign committee must sell any digital currency and deposit the proceeds from those sales into a campaign account before spending the funds.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.



PUBLIC CHAPTER NO. 394

SENATE BILL NO. 845

By Gresham

Substituted for: House Bill No. 304

By Wirgau

AN ACT to amend Tennessee Code Annotated, Title 5; Title 6; Title 7; Title 8 and Title 12, relative to local government.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 6-20-101(c), is amended by deleting the language "An ordinance approved by the voters may not be repealed or amended."

SECTION 2. Tennessee Code Annotated, Section 6-20-101(c), is further amended by adding the following language at the end of the subsection:

Any city that has previously adopted an ordinance approved by the voters pursuant to this subsection (c) increasing the number of commissioners from three (3) to five (5), may, after six (6) years, adopt an ordinance to decrease the number of commissioners from five (5) to three (3) following the same procedure. If a majority of those persons voting on the ordinance shall be for approval, then the number of commissioners shall be reduced to three (3). Any such ordinance providing for a decrease in the number of commissioners shall not operate to abbreviate the term of office of any elected commissioner.

SECTION 3. This act shall take effect July 1, 2015, the public welfare requiring it.



PUBLIC CHAPTER NO. 437

SENATE BILL NO. 60

By Green, Roberts, Norris

Substituted for: House Bill No. 55

By Johnson, Kumar

AN ACT to amend Tennessee Code Annotated, Title 16, Chapter 2, relative to the nineteenth judicial district.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 16-2-506(19)(A), is amended by adding the following language as a new subdivision:

(vi) Effective September 1, 2015, there is created in the nineteenth judicial district one (1) additional circuit court to be designated as division IV. The governor shall appoint a person to serve as judge of division IV of the circuit court. The person so appointed shall serve in such capacity until September 1, 2016, or until the person's successor is elected and qualified. At the August 2016 general election, the qualified voters of the nineteenth judicial district shall elect, in accordance with § 16-2-505, one (1) person to serve as judge of division IV of the circuit court. The person so elected at the August 2016 general election shall hold office until September 1, 2022, or until the person's successor is elected and qualified. Thereafter, the judge of division IV of the circuit court shall be elected for a full eight-year term;

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.



PUBLIC CHAPTER NO. 484

SENATE BILL NO. 137

By Tate

Substituted for: House Bill No. 695

By Akbari, Camper, Parkinson, Hardaway

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 13, Part 2 and Title 2, Chapter 14, Part 2, relative to selection of candidates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 2-13-204(b)(4), is amended by deleting the first two sentences in the subdivision and substituting instead the following language:

If the office to be filled is a seat in the general assembly, then it shall be filled by the members of the party's county executive committee who reside within that district, except that in counties having a metropolitan form of government with a population of more than five hundred thousand (500,000) according to the 2010 federal census or any subsequent federal census, then the office shall be filled by the members of the party's county executive committee who represent precincts within that district. In a county with two (2) or more districts, only members of the county executive committee who reside within a particular district shall determine the method of nomination in that district except that in counties having a metropolitan form of government with a population of more than five hundred thousand (500,000) according to the 2010 federal census or any subsequent federal census, only members of the party's county executive committee who represent precincts within that district shall determine the method of nomination in that district. If no member of the county executive committee resides within a district, then the members of the county executive committees who represent precincts within the district may nominate a candidate.

SECTION 2. Tennessee Code Annotated, Section 2-14-202(d)(3), is amended by deleting the first sentence in its entirety and substituting instead the following:

If a vacancy as described in subdivision (d)(1) occurs after the sixth Thursday before the primary election, then the members of the county executive committees who reside within the senate district may nominate a candidate to appear on the November election ballot by any method authorized under the rules of the party; provided, however, if no member of the county executive committee resides within the senate district, then the members of the county executive committees who represent precincts within the senate district may nominate a candidate. If a vacancy as described in subdivision (d)(1) occurs after the sixth Thursday before the primary election in any county having a metropolitan form of government with a population of more than five hundred thousand (500,000) according to the 2010 federal census or any subsequent federal census, then the members of the county executive committees who represent the precincts composing such senate district may nominate a candidate to appear on the November election ballot by any method authorized under the rules of the party.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.



HOUSE BILL NO. 505

By Representatives Matlock, Hardaway

Substituted for: Senate Bill No. 464

By Senator Bell

AN ACT to amend Tennessee Code Annotated, Title 2, Chapter 5 and Title 8, Chapter 8, Part 1, relative to elections for sheriff.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 8-8-102, is amended by adding the following new subsections:

- (d) A person may challenge whether a candidate has the required qualifications for sheriff, as identified in subsection (a); provided, that the challenge is filed in writing with the POST commission no later than twelve o'clock (12:00) noon prevailing time on the third day after the qualifying deadline, as determined under § 2-5-101(a).
- (e) If a candidate's qualifications are challenged pursuant to subsection (d), the POST commission shall:
 - (1) Notify the candidate of the challenge;
 - (2) Review and verify the candidate's required qualifications, identified in subsection (a);
 - (3) Review and verify the candidate's affidavit and psychological evaluation form, in accordance with subsection (b); and
 - (4) If the POST commission determines the candidate does not possess the required qualifications for sheriff:
 - (A) Disqualify the candidate;
 - (B) Notify the candidate and county election commission of its determination no later than twelve o'clock (12:00) noon prevailing time on the seventh day after the qualifying deadline, as determined under § 2-5-101(a); and
 - (C) Request that the county election commission:
 - (i) Not print the candidate's name on any ballot; and
 - (ii) Remove the candidate's name from any printed ballot.

