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THE BATTLE FOR TIPTON COUNTY

Election Results

The demand for equitable and reasonable accommodations and accurate and legal vote tabulations are the heart of this case. This case not only seeks relief for the Plaintiff as stated throughout the proceedings, but also addresses the primary interest of the public who were denied access to vote and finally the need to secure a question of Judicial ethics and address the denial of due process.

## Posted January 10, 2009

### IN THE SUPREME COURT OF TENNESSEE AT JACKSON

Mike Parsons

Appellant,

Vs. No. W2007-00327-SC-R11-CV

Jeff Huffman,

JAMES SNEED as Chairman of the

Tipton County Election Commission, and

TIPTON COUNTY ELECTION COMMISSION,

Appellee,

Appeal from the Final Judgment of the Chancery Court for Tipton County

Case No. 24402

# PETITION / MOTION TO RECONSIDER APPELLANT'S

# APPLICATION TO APPEAL TO THE SUPREME COURT

Comes Now Appellant Mike Parsons in accordance with Rule 22, TRAP, and Petitions / Moves this honorable court for reconsideration of its decision to deny Appellant's Application for Permission to Appeal to The Supreme Court. Whereas, the Supreme Court, relying on the record in making its decision was not able to render a truly informed decision in this case since the record before this court was defective and non-reflective of the evidence before the trial court and the events that occurred in the trial court.

In support of the forgoing Appellant would show and demonstrate to this Honorable Supreme Court as follows.

That evidence proving fraud in the tabulation of the vote of the 2006 General Election for Tipton County and other relevant fact were willfully removed from the record by the trial court. This intentional alteration of the record amounts a criminal act, perpetrated by the lower court for the express purpose of preventing this honorable court from rendering a fair ruling in this case.

The errors complained of in this appeal all serve to prejudice the Appellants case before the lower court.

Such actions of the lower court served to deny the Plaintiff's right to due process` and equal protection under the law.

## UNDISPUTED FACTS:

Appellant's Motion for New Trial and Alteration or Amendment of Judgment cites Plaintiff's Exhibit E, which is a photo taken from Channel 5, a local News Station in Memphis showing Plaintiff, Parsons having 79% of the vote, or 4,282 votes and Defendant, Huffman having 21% with only 1,142 votes the night of the election. And the following day the election commission reported Plaintiff had less than 3000 votes or substantially fewer votes than the night before. Something that is impossible and a clear indication of fraud and referenced in Plaintiff's Affidavit, as an "apparent manipulation of the voting process." All of these documents were filed with the trial court on December 21, 2006. (T.R. 16, 18, 28)

Appellant's Brief contained the following complaints that support these three pints at issue and the material facts still in dispute files October 22, 2007.

Appellant's Motion for Writ of Mandamus to correct and restore the record filed August 23, 2007 was so Ordered by the Court of Appeals, however the lower court failed to correct the record and further corrupted the record by removing Appellants Statement of the Evidence.

Plaintiff's Statement of Evidence indicates no objection to Plaintiff's exhibits by the Defendant's or the Court. But a statement by the lower court judge that "I'm just going to go by what is filed in writing. (T.R.64)

THE TRIAL COURT ERRORED BY EXCLUDING FROM THE TECHNICAL RECORD, APPELANT'S EXHIBITS THAT WERE FILED WITH THE TRIAL COURT WITH PLAINTIFF'S MOTION FOR NEW HEARING.

THE TRIAL COURT ERRORED BY EXCLUDING APPELANT'S STATEMENT OF EVIDANCE FROM THE TECHNICAL RECORD.

THE TRIAL COURT ERRORED BY DISMISSING THE CASE CLAIMING THE PLAINTIFF STATES NO GROUNDS UPON WHICH RELIEF CAN BE GRANTED WHEN A GENUINE ISSUE OF DISPUTED MATERIAL FACTS EXIST DENYING PLAINTIFF DUE PROCESS.

THE TRIAL COURT ERRORED BY IGNORING THE VIOLATIONS OF ELECTION LAW BY THE TIPTON COUNTY ELECTION COMMISSION.

THE TRIAL COURT ERRORED BY PRESIDING OVER THIS CASE WHEREAS THE JUDGE HAD A VESTED INTEREST IN THE OUTCOME.

#### ISSUES OF LAW BEFORE THE COURT:

##### What Constitutes Record:

Under TRAP 24(a), the record on appeal to the supreme court, court of appeals or court of criminal appeals consists of: (1) Copies, certified by the clerk of the trial court, of all papers filed in the trial court except as provided, (2) the original of any exhibits filed in the trial court, (3) the transcript or statement of the evidence or proceedings, which should clearly indicate and identify any exhibits offered in evidence and whether received or rejected and (4) any other matter designated by a party and properly includable in the record. (SEE ATTACHED EXHIBITS PROPERLY FILED)

##### Judicial Notice:

Judicial notice will be taken of the judicial proceedings, judgments and decisions of the courts. The court can take judicial notice of its own orders and judgments. *Hughes v. State*, 2 Tenn. Crim. App. 71, 451 S.W.2d 696 (1969)

A court can take judicial notice of all the papers filed in the case on trial and all the facts established thereby. *Stone v. O'Neal*, 19 Tenn. App. 512, 90 S.W.2d 548 (1935)

##### Tennessee Rules of Evidence:

Under the Tennessee Rules of Evidence, a court must take judicial notice of certain laws. Those laws included, but are not limited to: (1) The common law, (2) the constitution and statutes of the United States and Tennessee, (3) court rules adopted by the U.S. Supreme Court and the Tennessee Supreme Court, and (4) any rule of regulation that federal or Tennessee law requires the court to judicially notice. Rule 202(a), T.R.E.

