



III.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of ratification.

IV.

**FOURTH AFFIRMATIVE DEFENSE**

This defendant has not breached any duty allegedly owed to plaintiff.

V.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrines of waiver, laches, estoppel and merger.

VI.

**SIXTH AFFIRMATIVE DEFENSE**

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

VII.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendant specifically demurs and objects to jurisdiction and venue pursuant to T.C.A.

Sections 16-10-111 and 2-17-101.

VIII.

**EIGHTH AFFIRMATIVE DEFENSE**

Defendant would assert that T.C.A. Section 2-5-151 does not specify the form of a recall question. If the petition were certified then the "question" on the ballot pursuant to T.C.A. Section 2-5-151 and Chattanooga Charter provision 3.18 would be which candidate the voters

wished to select to be mayor. Defendant would show that dozens of municipalities have similar recall provisions. And, the Tennessee Supreme Court has validated similar provisions in State ex rel Brown vs. Howell Election Commissioners, 183 S.W. 517, (1916 Tennessee).

IX.

NINTH AFFIRMATIVE DEFENSE

Defendant would assert that said the imposition of dated signatures on the recall petition and other requirements under T.C.A. Section 2-5-151 for 93 of the 95 counties in Tennessee is unconstitutional under both Equal Protection of Article XI, § 8 of the Tennessee Constitution and the Equal Protection Clause of the United States Constitution.

X.

TENTH AFFIRMATIVE DEFENSE

Defendant would assert that Plaintiff is not entitled to an injunction or any extraordinary relief. Pursuant to T.C.A. Section 29-1-107 “No such extraordinary process shall be granted, unless the party applying therefor state in the party’s bill or petition that it is the first application for such process.” Defendant would show that Plaintiff is now on his third application for extraordinary relief. Plaintiff first applied for this exact same extraordinary relief on August 31, 2010 as alleged in paragraph 21 of his Complaint. Plaintiff then applied for this exact same extraordinary relief on November 18, 2011, when they applied and were denied this relief from the Tennessee Court of Appeals. Accordingly, Plaintiffs are not allowed the injunctive relief sought.

XI.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff most recently sought injunctive relief from the Court of Appeals on November 18, 2011, and were denied. Tenn. Code Ann. § 29-1-108 requires plaintiff to seek said relief from the same court instead of shopping until they find a court to grant said relief.

XII.

**TWELTH AFFIRMATIVE DEFENSE**

Defendant relies on the doctrine of former suit pending doctrine to prevent Plaintiff from pursuing this trial court claim relief while he is also pursuing the same relief on appeal. "The two suits must involve the identical subject matter and be between the same parties and the former suit must be pending in a court in this state having jurisdiction of the subject matter and the parties." *Id.* at 793 (quoting *Cockburn v. Howard Johnson, Inc.*, 215 Tenn. 254, 385 S.W.2d 101 (Tenn. 1964)).

XIII.

**THIRTEENTH AFFIRMATIVE DEFENSE**

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

1. Defendant denies the summary as stated in paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of the Complaint.
2. Defendant admits the factual allegations as stated in paragraph 9 and 10 of the Complaint.
3. Defendant denies that this court has proper jurisdiction or venue as alleged in

paragraphs 11 and 12 of the Complaint.

4. Defendant admits the allegations as stated in paragraphs 13, 14, 15, 16 and 17 of the Complaint.

5. Defendant admits that several versions of the petition were circulated, but denies that any significant variations existed as alleged in paragraph 18 of the Complaint.

6. Defendant denies the allegations as stated in paragraph 19 of the Complaint. Defendant would specifically assert that it has been the practice in this state for decades to present the recall question to the voters by presenting voters with various candidates and questioning who they prefer to elect.

7. Defendant denies the allegations as stated in paragraphs 20, 21 and 22 of the Complaint.

8. Defendant admits the existence of the Order attached in paragraph 23 of the Complaint, but denies such order should be considered as an advisory opinion and therefore moves this Court to strike said allegation contained in paragraph 23 of the Complaint and Exhibit G to the Complaint.

9. Defendant admits the allegations as stated in paragraphs 24 and 25 of the Complaint.

10. Defendant denies the allegations as stated in paragraphs 26, 27, 28, 29, 30, 31 and 32 of the Complaint.

11. Defendant denies the allegations as stated in paragraph 33 of the Complaint.

12. Defendant admits the allegations as stated in paragraphs 34 and 35 of the Complaint.

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

14. Defendant admits the allegations as stated in paragraph 37 of the Complaint.

15. Defendant denies the allegations as stated in paragraphs 38, 39, 40 and 41 of the Complaint.

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

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

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

19. Defendant denies the allegations as stated in paragraphs 45 and 46 of the

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

20. With regard to the allegations in paragraph 47 of the Complaint, Defendant admits that T.C.A. Section 2-5-151(e)(4) requires (amongst other requirements) that signatures to be dated for 93 of the 95 counties in Tennessee. Defendant would assert that said imposition is unconstitutional under both Equal Protection of Article XI, § 8 of the Tennessee Constitution and the Equal Protection Clause of the United States Constitution.