(f)

- (1) It is an offense for a person to intentionally file a fraudulent challenge under subsection (d).
- (2) A violation of subdivision (f)(1) is a Class A misdemeanor punishable by fine only.

SECTION 2. Tennessee Code Annotated, Section 2-5-101(g)(1), is amended by adding the following as a new, appropriately designated subdivision:

HB 505

Is declared disqualified by the peace officer standards and training (POST) commission pursuant to § 8-8-102(e);

SECTION 3. This act shall take effect July 1, 2015, the public welfare requiring it.



HOUSE BILL NO. 556

By Representatives Fitzhugh, Hardaway

Substituted for: Senate Bill No. 651

By Senators Jackson, Harris, Yarbro

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 50, relative to authorizing an electronic driver license system.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 50, Part 3, is amended by adding the following as a new section:

55-50-306.

- (a) The department of safety is authorized to develop a secure and uniform system, to be known as the "electronic driver license system," for authorizing persons to present or submit evidence of a valid driver license in an optional electronic format in lieu of a physical driver license. An acceptable electronic format includes display of electronic images on a cellular telephone or any other type of portable electronic device. The department may contract with one (1) or more entities to develop the electronic driver license system. The department or entity may develop a mobile software application capable of being utilized through a person's electronic device to access an electronic image of the person's driver license.
- (b) The department may accept donations and grants from any source to pay the expenses the department incurs in the development of the electronic driver license system.
- (c) The department may take reasonable measures to publicize the electronic driver license system to potential participants.
- (d) The department shall not charge a fee to participate in the electronic driver license system.
- (e) In lieu of a physical driver license, a person who participates in the system may present or submit evidence of possession of a valid driver license in an electronic format, which shall be accepted as such evidence for identification and other purposes, including upon the request of a law enforcement officer or a seller of alcoholic beverages. The electronic driver license system shall allow law enforcement officers to verify the authenticity of the driver license. If a person displays the evidence in an electronic format pursuant to this subsection, the person is not consenting for a law enforcement officer to access any other contents of the electronic device.
- (f) The department shall disable, suspend, or terminate a person's participation in the electronic driver license system if:
 - (1) The physical driver license issued to the participant has been canceled, revoked, or suspended as provided in this chapter; or
 - (2) The participant reports that the participant's electronic device has been lost or stolen.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

Tennessee 109th General Assembly - Private Acts

Chapter Number	Subject	Abstract	Bill Number
0001	Gatlinburg	As introduced, subject to local approval, amends the charter to remove certain budget requirements deemed by the legislative body to be obsolete, inconsistent with state law, or burdensome.	<u>HB0046</u>
0002	Cheatham County	As introduced, subject to local approval, removes requirement that persons be issued wheel tax decals for display on license plates as evidence of having paid the wheel tax.	HB1379
0003	School Districts, Special	As introduced, pursuant to the request of the Gibson County special school district, permits the district to issue bonds or notes in an amount of \$3 million or less and to issue bond, revenue, and grant anticipation notes.	HB1382
0004	School Districts, Special	As introduced, revises the property tax rate for the Trenton special school district.	HB0277
0005	School Districts, Special	As introduced, revises the property tax rate for the Bradford special school district.	HB0399
0006	Madison County	As introduced, subject to local approval, replaces existing civil service commission system with a new system.	HB1385
0007	Henry County	As introduced, subject to local approval, increases, from five to seven, the number of members on the board of trustees of the county medical center.	HB1387
0008	Westmoreland	As introduced, subject to local approval, exempts the city recorder from the requirement that office holders reside within two miles of the city limits; eliminates durational residency requirement of six months for an eligible appointment to the office of city recorder Amends Chapter 306 of the Private Acts of 1951; as amended.	HB1388
0009	Kingsport	As introduced, makes various charter revisions including clarifying powers of the board may be exercised by ordinance, resolution or motion; clarifying how vacancy filled when an alderman becomes mayor; revising bond requirements for employees who handle money; clarifying when employee may request hearing prior to termination; clarifying that competitive bidding is required only when a contract involves expenditure of city funds Amends Chapter 76 of the Private Acts of 1917; as amended.	<u>HB1390</u>
010	School Districts, Special	As introduced, pursuant to the request of the Tenth special school district of Wilson County, permits the district to issue bonds or notes in an amount of \$3 million or less and to issue bond anticipation notes in an amount of \$3 million or less Amends Chapter 330 of the Acts of 1901.	<u>HB1392</u>
011	Pikeville	As introduced, subject to local approval, allows property owners who are not residents of the Town of Pikeville to vote in municipal elections Amends Chapter 574 of the Private Acts of 1939; as amended.	НВ1393
012	Anderson County	As introduced, subject to local approval, validates, ratifies, and approves the actions of the county clerk and trustee of Anderson County, in establishing branch offices in Norris and Oak Ridge.	<u>HB1377</u>
D1.3	Petersburg	As introduced, amends the charter of the Town of Petersburg to remove the requirement that the recorder, chief of police, and judge live within the town limits.	HB1386



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