##### Defective Record:

The Rules of Appellate Procedure provide that if any matter properly includable is omitted from the record, is improperly included or is misstated therein, the record may be corrected or modified to conform to the truth... Absent and essential part of the record, the appeals court must presume that the trial court's determination is correct. In this case, the Court of Appeals ordered the lower court to correct and restore the record. However, not only did the lower court not correct the record, it further corrupted the record by removing Appellants Statement of the Evidence. Thereby, creating an absents of essential parts of the record. *State v. Boling*, 840 S.W.2d 944 (Tenn. Crim. App. 1992)

##### Necessity:

The statutory provisions that "no appeal shall be dismissed by the appellate court for failure to assign reasons for the appeal," did not interfere with the principles laid down in the rule of court regulating the practice in the supreme court, requiring the appellants, within certain time, to make a specific assignment of errors, etc. T.C.A. 27-3-111, *Bell v. Brown*, 13 Tenn. (5 Yer.) 107 (1833)

##### Assignable Errors:

The appeal in an equity cause in which a broad appeal was taken could assign errors upon questions of law. *Brown v. Dayton, C. & I. Co.*, 3 Tenn. Civ. App. (Higgins) 395 (1912)

##### Spoliation or destruction of evidence:

The spoliation, destruction, mutilation, or alteration of evidence without satisfactory explanation gives rise to an inference unfavorable to the spoliator. The unexpected and deliberate spoliation or destruction of relevant, documentary, or other evidence, or the mutilation or alteration of such evidence, gives rise to an inference that the matter destroyed, mutilated, or altered is unfavorable to the spoliator. The party having control over the evidence must have an obligation to preserve it at the time it was destroyed, and generally be on notice of a claim or potential claim at the time of the destruction. An unfavorable inference can arise only against one who actually destroyed or was privy to the destruction of the evidence and usually only in cases where the destruction or mutilation was in bad faith for the purpose of suppressing evidence. There is, however, authority that a showing of bad faith is not necessary. There is authority that the party seeking the benefit of the inference must make a prima facie showing that the other party destroyed the evidence under circumstance manifesting fraud, deceit, or bad faith, or show that the once-extant evidence was destroyed to suppress the truth, and that the evidence would have favored its case. Fla.—Hernandez v. Pino. 482 So. 2d 450 (Fla. Dist. Ct. App. 3d Dist. 1986)

## CONCLUSION

For these reasons, Appellant Petitions/Moves this Honorable Court to reverse its ORDER filed on December 15, 2008 and Approve the Appellant's Application/Motion to Appeal to the Supreme Court the Chancery Court's order granting defendant's motion to dismiss and pending a full review of a corrected record declare the Tipton County General Election of August 03, 2006 void and instruct the Tipton County Election Commission to order a new election which is proper and is provided for within the law. Appellant also Moves this court to refund all filing cost to the Appellant and assess cost the defendants.

RESPECTFULLY SUBMITTED this 31st day of December, 2008

**Posted August 20, 2008**

**IN THE SUPREME COURT OF APPEALS FOR THE STATE OF TENNESSEE AT JACKSON**

Appeal from the Final Judgment of the Chancery Court for Tipton County

MIKE PARSONS

Appellant/Plaintiff

V. No. W2007-00327-SC-R11-CV

JEFF HUFFMAN,

JAMES SNEED as Chairman of the

Tipton County Election Commission and

TIPTON COUNTY ELECTION COMMISSION

Appellee(s)/Defendant(s)

Case No. 24,402

## Appeal from the Final Judgment of the Chancery Court for Tipton County

Case No. 24,402

## APPELLANT'S APPLICATION FOR PERMISSION TO APPEAL TO THE SUPREME COURT

Comes now, Mike Parsons acting Pro Se and makes application for an appeal before the Supreme Court of Tennessee, of the final judgment in this matter by the Appellate Court for the Western District filed June 3, 2008.

No petition for rehearing was filed.

The demand for equitable and reasonable accommodations and accurate and legal vote tabulations are the heart of this case. This case not only seeks relief for the Plaintiff as stated throughout the proceedings, but also addresses the primary interest of the public who were denied access to vote and finally the need to secure a question of Judicial ethics and address the denial of due process.

1st Questions for review:

Did the Court of Appeals ignore the material issues of fact presented to the lower court that were the basis for the law suit and appeal?

Facts:

Defendants, James Sneed the Chairman of the Tipton County Election Commission and the Tipton County Election Commission are the duly authorized entity with the authority to conduct and monitor elections in Tipton County, Tennessee and had a duty to insure that adequate voting equipment and facilities were provided for the August 03, 2006 General Election.

The only location for early voting was in Covington. Being five miles from the northern county line and 20 miles from the southern county line posed an inequitable condition to those living in the South end of the County. More than 65% of the population live within ten miles of the southern border and over 75% of those work outside the County making a 20 mile drive to Covington to vote early impractical.

The Election Commission was aware that there would be fewer voting machines available than in previous elections but failed to notify the public, forcing many in the south to wait for several hours to vote. The local news paper reported many voters having to wait more than four hours in line to vote and some polls not closing until midnight. See Attachment (a)

There were estimates of a few thousand voters that went to the polls but left without voting due to long lines outside in 100 degree temperatures. I observed over two hundred leave without voting from 4 to 7PM at the Atoka polling location.

Early tabulations from the Election Commission before 10PM sent to WMCTV Channel 5 in Memphis showed (Plaintiff) Parsons having 79% of the vote with 4282 votes and 18% reporting. The following day, the Election Commission reported Parsons had received less than 3000 votes.

These questionable factors combined with the numerous violation of election law were the foundation of my challenge of the election in the Tipton County Chancery Court.

2nd Question for Review

Did the Court of Appeals ignore the primary interest of the public who were denied access to vote.

Facts:

See attachment (a) Public outcry for lack of machines.

### 3rd Question for Review

The Need to Secure Settlement of an Important Question of Law.

Does a Judge have to be told he has a conflict of interest when he has already decided he has?

Fact:

At the time this case was filed in the Chancery Court in Tipton County, another similar case was filed challenging the election results of the August 03, 2006 general election. In that case it was regarding the tabulation of votes in a race where the winner won by one or two votes. In that case Judge Joe Walker recused himself because he was himself, on the ballot of said election. That election contest sought to overturn just that race and declare the Plaintiff the winner of the election.

However, in my challenge of the election, I was seeking to void the entire election because of a complete lack of voting machines, several violations of election law and irregularities.

### 4th Questions for review:

The need to secure uniformity of decision. Did the Court of Appeals not review Plaintiffs Rule 59.4 Motion in the lower court on its merits?

Facts:

In Parsons v Wells W2007-00316-COA-R11-CV, the Appellate Courts Judgment references “ The purpose of a Rule 59.04 motion to alter or amend a judgment is to provide the trial court with an opportunity to correct errors before the judgment becomes final. The motion should be granted when previously unavailable evidence becomes available; or to correct a clear error of law or to prevent injustice.” The Plaintiff’s affidavits site multiple undisputed facts that were presented at the Rule 59 Motion Hearing.

Interestingly, the Court of Appeals took a different view of the function of the Rule 59.4 motion in this case and stated in their opinion, “there was nothing in the record to review regarding this matter,” (p10) This is a direct result of the lower court manipulating the evidence before the Court of Appeals by removing it from the record.

Authority: In re M.L.D. 182 S.W.3d 890,895 (Tenn. Ct. App.2005) Id, :see Bradley v. McLeod, 984S.W.2d 929, 933 (Tenn. Ct. App.1998)

### Denial of due process:

Why would the Court of Appeals ignore the lower courts failure to take action when the Election Commission ignored my subpoena demanding access to the voting records – especially in light of the recent errors and manipulated voting results with the Micro-Vote System throughout the country? The actions of the lower court dismissing my petition on questionable grounds prevented my fundamental right of redress of our most essential legal process (voting). In essence the lower court has said this election is non-reviewable by its citizens. This is a clear denial of my right to due process. Issues sited to the Court of Appeals were:

THE TRIAL COURT ERRORED BY DISMISSING THE CASE UPON DEFENDANT’S MOTION THAT PLAINTIFF’S PETITION WAS TIME BARRED. (TCA 1-3-102)

THE TRIAL COURT ERRORED BY DISMISSING THE CASE UPON DEFENDANT'S MOTION TO DISMISS FOR IMPROPER PROCESS OF SERVICE. Appellant paid Sheriff for process and instructed the court to serve process in initial petition.

THE TRIAL COURT ERRORED BY DENYING PLAINTIFF'S MOTION FOR CLAIRIFICATION. To identify Appellee Jeff Huffman as an individual, not as County Executive.

THE TRIAL COURT ERRORED BY DENYING PLAINTIFF'S QUESTION TO THE COURT; WAS THE COUNTY ATTORNEY REPRESENTING JEFF HUFFMAN AS THE COUNTYEXECUTIVE. Appellee Jeff Huffman never appeared in court and was not represented by an attorney who could legally represent him.

THE TRIAL COURT ERRORED BY IGNORING PLAINTIFF'S MOTION TO COMPEL. SOS.CH1360-2-13-.24 (T.C.A.2-9-108) Examination of the Election vote tabulation could have revealed any manipulation of the process

THE TRIAL COURT ERRORED BY EXCLUDING FROM THE TECHNICAL RECORD, APPELANT'S EXHIBITS THAT WERE FILED WITH THE TRIAL COURT WITH PLAINTIFF'S MOTION FOR NEW HEARING. Tenn. R. App. P. 24(g) Limit on Authority to Add or Subtract from the Record. —Nothing in this rule shall be construed as empowering the parties or any court to add to or subtract from the record except insofar as may be necessary to convey a fair, accurate and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal. An abuse of discretion is where discretion has been exercised arbitrarily and capriciously or where discretion has been exercised in bad faith,

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THE TRIAL COURT ERRORED BY DISMISSING THE CASE CLAIMING THE PLAINTIFF STATES NO GROUNDS UPON WHICH RELIEF CAN BE GRANTED WHEN A GENUINE ISSUE OF DISPUTED MATERIAL FACTS EXIST DENYING PLAINTIFF DUE PROCESS. The Election Commission failed to provide adequate facilities; proper placement of machines, enough machines, failure to notify the public of a known reduction of voting machines and certain long delays to vote and failure to provide access to inspect the tabulation equipment after the election in light of the change of votes provided to the media by the Election Commission.

THE TRIAL COURT ERRORED BY IGNORING THE VIOLATIONS OF ELECTION LAW BY THE TIPTON COUNTY ELECTION COMMISSION. Secretary Of State, State Coordinator of Elections Ch1360-2-18-.06 and T.C.A. 2-6-304( c ), "In no event may the votes for any candidate be totaled until after all polls in the county are closed Assure that voting machines and voting compartments are arranged in such a way that the secrecy of the ballot is preserved and that no voter, on entering the polling place, comes near the voting machines of ballot box before the voter's eligibility to vote has been determined; (4) Have persons who are waiting to vote stand in line so that no person who is waiting is standing nearer than (10)' to any voting machine or ballot box. T.C.A. 2-7-102

THE TRIAL COURT ERRORED BY PRESIDING OVER THIS CASE WHEREAS THE JUDGE HAD A VESTED INTEREST IN THE OUTCOME. The Judge presiding over Plaintiff's challenge to the election was himself on the ballot of said election. In the event the Judges ruling is overturned, he would be on the ballot of the new election and another candidate could pose a challenge.

#### Authority

In an election contest, whether there is proof of actual fraud only, or violations of statutory safeguards only, or a combination of two, issue is weather or not those acts, viewed cumulatively, compel conclusion that election did not express free and fair

will of qualified voters. *Emery v. Robertson County Election Commission* 586 S.W.2d 103 (Tenn. 1979)

Where there is a total disregard of a statute regulating the conduct of elections, it cannot be treated as an irregularity, but it must be held and adjudicated to be cause for declaring the election void and illegal.

Statutory violations alone may be sufficient to invalidate election, especially where they thwart those statutory provisions designed to prevent undue influence or intimidation of free and fair expression of will of electors or to ensure that only those who meet statutory requirements for eligibility to vote case ballots. (*Forbes v. Bell*, 816 S.W.2d 719 Tenn. 1991)

Tennessee law empowers a court to void an election on two alternative, but closely related bases. First, “upon a sufficient quantum of proof that fraud or illegality so permeated the election as to render it incurably uncertain, even though it can not be shown to a mathematical certainty that the result might have been different. (T.R.p.28) *Emery v. Robertson County Election Commission*, 586 S.W.2d 103, 109 (Tenn.1979); *State ex rel Davis v. Kivett*, 180 Tenn. 598, 177 S.W.2d 551 (1994); *Ingram v. Burnette* 204 Tenn. 149, 316 S.W.2d 31 (1958).

An election should be invalidated when it was so permeated with fraud and illegality that it cannot be said to fairly reflect the will of the voters. It is not necessary that the complaint specifically set out a sufficient number of illegal votes to change the result of the election or to make the result mathematically uncertain to void an election, however, the alleged wrong must be so gross and palpable a failure of the opportunity for a free and equal expression of the popular will, that the courts cannot permit the election to stand. *Southall v. Billings*, supra, 375 S.W.2d at 849, *Barry v. Lauck*, 45 Tenn. 588 (1868)

Attachment (a)

Voters Respond to Lack of Voting Equipment

As a resident of Drummonds for over 20 years, my family has always exercised our right to vote. Yesterday (Thursday), my wife and I arrived at 6:45 p.m. to vote. At 8:15 we were still about two and a half to three hours away from voting. We left.

Hopefully by November this can get fixed. I understand the long ballot, but the lack of machines (there were only two when there had always been four in this district) was definitely a deterrent to voting. We wonder how it is no one shows up to vote.

Thankfully my son who is 20 years old could go earlier in the day. He only had to wait one and a half hours to vote! Let's get this fixed by November. I also appreciated the people who stayed so long to vote. Thanks.

Robert Thompson

Drummonds

By Jeff Ireland, News Editor

At a little past 1 a.m. last Friday morning, it still wasn't over as weary Tipton County election commissioners, office personnel and candidate supporters milled around the Tipton County Election Commission office in Covington.

The polls had been closed for more than six hours, but long lines, a long ballot, and in some people's opinions, not enough voting machines, had combined to make for a very long election night.

At approximately 1:15 a.m., the results from the final precinct in Drummonds finally came in and a few candidates could finally rest easy.

Even though the polls officially closed at 7 p.m. Thursday night, anyone in line at that time was allowed to vote.

The final voter at Poplar Grove Church in Drummonds finished up just before midnight. Several other precincts in the county were also overwhelmed by long lines.



Joe Laxton got in line at Poplar Grove at 5:30 p.m. and didn't get to vote until 9 p.m.

He said he counted 43 people who left the line after waiting for a long period of time to vote and estimated 15 or 20 more arrived, found out how long it was going to take to vote, and left without voting.

"I've never had a problem before," said Laxton, who added he has been voting in Drummonds for several years. "A 30-minute wait would have been long. An hour wait is reasonable. Three or four is not. That is not a reasonable amount of time to anybody with children, or the elderly, to wait."

There were two machines at the precinct and Laxton said it was not nearly enough.

Laxton said the poll workers were doing the best they could in Drummonds.

"It wasn't anybody's fault at the precinct," he added. "The problem was not the ballot. It was the number of machines. If the (number) of machines were short in the south (end of the county), the results were skewed. People are not going to stand in line for four hours typically."

Many races were close.

District 6 County Commissioner Billy Yancy lost his bid for reelection by 32 votes.

In a District 2 commissioner race, Billy Dan Huggins lost by one vote.

"Bunches of people walked out of the polling places," said Yancy. "All day long. People left. I was there at Randolph all day long. People came back two or three times and still couldn't vote ... We need early voting in South Tipton County."

#### Conclusion

For these reasons, Appellant request this Court to reverse the Chancery Court's order granting defendant's motion to dismiss and declare the Tipton County General Election of August 03, 2006 void; and instruct the Tipton County Election Commission to order a new election at the earliest possible time which is proper and is provided for within the law. Appellant also request a refund of all cost in both courts and any other relief this court deems proper.

RESPECTFULLY SUBMITTED this 1st day of August, 2008.

## Posted June 06, 2008

On June 03, 2006, the Court of Appeals filed its decision in Parsons v. Huffman, the challenge of the 2006 Tipton County General Election denying a review of the election.

By denying my appeal, the Court of Appeals has denied the people of Tipton County the opportunity to review the evidence that proves the Tipton County 2006 General Election was rigged. Please read my Oral Argument presented to the Court of Appeals and decide for yourself. Did this case fail to state a cause of action?

The demand for equitable and reasonable accommodations and accurate and legal vote tabulations are the heart of this case.

Defendants, James Sneed the Chairman of the Tipton County Election Commission and the Tipton County Election Commission are the duly authorized entity with the authority to conduct and monitor elections in Tipton County, Tennessee and had a duty to insure that adequate voting equipment and facilities were provided for the August 03, 2006 General Election.

Some of the undisputed facts in this election were:

1. That the only location for early voting was in Covington. Being five miles from the northern county line and 20 miles from the southern county line posed an inequitable condition to those living in the South end of the County. More than 65% of the population live within ten miles of the southern border and over 75% of those work outside the County making a 20 mile drive to Covington to vote early impractical.
2. That the Election Commission was aware that there would be fewer voting machines available than in previous elections but failed to notify the public, forcing many in the south to wait for several hours to vote. The local news paper reported many voters having to wait more than four hours in line to vote and some polls not closing until midnight. See Attachment (a)
3. There were estimates of a few thousand voters that went to the polls but left without voting due to long lines outside in 100 degree temperatures. I observed over two hundred leave without voting from 4 to 7PM at the Atoka polling location.
4. That early tabulations from the Election Commission before 10PM sent to WMCTV Channel 5 in Memphis showed Parsons having 79% of the vote with 4282 votes and 18% reporting. The following day, the Election Commission reported Parsons had received less than 3000 votes.

These questionable factors combined with the numerous violation of election law were the foundation of my challenge of the election in the Tipton County Chancery Court.

Denial of due process:

Why would the lower court fail to take action when the Election Commission ignored my subpoena demanding access to the voting records – especially in light of the recent errors and manipulated voting results with the Micro-Vote System throughout the country? The actions of the lower court dismissing my petition on questionable grounds prevented my fundamental right of redress of our most essential legal process (voting). In essence the lower court has said this election is non-reviewable by its citizens. This is a clear denial of my right to due process.

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10. THE TRIAL COURT ERRORED BY PRESIDING OVER THIS CASE WHEREAS THE JUDGE HAD A VESTED INTEREST IN THE OUTCOME. The Judge presiding over Plaintiff's challenge to the election was himself on the ballot of said election. In the event the Judges ruling is overturned, he would be on the ballot of the new election and another candidate could pose a challenge.

#### Authority

In an election contest, whether there is proof of actual fraud only, or violations of statutory safeguards only, or a combination of two, issue is weather or not those acts, viewed cumulatively, compel conclusion that election did not express free and fair will of qualified voters. *Emery v. Robertson County Election Commission* 586 S.W.2d 103 (Tenn. 1979)

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Tennessee law empowers a court to void an election on two alternative, but closely related bases. First, “upon a sufficient quantum of proof that fraud or illegality so permeated the election as to render it incurably uncertain, even though it can not be shown to a mathematical certainty that the result might have been different. (T.R.p.28) *Emery v. Robertson County Election Commission*, 586 S.W.2d 103, 109 (Tenn.1979); *State ex rel Davis v. Kivett*, 180 Tenn. 598, 177 S.W.2d 551 (1994); *Ingram v. Burnette* 204 Tenn. 149, 316 S.W.2d 31 (1958).

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## CONCLUSION

For these reasons, Appellant request this Court to reverse the Chancery Court’s order granting defendant’s motion to dismiss and declare the Tipton County General Election of August 03, 2006 void; and instruct the Tipton County Election Commission to order a new election at the earliest possible time which is proper and is provided for within the law.

Appellant also request a refund of all cost in both courts and any other relief this court deems proper.

Attachment (a)

### Voters Respond to Lack of Voting Equipment

As a resident of Drummonds for over 20 years, my family has always exercised our right to vote. Yesterday (Thursday), my wife and I arrived at 6:45 p.m. to vote. At 8:15 we were still about two and a half to three hours away from voting. We left.

Hopefully by November this can get fixed. I understand the long ballot, but the lack of machines (there were only two when there had always been four in this district) was definitely a deterrent to voting. We wonder how it is no one shows up to vote.

Thankfully my son who is 20 years old could go earlier in the day. He only had to wait one and a half hours to vote! Let's get this fixed by November. I also appreciated the people who stayed so long to vote. Thanks.

Robert Thompson

Drummonds

By Jeff Ireland, News Editor

At a little past 1 a.m. last Friday morning, it still wasn’t over as weary Tipton County election commissioners, office personnel and candidate supporters milled around the TiptonCounty Election Commission office in Covington.

The polls had been closed for more than six hours, but long lines, a long ballot, and in some people’s opinions, not enough voting machines, had combined to make for a very long election night.

At approximately 1:15 a.m., the results from the final precinct in Drummonds finally came in and a few candidates could finally rest easy.

Even though the polls officially closed at 7 p.m. Thursday night, anyone in line at that time was allowed to vote.

The final voter at Poplar Grove Church in Drummonds finished up just before midnight. Several other precincts in the county were also overwhelmed by long lines.

Joe Laxton got in line at Poplar Grove at 5:30 p.m. and didn’t get to vote until 9 p.m.

He said he counted 43 people who left the line after waiting for a long period of time to vote and estimated 15 or 20 more arrived, found out how long it was going to take to vote, and left without voting.

“I’ve never had a problem before,” said Laxton, who added he has been voting in Drummonds for several years. “A 30-minute wait would have been long. An hour wait is reasonable. Three or four is not. That is not a reasonable amount of time to anybody with children, or the elderly, to wait.”

There were two machines at the precinct and Laxton said it was not nearly enough.

Election commissioner Tissie Wilson said the long ballot, which included many judges in addition to the county general election candidates, caused a problem.

“It’s not like this was just a Tipton County problem,” Wilson said. “This happened all across the state.”

She said the number of machines at precincts is based on the number of registered voters in that area.

Poll workers reported, Wilson said, that voters were taking, on average, 20 minutes to vote.

“There was just no way for us to anticipate that,” Wilson said.

The fact the new automated machines were being used for the first time may have also contributed to the amount of time it was taking people to vote.

Laxton said the poll workers were doing the best they could in Drummonds.

“It wasn’t anybody’s fault at the precinct,” he added. “The problem was not the ballot. It was the number of machines. If the (number) of machines were short in the south (end of the county), the results were skewed. People are not going to stand in line for four hours typically.”

Many races were close.

District 6 County Commissioner Billy Yancy lost his bid for reelection by 32 votes.

In a District 2 commissioner race, Billy Dan Huggins lost by one vote.

Early voting for all county residents was available in Covington. In the months leading up to the election, some officials called for an early voting site in South Tipton County, something that never happened.

“Bunches of people walked out of the polling places,” said Yancy. “All day long. People left. I was there at Randolph all day long. People came back two or three times and still couldn’t vote ... We need early voting in South Tipton County.”

Although the lines were long at some Tipton County voting locations, the turnout in last Thursday’s county general election was not as large as many had predicted.

There were a total of 12,255 voters who cast ballots, just under 36 percent of registered voters.

The highest vote-getter in a contested county-wide race was Jeff Huffman, the incumbent county executive, who netted 7,685 votes, or nearly 70 percent. Challenger Mike Parsons received 2,930 votes, or around 27 percent.

NOTE: Actually with 31,376 registered voters, 12,255 votes would be 39%. Had the nearly 2,000 voters who were reported to have left without voting been able to vote it would have resulted in a 45 % voter turnout.

A 45% turnout would have been the largest turnout ever in Tipton County for a General election.

### Original Petition

1. For proper process to issue against the defendants requiring them to answer this petition as required by law.
2. For the poll books, voter signature list, ballot applications voting machines and all other proper evidence be received by the court as required by T.C.A. Sections 2-17-109 and 2-17-110.
3. That the General Election of Tipton County held August 03, 2006 be voided and order a new election.
4. That a hearing be set no sooner than 15 days after the filing of this Complaint but no later than 50 days after the filing of this Complaint as required by the T.C.A. Section 2-17-106.
5. For such other and further relief, including the cost of this matter.
6. This motion is filed timely as specified by The Tennessee Rules of Civil Procedures, Rule 6.01.

Posted December 31, 2006

For those who responded to the misrepresentation by the local publication December 26, 2006, about my challenge of the August 03, 2006 election.

This is my petition currently before the court.

IN THE CHANCERY COURT OF TIPTON COUNTY, TENNESSEE

MIKE PARSONS

Plaintiff,

Vs. No. 24402

Jeff Huffman,

JAMES SNEED as Chairman of the

Tipton County Election Commission, and

TIPTON COUNTY ELECTION COMMISSION,

Defendants,

MOTION FOR NEW TRIAL

AND ALTERATION OR AMENDMENT OF JUDGEMENT

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Whereas, the Court erred in it's findings in this matter, the Plaintiff respectfully submits as follows:

1. The Court erred in its Findings and Order, whereas, it only identified certain elements in Plaintiff's petition to Contest the Election and addressed only specific items.

Specifically, plaintiff's position that the election officials did not provide an adequate number of voting machines. That the Tipton County Election Commission provided the state mandated minimum, but should have provided more machines.

The Court failed to acknowledge the remaining issues and facts cited: The Tipton County Election Commission is the duly authorized entity with the authority to conduct and monitor elections in Tipton County Tennessee and has a duty to insure that adequate voting equipment and facilities are provided.

Although the State of Tennessee requires that the county provide a minimum of one machine per 750 voters, the county has the ability and duty to have as many voting machines as they feel they may need in a given election. Microvote, the vender of voting machines stated, through their representative, Bill Whitehead, that Microvote recommended that they, the Tipton County Election Commission, have one machine per every 250 voters.

That Plaintiff personally observed over 200 individuals arrive to vote at the East Atoka Precinct and after waiting, many for hours outside in 100 degree temperatures, left without voting. This same occurrence was observed by many other witnesses at several other polling locations in the south end of Tipton County.

To the contrary, the polling locations at the north end of the county had no long lines and no reports of people walking away without voting due to long lines.

Had an opportunity been provided, at a full and proper hearing on the petition to contest the election, plaintiff would have shown that "this is a direct result of having early voting available only in Covington at the election Commission office. According to the percentages of voters living close to Covington, (5 miles away from the northern county line), vs. those living in the more heavily populated south end of the county almost 20 miles away."

And that the election commission failed to provide adequate facilities in the form of failing to provide the public notification of a special condition to this August 03, 2006 General Election to the effect that fewer machines would be provided, causing longer lines and waiting time and that utilization of early voting would be necessary to avoid said delays in voting.

2. The Court erred in its position that the filing was time bared.

TCA 1-3-102 Computation of Time Controls- The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded. The ruling statute of time is therefore TCA 1-3-102. The Tipton County General Election of August 03 2006 occurred on a Thursday and the 10th day following that was Sunday August 13, 2006. Filing of the Petition to Contest the Election on August 14, 2006 was proper. Sanders v. Traver, 109S.W.3d 282, 286 (Tenn.2003) Evans v. Perkey, 647 S.W.2d 636 (Tenn. App. E.S. 1982) (claim filed on August 31, 1981 was timely filed when the one year savings statute ran on August 29, 1981, which was a Saturday). Plaintiffs original petition to contest the election included the statement that "This motion is filed timely as specified by the Tennessee Rules of Civil Procedures, Rule 6.01) which is a reflection of the preceding and controlling statute. It is interesting that the judge sites case law to support the statement, "When the meaning of statutory language is clear, we must interpret it as written". Plaintiff submits that T.C.A. 1-3-102 is clear to that point of filing and that the last day can not be counted if it falls on a Saturday, Sunday, Legal Holiday. In this case the 10th day occurred on a Sunday and Plaintiff files his Contest of Election Petition on the following day, Monday, when the court was open for business.

3. The Court erred by not acknowledging the fact that in the plaintiff's petition, Plaintiff instructed the Chancery Court to provide proper process as required by law.

That Plaintiff was charged and paid for process by the Tipton County Sheriff's office in the amount of \$66.00 for process service to the three listed defendants. (Exhibit C) The fact that Plaintiff also personally provided a copy of the Complaint and an additional copy of the Summons to the defendants listed in the complaint. Does not vacate the duties and responsibilities of the Tipton County Chancery Court Clerk and Tipton County Sheriff's department.

4. It would appear that the Court in reviewing the file has been misled by the addition of the phrase "Jeff Huffman County Executive" and "James Sneed, Chairman of the Tipton County Election Commission" that was added to the summons after the fact of service by the plaintiff. As stated in Plaintiff's affidavit; the Summons Plaintiff served on the defendant's was completed by the clerk's staff of the Tipton County Chancery Court and indicates the defendants as Jeff Huffman, James Sneed, as chairman of Tipton County Election Commission and Tipton County Election Commission. It did not say "Jeff Huffman County Executive". Plaintiff was not provided a copy of the original summons Plaintiff served or any copy of the ones the Tipton County Sheriff's office was instructed and paid to serve. (Exhibit C) No copies of the summons the Tipton County Sheriff's office was instructed and paid to serve were on file in the Tipton County Chancery Court Clerks File.

Only copies of the summons Plaintiff served were later found in the Tipton County Chancery Court file and provided to Plaintiff by the clerks staff after the Courts Finding and Order filed in the clerks office on November 21, 2006; and theretofore has "Jeff Huffman County Executive" hand written, out to the side of the form printed statement, "To the above named Defendant (s)". (See attached Affidavit and Exhibits. #A and #B)

That my Complaint to Contest Election sites Jeff Huffman as the first defendant. That in all of my filings and subsequent filing by the listed defendant's council indicates the first defendant as Jeff Huffman.

Furthermore, evidence would show that by virtue of the absents of the process of service of a Summons for a Subpoena Plaintiff filed with the Tipton County Chancery Court Clerk, September 26, 2006 and whereby Plaintiff paid a fee to the clerk for the Sheriff to provide service and service was not performed indicates a failure on the Tipton County Chancery Court Clerks office and or Tipton County Sheriff's Office both of which are outside of the Plaintiff's responsibility.

5. The Court erred denying Plaintiff's Motion for Clarification. The court on this matter implies the plaintiff somehow purported to bring an additional issue before the court and sites *Forbes v. bell*, 816 S.W.2d 716 (Tenn. 1991) which held that the plaintiff could not amend the substance of her complaint after the ten-day statute. Plaintiff's Motion for Clarification was to identify the obvious difference that the court may not understand the Plaintiff had named the defendant, Jeff Huffman, an individual and not Jeff Huffman as the Tipton County Executive. This in no way seeks to amend the substance of this case.

6. The Court erred in the fact that he failed to address the Plaintiff's Motion to Compel. Whereby the plaintiff was seeking action by the court to force the Defendants in the case to provide the evidence requested and ordered in the original petition, subsequent Subpoena and finally demanded in Plaintiff's Motion to Compel. Had Plaintiff been able to review evidence available to him as provided for within the law. Examination of the Election vote tabulation process could have identified how early voting results before the last poll was closed indicated Plaintiff's having 79% of the vote and defendant only 21%. (Exhibit E)

7. The Court erred in his position that Plaintiff states no grounds upon which relief can be granted and sites several cases pertaining to a challenged election where the plaintiff in those cases seek to have the election overturned and he or she be declared the winner. There are two distinct causes of action and two remedies for those causes. The court in this matter has clearly cited the first reason that is remedied by declaring the petitioner in essence the winner, but failed to site the second which relief would be for a new election as was sought in Plaintiff's petition.

Tennessee law empowers a court to void an election on two alternative, but closely related bases. First, "upon a sufficient quantum of proof that fraud or illegality so permeated the election as to render it incurably uncertain, even though it can not be shown to a mathematical certainty that the result might have been different. *Emery v. Robertson County Election*



Commission, 586 S.W.2d 103, 109 (Tenn.1979); State ex rel Davis v. Kivett, 180 Tenn. 598, 177 S.W.2d 551 (1994); Ingram v. Burnette 204 Tenn. 149, 316 S.W.2d 31 (1958).

Second, where some ballots are found to be illegal, (and) the number of illegal votes cast is equal to, or exceeds the margin by which the certified candidate won. Emery v. Robertson County Election Commission, sputa: Hilliard v. Park, 212 Tenn. 588, 370S.W.2d 829 (1963) Millar v. Thomas, 657 S.W.2d 750, 751 (Tenn. 1983)

The contestant may claim that the election was null and void for some valid reason or reasons, with the proper relief in that case being to order a new election.

The election should be invalidated because it was so permeated with fraud and illegality that it cannot be said to fairly reflect the will of the voters. It is not necessary that the complaint specifically set out a sufficient number of illegal votes to change the result of the election or to make the result mathematically uncertain to void an election, however, the alleged wrong must be so gross and palpable a failure of the opportunity for a free and equal expression of the popular will, that the courts cannot permit the election to stand. Southall v. Billings, supra, 375 S.W.2d at 849, Barry v. Lauck, 45 Tenn. 588 (1868) When the Tipton County Election Commission failed to provide adequate facilities, enough voting machines comparable to past elections, including proper placement of voting machines, voting machines were within 10' of voters prior to their being registered and no privacy was provided to permit voting in secrecy, (Parsons Affidavit) and or proper notification of potential delays due to fewer machines and the result of not early voting was a violation of statute and a gross failure and thwarted the otherwise opportunity for a free and equal expression of the popular will.

Whereas the plaintiff filed his petition to challenge the election results and named Jeff Huffman, An individual) was proper in that an election contest is a controversy between two private individuals as to the right to exercise the functions and enjoy the emoluments of office. This election contest is a civil suit brought to recover and enforce a civil right. Furthermore, this action seeks a judicial determination that the August 03, 2006 election is invalid.

The Election Commission Erred by virtue of their violation of Statute of the Rules of Secretary Of State, State Coordinator of Elections Ch1360-2-18-.06 and T.C.A. 2-6-304( c ), "In no event may the votes for any candidate be totaled until after all polls in the county are closed. Plaintiff's Exhibit D and affidavit clearly show that the Tipton County Election Violated statute by totaling the votes prior to the closing of all polls.

Polls are considered closed is defined by T.C.A. 2-17-127 At the time set for closing of the polling place, the officer of elections shall place one (1) of the election officials at the end of the line of persons waiting to vote. No other person may then get in line to vote. The polls shall be closed as soon as all persons in the line ahead of the election official have voted regardless of when the polls opened. Emery v. Robertson County Election Commission 586 S.W.2d 103 (Tenn. 1979) Millsaps v. Thompson, 96 F. Supp. 2d 720 (E.D. Tenn. 2000) aff'd, 259 F.3d 535, 2001 Fed. App. 256P (6th Cir. 2001); Millsaps v. Thompson, 259 F. 3d 535, 2001 Fed. App. (6th Cir. 2001)

The Election Commission also failed to provide adequate facilities when it failed to provide privacy for the voting both whereas a person standing next to you voting or walking behind you could look over and see who you were voting for.

Whereas, the officer of elections is in charge of and responsible for the conduct of all the elections being held at the polling place where such officer is the officer of elections. The officer is subject to the direction of the county election commission in the performance of such duties.

The officer of elections shall: (2) Assure that voting machines and voting compartments are arranged in such a way that the secrecy of the ballot is preserved and that no voter, on entering the polling place, comes near the voting machines of ballot box before the voter's eligibility to vote has been determined; (4) Have persons who are waiting to vote stand in line so that no person who is waiting is standing nearer than (10)' to any voting machine or ballot box. T.C.A. 2-7-102

In an election contest, whether there is proof of actual fraud only, or violations of statutory safeguards only, or a combination of two, issue is weather or not those acts, viewed cumulatively, compel conclusion that election did not express free and fair will of qualified voters. *Emery v. Robertson County Election Commission* 586 S.W.2d 103 (Tenn. 1979)

Where there is a total disregard of a statute regulating the conduct of elections, it cannot be treated as an irregularity, but it must be held and adjudicated to be cause for declaring the election void and illegal.

Statutory violations alone may be sufficient to invalidate election, especially where they thwart those statutory provisions designed to prevent undue influence or intimidation of free and fair expression of will of electors or to ensure that only those who meet statutory requirements for eligibility to vote case ballots. (*Forbes v. Bell*, 816 S.W.2d 719 Tenn. 1991)

Whereas, Plaintiff's testimony, affidavit, Exhibits and petitions all indicate a genuine issue of material facts.

Where a dispute exists as to any material fact or where there is merely uncertainty as to whether there may be a dispute, it is the duty of the court to overrule a motion for summary judgment. *Dooley v. Everett*, 805 S.W.2d 380, 1990 Tenn. App.

Plaintiff's request application of Rule 59 allows for a New Trial and Rule 60 allows for Relief From Judgment or Orders, Whereas, both are proper and just in this matter.

Respectfully Submitted;

Mike Parsons, Propria Persona

## Posted December 28, 2006

This is a copy of the press release provided the local publication in its entirety.

It would appear that the citizens of Tipton have lost an opportunity to determine forever, if the Tipton County General Election of August 03 2006 was tainted by manipulation of the voting process.

It appears the Judge in this matter has chosen to deny our access to a full review of the evidence in this matter by dismissing this case; not on the facts and merits of the case but questionable technicalities.

The undisputed facts in this election were:

2. That the Election Commission was aware but failed to properly notify the public that there would be fewer voting machine stations available than in previous elections, potentially forcing many to wait for hours to vote. This was in-fact, the result at many polling locations on Election Day, where there were reports of voters having to wait more than four hours in line to vote.
3. That estimates of a few thousand voters went to the polls and left without voting due to long lines outside in 100 degree temperatures.
4. And finally, the fact that early reports on Ch 5, TV showed Parsons having 79% of the vote with 4282 votes and 18% reporting. Then, the following day, the Election Commission reported I had received less than 3000 votes. This was viewed by many as highly questionable.

The demand for equitable and reasonable accommodations and accurate vote tabulations are the heart of this case.

The fact that there is now early voting in the South end of the County, (something I pushed for and promised in the Candidate Forum Debate at the Ruffin Theater before the election) is a step in the right direction of equitable accommodations.

However, the Election Commissions elimination of three of the largest Polling locations in the South end of the County; combining them into one location with less than half the space of the smallest polling location (approximately 10'x 20'); with less than 10 dedicated parking spaces where hundreds were available in the previous locations, is not a reasonable accommodation, nor a responsible decision by the Election Commission. This was a step in the wrong direction. This reduction of space by elimination of those facilities was so drastic that I would submit it rises to the level of being discriminatory in nature to the citizens of Munford and Drummonds.

The fact that our opportunity to review the smart cards and other voting equipment having been denied by the Election Commission reeks of a cover-up.

The fact that the Election Commission and court did not respond to our Subpoena and request of the court to secure this evidence prior to the November 07 election speaks for itself.

August 03, 2006 election night coverage by a local TV station revealed Mike Parsons with 4282 Votes at 79% of the vote with 18% of the polls reporting.

The following day, a local publication in Tipton County reported Mike Parsons only having 2814 Votes and losing the election.

How could the final election results flip from Mike Parsons having over 70% of the vote to his opponent having over 70% of the vote?

And how could MIke Parsons have fewer votes in numbers with 100% of the votes counted than with 18% at the beginning of the tabulation?

As FOX NEWS says... WE REPORT, YOU DECIDE.

1. That two weeks of early voting at the Election Commission Office in Covington, five miles from the northern county line and 20 miles away from the southern county line posed an inequitable condition to those living in the South end of the County. Many of whom work outside the County and or have other commitments that make a 20 mile drive to Covington before and after work difficult.

If you were one of the many who went to vote, but could not wait for hours and had to leave and believe that more machines and proper notification of the voting delays could have made a difference in your being able to cast your vote, please let me know. My e-mail is [mike@mikeparsons.org](mailto:mike@mikeparsons.org) Please send any written correspondence to: Mike Parsons P.O. Box 655 Arlington Tennessee 38002.

## Citizens to Elect Mike Parsons

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