21. Defendant admits the allegations as stated in paragraph 48 of the Complaint.

22. Defendant denies the allegations as stated in paragraph 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62 of the Complaint.

23. Defendant denies that Plaintiff is entitled to a declaratory judgment or injunction.  
24. All other allegations of the Complaint, neither admitted, explained, nor denied, are here and now denied as if specifically denied herein.

**NOW** having answered as fully and completely as required by law Defendant demands the Plaintiff's Complaint be dismissed.

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COUNTERCLAIM

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The Defendant, Hamilton County Election Commission, now file this Counter-Claim against Ron Littlefield and assumes the role of Counter-Plaintiff and would state as follows:

1. Counter-Plaintiff is a duly and properly created government entity of both the State of Tennessee and Hamilton County, Tennessee.
2. Counter-Defendant Ron Littlefield is a resident and citizen of Hamilton County, Tennessee.
3. Venue and jurisdiction should be transferred to Chancery Court of Hamilton or Davidson County, Tennessee.
4. Counter-Defendant, Ron Littlefield, has obtained one injunction improperly and is in the process of obtaining another injunction improperly.
5. As a direct and proximate result of the improper injunction obtained by Ron

Littlefield in the first case The Hamilton County Election Commission has incurred damages related to the holding of elections, staff time in responding to injunctions, attorney's fees, court costs.

6. Pursuant to Rule 65 of the Tennessee Rules of Civil Procedure Ron Littlefield is liable to the Hamilton County Election Commission for all such damages.

7. Counter-Plaintiff also seeks declaratory judgment that T.C.A. Section 2-5-151 is unconstitutional under both Equal Protection of Article XI, § 8 of the Tennessee Constitution and the Equal Protection Clause of the United States Constitution.

Premises considered, Counter-Plaintiff prays:

1. That process issue and be served upon the counter-Defendant through his attorney, Hal North.
2. That the counter-Plaintiff be awarded damages equal additional costs of holding the recall election, staff time in responding to injunctions, attorney's fees, court costs.
3. That the Court issue a declaratory judgment finding T.C.A. Section 2-5-151 is unconstitutional under both Equal Protection of Article XI, § 8 of the Tennessee Constitution and the Equal Protection Clause of the United States Constitution.
4. That Counter-Plaintiff have all such other, further and general relief to which it may show itself to be entitled upon a trial of this cause.

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THIRD PARTY COMPLAINT

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The Defendant, Hamilton County Election Commission, now files this Third Party Complaint against Robert E. Cooper, Jr. in his capacity as Attorney General and Reporter for the State of Tennessee and assumes the role of Third Party Plaintiff and would state as follows:

1. Counter-Plaintiff is a duly and properly created government entity of both the



State of Tennessee and Hamilton County, Tennessee.

2. Robert Cooper is the duly appointed Attorney General and Reporter for the State of Tennessee.

3. Jurisdiction and Venue in the Third Party Complaint are in the Chancery Court for Hamilton, Tennessee. Accordingly, this matter should be transferred to said court.

4. T.C.A. Section 2-5-151(e)(4) places recall restrictions and requirements for 93 of the 95 counties in Tennessee.

5. Said imposition is unconstitutional under both Equal Protection of Article XI, § 8 of the Tennessee Constitution and the Equal Protection Clause of the United States Constitution.

6. The Hamilton County Election Commission is charged with enforcing said unconstitutional mandate at a significant cost to itself.

7. The Hamilton County Election Commission is entitled to a declaratory judgment finding T.C.A. Section 2-5-151 is unconstitutional under both Equal Protection of Article XI, § 8 of the Tennessee Constitution and the Equal Protection Clause of the United States Constitution.

Premises considered, Counter-Plaintiff prays:

1. That process issue and be served upon the Third Party Defendant, Robert E. Cooper, Jr. in his capacity as Attorney General and Reporter for the State of Tennessee.

2. That the Court issue a declaratory judgment finding T.C.A. Section 2-5-151 is unconstitutional under both Equal Protection of Article XI, § 8 of the Tennessee Constitution and the Equal Protection Clause of the United States Constitution.

3. That Third Party Plaintiff have all such other, further and general relief to which it may show itself to be entitled upon a trial of this cause.

Respectfully submitted,

SAMPLES, JENNINGS, RAY & CLEM, PLLC

By:

  
J. CHRISTOPHER CLEM, BPR# 015793

Attorneys for Defendant

Hamilton County Election Commission

130 Jordan Drive

Chattanooga, TN 37421

(423) 892-2006

CERTIFICATE OF SERVICE

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

Hal North, Esq.

Fred Hitchcock, Esq.

Tom Greenholtz, Esq.

1000 Tallan Building

Two Union Square

Chattanooga, Tennessee 37402

Robert E. Cooper, Jr.

Office of the Attorney General and Reporter

P. O. Box 20207

Nashville, TN 37202-0207

This the 30<sup>th</sup> day of Dec, 2011.

SAMPLES, JENNINGS, RAY & CLEM, PLLC

BY:

